

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report**  
**Phase 2**  
**Implementation of the Standard**  
**in Practice**

**LITHUANIA**





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

PHASE 2:  
IMPLEMENTATION OF THE STANDARD IN PRACTICE

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

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## *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 Lithuania .....	11
Overview of Lithuania .....	12
<b>Compliance with the Standards</b> .....	19
<b>A. Availability of information</b> .....	19
Overview .....	19
A.1. Ownership and identity information .....	22
A.2. Accounting records .....	58
A.3. Banking information .....	67
<b>B. Access to information</b> .....	73
Overview .....	73
B.1. Competent Authority’s ability to obtain and provide information .....	74
B.2. Notification requirements and rights and safeguards .....	85
<b>C. Exchange of information</b> .....	87
Overview .....	87
C.1. Exchange of information mechanisms .....	88
C.2. Exchange of information mechanisms with all relevant partners .....	96
C.3. Confidentiality .....	98
C.4. Rights and safeguards of taxpayers and third parties .....	102
C.5. Timeliness of responses to requests for information .....	103
<b>Summary of determinations and factors underlying recommendations</b> .....	113

<b>Annex 1: Jurisdiction’s response to the review report . . . . .</b>	<b>117</b>
<b>Annex 2: List of exchange of information mechanisms . . . . .</b>	<b>118</b>
<b>Annex 3: List of all laws, regulations and other relevant material . . . . .</b>	<b>125</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 Lithuania, as well as the practical implementation of that framework. 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 access to that information, and in turn, whether that information can be effectively exchanged on a timely basis with its exchange of information partners. The assessment of effectiveness in practice has been performed in relation to a three-year period: from 1 July 2011 to 30 June 2014.

2. Lithuania is the largest of the three Baltic States located in northern Europe. It has generally enjoyed a high rate of growth over the past decade following economic reforms. Its diverse economy is predominantly based on services and industry, with a fast-growing information technology sector and business outsourcing sector. The financial sector mainly services domestic demand and is dominated by the banking sector. Lithuania has been a member of the European Union (EU) since 2004. Much of Lithuania’s trade is conducted with other EU members, although the Russian Federation (Russia) remains one of its main trade partners. The majority of the foreign direct investments made to Lithuania are from Sweden, Germany and Poland. Lithuania has a developed tax system which includes the imposition of income tax on the worldwide income of Lithuanian resident individuals and Lithuanian entities.

3. The legal and regulatory framework ensures the availability of ownership information of all companies and partnerships formed under Lithuanian law. All legal entities formed in Lithuania and foreign entities setting up a branch in Lithuania are required to register with the Register of Legal Entities (the Registrar) to gain legal recognition. Ownership information on private limited liability companies (UABs) and partnerships (KŪBs, TŪBs, MBs and EEIGs) is available through the Registrar, either through its electronic database IS MLE or held in a more conventional way in the form of documents that were scanned and turned into electronic form. The

authenticity of the data submitted to the Registrar and compliance with the legal requirements are checked by notaries as well as the Registrar itself. Both perform a preventive check of the data and documents submitted to the Registrar. Supervision of notaries in turn is performed by the Chamber of notaries as well as the Financial Crime Investigation Service.

4. In addition, all entities that are obliged to pay or withhold tax are required to register with the Lithuanian tax administration, although generally ownership information is not provided through this registration. Shares in public limited liability companies (ABs) can only be held in uncertificated form. Ownership information on ABs is maintained by the securities account managers of the shareholders. Nominee shareholding is permitted in specified circumstances which are accompanied by obligations to identify the owners behind the nominee holding. Bearer shares cannot be issued under Lithuanian law.

5. Over the period of review Lithuania has received in total 439 requests for information. Ownership information has been requested in 63 EOI requests in the three-year review period. The Lithuanian authorities report that the information requested was provided in virtually all cases. Lithuanian EOI partners who report having asked for ownership information have in general not reported any specific difficulties. Statistics provided by Lithuania as well as input from peers further indicate that the main category of information requested regarded information in respect of companies. Requests regarding ownership of companies could be responded to in almost all cases from information available in the internal databases and tax returns, as well as taxpayers' information that is held at file at the tax office.

6. Although trusts cannot be formed under Lithuanian law, residents may act as a trustee or trust administrator of a foreign trust. The combination of record-keeping obligations under the accounting and tax laws and the customer due diligence obligations under the anti-money laundering (AML) legislation ensure that information regarding the settlors, trustees and beneficiaries of foreign trusts is available to the Lithuanian authorities. AML-obligated persons must in all cases perform ongoing monitoring of customers' business relationships as well as regularly review and update identity information held on their customers and the beneficial owners. AML-related supervision on company service providers is exercised by the Financial Crime Investigation Service and regular inspections confirm that this information is generally available. Foundations, in the form of charitable and sponsorship funds, can only be formed for public interest and charitable purposes. Sponsorship funds may be provided by the foundation to authorised recipient entities which must use the funds for public interest purposes only.

7. The legal and regulatory framework of Lithuania generally ensures the availability of accounting and bank information. All relevant entities and

arrangements are subject to the general obligations under Lithuanian accounting law to keep accounting records and underlying documents for a minimum period of ten years. Accounting obligations with respect to the keeping of underlying records also ensure the availability of bank transaction records in Lithuania, whilst banks are obliged to keep identity records on account holders collected through customer due diligence as required by the AML legislation. Banks are required to keep both customer identity and transaction records for a minimum period of ten years.

8. The system of mandatory audits combined with independent review of the auditors ensures that reliable accounting records, supported by underlying documentation, are kept by all the entities and arrangements which have their accounts audited. Furthermore, the approved financial statements have to be filed with the Registrar and this would be in the hands of the tax authority. Compliance with the accounting requirements is reviewed within the course of regular tax proceedings, e.g. during a tax audit by local and regional tax offices.

9. Of the 439 requests for information received in the period of review, 294 requests (66%) pertained to accounting information, in the majority of cases in relation to companies. Lithuania's authorities report that the information requested was provided in all cases. Those of Lithuania's EOI partners who report having asked for accounting information have in general not reported any specific difficulties. Bank information was requested in 53 cases. Regular inspections by the supervisory authorities as well as the experience that information requested from a bank could be obtained and exchanged, confirm that this information is available with the banks.

10. Lithuania's competent authority – the State Tax Inspectorate (STI) – has broad powers to access information for EOI purposes, which are complemented by powers to search premises, seize information and inspect property. Enforcement of these provisions is secured by the existence of financial penalties and criminal sanctions for non-compliance. There is no domestic interest requirement in relation to the exercise of these information gathering powers. Furthermore, STI's ability to access information for the purpose of carrying out their functions extends to information that might otherwise be subject to bank, commercial or professional secrecy.

11. The Lithuanian competent authority has direct access to a wide range of information collected as part of the registration and filing requirements applicable in Lithuania and stored in the Tax Inspectorate's institutional databases. During the review period, the Lithuanian competent authority was able to access information to reply to EOI requests concerning ownership and identity information, accounting information and other types of information.

12. Lithuania has an extensive exchange of information (EOI) network, comprising 55 double taxation conventions (DTCs), the Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention) and a number of EU instruments that allows for EOI with all relevant partners. Furthermore, Lithuania has not refused to enter into an EOI agreement with any Global Forum member. All but one of the DTCs allows Lithuania to exchange of information to the international standard. Although the majority of Lithuania's DTCs do not contain wording akin to paragraphs 4 and 5 of Article 26 of the Model Tax Convention, Lithuania is nevertheless able to exchange bank information and information without a domestic interest requirement.

13. Overall, Lithuania has a legal and regulatory framework in place that generally supports the availability, access and exchange of all relevant information for tax purposes in accordance with the international standard. Lithuania has in place appropriate organisational processes to ensure effective exchange of information. Recommendations have been made where elements of Lithuania's EOI regime have been found to be in need of improvement.

14. Lithuania has substantial experience in EOI and it is considered by its EOI partners to be an important partner. Over the period of review from 1 July 2011 to 30 June 2014 Lithuania has received 439 requests for information. Including the time taken by the requesting jurisdiction to provide additional information, the requested information was provided within 90 days, 180 days and within one year in 64%, 90% and 99% of the time respectively.<sup>1</sup>

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

16. A follow up report on the steps undertaken by Lithuania to answer these recommendations should be provided to the PRG within twelve months after the adoption of this report.

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1. These figures are cumulative.

## Introduction

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

17. The assessment of the legal and regulatory framework of Lithuania as well as its practical implementation 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 has been conducted in two stages: the Phase 1 review assessed Lithuania’s legal and regulatory framework for the exchange of information as at January 2013, while the Phase 2 review assessed the practical implementation of this framework during a three year period (1 July 2011 to 30 June 2014) as well as amendments made to this framework since the Phase 1 review up to 5 May 2015. The following analysis reflects the integrated Phase 1 and Phase 2 assessments.

18. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 5 May 2015., Lithuania’s responses to the Phase 2 questionnaire and supplementary questions, other materials supplied by Lithuania, information supplied by partner jurisdictions and explanations provided by Lithuania during the on-site visit that took place from 6-9 January 2015 in Vilnius, Lithuania. During the on-site visit, the assessment team met a wide range of officials and representatives of the Ministry of Finance and the State Tax Inspectorate (STI), as well as representatives of the Register of Legal Entities, the Financial Crime investigation Unit and the Ministry of Economy as well as representatives of the Central Bank of the Republic of Lithuania, among others.

19. 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 Lithuania’s legal and regulatory framework and its application in practice against these elements and each of the enumerated aspects. In

respect of each essential element a determination is made that either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning Lithuania's practical application of each of the essential elements and a rating of either: (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant is assigned to each element. As outlined in the Note on Assessment Criteria, an overall "rating" is applied to reflect the jurisdiction's level of compliance with the standards (see the Summary of Determinations and Factors Underlying Recommendations at the end of this report).

20. The Phase 1 and Phase 2 assessments were conducted by assessment teams comprising expert assessors and representatives of the Global Forum Secretariat. The 2013 Phase 1 assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Ms Ann-Sofi Johansson, Senior Adviser, Tax Auditing Unit, Finnish Tax Administration, Finland; Mr Andrew Cousins, Deputy Comptroller of Taxes and Competent Authority, Treasury and Resources, Jersey; and Ms Doris King from the Global Forum Secretariat. For the Phase 2 assessment Ms Doris King was replaced by Mr. Boudewijn van Looij, also from the Global Forum Secretariat, while Mr. Mr Andrew Cousins after the onsite visit was replaced by Ms. Niamh Moylan of Jersey.

## Overview of Lithuania

21. The Republic of Lithuania (hereafter, "Lithuania") is located in Northern Europe along the south-eastern shore of the Baltic Sea. It shares a land border with Latvia (to the north), Belarus (to the south-east), Poland and the Russian federal exclave of Kaliningrad (to the west and south-west). It covers an area of 65 200 km<sup>2</sup> and is the largest of the three Baltic states. As of June 2014, the total population of Lithuania was around 3.04 million. Its currency is the Euro as of 1 January 2015.<sup>2</sup>

22. Lithuania has experienced mixed economic fortunes since gaining its independence in 1991 and transitioning to a market economy. It had the highest annual GDP growth rate (at 8.8%) out of the European Union (EU) candidate states in 2003; this growth rate was sustained up to 2008, averaging at 8% annually. The economy was significantly hit by the 2008-9 global financial crisis with GDP falling nearly 15% in 2009. It has since made a

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2. Prior to this, the currency was the Lithuanian litas (LTL), which was replaced at the fixed exchange rate of EUR 1 = LTL 3.45280.

quick recovery through the government's efforts to attract foreign investment, develop export markets, and to pursue broad economic reforms. In 2014, Lithuania had a GDP per capita, at current prices, of USD 25 550 (EUR 21 655) and annual GDP growth of 3.3%.

23. Lithuania's economy is mainly driven by the services sector (68% of GDP), followed by the industrial sector (28%) and the agricultural sector (4%). Important sub-sectors within the service industry include information and communication technologies, and the fast growing area of shared services and outsourcing of business processes. In terms of manufacturing, food processing and chemical products form significant parts of the sector. High value added production is also increasing in importance in Lithuania in the areas of pharmaceutical substances, components for molecular diagnostics and other biotech products, much of which is produced for export.

24. In 2014, Lithuania's total exports were valued at EUR 24.4 billion and total imports at EUR 26.5 billion. Lithuania's main trading partners were the EU and Russia, with the latter comprising 21% of Lithuania's total trade. Of the EU, the greatest volumes of trade were conducted with Latvia (9% of total trade), Poland (8%), Germany (7%). Outside the EU the greatest volumes of trade was conducted with Belarus (5%). As of 31 December 2014, cumulative foreign direct investments (FDI) in Lithuania amounted to EUR 12.1 billion and were mainly from Sweden, Netherlands and Germany.<sup>3</sup> The FDI was predominantly made to Lithuania's manufacturing sector.

25. Lithuania has been a member of the EU since 2004. It participates in the Schengen Area, a European zone of free movement of people. It is also a member of the World Trade Organisation (WTO), the North Atlantic Treaty Organisation (NATO) and the United Nations (UN).

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

26. Lithuania is a parliamentary democratic republic. The basis for the Lithuanian governmental and legal system is the Constitution, which was adopted on 25 October 1992. Lithuania follows the principle of the separation of powers. The President of the Republic, who is popularly elected, is the Head of State and conducts his duties as foreseen in the Constitution (art. 84). Executive power rests with the Government, which comprises the Prime Minister and Ministers. The Prime Minister is appointed or dismissed by the President of the Republic, with the approval of the Seimas (the Parliament). Ministers are nominated by the Prime Minister and approved by the President. Legislative power is exercised by the single-chamber Seimas.

3. All statistics obtained from Statistics Lithuania as accessed on 31 July 2014 : [www.stat.gov.lt](http://www.stat.gov.lt).

The Seimas is composed of 141 members who are democratically elected for four-year terms.

27. Judiciary power rests with the courts in Lithuania. The Lithuanian court system comprises the Constitutional Court, the Supreme Court, the Court of Appeal, regional courts and district courts. Apart from the Constitutional Court and the Supreme Court, the courts are divided into courts of general jurisdiction, which consider civil and criminal cases and administrative offences, and administrative courts, which consider disputes involving at least one party that is the State and/or a public authority (including tax disputes). Supreme Court judges are appointed and dismissed by the Seimas upon the recommendation of the President of the Republic of Lithuania. Judges of the Court of Appeals shall be appointed by the President of the Republic of Lithuania upon the approval of the Seimas. Judges and chairpersons of district courts, local courts, and other specialised courts are appointed by the President of the Republic of Lithuania.

28. Lithuania has a civil law legal system. The Constitution is the state's supreme law and any law that does not conform with the Constitution is considered invalid (Constitution, s. 7). The hierarchy of law in Lithuania ranks as follows, in descending order: (i) the Constitution, (ii) Constitutional laws, (iii) Laws including Codes, (iv) resolutions of the Seimas, resolutions of the Government and decrees of the President, (v) orders of the ministers, and (vi) other regulatory acts. The principal branches of substantive and procedural laws are codified. International treaties and conventions become part of the Lithuanian legal system once they are ratified by the Seimas and prevail over laws made on the national level, including the Codes (Constitution, s. 138; Law on Treaties, ss. 2 and 11). Since 2006, Lithuanian courts have followed the principle of binding precedents (*stare decisis*): courts must follow both judgements of higher courts and those of courts of equal ranking.

### *The tax system*

29. Lithuania has a developed tax system and imposes direct taxes (such as corporate income tax, individual income tax and tax on real estate) and indirect taxes (such as value added tax and excise duties). The State Tax Inspectorate (STI) is responsible for the enforcement of the main taxes and duties, the management of the Register of Taxpayers and also the supervision of the functions of the ten County Tax Inspectorates (CTI). Both the STI and the CTIs, are empowered to conduct tax control activities, including tax audits, tax inspections and tax investigations, as appropriate. Customs of Lithuania (Customs) is responsible for the administration of customs duties and other import taxes (e.g. VAT and excise duties). Both the STI and Customs are under the supervision of the Ministry of Finance.



30. Under the Law on Corporate Income Tax (LCIT), Lithuanian incorporated and registered legal entities (Lithuanian entities) are subject to corporate income tax on their worldwide income. Foreign entities are subject to corporate income tax on the income of their permanent establishment in Lithuania and on other Lithuanian sourced income, including interest, dividends, royalties, and proceeds from rent/sale of immovable property. As from 1 January 2010, the general corporate income tax rate is 15%, with a concession rate of 5% for small entities. Withholding tax on interests and royalties is at a rate of 10%. The taxable period follows the calendar year.

31. Under the Law on Income Tax of Individuals (LITI), individuals are considered resident in Lithuania if (i) their permanent place of residence is in Lithuania, (ii) their personal, social or economic interests are located in Lithuania (rather than in a foreign jurisdiction), during a taxable period, (iii) they are present in Lithuania for a period or periods in the aggregate of 183 days or more during the tax period, or (iv) they are present in Lithuania for a period or periods in the aggregate of 280 days or more during successive tax periods and who stayed in Lithuania for a period or periods in the aggregate of 90 days or more in any of such tax periods. Resident individuals are taxed on their worldwide income. Non-resident individuals are subject to tax on income derived through a fixed base in Lithuania and other Lithuanian sourced income, including income from employment, interest, dividends, royalties and proceeds from immovable property. As from 1 January 2010, the general personal income tax rate is 15%, however a 5% personal income tax rate is applied for income from business activity (with the exceptions to income from professional services prescribed in the LITI). From 1 January 2014 dividend income is taxed at 15%. As with corporate income tax, the taxable period follows the calendar year.

32. All individuals and legal entities with an obligation to pay tax, including as a tax withholder, are required to register with their respective CTI (Law on Tax Administration (LTA), s. 45(1)). A taxpayer identification number (TIN) is provided upon registration and the TIN must be included in tax returns and other documents submitted by the taxpayer. Where available, the taxpayer's registration number from the Register of Legal Entities (for legal persons) or the Population Register (for individuals) is used as the taxpayer's TIN (LTA, s. 47(2)). This facilitates the ease of tracing information held on Lithuanian taxpayers across the different registries. Furthermore, the respective registries automatically provide certain information to the Lithuanian tax administration for the taxpayer register (see *State registers*).

33. Lithuanian entities and permanent establishments of foreign entities in Lithuania are required to file their annual corporate income tax returns, accompanied by financial reports, with the Lithuanian tax administration within six months of the end of the relevant tax period (i.e. before June of

each following year). With respect to the other income received by foreign entities (i.e. interest, dividends, royalties payments etc.), tax must be withheld by the payer and paid to the Lithuanian tax authorities. In general, withheld amounts must be declared by the withholding agent and paid to the Lithuanian tax administration in the month following that in which the income payment from which tax was withheld was made.

34. Individual income tax is withheld by the payer in the case of: (i) income derived from Lithuanian entities, permanent establishments or non-resident individuals via their Lithuanian fixed base, except prescribed taxes on income (such as business income); (ii) income connected with employment or corresponding relations, sports activities or performing activities; and (iii) interest and royalties received from a Lithuanian resident individual. The individual taxpayer must file a tax return by 1 May of the following calendar year with respect to all other types of income received.

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

35. Lithuania has in place 55 Double Taxation Conventions (DTCs) which cover its main trading partners. It also exchanges information with other EU member states under a number of EU instruments. Lithuania signed the updated Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention) on 7 March 2013. The updated Multilateral Convention entered into force in respect of Lithuania on 1 June 2014.

#### *State registers*

36. All legal entities formed under Lithuanian law are required to register with the Registrar in order to be deemed incorporated. Information that is required to be provided on registration of a legal entity includes, amongst other things, its founding documents, name of the entity, its legal form, its registered office address and details on the members of its management body. However, except for single member entities, ownership information is not explicitly required to be provided, although this information may be recorded in the founding documents submitted for registration. The managers of a legal entity have a duty to report any changes to the registered information to the Registrar within 30 days of the change (Civil Code, s. 2.66(3)). The Registrar furnishes the Lithuanian tax administration, on a daily basis, with certain registered information on legal entities which is required for taxpayer registration – including, the name, legal entity code, legal form, head office address, branch address and details on the managers of the entity (Regulation of the Register of Legal Entities, s. 39.6).

37. The Residents' Register Service maintains a residents' register which contains information on all citizens of Lithuania and stateless persons

or citizens of other states who declare Lithuania as their place of residence. The residents' register contains a range of information on each individual including his/her personal identification number, name, surname, date of birth, place of birth, etc. The information in the Residents' Register is drawn upon by institutions that maintain other state registers (such as the taxpayer register) to ensure that the personal information reflected in their registers are kept up-to-date.

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

38. The financial sector in Lithuania is mainly domestically focussed. In 2012, the value of international payment transactions constituted 20% of all payment transactions in Lithuania. The Bank of Lithuania became the single financial regulator for all financial undertakings (including those in the banking, capital, insurance and pension sectors) as of 1 January 2012, and is responsible for all licensing and supervisory functions. It also oversees the compliance of financial institutions with the Law on the Prevention of Money Laundering and Terrorist Financing (AML Law), which transposes the EU Third Money Laundering Directive 2005/60/EC into Lithuania's domestic law (AML-CFT regime).

39. Banking comprises the largest proportion of the financial sector, making up 77% of its total asset value, which amounted to LTL 112 billion (EUR 31.6 billion) as at 31 December 2013.<sup>4</sup> As at September 2014, there were 7 domestic commercial banks and 8 branches of foreign banks in Lithuania. The majority of the share capital in the domestic commercial banks is held by foreign, mainly Nordic, investors.

40. Insurance broker companies are licensed and supervised by the Bank of Lithuania. Certain requirements must be fulfilled by licence applicants, e.g. on solvency. However insurance intermediaries (which includes individuals acting as insurance agents and insurance agent companies) which are tied to a licensed insurance broker company are not required to be licensed themselves. As at the beginning of 2013, there were 1 000 licensed insurance broker companies in Lithuania with approximately 5 000 tied intermediaries.

41. Only a company that has in place satisfactory trading systems and a licence from the Bank of Lithuania may operate a regulated market in Lithuania. The Lithuanian stock exchange is currently operated by NASDAQ OMX Vilnius, under the supervision and regulation of the Bank of Lithuania. As at 8 August 2013, the total market capitalisation of NASDAQ OMX Vilnius was EUR 4.7 billion, with the total value of share capitalisation amounting to EUR 2.8 billion. There were 33 companies with shares listed

4. [www.lb.lt/financial\\_stability\\_review\\_2014\\_1#page=67](http://www.lb.lt/financial_stability_review_2014_1#page=67).

on the stock exchange; and two companies and the Lithuanian Government listed on the bond market.

42. The professional practice of advocates (or lawyers) in Lithuania is supervised by the Lithuanian Bar Association (Law on the Bar, s. 57). As well as legal requirements, advocates in Lithuania must adhere to the Lithuanian Code of Ethics for Advocates which is drafted and amended by the general meeting of advocates and published by the Ministry of Justice (Law on the Bar, s. 59(4)). The Lithuanian Bar Association or the Ministry of Justice can institute disciplinary action against an advocate for violation of the Law on the Bar, the Lithuanian Code of Ethics for Advocates or for professional misconduct (Law on the Bar, Chapter X).

43. Accountants in Lithuania are not required to belong to any professional body, although they are required to follow the principles of the Code of Ethics for Professional Accountants and possess the relevant qualifications. Auditors are also subject to this code of ethics and are supervised by the Lithuanian Chamber of Auditors, a professional self-governing body. Public oversight of the audit profession is provided by the Authority of Audit and Accounting, which can conduct investigations into audits. Both the Lithuanian Chamber of Auditors and the Authority of Audit and Accounting have the power to take disciplinary actions as prescribed by the Law on Audit.

44. Notaries play a significant role in the execution of commercial transactions, the formation of legal entities and registration matters in Lithuania. According to the Law on the Notarial Profession (LNP), notaries “give legal effect to undisputable individual rights of natural and legal persons and legal facts” (s. 1). All notaries in Lithuania must be a member of the Chamber of Notaries, based in Vilnius, which is responsible for the supervision of notaries in their professional practice as well as co-ordinating notarial activities (LNP, ss. 8-10).

45. Auditors fall within the AML-CFT regime in Lithuania. Notaries and lawyers are also subject to AML obligations when conducting specific activities, see further A.1.1 (*AML-CFT regime*) below.

## Compliance with the Standards

### A. Availability of information

#### Overview

46. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period 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 Lithuania's legal and regulatory framework for availability of information.

47. The legal and regulatory framework ensures the availability of ownership information for all companies and partnerships formed under Lithuanian law. All companies, as with all legal entities, formed under Lithuanian law are required to register with the Register of Legal Entities (hereafter, the "Registrar") as part of their incorporation process. They are also required to register as taxpayers with the Lithuanian tax administration. Ownership information is provided by public limited liability companies (ABs) upon registration with the Registrar but there is no requirement to

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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.

update this information. Full, up-to-date ownership information on ABs is available through the licensed securities account managers with whom their shareholders hold their uncertificated shares. Up-to-date shareholder information on private limited liability companies (UABs) is held by the Registrar, as well as maintained by the company itself. Furthermore, as of 1 August 2014 the Registrar started to operate a new electronic database system. This database that is officially known as Information System of Members of Legal Entities” (hereinafter IS MLE) will hold shareholder information with regard to all newly formed UABs and information on partners in MBs. At the same time all relevant information regarding existing UABs and MBs will still be available with the Registrar in paper form (scanned documents). With both systems working contemporaneously, it is sufficiently ensured that updated information is available in all cases. Nominee shareholding is only permitted in limited specified circumstances in Lithuania which, in all cases, is accompanied by obligations that ensure identity information on owners is available. Bearer shares cannot be issued under Lithuanian company law.

48. Partnerships formed under Lithuanian law, including general partnerships (TŪBs), limited partnerships (KŪBs) and European economic interest groupings (EEIGs), are also required to register with the Registrar and the Lithuanian tax administration. Full identity information on all partners is provided upon registration with the Registrar. Any changes to the partners of the partnership is reflected through the incorporation documents and also required to be registered with the Registrar.

49. Foreign companies and foreign partnerships must register with the Registrar when setting up a branch in Lithuania. They are also required to register as a taxpayer if they carry on business or otherwise derive income through a permanent establishment in Lithuania. However, no ownership information is provided upon registration, in either case, nor is full ownership and identity information otherwise consistently available.

50. Although trusts cannot be formed under Lithuanian law, residents may act as a trustee or trust administrator of a foreign trust. The combination of obligations under general accounting and tax laws to maintain and submit accounting records and documents, and the customer due diligence obligations under the AML Law, ensures that information regarding the settlors, trustees and beneficiaries of foreign trusts is available to the Lithuanian authorities. Accordingly, it is considered that Lithuania has taken reasonable measures to ensure that ownership and identity information is available in respect of trusts.

51. Over the period of review Lithuania has received in total 439 requests for information. Ownership information has been requested in 63 EOI requests in the three-year review period. The Lithuanian authorities report that the information requested was provided in virtually all cases. Lithuanian

EOI partners who report having asked for ownership information have in general not reported any specific difficulties. Statistics provided by Lithuania as well as input from peers further indicate that the main category of information requested regarded information in respect of companies.

52. Requests regarding ownership of companies could generally be responded to from information that is readily available in the internal databases and tax returns, as well as taxpayers' information that is held at file at the tax office.

53. The obligations that ensure the availability of ownership and identity information for all relevant legal entities and arrangements are sufficiently supported by enforcement measures. These enforcement provisions are adequately applied in practice and generally ensure that ownership information with regard to the relevant entities is available.

54. The Lithuanian accounting laws provide a general obligation for all relevant entities and arrangements to keep accounting records and underlying documentation for a minimum period of ten years. However, it is not clear whether the accounting obligations on Lithuanian resident professional trustees extend to cover the income and assets of the foreign trust which they manage. Provisions in the accounting laws are further reinforced by the tax law. Enforcement of these provisions is secured by the existence of significant financial penalties for non-compliance. Compliance is reviewed within the course of regular tax proceedings, e.g. during a tax audit by local and regional tax offices. Statistics provided demonstrate that the number of fines and the corresponding amounts for violating accounting rules have increased during the period under review.

55. The system of mandatory audits combined with independent review of the auditors ensures that reliable accounting records, supported by underlying documentation, are kept by all the entities and arrangements which have their accounts audited. Furthermore, the approved financial statements have to be filed with the Registrar and this would be in the hands of the tax authority. Compliance with the accounting requirements is reviewed within the course of regular tax proceedings, e.g. during a tax audit by local and regional tax offices.

56. Of the 439 requests for information received in the period of review, 294 requests (66%) pertained to accounting information, in the majority of cases in relation to companies. Lithuania's authorities report that the information requested was provided in all cases. Those of Lithuania's EOI partners who report having asked for accounting information have in general not reported any specific difficulties.

57. The availability of banking information is ensured through general accounting obligations and AML requirements which apply to banks

operating in Lithuania. All transaction and client identity records are required to be kept by the banks for a minimum of ten years. In addition, banks are required automatically to report certain transaction and account information to the Lithuanian tax administration. In Lithuania, banks are regulated by the Bank of Lithuania. The Bank of Lithuania's rules establish clear requirements to keep all relevant transactional and financial records. These are complemented by the obligations of the AML regime on all Financial AML Service Providers. Lithuanian officials from the Bank of Lithuania state that in essence no breach of the obligation under AML legislation to keep proper documents and records of bank accounts has been found in the period of the review.

58. The customer identification obligations and record keeping obligations on all transactions require banking information to be available in Lithuania for all account holders. Compliance by banks in respect of these legal obligations is checked by independent auditors and supervised by the Bank of Lithuania. Through their inspections, it has been established that banks keep the required information on their clients and transactions. This is confirmed by the experience of the Lithuanian competent authority, as well as peer input, that banking information was available with banks and could be exchanged upon request.

59. During the three-year review period, bank information was requested in 53 cases. In the majority of cases (85%) this information was obtained directly from the banks. Lithuania's EOI partners indicated that banking information was provided in all cases.

## 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 6 A.1.1)*

60. The legal framework governing the formation and operation of companies in Lithuania comprises the Civil Code (CC), which sets out overarching legal principles on civil (including commercial) relationships and organisations, as supplemented by specific legislation governing each type of company. Registration with the Registrar forms an essential part of the formation process of any legal entity in Lithuania. A legal entity is deemed

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



incorporated from the date of its registration (CC, s.2.63(1)). The following forms of companies can be formed under Lithuanian law:

- Limited liability companies, including: (i) public limited liability companies (*akcinė bendrovė*, AB); (ii) private limited liability companies (*uždaroji akcinė bendrovė*, UAB); and (iii) European companies (*societas europaea*, SE). The operation of ABs and UABs is governed by the Law on Companies (LC). The formation and operation of SEs is governed by the Law on European Companies which implements Council Regulation (EC) No. 2157/2001 of 9 October 2001 in Lithuania (SE Regulation). SEs with their registered office in Lithuania are governed by the same provisions in the LC as applicable to ABs to the extent not otherwise provided by the SE Regulation or the Law on European Companies. The most prevalent form of legal entity used in Lithuania is the UAB, with 112 503 UABs registered as at 26 August 2014. This is compared to 484 ABs and one SE registered as at that date. These are further discussed under *Limited Liability Companies*.
- Agricultural companies (*ŽŪB*), which are governed by the Law on Agricultural Companies (LAC). As at 21 May 2014 there were 1 559 ŽŪBs registered in Lithuania. These are further discussed under *Other forms of Lithuanian incorporated companies*.
- Small partnerships (MB), which are governed by the Law on Small Partnerships (LSP), see *Other forms of Lithuanian incorporated companies*. As at 26 August 2014, there were 5228 MBs registered in Lithuania.
- Co-operative societies (or Co-operatives, *kooperatinė bendrovė*), which are governed by the Law on Co-operative Societies (LCS), see *Other forms of Lithuanian incorporated companies*. As at 21 May 2014, there were 654 co-operatives registered in Lithuania.

### ***Limited Liability Companies***

61. The LC provides for the formation of two types of limited liability companies: ABs and UABs. As Lithuania is a member of the EU, European companies (*societas europaea*, SE) can also be formed (see below).

62. Public limited liability companies (*akcinė bendrovė*, AB) can be formed by natural and/or legal persons. No maximum number of shareholders is stipulated by the LC. The minimum required share capital of a public limited liability company is EUR 40 000. Shareholders have limited liability for the debts of the company. An AB can only issue shares in uncertificated

form which can be publicly traded (LC, ss. 40(7) and 2(3)). It must maintain its registered office in Lithuania (LC, s. 2(7)).

63. Private limited liability companies (*uždaroji akcinė bendrovė*, UAB): The incorporation requirements follow those for ABs described above except that the minimum required share capital is EUR 2 500). An UAB can have up to a maximum of 250 shareholders (LC, s. 4(1)). An UAB may issue shares in certificated or uncertificated form (LC, s. 40(8)). Shares of an UAB cannot be publicly traded unless where otherwise expressly provided by law (LC, s. 2(4)). It must maintain its registered office in Lithuania (LC, s. 2(7)).

64. European companies (*Societas Europaea*, SE) are regulated by Council Regulation (EC) No. 2157/2001 of 9 October 2001 on the Statute for a European Company (SE) (the SE Regulation). According to section 1 of the SE Regulation, a SE is a legal entity with capital divided into shares. The liability of each shareholder is limited to the amount the shareholder has subscribed. According to section 10 of the SE Regulation, an SE must be treated in every Member State as if it were a public limited liability company formed in accordance with the law of the Member State in which it has its registered office. The SE Regulation is implemented by Lithuania through the Law on European Companies, pursuant to which the provisions regulating ABs to the extent permitted by the SE Regulation and unless otherwise provided for by the SE Regulation, Law on European Companies and other legal acts regulating SEs shall apply *mutatis mutandis* to SEs, whose registered office is located in Lithuania (s. 1(3)).

### *Information kept by public authorities*

65. A company formed under Lithuanian law is deemed incorporated upon its registration with the Registrar (LC, s. 11(1); CC, 2.63(1)). The incorporation documents of a company comprise its Memorandum and Articles of Association. The Articles of Association of a company must be registered with the Registrar within six months of its signing by all its incorporators, or it would otherwise become invalid (LC, s. 4(9)). Identity information on the initial shareholders, as founders of the company, is made available to the Registrar through the Memorandum of Association (LC, ss. 7(2)(1), ). However, the Memorandum of Association is not amended to reflect subsequent changes to the shareholders.

66. For both ABs and UABs, information reported upon registration includes: (i) an application for the registration of AB or UAB; (ii) the memorandum of association and its amendments, if the memorandum was amended before the registration of AB or UAB; if AB or UAB is formed by a single person, the Act of Establishment shall be presented instead of the memorandum; (iii) Articles of Association; (iv) the licence, if a licence must be

acquired prior to the formation of AB or UAB according to the laws; (v) the contribution in kind evaluation report; (vi) the incorporation report, if an AB is formed and etc. (Regulation on the Register of Legal Entities (RRLE), s. 52-53). Furthermore, the following information should be provided: (i) the head office address, (ii) identity information on the management board and (iii) information on any branches and representative offices (Regulation on the Register of Legal Entities (RRLE), s. 17). Shareholder information is only reported on registration, separately from its inclusion in the filed documents, in the case of single-member companies (LC, s. 12(1)). All information and documents, whether provided upon or subsequent to initial registration, must be authenticated by a notary prior to submission to the Registrar (RRLE, s. 35).

67. The company manager of both ABs and UABs must report any changes to the registered information and incorporation documents to the Registrar within 30 days of the change, unless a shorter timeframe is specified by law (LC, s. 12(3); CC, s. 2.66(3)). The company manager must be a natural person and is elected by the board of the company, if one has been appointed or otherwise by the supervisory board of the company. If neither a board nor a supervisory board has been elected, then the company manager is appointed at the general meeting of shareholders (LC, ss. 37(1)-(3)).

68. A company cannot rely on any amended information as against a third party until the amendment is published by the Registrar, unless it can prove that the third parties had knowledge of the amendment (LC, s. 12(3)). As mentioned, changes to shareholders are not reflected through amendments of the Memorandum of Association.

69. UABs are additionally required to file a list of shareholders with the Registrar upon registration (LC, s. 41(10)). Where the shareholder is a natural person, the identity information to be recorded includes the name, surname, personal identification number, address; where the shareholder is a legal person, the information required includes its business name, legal form, registration code and registered office (LC, s. 41<sup>1</sup>(2)(2)). The company manager is required to update the list of shareholders to reflect changes in shareholder information, including any change in the identity of the shareholders, as well as the amount of their shareholding (LC, s. 41<sup>1</sup>(7)). The company manager must file any revised list of shareholders with the Registrar within five working days of its preparation (LC, s. 41<sup>1</sup>(8)). Accordingly, up-to-date shareholder information on UABs is available in the hands of the Registrar.

70. However, as no such list of shareholders is required to be filed for ABs, the Registrar only maintains updated shareholder information with respect to ABs that have only one shareholder.

71. As of 1 August 2014 the Registrar started to operate a new electronic database system, the Information System of Members of Legal Entities. All UABs and small partnerships (MB) with more than one shareholder or member are obliged to provide information on their shareholders (i.e. first name and surname of a natural person, TIN and name of legal entity, date of becoming shareholder) or members (i.e. first name and surname of a natural person, date of becoming a partner of a small partnership) to the IS MLE system. The data must be provided in electronic form with an electronic signature. Data may be provided by the manager or a person authorised by him. Some of the shareholder related information is publicly accessible. The requirement to provide data to IS MLE is equally applicable to newly formed companies or MBs as well as existing ones.<sup>7</sup> However, the deadline as set under Lithuanian company law only refers to newly founded companies (s.41(1)). Statistics provided by Lithuania indicate that by the end of 2014 in total 5 673 lists of shareholders of UABs and 2 262 lists of members of MBs have been submitted, representing 12.5% of all private limited liability companies and 40% of small partnerships which had to present the lists. Therefore, it can be expected to take some time before all relevant information is also available through this new information system that is likely to enhance the accessibility to shareholder information with regard to UABs and information on partners in MBs. However, information that has not (yet) been updated in IS MLE, is still available in conventional scanned form with the Registrar. With both systems working contemporaneously during this transition phase, it is sufficiently ensured that updated information is available in all cases.

### *In practice*

72. The Commercial Register is maintained by the Ministry of Justice and was set up in 2003. The Registrar's database provides information on all corporations, non-profit organisations and foreign companies registered in Lithuania including their directors, (initial) shareholders, as well as fixed capital and annual accounts. The information in its databases is based on original documents.

73. Authenticity of the data submitted to the Registrar and compliance with the legal requirements are checked by notaries as well as the Registrar itself. Notaries as well as the Registrar cross-check all information provided with relevant registers, e.g. with the data from the Address Register,

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7. UABs founded prior to 1 January 2014 had to submit data on their shareholders to be included in IS MLE by 10 July 2014 (s. 78(3) of the Law on Companies). MBs formed before 1 July 2014 had to submit the data on their members by 1 October 2014 (Article 311 of the Law on Small Partnerships).

Citizens Register and the Real Property Cadastre. As all these registers have connected IT systems, the Registrar will usually perform this check automatically. The Registrar requires valid ID documents or a certificated e-signature as identification. When performing notarial acts, a notary establishes the identity of natural persons, their representatives or representatives of legal persons<sup>8</sup>. Lithuanian officials have explained that both notaries and the Registrar perform a preventive check of the data and documents submitted to the Registrar. However, the Registrar checks the authenticity of the data and compliance essentially in cases where the data of companies, branches or representative offices changes and in cases where a private limited liability company (UAB) or a small partnership (MB) is established or alterations take place in its incorporation documents. In all other cases, compliance of the required data and documents is verified by a notary. Supervision of notaries in turn is performed by the Chamber of Notaries as well as the Financial Crime Investigation Service (the Lithuanian FIU).

74. Requirements are in place to update the information that is submitted to the Registrar, and alterations of the incorporation documents and other relevant data should be submitted to the Registrar within thirty days after the alterations took place (Article 2.66 (3) of the Civil Code). Cases of wrong or non-timely filing constitute administrative offences. Staff members of the State Enterprise Centre of Registers (the public body that administers the Register of Legal Entities) have the right to sign the protocol of infringement of law in these situations. During the period 2013-14 there were 67 protocols of infringement signed (20 protocols were signed in the year 2013 and 47 protocols were signed in 2014).

### ***Tax law***

75. All companies formed under Lithuanian law are required to register with their respective County Tax Inspectorate (CTI) by virtue of being a taxpayer and/or a person with withholding tax obligations (Law on Tax Administration (LTA), s. 45(1)). This taxpayer registration must be carried out within five working days of the company's registration with the Registrar

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8. The identity of citizens of the Republic of Lithuania is to be established on the basis of the produced identity card or any other identification document bearing a personal number and a photograph. The identity of aliens whose permanent place of residence is in a foreign country is to be established on the basis of the citizen passport issued in that country. The identity of aliens whose place of residence has been declared in the Republic of Lithuania is to be established on the basis of the produced temporary residence permit or permanent residence permit in the Republic of Lithuania.

(LTA, s. 46(1)). A taxpayer identification number (TIN) is assigned upon registration with the tax administration (LTA, 47).

76. Only single-member companies (whether ABs or UABs) are required to provide shareholder information upon registration as a taxpayer. In all cases, a company provides its name and identification number, the address of its registered office and details of its representatives for taxpayer registration (RRT, s. 16). Any changes to the registration information, including shareholder information (if initially provided), must be notified to the CTI within five working days of the change (LTA, s. 46 (2); and RRT, s. 65)<sup>9</sup>. The Registrar also provides information from its register, including most of the information mentioned above, to the Lithuanian tax administration for taxpayer registration purposes (LTA, s. 54; and RRT, s. 39.6).

77. Some shareholder information is provided to the Lithuanian tax administration through the tax returns and accompanying documents submitted by ABs and UABs. Companies (including ABs and UABs) are required to submit a report identifying their controlling shareholders and other legal entities which the company controls as at the last day of the relevant tax period (LCIT, s. 50(2)(2)). A person is deemed to control a company if he/she holds (i) 50% or more of the shares of the company or (ii) at least 10% of the shares and he/she together with his/her related persons holds a 50% or greater shareholding in the company.

78. In addition, companies that are required to withhold tax on dividend payments made to foreign entities and non-resident individuals are required to provide identity information on such shareholders in their tax return. In the case of shareholders which are legal entities, the information provided includes the foreign entity's name, registered office address, identification code and the jurisdiction in which the foreign entity is registered. In the case of non-resident individual shareholders, the information filed includes the shareholder's full name, personal identity number, code of the foreign state, address and taxpayer's code as assigned by the foreign state. However, these tax reporting obligations do not ensure that information on all shareholders is provided to the Lithuanian tax administration.

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9. Where a single-member company had more than one shareholder after registration has been completed, this company would be treated as a regular AB or UAB. As is the case for regular ABs or UABs the list of shareholders has to be provided to the IS MLE electronically (as from the 1st August 2014). Before that date, the list of shareholders was managed and provided to the Registrar in paper form (pdf copies are stored in Registrar system). That means the information about one or more shareholders would be available. Moreover, Lithuania further notes that the systems are connected and the data can be cross-checked.

*In practice*

79. The tax authorities monitor compliance with the obligations to register for tax purposes and to keep this information updated as part of the tax audits performed by STI. Statistics provided by Lithuania show that around 600 cases<sup>10</sup> per year have been identified where there was a violation of these requirements and fines have been imposed under article 172<sup>9</sup> of the Code of Administrative Offences (CAO) (on average around EUR 100 in each case), as demonstrated by the following table.

CAO art. 172 <sup>9</sup>	Number of cases	The sum of fines (EUR)
Year 2011, months 6-12	294	8 833
Year 2012	695	21 142
Year 2013	682	13 635
Year 2014, months 1-6	159	7 313

*Information kept by the companies*

80. There is no express requirement for ABs to maintain shareholder records. ABs can only issue shares in uncertificated form which are held through the personal securities accounts of the shareholder (LC, s. 40(7)). Uncertificated shares are not represented by physical certificates, instead ownership of such shares is recognised through book-entry. The acquisition and disposal of uncertificated shares are carried out through the logging (or entry) of these activities in the securities account of the shareholder. Personal securities accounts for the holding of AB shares are managed by licensed account manager(s) pursuant to the Law on Markets in Financial Instruments (LMFI). An AB is entitled to obtain from the account manager(s) a list of its own shareholders and identity information on such shareholders (LC, s. 41(5)) – see *Uncertificated shares* below.

81. Each shareholder has the right to access and/or obtain copies of the list of shareholders from the AB (LC, s. 18(1)). The list of shareholders must state the names of the shareholders, the number of registered shares owned by the shareholders and the shareholders' place of residence or correspondence addresses, according to the most recent data available to the AB (LC, s. 18(3)). A shareholder can apply to court to dispute the company's refusal to provide such information (LC, s. 18(1)). However, these provisions do not equate to an express obligation for an AB to maintain shareholder records.

10. Lithuania stated in total 217 136 legal entities are registered as taxpayers. This includes 1860 foreign companies. Furthermore 117 777 natural persons are registered as taxpayers.

Nevertheless shareholder information will be held by, or available to, the account managers of the shareholders' personal securities accounts as further described in *Uncertificated Shares* below.

82. UABs (except for single member UABs) are required to maintain a list of shareholders regardless of whether they issue certificated or uncertificated shares (LC, s. 41<sup>1</sup>(1)). The manager of the company must prepare the list of shareholders based upon documents that he/she receives and according to which entries in the personal securities accounts or the register of certificated shares are made (LC, s. 41<sup>1</sup>(7)). The list of shareholders must include:

- identity information on each shareholder, including all owners in the case of joint ownership of a share and the identity of their representative (s. 41<sup>1</sup>(2)((2) and (3));
- number of shares held by each shareholder and nominal value (s. 41<sup>1</sup>(2)(4));
- the date of acquisition and date of transfer of the shares (s. 41<sup>1</sup>(2)(5) and (6)).

83. The company manager is required to update the list of shareholders upon any transfer, acquisition or other changes to the holders of shares (LC, s. 41<sup>1</sup>(8) and (9)). The shareholders have a right to access and/or obtain copies of the list of shareholders from the UAB, and as mentioned above, the particulars of the aforementioned list are required to be filed with the Registrar (LC, ss. 18(1) and 41<sup>1</sup>(8) and (9)).

84. The manager of a UAB will also maintain shareholder information in other formats, dependent upon whether the UAB issues certificated or uncertificated shares. The prescribed formats in which shareholding information must be maintained in each case are set out by the Rules on the Administration of the Personal Securities Accounts of Shareholders of Private Limited Liability Companies (Non-material Shares Owners) and Rules on Registration of Material Shares Owners in Private Limited Liability Companies (hereafter, the Rules). In the case of certificated shares, the company manager is required to maintain a shareholders registry journal, through which identity information and the dates of entry and cancellation of the entry for each shareholder are recorded (the Rules, s. 10 and Annex 3). In the case of uncertificated shares, where ownership in such shares is recognised through book-entry, the company manager (acting as account manager) must maintain a separate personal securities account for each shareholder, as well as keep a record in a share operations registry journal. The personal securities account of a shareholder is a written account in which information on the UAB shares that has been obtained, transferred, annulled, owned and paid for by that shareholder is recorded (the Rules, Annex 1). Identity information on each shareholder and the date(s) of transfer of the shares are recorded both



on the personal securities account and in the registry journal (the Rules, s. 3 and Annexes 1 and 2). The management of the shareholders' personal securities accounts (i.e. keeping of the record of ownership in the company) can be outsourced to an account manager, in which case the share operations registry journal would be maintained by the account manager (LC, s. 41(3) – see *Uncertificated shares* below).

### *In practice*

85. In line with the supervision of wrong filing or late submission of data to the Register of Legal Entities mentioned above, staff members of the State Enterprise Centre of Registers have the right to sign the protocol of infringement of law with regard to these administrative offences. Further, licensed account managers are required to maintain and provide such identity information on shareholders to the Lithuanian Central Depository. The Lithuanian Central Depository ensures that the record keeping and reporting requirements are met through onsite inspection and desk audits (see also the item below regarding uncertified shares). The Bank of Lithuania acts as a supervisory authority.

### ***Information kept by service providers and other persons***

#### *Anti-money laundering and counter-terrorism financing regime (AML-CFT regime)*

86. The Law on the Prevention of Money Laundering and Terrorist Financing (AML Law), which implements the EU Third Money Laundering Directive, provides the framework for the AML-CFT regime in Lithuania. The AML Law imposes obligations on a wide range of entities and professionals (hereafter, the “AML obligated persons”) as defined under section 2(8) and (10) of the AML Law. These include (i) financial institutions, (ii) auditors, (iii) notaries and lawyers under specific circumstances (see paragraph below) and (iv) providers of trust and company formation and administration services.

87. Notaries and lawyers fall within the scope of AML obligations when: (i) they assist or act on behalf of their customer in the sale or purchase of real estate or business entities; (ii) manage customer money, securities, or other property; (iii) open or manage bank or securities accounts on behalf of their customers; or (iv) provide trust or company formation or administration services (s.2(10)(5)). The certification of documents by a notary, which is necessary for the registration of a company with the Registrar, is considered one of the phases in the company formation process.

88. AML requirements are particularly relevant in Lithuania to identifying shareholders in the context of uncertificated shareholdings in ABs, since the account managers of the shareholders' personal securities accounts are subject to AML customer due diligence (CDD) obligations – see *Uncertificated shares*. These CDD obligations further support the comprehensive requirements under the LMFJ for account managers to maintain identity information on AB shareholders (discussed below). CDD obligations are also triggered through other activities that are commonly required for conducting business, such as the opening of a bank account. However, it is noted that with regard to entities formed under Lithuanian law, the commercial law obligations, as opposed to AML obligations, are the main obligations by which ownership information in all cases is ensured.

89. AML obligated persons are required to conduct CDD to identify and verify the identity of their customer and the beneficial owner(s) of the customer under the following circumstances (ss. 9(1) and (8)):

- prior to entering into a business relationship;
- when conducting monetary operations or concluding transactions amounting to more than EUR 15 000 whether in a single transaction or series of linked transactions; or
- where there are doubts about the veracity or authenticity of previously obtained customer or beneficial owner's identification data.

90. The AML obligated persons must perform ongoing monitoring of customers' business relationships as well as regularly review and update identity information held on their customers and the beneficial owners (s. 9(9) and (10)). Identity information must be retained by the AML obligated persons for ten years from the termination of the transaction or business relationship (s. 16(9)).

91. Where an AML obligated person acts for a company or other corporate entity, the "beneficial owner" of the customer is: (i) any natural person who ultimately owns or controls more than 25% of the shares or voting rights in the customer<sup>11</sup>; or (ii) any natural person who otherwise exercises control over the customer (s. 12(1)). It is noted that the 25% threshold would only

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11. However, an AML obligated person is not required to identify the beneficial owners of a customer that is a company listed on a regulated market and subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards. It is recognised, and explicitly stated in Article 5(4) of the Model TIEA, that the international standard does not require a requested jurisdiction to obtain or provide ownership information with respect to publicly traded companies unless such information can be obtained without giving rise to disproportionate difficulties.

prevent the identification of all owners of a company by the AML obligated person where its customer is the company itself. Where the AML obligated person is engaged by the owner, such as in the case of personal securities account managers for the holding of uncertificated shares (see *Uncertificated shares* below), the account manager is required to identify the shareholder (as its customer) in all cases.

92. Lithuania amended its AML/CFT Law in May 2014. One of the major changes concerns the record keeping requirements, as all correspondence regarding the business relations with the customer should now be kept for five years after the final date of the carrying out of the transactions or the end of the business relationship with the customer. Furthermore, there's the possibility to extend this data storage term in specific cases.

### *In practice*

93. As noted above, regulation and supervision of obligations of the AML regime on financial institutions (including those in the banking, capital, insurance and pension sectors) is undertaken by the Bank of Lithuania. Supervision of obligations of the AML regime regarding notaries and lawyers is entrusted to the Chamber of Notaries and the Bar Association. Both these institutions are supervised by the Financial Crime investigation Service.

94. The Bank of Lithuania performs its monitoring and enforcement actions by adopting a risk based approach. This means that supervisory efforts are focused on systemically important and more risky financial market participants.

95. The supervision model takes into account a combination of on-site and off-site inspections. Off-site supervision consists of an analysis of the documents and reports that are submitted by financial institutions on a quarterly basis. On-site supervision on the other hand concentrates on the most risky financial sector areas. The Bank of Lithuania checks selected institutions on their compliance with Lithuanian anti-money laundering laws and international standards, evaluates adequacy of CDD measures taken and assesses the sufficiency of information on client “profile”.

96. The Bank of Lithuania AML inspection team further focuses on how effectively the financial institution conducts on-going monitoring of the business relationship and transactions and checks suspicious transaction identification and reporting practice within a financial institution. Special attention is given to higher risk-accumulating non-resident business, cash intensive business, business relations and/or transactions with natural persons and legal entities subject to financial sanctions, and also business relations and/or transactions with third countries which have been categorised by

FATF as non-co-operative and high-risk jurisdictions, and evaluation of the adequacy of CDD measures taken.

97. Further, the Bank of Lithuania co-operates actively with the Financial Crime Investigation Service (Lithuanian FIU) that operates within the competence of the Ministry of the Interior. The Central Bank and the Lithuanian FIU have entered into a co-operation agreement, and four joint inspections of financial sector participants have been carried out since.

98. In addition to these inspections, the Bank of Lithuania aims to strengthen its formal and informal communication with the financial sector and regularly organises meetings and training on AML related topics. The purpose of these common gatherings is to give guidance to the insurance and banking sector on how to establish a consistent AML practice and also to educate other financial market participants such as credit unions, life insurance companies, financial brokerage firms and investment management firms that do not fall under the category of banks.

99. Regarding the number of penalties applied, statistics demonstrate that nine AML/CFT on-site inspections were carried out in 2012. In five cases AML/CFT infringements were identified. As a result, one institution received a written warning and one license has been withdrawn. In addition, four institutions received a written notice. This notice (Resolution of the Board of the Bank of Lithuania) requires a bank or financial institution to eliminate the deficiencies identified. In such a case the financial institution should implement an action plan and provide that action plan to the Bank of Lithuania. The Bank reviews the action plan and provides comments or recommendations if necessary. In 2013 five AML/CFT on-site inspections were carried out. In one case an AML/CFT infringement was identified, and in another case the institution involved is awaiting a court decision as part of an administrative procedure that has been initiated. In addition, two institutions received a written notice requiring them to eliminate the deficiencies identified. Statistics regarding 2014 were not available at the time of the assessment team's on-site visit, as some of the AML/CFT on-site supervision processes were still on-going.

### *Uncertificated shares*

100. ABs can only issue uncertificated shares which are held through personal securities accounts. Shares in ABs constitute “financial instruments” within the scope of the LMFI (ss. 3(4) and (27)(1)). Under the LMFI, only licensed financial brokerage firms, licensed credit institutions (i.e. banks and credit unions) and the Lithuanian Central Depository (LCD) are permitted to open and manage securities accounts for the holding of financial instruments (s. 65(1)). Whilst credit institutions must be formed in Lithuania to obtain a

licence in Lithuania, financial brokerage firms formed and licensed outside of the EU may nevertheless obtain a licence to provide such personal account management services in Lithuania (s. 5(2)(2)). Furthermore, financial brokerage firms and credit institutions licensed in other EU member states can provide investment services in Lithuania through passporting of their home state licence. Accordingly, the uncertificated shares of ABs may be held by account managers that are located in either Lithuania or other EU member states.

101. The LCD is a special purpose public company that provides an organisation and settlement system for financial instruments in Lithuania. All transactions on financial instruments, including AB shares, are conducted and settled through the LCD. Account managers maintain with the LCD a general account in relation to each issuing entity, through which they execute transactions related to the financial instruments issued by that entity. The account managers correspondingly record the outcome of the transactions in the personal securities accounts of their clients.

102. Account managers are subject to client record keeping obligations under the Rules on Accounting of Financial Instruments and their Circulation, which are set by the LCD. Account managers are required to keep:

- a journal of operations which sets out in chronological order all operations and transactions executed with respect to the financial instruments (including AB shares) that are held in the relevant accounts. The owners of the financial instruments must be identified in the journal, except in the cases described under *Nominee identity information* below (item 9.2); and
- all the underlying documents for the entries made in the securities accounts for which they are responsible (item 24.4).

103. Under the LMFI, ABs have the right to request a list of its shareholders from the account managers by submitting an enquiry to the LCD. This is supported by a corresponding obligation on account managers to submit to the LCD information on the persons for whom they manage personal securities accounts (LMFI, s. 65(4)). Account managers are required to submit a range of information to the LCD when requested including the name and personal/company code of each shareholder for which it manages a personal securities account (LSD Corporate Actions Practice Guide). The LCD also provides to each AB prior to its annual general shareholders meeting each year, free of charge and upon request, a list of the account managers through whom its securities are managed (LMFI, s. 65(4)).

104. Credit institutions and financial brokerage firms (including those formed outside of Lithuania but licensed to provide investment services in Lithuania), are also subject to CDD obligations by virtue of being “financial

institutions” under the AML Law (ss. 2(8) and 9). As described above, AML obligated persons are required to verify the identity of their customers prior to the establishment of a business relationship. Therefore, these financial institutions, as account managers for the shareholders, are required to verify the identity of all these shareholders as customers, as well as any beneficial owner of these shareholders that exceed the 25% ownership threshold (described in the section above). This obligation reinforces the requirement for account managers to maintain identity information on the shareholders of ABs under the obligations above.

105. The manager of an UAB issuing uncertificated shares can outsource the management of the personal securities accounts to an account manager. There are no legal restrictions regarding who may act as an outsourced account manager and such account managers are not subject to licensing requirements. Account managers must keep a separate personal securities account for each shareholder and a share operations registry journal, in the prescribed form, through which identity information on shareholders is maintained (the Rules, s. 3 and Annexes 1 and 2 – see *Information kept by the companies* above). An account manager (whether outsourced or otherwise) is required to provide to a shareholder upon request an excerpt of his/her personal securities account (LC, s. 41(4)). Although there is no express obligation under the LC for an outsourced account manager to provide shareholder information to the UAB, there is a separate obligation on the UAB to provide the IS MLE with the particulars of the list of its shareholders whenever this is updated (LC, s. 41'(8)). However, as Lithuania explains in practice there is a contractual relationship between the company and a professional service provider. Within this relationship it can be expected that professional service provider is bound to provide the relevant information and/or documents to the commissioning company and the UAB will be able to meet its legal obligations. Lithuania further explains that no issue in this respect did ever come up in practice.

### *In practice*

106. Supervision of the personal securities account managers takes place by Lithuanian Central Depository (LCD). Supervision of the LCD in its turn takes place by Bank of Lithuania. The Bank of Lithuania has the power to suspend or revoke licences and permissions. However, in this respect Lithuania has explained that there have been no cases so far where these sanctions had to be applied by the Bank of Lithuania.

107. The LCD verifies whether the account managers comply with the rules and instructions of securities accounting. This supervision is combined with meetings and activities during which officials from the LCD can be consulted and train specialists in securities accounting.

108. In the case of any failure to maintain and provide identity information on shareholders to the LCD, the LCD would inform the Bank of Lithuania as a supervisory institution of such an incident. The LCD monitors record keeping and other legal requirements of account managers inter alia through on-site inspections and desk audits. In this capacity the LCD is entitled to access the premises of account managers and examine accounting books, electronic files, and to request all documents necessary for the inspection. After each inspection an inspection report is drawn up and any violations detected will be reported to the Bank of Lithuania. The Bank of Lithuania will then take necessary measures with regard to the account manager. In addition the LCD can also give binding instructions to eliminate the violations identified in the inspection report. If the account manager fails to eliminate the violations during the period set by the LCD, the LCD can close the accounts of the participant concerned or withdraw the official status from the account manager involved. The number of inspections done by the LCD as from 1 January 2011 up to 1 January 2015 is 18 (eighteen), and no critical violations were observed during the inspections.

#### *Nominee identity information*

109. The LC does not provide for general nominee shareholding in ABs and UABs but states that shares can be held in the securities account of another named person where so provided by law (LC, s. 40(9)). The LMFI provides for three such specific situations with respect to AB shares:

- where the shares are pledged, in which case the shares can be held in an account in name of the holder of the pledge. However, the identity of the owner of the shares must also be indicated (LMFI, s. 64(2));
- an account manager registered outside of Lithuania can maintain a securities account in its own name with a Lithuanian registered account manager (i.e. an account manager that is formed under Lithuanian law and registered with the Registrar), through which it holds securities on behalf of its clients. In such case the non-Lithuanian account manager must indicate that it is acting as account manager on behalf of its client. Under the LMFI, the Lithuanian registered account manager in such an arrangement is required to ensure that it can provide information on the owner of the securities upon request by the LCD (s. 64(3)); and
- a Lithuanian registered account manager can open a securities account in its own name with another Lithuanian registered account manager on behalf of its clients who wish to have a joint account. It must indicate that it is acting as account manager on behalf of its clients. Furthermore, the LMFI requires that the account manager, in

whose name the account is opened, reports to the LCD upon request the identity of the owners for whom it is holding the shares (s. 64(4)).

110. In all cases above, the LMFI sets out sufficient requirements to ensure the availability of identity information with respect to the owners of the shares.

111. Furthermore, representation by one shareholder on behalf of others is permitted in the case of joint ownership of a share, since the LC does not permit the division of a share into parts. However, in such case, the representative must be authorised by written proxy by all the other holders of the share, and the authorisation must be notarised (LC, s. 40(5)). In addition, where the share is in a UAB, the identity of the representative and of all the owners of the share must be recorded in the list of shareholders (LC, s. 41(2) (3)). Accordingly, identity information on all owners of the share is also available in such circumstances (i.e. where proxy arrangements exist).

112. Although Lithuanian authorities advised that the concept of nominee shareholding is not generally recognised under Lithuanian company law, the AML Law provides that persons who provide trust and company forming and administration services by way of business, including through acting as a nominee shareholder, are subject to AML obligations (AML Law, ss. 2(10) and (14) and 9). Such persons are required to verify the identity of their customers (i.e. the persons for whom they hold shares as nominee) through CDD. Accordingly, the identity of persons for whom the shares are held in a professional nominee arrangement would be identified in all cases.

113. In practice AML-related supervision of company service providers is exercised by the Financial Crime investigation Service. This includes requirements to verify the identity of their customers through CDD. After the 2012 Moneyval report, inspections of these company service providers were strengthened and 9 AML/CFT inspections took place in 2012. In 6 cases infringements were identified and these cases were taken to Court. This resulted in 6 persons being fined for a total amount of EUR 3480. In 2013 in total 7 AML/CFT inspections were carried out, focusing on company service providers. In 6 cases infringements were identified and these cases were taken to Court. This resulted in 6 persons being fined a total amount of EUR 4400.

### ***Other forms of Lithuanian incorporated companies***

114. As mentioned above, other forms of companies can be formed under Lithuanian law. These include agricultural companies (ŽŪBs), small partnerships (MBs) and co-operative societies. In all cases, these entities are required to register with the Registrar and as a taxpayer with the Lithuanian tax administration. Further information on each of these types of companies is set out below.



115. Agricultural companies (ŽŪB) are limited liability entities where over 50% of the total annual income of the company must be derived from agricultural production and agriculture-related services. ŽŪBs can be formed by natural and/or legal persons. Members/contributors of a ŽŪB share in the increase (or decrease) in the value of the ŽŪB's property in proportion to their relative contribution to the ŽŪB (LAC, s. 15(4)). Ownership information, including name, address, personal code and date of birth (of individual members) or company code (in the case of corporate members), is available through the list of members which forms part of the ŽŪB's founding documents (LAC, ss. 6 and 11). There is no express requirement to update this list of members. However, contributors' property records are required to be kept for the ŽŪB in which the annual allocation of the change in the ŽŪB's property value to its members/contributors is recorded (LAC, s. 15(5)). Identity information on the members/contributors is available through the contributor property records.

116. Small partnerships (MB) are limited liability entities formed by ten or less natural persons. MBs are mostly used for small family businesses. A MB is formed through a formation act, if there is only one founder, or a small partnership formation agreement, where there are two or more founders (LSP, s. 3(2)). The founders also become the members of the MB upon its registration (LSP, s. 3(6)). A MB must maintain a registered office in Lithuania. A member of a MB wishing to sell his/her membership rights must notify the MB of this intention. Other members of the MB have a right of pre-emption to acquire this membership right within 30 days. Where no right of pre-emption is exercised, the selling member can transfer his/her membership rights to a third party individual. Such individual (the buyer) is required to submit to the MB document(s) to prove his/her acquisition of the membership rights (LSP, s. 10(4)). The manager or representative of the MB is required to manage the information on the MB's members (LSP, s. 14(4), 21(7)). The particulars of the members of the MB and any updates to this information have to be submitted to the IS MLE, as with UABs.

117. Co-operative societies (or Co-operatives, *kooperatinė bendrovė*) are limited liability entities that are formed for the purpose of achieving the common economic, social and cultural goals of its members. A co-operative can be formed by a minimum of five natural persons and/or legal persons formed under Lithuanian law or the laws of an EU or EEA member state (LCS, s. 4). The incorporation documents for a co-operative comprise its Memorandum and Articles of Association. Identity information on the founders of the co-operative, who are also its initial members, is recorded in the Memorandum of Association. The transfer of a membership share by an existing member to a new person must be approved by the co-operative (LCS, s. 8(2)). A co-operative must maintain a register of its members containing identity information on the shareholders such as, the name, surname,

personal number and place of residence (for natural persons), or code and registered office (for legal persons). In addition, the register must document the amount of each member's share and the dates which members join and leave the co-operative.

118. As Lithuania is an EU member state, European co-operative societies can be formed as provided by Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (ESC Regulation). European co-operative societies with their registered office in Lithuania are governed by the Lithuanian laws applicable to co-operatives, as described above, to the extent that the ESC Regulation does not provide otherwise.

119. All these entities are required to register with the Registrar as part of their incorporation process, for which incorporation documents are required to be submitted. In all cases, identity information on the initial members is contained in the incorporation documents and therefore made available to the Registrar.

120. With respect to taxpayer registration, ownership information is only provided and updated where the taxpayer entity is a single-member entity – see *Tax Law* above.

121. In summary, legal provisions to ensure the availability of ownership information on co-operatives, MBs and ŽŪBs are in place. Ownership information is required to be maintained by the co-operative itself. The manager of the MB, the single-member of the MB or representative of the MB has an obligation to manage membership information on the MB. A list of members is required to be prepared on the founding of ŽŪBs, and further identity information on members can be found in the contributors property records of the ŽŪB which is required to be updated on an annual basis.

### *Foreign companies*

122. Where a company has sufficient nexus to a jurisdiction, including being resident there for tax purposes, or having its head office, headquarters or location of the majority of the senior management there, that jurisdiction has the responsibility of ensuring that ownership information is available. A legal entity is resident in Lithuania for tax purposes if it is a legal entity formed under Lithuanian law (including if it is a SE), and it is registered with the Registrar (Law on Corporate Income Tax (LCIT), s. 2(2)). The place of effective management is not a criterion for determining the residence of legal entities under Lithuanian tax law. However, the location of its head office or headquarters in Lithuania, by virtue of its degree of permanency, could give rise to a permanent establishment in Lithuania (LCIT, s. 2(22)).

123. Foreign companies that carry on activities through a permanent establishment in Lithuania are subject to corporate income tax on the income from such activities (Law on Corporate Income Tax (LCIT), s. 4(3)(1)). As at August 2014, there were 353 foreign companies with a permanent establishment in Lithuania. Foreign companies that are subject to corporate income tax on income derived through their permanent establishment, or other taxes such as VAT and social security contributions, are required to register as a taxpayer in Lithuania (LTA, s. 45(1)). Ownership information is not required for registration purposes. The information submitted on registration includes, the contact details of the company's dependent representative and fiscal agent in Lithuania, as well as the foreign company's registered office address and its registration code in its jurisdiction of incorporation (RRT, s. 18).

124. Foreign companies with a permanent establishment in Lithuania are required to file an annual corporate income tax return, along with a report on their controlling shareholders and companies which they control (LCIT, s. 50(2)(2)). However, as noted under *Tax Law*, this does not ensure that full ownership information is provided.

125. Foreign companies can set up a branch in Lithuania, i.e. a physical presence/office through which all or part of the entity's activities are conducted, through registration with the Registrar (CC, s. 2.53; LC, s. 75(2)). As at 26 August 2014, there were 428 foreign companies with registered branches in Lithuania. However, a foreign company can have a permanent establishment, without having a branch, in Lithuania. The concept of "permanent establishment" is broader and also includes the situation where a foreign entity permanently carries out activities in Lithuania, or carries out its activities through an agent in Lithuania (LCIT, s. 2(22)). Ownership information is not required to be provided for branch registration, although the name and head office address and identity information on the company's managers are provided (RRLE, s. 30). The company must also provide its incorporation documents and a copy of its commercial registration from its home jurisdiction. The incorporation documents could, but may not necessarily contain ownership information if required by the laws under which the company is formed.

126. To the extent that a foreign company engages the services of AML obligated persons (such as banks with which the foreign company maintains an account), some ownership information would be collected with respect to the foreign company, by virtue of CDD conducted by that AML obligated person. However, as noted above, since AML obligated persons are only required to identify 25% or greater beneficial ownership of their customers, this would not necessarily ensure that full ownership information is collected with respect to a corporate customer.

*Conclusion and practice*

127. The legal and regulatory framework ensures the availability of ownership information on Lithuanian incorporated companies, either as held by the relevant entity itself, by an account manager, and/or by the Lithuanian authorities. UABs, co-operatives and managers of MBs are required to maintain up-to-date identity information all their members/shareholders. Full ownership information on ABs is available through the account managers of the shareholders' personal securities accounts.

128. Up-to-date ownership information on UABs is available in the hands of the Registrar, either through its electronic database IS MLE or held in a more conventional way in the form of documents that were scanned and turned into an electronic format. In relation to other types of Lithuanian companies, the Registrar maintains up-to-date ownership information on single-member companies only. For companies (except UABs) with more than one shareholder, only identity information on the initial shareholders/members of the company is maintained by the Registrar. Ownership information is only required to be provided for taxpayer registration in the case of single-member companies. Identity information is only provided with respect to the controlling shareholders of a company through annual tax return filings.

129. Regarding supervision of tax filing and registration requirements with the Commercial Registry, reference can be made to the items already identified in this chapter. As noted, the authenticity of the data submitted to the Registrar and compliance with the legal requirements are checked by notaries as well as the Registrar itself. A notary as well as the Registrar cross-check all information provided with relevant registers, e.g. with the data on the Address Register, Citizens Register and the Real Property Cadastre. As all these registers have connected IT systems, the Registrar will usually perform this check automatically. The Registrar requires valid ID documents or a certificated e-signature as identification. When performing notarial acts, a notary establishes the identity of natural persons, their representatives or representatives of legal persons<sup>12</sup>. Both notaries as well as the Registrar itself perform a preventive check of the data and documents submitted to the Registrar. However, the Registrar checks the authenticity of the data and

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12. The identity of citizens of the Republic of Lithuania is to be established on the basis of the produced identity card or any other identification document bearing a personal number and a photograph. The identity of aliens whose permanent place of residence is in a foreign country is to be established on the basis of the passport issued by that country. The identity of aliens whose place of residence has been declared in the Republic of Lithuania is to be established on the basis of the produced temporary residence permit or permanent residence permit of the Republic of Lithuania.

compliance essentially in cases where the data of companies, branches or representative offices changes and in cases where a private limited liability company (UAB) or a small partnership (MB) is established or alterations take place in their incorporation documents. In all other cases, compliance of the required data and documents is verified by a notary. Supervision of notaries in turn is performed by the Chamber of notaries as well as the Financial Crime Investigation Service.

130. Requirements are in place to update the information that is submitted to the Registrar. Alterations of the incorporation documents and other relevant data should be submitted to the Registrar within thirty days after the alterations took place (Article 2.66 (3) of the Civil Code). Cases of wrong or non-timely filing constitute administrative offences and staff members of the State Enterprise Centre of Registers have the right to sign the protocol of infringement of law in these situations.

131. The concept of general nominee shareholding is not recognised under Lithuanian law, although the LMFI specifies certain situations in which shares can be held in the name of another person. In such cases, there are adequate obligations to ensure the availability of ownership information. This is reinforced by the AML obligation for all professional nominees to conduct CDD on their customers for whom they hold shares. As noted above under the item “Nominee identity information”. AML-related supervision on company service providers is exercised by the Financial Crime Investigation Service.

132. Companies that are not formed under Lithuanian law are not required to provide ownership information to any registration authority in order to conduct activities in Lithuania. The identity of controlling shareholders is reported through annual corporate income tax return filings by companies that derive income through a permanent establishment in Lithuania. Furthermore, an AML obligated person could be engaged by a foreign company and might therefore conduct CDD with respect to the company. However, only beneficial owners with a 25% or greater shareholding in the customer company would be identified through CDD. These obligations do not ensure the availability of full ownership information with respect to all relevant foreign companies. Therefore, Lithuania is recommended to ensure that ownership information on foreign companies with sufficient nexus with Lithuania, in particular having their place of effective management in Lithuania, is available in all cases.

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

133. Limited liability companies cannot issue bearer shares in Lithuania. The LC provides that all shares must be registered (s. 40(2)). As noted above,

ABs can only issue uncertificated shares (s. 40(7)). UABs can issue certificated shares or shares certificates instead of uncertificated shares.

134. Certificated shares or share certificates issued by UABs must contain information identifying the shareholder (LC, s. 40(11)(6) and s. 40(13)(8)). Transfer of ownership is affected by making an entry (or endorsement) on the share or share certificate, which must be dated and signed by the transferor and the transferee (LC, s. 46(1)). The endorsement must contain information identifying the transferee, such as their name and identification number. Furthermore, as noted in A.1.1 above, the company manager of an UAB is required to maintain an up-to-date list of all shareholders, whether they hold certificated or uncertificated shares (LC, s. 41<sup>1</sup>(1) and (8)). Particulars of the list of shareholders must also be filed with the IS MLE whenever it is revised (LC, s. 41<sup>1</sup>(8)).

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

135. The Law on Partnerships (LP) governs the formation of partnerships in Lithuania. Partnerships are unlimited liability entities under Lithuanian law (LP, 2(5)). They have a separate legal personality from their partners and are subject to tax as fiscal entities (LP, ss. 2(5); and LCIT, s. 2(2)). Partnerships can be formed by natural and/or legal persons (LP, s.3(1)). However, certain categories of persons such as general partners of other partnerships, owners of individual enterprises, state entities, partnerships, EEIGs cannot be general partners of a partnership (LP, ss. 3(2) and 6(4)). Two types of partnerships can be formed under the LP: general partnerships (*tikroji ūkinė bendrija*, TŪB) and limited partnerships (*komanditinė ūkinė bendrija*, KŪB). In addition, as Lithuania is an EU member state, European Economic Interest Groupings (EEIGs) can be formed in Lithuania.

136. General partnerships (*tikroji ūkinė bendrija*, TŪB) can be formed by a minimum of two partners (LP, ss. 3(1) and 6(2)). All partners in a TŪB have joint and several unlimited personal liability for the obligations of the TŪB (LP, s. 8(1)). A TŪB is formed by the conclusion of a written partnership agreement between all the partners and registration with the Registrar (LP, s.3(6) and (7)). A TŪB must maintain its head office in Lithuania (LP, s. 2(8); CC, s. 2.49(1)). As at 26 August 2014, there were 373 TŪBs registered in Lithuania.

137. Limited partnerships (*komanditinė ūkinė bendrija*, KŪB) can be formed by a minimum of two members (comprising one general partner and one limited partner) (LP, ss. 3(1), 6(2)). The general partners have joint and several unlimited personal liability for the obligations of the KŪB. The limited partners are liable for the KŪB's obligations up to the extent of their agreed contribution (LP, s. 8(1)). A member of a KŪB cannot be a general partner and a limited partner of the KŪB at the same time (LP, s. 6(6)).

A KŪB is formed by the conclusion of a written partnership agreement between all the general partners and limited partners and registration with the Registrar (LP, s. 3(6) and (7)). A KŪB must maintain its head office in Lithuania (LP, s. 2(8); CC, s. 2.49(1)). As at 26 August 2014, there were 206 KŪBs registered in Lithuania.

138. European Economic Interest Groupings (EEIGs), the operations of EEIGs are governed by Council Regulation (EEC) No 2137/85 on the European Economic Interest Grouping (EEIG Regulation), which is implemented in Lithuania through the Law on European Economic Interest Groupings (LEEIG). EEIGs can be formed in Lithuania by two or more companies or entrepreneurs with their central administration or principal activities, respectively, in different EU member states (EEIG Regulations, s. 4(1)). The aim of an EEIG is to facilitate and accelerate the activities carried out with a view to profit by its members and to improve and increase the results of these activities, but not to create a profit of its own (EEIG Regulations, s. 3(1)). However, an EEIG can carry on activities that are related and ancillary to the economic activities of its members. An EEIG is considered a legal entity in Lithuania (LEEIG, s. 2(1)). The members have joint and several unlimited liability for the obligations of the EEIG (EEIG Regulations, s. 24(1)). Lithuanian law on the liability, insolvency and liquidation of partners of general partnerships, apply equally to EEIGs (LEEIG, s. 1(3)). As at 26 August 2014, there were three EEIGs registered in Lithuania.

### *Information held by public authorities*

139. Partnerships formed under Lithuanian law, including TŪBs, KŪBs and EEIGs, are required to register with the Registrar. They are deemed incorporated upon registration (LP, s. 3(6); LEEIG, s. 2(2)). In all cases, identity information on all partners/members is provided upon registration. In the case of partners that are natural persons, the identity information provided includes the name and personal identification number (and/or date of birth, in the case of non-Lithuanian partners); and in the case of partners that are legal persons, their name, legal form and registration code as well as – in the case of non-Lithuanian partners – particulars regarding the state in which it is registered, date of registration and register (RRLE, ss. 20, 23.4, 23.10 and 2.66 (2)). Incorporation documents must be filed with the Registrar upon the registration of a legal entity through which identity information on all partners/members is also available (LP, s. 4(1)(4) and (5); EEIG Regulations, s. 5(d) – also see *information held by the partners* below). Other information provided upon registration includes the identity of the general partners appointed to manage the partnership (or manager of the EEIG, as relevant), other authorised signatories, and the head office address of the partnership (CC, s. 2.64(2); and RRLE, s. 17; EEIG Regulations, s. 7(d)).

140. The general partners of TŪBs, KŪBs and EEIGs must report any changes to the registered information to, and file any amendments to the incorporation documents with, the Registrar within 30 days of the change (LP, s. 4(4); CC, ss. 2.66(3) and 2.82(3); and EEIG Regulations, s. 7). The partnership agreement or contract of EEIG formation and amendments to these documents, including in relation to changes to the partners/members, become effective as of their registration with the Registrar (LP, s.4(5); CC, s.2.66(5)).

### *Tax law*

141. Partnerships are treated as fiscal entities under Lithuania tax law. Partnerships formed and registered under Lithuanian law (Lithuanian partnerships) are subject to tax on their worldwide income. Accordingly, they are required to register as taxpayers with the Lithuanian tax administration (LCIT, s. 2(2); and LTA, s.45(1)). Identity information on partners is not provided as part of taxpayer registration. The information provided upon taxpayer registration of a partnership includes: (i) the registered office address; (ii) the details of the representative of the partnership; (iii) details of the partnership’s accountant; (iv) accounts held (or previously held) by the partnership in Lithuanian banks and credit institutions; and (v) registration code issued by the Registrar (RRT, ss. 16 and 17).

142. Lithuanian partnerships are required to file annual corporate income tax returns. In addition, as with companies, a partnership must file an accompanying report on its controlling partners – i.e. those who (i) are entitled to a stake of greater than 50% in the partnership; or (ii) are entitled to at least a 10% stake in the partnership, and together with their related persons, are entitled to a stake greater than 50% in the partnership (LCIT, s. 50(2)(2) – see A.1.1, *Tax Law*). However, this does not ensure the availability of identity information on all partners of a partnership.

### *Information held by the partners*

143. TŪBs, KŪBs and EEIGs are not expressly required to maintain a record of their partners/members. However, identity information on all partners/members is available through the partnership agreement (or the contract of formation for EEIGs), which could be held by the partnership or the partners/members.

144. The same requirements apply to the formation of both TŪBs and KŪBs. A written partnership agreement must be concluded by all the partners, which must be notarised and registered with the Registrar (LP, ss. 3(1) and 4(7)). Identity information on all partners is available to the partnership through the partnership agreement. In relation to a TŪB, the partnership



agreement must state: the name, personal identification number and place of residence (in the case of partners that are natural persons); or the name, legal form, registration code and head office address of partners that are legal persons (LP, s. 4(1)(5)). In the case of a KŪB, the partnership agreement would also include the same types of identity information (mentioned above) for both limited partners and general partners. Changes to the composition of a partnership, such as the admission or retirement of a partner, can only be effected through amending the partnership agreement (LP, s.4(4)). In this respect it can be noted that a change to the partners, which requires an amendment to the partnership agreement, does not take legal effect until the amended agreement is registered with the Registrar (LP, ss. 4(4) and (7)).

145. Similarly, identity information on all members of an EEIG is required to be set out in the EEIG’s contract of formation (EEIG Regulation, s. 5(d)). Any changes to the members of an EEIG must be reflected through an amendment to the EEIG’s contract of formation and filed with the Registrar (EEIG Regulation, ss. 5(d) and 7(a)).

### *Information held by service providers*

146. The LP provides that the partnership agreement must be notarised (s. 3(1)). Through this, identity information is collected by the notary on all persons entering into the partnership agreement. This includes all the partners in the case of a TŪB; and all the general and limited partners, in the case of a KŪB.

147. 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 – *Anti-money laundering and counter-terrorism financing regime* above).

### *Foreign partnerships*

148. Where a partnership has income, deductions or credits for tax purposes in the jurisdiction or carries on business in the jurisdiction, that jurisdiction has the responsibility of ensuring that identity information is available with respect to the partners of that partnership, even if the partnership is formed under foreign laws (hereafter, “foreign partnership”).

149. Under Lithuanian tax law, foreign partnerships are treated in the same way as companies formed under foreign law (see A.1.1 above). A foreign partnership with a permanent establishment in Lithuania is subject to corporate income tax in Lithuania on its worldwide income as derived through that permanent establishment. A foreign partnership must register

as a taxpayer in Lithuania if it is subject to corporate income tax through its permanent establishment, or subject to other taxes such as, VAT or social security contributions in Lithuania. Identity information on any partner who acts as the fiscal agent or the representative of the partnership in Lithuania must be provided upon taxpayer registration (RRT, ss. 18.7 and 18.8). However, there is no requirement to provide identity information on all the partners of the partnership.

150. Foreign partnerships with a permanent establishment in Lithuania are required to file annual tax returns to the Lithuanian tax administration which must be accompanied by a report on its controlling members (LCIT, s. 50(2) (2)). However, as noted above, this does not ensure the availability of identity information on all members of the partnership.

151. Foreign partnerships can register a branch with the Registrar, in the same way as a foreign company (see A.1.1 above). However, it is not compulsory for a foreign partnership conducting business activities or deriving income in Lithuania to maintain a registered branch in Lithuania. Identity information on the managers of the partnership, who are likely to be its general partners, is required to be provided for registration (RRLE, s. 30.7). However, this would not ensure the availability of identity information on any limited partners of such partnership.

152. To the extent that a foreign partnership engages the services of AML obligated persons (such as a bank with which the foreign partnership maintains an account), some identity information would be collected with respect to the foreign partnership through CDD requirements. However, as noted above, since AML obligated persons are only required to identify natural persons with a 25% or greater beneficial ownership stake in their customers, this would not ensure that full identity information is collected with respect to all partners of the partnership.

### *Conclusion and practice*

153. The legal and regulatory framework ensures, through a variety of channels, the availability of identity and ownership information on partnerships formed under Lithuanian law and EEIGs registered in Lithuania. Up-to-date identity information on all partners/members of TŪBs, KŪBs and EEIGs is available through registration and updating requirements with the Registrar. Identity information on all partners is documented in the partnership agreement (or the contract of formation for EEIGs) and is available in the hands of the partnership or partners who retain these documents. Finally, with respect to TŪBs and KŪBs, notaries collect and maintain identity information on general partners (and limited partners) through their notarisation of partnership agreements.

154. Foreign partnerships that conduct business activities in Lithuania may engage the services of an AML obligated person, through which identity information would be collected on the beneficial owners and the managers of the partnership. However, this only requires the collection of identity information on those with a 25% or greater ownership stake in their customers. The identity of partners holding a controlling stake in the partnership is reported through documents accompanying the partnership's annual tax return. However, neither of these obligations captures identity information on all partners of relevant foreign partnerships. Therefore, it is recommended that Lithuania ensures that identity information on all partners of relevant foreign partnerships is available in all cases.

155. Authenticity of the data submitted to the Registrar and compliance with the legal requirements are checked by notaries. As noted, partnership agreements must be notarised and registered with the Registrar. Changes to the composition of a partnership, such as the admission or retirement of a partner, can only be effected through amending the partnership agreement. These amendments must be notarised and have to be registered as well, as the amendments only become effective as of their registration with the Registrar. Compliance of the required data and documents is verified by a notary. As noted, supervision of notaries in turn is performed by the Chamber of Notaries as well as the Financial Crime Investigation Service.

156. The Lithuanian authorities have indicated (confirmed by feedback from peers) that there have been no requests for information concerning ownership and identity information in respect of partnerships during the review period.

### ***Trusts (ToR A.1.4)***

157. It is not possible to form a trust under Lithuanian law and there is no domestic trust legislation. Lithuania is not a signatory to the Hague Convention on the Law Applicable to Trusts and their Recognition. However, there are no restrictions for a Lithuanian resident to act as a trustee or administrator of a trust formed under foreign law. Lithuanian authorities have indicated that they are not aware of any person in Lithuania acting at present as a trustee or trust administrator of a foreign trust.

### ***Taxation of trusts***

158. Lithuanian residents are taxed on their worldwide income from whatever source. This means that trustees or trust administrators of foreign trusts, who reside in Lithuania and receive income earned by the trust, are subject to income tax on that income as if it was their own income. Resident trustees or trust administrators may only avoid such a tax liability by demonstrating that

the income should be attributed to another person, such as by providing evidence of the existence of a fiduciary relationship (typically the trust deed) and disclosing the identity of the settlor(s) and beneficiaries to the tax authorities.

159. All taxpayers are required to keep accounts, accounting documents and registers as well as other documents as required by the relevant legal acts and to submit these documents to the tax administration upon request (LTA, ss. 33(1) and 40(6)). Lithuanian resident professional trustees would be subject to tax in Lithuania regardless of whether they demonstrate that the income derived by the trust is or is not their income, since they would be taxed either on the trust income or on the fees they receive as trustee.

160. The LTA does not set out specific accounting requirements but reinforces the general accounting and bookkeeping obligations in the Accounting Law (AL) – see A.2. The AL applies to all Lithuanian entities as well as to Lithuanian resident individuals who engage in “individual activities” (i.e. income-generating activities which include individuals acting as professional trustees). The AL requires, amongst other things, the keeping of accounts and accounting documents by the covered persons for a statutory minimum period (AL, s. 19(2)). Accounting documents must contain information identifying the content of the transaction, including the transaction parties involved (AL, s. 2(1)). Accordingly, it would be possible to identify the settlors and beneficiaries of the trust through such documents kept by Lithuanian resident trustees.

161. Lithuanian resident individuals that act as trustees in a non-business capacity may not fall under the requirements of the AL, if they are not considered as engaging in income-generating activities. Nevertheless, the LTA provides that any taxpayer must submit “substantiated explanations concerning the sources of acquisition of property and receipt of income” upon request by the Lithuanian tax administration (LTA, s. 41). The Lithuanian authorities assert that such persons would have to keep adequate documents (including trust documents in the case of a trustee) to satisfy this obligation. Nevertheless, a gap remains as this obligation would not apply in relation to individuals that are not subject to individual income tax. It is considered that this situation is likely to be rare and not to prevent effective EOI.

### *AML-CFT regime*

162. Persons who provide trust and company formation and administration services, such as acting by way of business as a trustee, fall within the scope of “other entities” under s. 2(10) of the AML Law. Accordingly, they are required to conduct CDD when establishing a business relationship by establishing and verifying the identity of their customer and the beneficial owner (AML Law, s. 9).

163. The AML Law does not further define the term “trusts”. However, trusts are regarded as foreign law entities which accept, administer or distribute funds for a particular purpose with respect to which the term “beneficial owner” or “beneficiary” is defined as (s. 2(12)):

1. any natural person who is the beneficial owner/beneficiary of 25% or more of the property of the legal entity, where the future beneficial owners have already been determined;
2. where the individuals to benefit from the legal entity are yet to be determined, the class of persons in whose main interest the legal entity is set up or operates;
3. any natural person who exercises control over 25% or more of the property of the legal entity.

164. In general, establishing and verifying the identity of the “beneficial owners” must be done on the basis of documents, data or information obtained from a reliable and independent source (s. 9(8)). However, no clear obligation exists under the AML Law for trustees or trust administrators to identify persons other than the beneficiaries of more than 25% of the trust property.

165. As discussed above, AML obligated persons must in all cases perform ongoing monitoring of customer’s business relationships as well as regularly review and update identity information held on their customers and the beneficial owners (AML Law, s. 9(9) and (10)). Identity information must be retained by the obligated persons for ten years from the termination of the transaction or business relationship (s. 16(9)).

### ***Conclusion and practice***

166. Although trusts cannot be formed under Lithuanian law, Lithuanian residents may act as a trustee or trust administrator of a foreign trust. Beneficiaries of more than 25% of the trust property must be identified by professional trustees under the AML Law. The Lithuanian tax rules attribute the income of a foreign trust to the resident trustee or trust administrator, unless that person can prove otherwise. The Lithuanian tax law requires taxpayers to keep accounts, accounting documents and registers and provide them to the Lithuanian tax administration upon request. Accordingly, the combination of the obligations under the AML Law, the accounting law and the general tax obligations to maintain and submit information to the tax authorities, enables information regarding the settlors, trustees and beneficiaries of foreign trusts to be available to the Lithuanian tax authorities. Individuals performing services gratuitously or in the course of a purely private non-business relationship (e.g. a resident trustee of a foreign trust) would

not be subject to the AML Law. Furthermore, they would not be subject to accounting obligations under the AL if they are not considered as engaging in income-generating activities. However, so long as these individuals are subject to individual income tax, they would be required to submit to the Lithuanian tax authorities, on request, relevant accounting documents to substantiate their income. Accordingly, it is concluded that Lithuania has taken reasonable measures to ensure the availability of ownership and identity information in respect of foreign trusts with a Lithuanian resident trustee or trust administrator.

167. As noted above, AML-obligated persons must in all cases perform ongoing monitoring of customers' business relationships as well as regularly review and update identity information held on their customers and the beneficial owners. AML-related supervision on company service providers is exercised by the Financial Crime Investigation Service. This includes requirements to verify the identity of their customers through CDD. After the 2012 Moneyval report, inspections of these company service providers were strengthened and 9 AML/CFT inspections took place in 2012. In 6 cases infringements were identified and these cases were taken to Court. This resulted in 6 persons being fined for a total amount of EUR 3480. In 2013 in total 7 AML/CFT inspections were carried out focusing on company service providers. In 6 cases infringements were identified and these cases were taken to Court. This resulted in 6 persons being fined for a total amount of EUR 4400. Lithuanian officials report not having seen trusts or related services in Lithuania.

168. During the period under review Lithuania did not receive any requests relating to trusts and peer input did not indicate any issue in respect of trusts either.

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

169. Sponsorship and charity funds are public legal persons set up for the aim of meeting public interests (CC, s. 2.34(2)). The formation and operation of sponsorship and charity funds are governed by the Civil Code and the Law on Charity and Sponsorship Funds (LCSF). The LCSF specifies the objective of a sponsorship and charity fund as "providing charity and/or sponsorship and other support...to legal and natural persons in the fields of science, culture, education, arts, religion, sports, health care, social care and assistance, environmental protection as well as in other fields recognised as selfless and beneficial to society" (LCSF, s. 2(1)). Only persons falling within the categories specified in the LCSF may be recipients of benefits (i.e. non-monetary benefits) or funds (i.e. monetary funds) from such entities. In the case of charity, permitted recipients include the infirm, the sick, the orphaned, pensioners, the unemployed and victims (LCSF, s. 6). In the case of sponsorship,

permitted recipients encompass legal persons conducting non-profit activities provided their income cannot be allocated to their participants and they have been granted the status of a recipient of sponsorship from the Registrar (LCSF, ss. 7 and 15). Accordingly, sponsorship and charity funds are not further considered below.

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

170. Lithuania 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 effectively to enforce the obligations to retain identity and ownership information. Questions linked to access are dealt with in Part B.

### ***Enforcement provisions in relation to registration with the Registrar***

171. The availability of up-to-date ownership and identity information with respect to UABs and all Lithuanian formed partnerships (including TŪBs, KŪBs and EEIGs) is ensured through registration with the Registrar, either through its electronic database IS MLE or held in a more conventional way in the form of (scanned) documents. Although only identity information with respect to the initial shareholders/members is registered for other entities, the Registrar nevertheless holds information that could be useful for tracing full ownership and identity information. The manager of an entity which files incorrect documents or fails to file the required documents and/or information with the Registrar or IS MLE is liable to a fine of LTL 100 to LTL 5 000 (EUR 29 to EUR 1490, Code of Administrative Offences (CAO), s. 172<sup>2</sup>). Lithuanian authorities advised that where the failure remains unrectified, this penalty would be applied annually.

172. In addition to financial penalties, it is noted that registration with the Registrar is an essential part of the incorporation process of Lithuanian legal entities, which are deemed incorporated upon their registration (CC, s.2.63(1)). Furthermore, incorporation documents which are not registered with the Registrar within six months of their preparation become void (CC, s. 2.46(4)). In particular in the context of partnerships a change to the partners, which requires an amendment to the partnership agreement, does not take legal effect until the amended agreement is registered with the Registrar (LP, ss. 4(4) and (7)).

### *Enforcement provisions in relation to tax obligations*

173. Identity information with respect to beneficiaries and settlors of foreign trusts managed by a Lithuanian resident trustee as well as identity information on the controlling shareholders of companies and controlling members of partnerships is made available through obligations to keep and submit tax documents to the Lithuanian tax authorities. A failure to comply with submission obligations is punishable by the issuance of a notice or a fine of LTL 200 to LTL 500 (EUR 58 to EUR 145; LTA, s. 143 and CAO, s. 172<sup>1</sup>). A repeated breach of such requirements is punishable by a penalty of LTL 500 to LTL 1000 (EUR 145 to EUR 290). Lithuanian authorities confirmed that a continuing failure to comply with a relevant requirement for one year is considered as a repeated breach of the requirement. The fine is borne by the manager of the taxpayer in the case of a corporate income taxpayer.

174. The tax authorities monitor compliance with the obligations to keep and submit tax documents to the Lithuanian tax authorities. Statistics provided by Lithuania show that around 2 000-3 500 cases per year have been identified where there was a violation of these requirements and fines have been imposed under article 172<sup>1</sup> of the CAO. The fines have slightly dropped during the same period, as can be demonstrated by the following table.

CAO art. 172 <sup>1</sup>	Number of cases	The sum of fines (EUR)
Year 2011, months 6-12	1 665	24 458
Year 2012	4 096	43 158
Year 2013	6 565	76 894
Year 2014, months 1-6	3 380	30 837

175. Taxpayers' compliance with their duties to present tax declarations/information on income, assets, profit and taxes is verified by Taxpayer Compliance Units (providing services to taxpayers), Control Departments (performing audit procedures) and the Large Taxpayers Unit (LTPD). The Taxpayer Compliance Units observe the timeliness of the submission of tax returns by taxpayers and if they are late, reminders are issued. The Units also evaluate whether the data provided in tax declarations match the information about the taxpayer that is available within the tax administration. Employees of Control Departments and the LTPD assess a taxpayer's compliance with his/her tax obligations to calculate, declare and pay taxes.

176. Although taxpayer registration does not ensure the availability of ownership information, it is relevant for the availability of other taxpayer information (such as, information about taxpayers' opened and closed accounts with Lithuanian banks and credit institutions) that could be relevant to exchange of information for tax purposes. Non-submission, or delay in submission,



of taxpayer registration information is punishable by a penalty of LTL 500 to LTL 1 000 (EUR 145 to EUR 290, CAO, s. 172<sup>9</sup>). A fine of LTL 1 000 to LTL 5 000 (EUR 290 to EUR 1 450) can be imposed for a repeated breach.

177. The tax authorities monitor compliance with the obligations to register for tax purposes and to keep this information updated as part of the tax audits performed by the STI. Statistics provided by Lithuania show that around 600 cases per year have been identified where there was a violation of these requirements and fines have been imposed under article 172-9 of the CAO (on average around EUR 100 in each case).

### ***Enforcement provisions in relation to information kept by entities***

178. Ownership information on ŽŪBs and co-operatives, as well as UABs, is required to be maintained by the manager(s) of the respective entities. In each case, failure to maintain such information is considered “a violation of the commercial or economic activity rules” and is punishable by a fine of LTL 500 to LTL 1000 (EUR 145 to EUR 290; CAO, s. 172). A fine of between LTL 1000 to LTL 2000 (EUR 290 to EUR 580) can be imposed for a repeated breach where an initial penalty had already been imposed.

179. The tax authorities monitor compliance with taxpayers’ obligations to submit registration data through on-site inspections, i.e. operational tax audits. If the tax administrator identifies an activity that should have been registered, a fine is imposed under s. 172 of the CAO. In order to raise awareness among taxpayers regarding their duties and obligations, additional information is available through the Tax Administration’s website [www.vmi.lt](http://www.vmi.lt) or through the Taxpayer Information Centre by phone or e-mail.

180. Statistics provided by Lithuania show that around 1200-3600 cases per year have been identified where there was a violation of these requirements and fines have been imposed under article 172 of the CAO. The number of fines has increased after the year 2012 to around approximately 1 800 cases in 2013, and has almost doubled in the first half of 2014. The amount of the fines has slightly dropped during the same period, as demonstrated by the following table.

CAO art. 172	Number of cases	The sum of fines (EUR)
Year 2011, months 6-12	662	23 196
Year 2012	1 200	37 975
Year 2013	1 849	32 307
Year 2014, months 1-6	1 793	34 442

181. Identity information on foreign trusts is ensured through accounting and bookkeeping obligations under the AL. Criminal sanctions apply for a failure to keep accounting documents as required by law which prevents, in whole or in part, the determination of a person's activities or the amount or structure of their assets, equity or liabilities. A fine of between LTL 65 000 to LTL 6 500 000 (EUR 18 850 to EUR 1 885 000) or imprisonment for up to two years can be imposed in the case of a failure caused by negligence (Criminal Code, s. 223). A fine of between LTL 130 000 to LTL 6 500 000 (EUR 37 700 to EUR 1 885 000) or imprisonment of up to four years applies where there is fraudulent intent (Criminal Code, s. 222).

182. The Financial Crime Investigation Service and Police Department monitor compliance with these accounting and bookkeeping obligations under the AL. Lithuania provided the following numbers of court cases and persons sentenced for the years 2011 up until 2013 (There are no statistics for the year 2014 yet).

	Court Cases			Persons sentenced		
	Year 2011	Year 2012	Year 2013	Year 2011	Year 2012	Year 2013
Criminal Code, s. 222	274	226	255	249	214	221
Criminal Code, s. 223	175	177	179	156	160	165
Criminal Code, s. 202	51	50	67	48	48	65

### ***Enforcement provisions in relation to information held by third parties***

183. CDD obligations under the AML Law assist in ensuring the availability of beneficiary information in relation to relevant foreign trusts and ownership information in relation to relevant foreign companies and foreign partnerships. In addition, AML obligations reinforce the LMFI requirements for securities account managers to maintain ownership information on ABs.

184. Financial penalties apply for breaches of CDD obligations. An individual can be fined between LTL 2 000 to LTL 8 000 (EUR 580 to EUR 2 320) for the first breach and between LTL 5 000 to LTL 20 000 (EUR 1 450 to EUR 5 800) for subsequent breaches. The manager of an entity which fails to conduct CDD can be fined between LTL 8 000 to LTL 20 000 (EUR 2 320 to EUR 5 800) for the first breach and between LTL 20 000 to LTL 35 000 (EUR 5 800 to EUR 10 150) for subsequent failures (CAO, ss. 172<sup>14</sup>(1) and (4)).

185. In practice AML-related supervision on company service providers is exercised by the Financial Crime investigation Service. This includes requirements to verify the identity of their customers through CDD. As noted above, inspections of company service providers were strengthened and 9 AML/

CFT inspections took place in 2012. In 6 cases infringements were identified and these cases were taken to Court. This resulted in 6 persons being fined for a total amount of EUR 3 480. In 2013 in total 7 AML/CFT inspections were carried out, focussing on company service providers. In 6 cases infringements were identified and these cases were taken to Court. This resulted in 6 persons being fined for a total amount of EUR 4 400.

186. Under the LMFI and the Rules on Accounting of Financial Instruments and their Circulation, licensed account managers are required to maintain and provide such identity information on shareholders to the Lithuanian Central Depository. The Bank of Lithuania, as supervisory authority, can sanction a breach of such obligations by issuing a warning, installing a temporary supervisory representative or replacing the head of the non-compliant firm, or suspend or revoke its licence (LMFI, ss. 83 and 84(1)(4)). Firms can also be fined up to LTL 100 000 (EUR 29 000) for a breach of the LMFI and/or the Rules on Accounting of Financial Instruments and their Circulation, including the record keeping requirements therein (LMFI, s. 93(1)(9)). The breach of these obligations by an individual is considered an engagement in commercial, economic, financial or professional activities in an unlawful manner: this is punishable by a fine ranging from LTL 1 000 to 10 000 (EUR 290 to 2 900) where the revenue generated from such illegality does not exceed LTL 65 000 (EUR 18 850; CAO, s. 173); and where this revenue threshold is exceeded, an individual could be fined, subject to community service or imprisoned for up to four years (Criminal Code, s. 202).

187. Lithuania has explained that so far there have been no cases where these sanctions were applied by the Bank of Lithuania.

188. Notaries must establish the identity of natural persons or representatives of legal persons for whom they perform notarial acts (Law on the Notarial Profession (LNP), s. 31). Through this, identity information is collected and maintained on general partners of partnerships, and managers and founders of companies. A notary that fails to comply with the requirements of the LNP, including establishing the identity of the relevant persons, can be subjected to disciplinary action, including the issuance of a reprimand, censure, suspension or removal from office (LNP, s. 10).

189. Supervision of notaries is entrusted to the Chamber of Notaries as well as the Financial Crime Investigation Service. There are 265 notaries working in Lithuania. In line with the Law on Notary, notaries are certified every five years (and within one year from commencing to work as a notary). The so-called Attestation Commission for the notarial activities checks how the requirements of AML/CFT Law are implemented by notaries. After the FIU performed several risk-based checks in 2010 concerning compliance with suspicious transaction reporting (STR reporting) obligations, (15 inspections, 8 violation established), notaries started to actively report STR's. In 2014 four inspections were performed by the FIU and no violations were identified.

### Conclusion

190. There are sufficient enforcement provisions to support the legal and regulatory obligations which ensure the availability of identity and ownership information in Lithuania. Enforcement provisions are adequately applied in practice and generally ensure that ownership information with regard to the relevant entities is available.

#### Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
Ownership information on foreign companies having sufficient nexus with Lithuania (in particular, having their place of effective management in Lithuania) and on foreign partnerships carrying on business in Lithuania or deriving taxable income is not consistently available.	Lithuania should ensure that ownership information on foreign companies with sufficient nexus with Lithuania (in particular, having their place of effective management in Lithuania) and on foreign partnerships carrying on business in Lithuania or deriving taxable income is available in all cases.
Phase 2 rating	
Compliant	

## A.2. Accounting records

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

191. 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)***

192. Accounting and record keeping obligations in Lithuania are primarily set out under the Accounting Law (AL), the Law on Financial Statements of Entities and Lithuanian tax laws. The AL imposes requirements for relevant legal persons in Lithuania to maintain reliable accounting records, in accordance with the International Accounting Standards or the Business Accounting Standards produced by the Accounting Institute of Lithuania. Accounting records and underlying documents must be maintained for at least 10 years (AL, s. 19(2); Law on Documents and Archives, s. 13(2); General Index on Terms of Document Retention, paragraph 10.5). These requirements are enforced by the tax laws, under which all entities that are taxable in Lithuania are required to keep accounts in accordance with the procedure provided for in relevant laws including the AL (LTA, s. 40(6); and LCIT, s. 57(2)).

193. The AL applies to all “economic entities”, which is defined as including all legal persons formed under Lithuanian law with limited or unlimited liability, foreign legal entities acting through their permanent establishment or representative offices in Lithuania, as well as, Lithuanian resident individuals engaged in “individual activities” (i.e. income generating activities, AL, s. 1(1)). Accordingly, all companies and partnerships formed under Lithuanian law as well as all relevant foreign companies and partnerships are covered by the requirements of the AL.

194. All economic entities are required to organise their accounting system such that up-to-date relevant, objective and comparable accounting information is presented in a way that is comprehensive and useful for internal purposes as well as to those outside the organisation (AL, s. 4). Although an economic entity can determine for itself the list of accounts that it will keep, in all cases the list of accounts must include accounts showing the assets, liabilities, equity, income and expenses of the economic entity (AL, ss. 2(14), 7(2)). Double entry accounting must be used by all economic entities, except individuals and unlimited liability entities that are not value added tax (VAT) payers and have no current employees (AL, s. 6(3)).

195. Accounting information is set out in ledgers (termed “accounting registers”) and entries in the ledgers must be made in a chronological, systematic or chronological-systematic order (AL, s. 16(3)). Any act or event which affects the amount or structure of the economic entity’s assets, equity or liabilities must be recorded in the relevant ledgers on the day of occurrence, or as soon as practicable thereafter (AL, s. 6(2), 12(4)). Each entry must be supported by an accounting document that evidences the relevant economic transaction or event or, where not possible, accounting documents that evidence related economic transactions and events (AL, ss. 12(1) and (2) and 13(3), see further A.2.2). The Lithuanian authorities confirmed that in almost all cases, it is possible for an economic transaction or economic event to be

supported by its own accounting document, and therefore reliance should not be placed on those of related economic transactions or events. Any corrections to accounting entries must be made through a rectification certificate, or if corrected prior to the preparation of annual financial statements, in a way that leaves the original entry legible (AL, s. 18(4)).

196. Where financial statements are prepared, they must be based on the information set out in the accounts and prepared in accordance with the Law on Financial Statements of Entities (LFSE; AL, s. 17). The LFSE explicitly requires limited liability entities (such as ABs, UABs, MBs, co-operatives and foreign companies acting through a permanent establishment) to prepare financial statements (LFSE, s. 2(1)). However, a partnership, whether it is a KŪB or a TŪB, is only required to prepare financial statements where either: (i) it is expressly required to do so under its partnership agreement (LP, s. 4(1) (14)); or (ii) all of its partners are either UABs and/or ABs (LFSE, s. 2(3)).

197. Nevertheless, partnerships that are not explicitly required to prepare financial statements remain subject to the requirements under the AL to keep a list of accounts showing the assets, liabilities, equity, income and expenses of the partnership; and promptly to record any transaction or event that affects its assets, liabilities and equity based on accounting documents. These obligations ensure that all transactions are explained, and allow for the partnership's financial position to be determined with reasonable accuracy. The accounting records kept would, accordingly, allow for financial statements to be prepared if so desired.

198. The LFSE reinforces the accounting obligations in the AL by providing that financial statements must be drawn up to give a true and fair view of an entity's assets, equity, liabilities, income and expenditure as well as cash flows (LFSE, s. 4(1)). Furthermore, financial reports must consist of a balance sheet; profit/loss account; cash flow statement; statement of changes in equity and notes on the accounts (LFSE, s. 22). ABs are required to have their annual financial reports audited, and UABs, co-operatives, TŪBs and KŪBs are also required to have their annual financial reports audited where:

- all of their members/partners are ABs and/or UABs; and
- on the last day of the financial year they exceed two of the following limits: (i) net turnover of EUR 3.48 million; (ii) value asset on the balance sheet of EUR 1.74 million; (iii) average annual number of payroll workers of 50 (LFSE, s. 21(1) and (2)).

199. ABs and UABs, MBs, as well as TŪBs and KŪBs that prepare financial statements, are required to file their approved financial statements with the Registrar. ABs and UABs must do so within 30 days of the shareholders' approval of the documents at the annual general meeting (LC, s. 58(3)). MBs,

TŪBs and KŪBs must submit their approved financial statements within three months of financial year end (LSP, s. 22(3), LP, s. 11(4)).

200. Administrative penalties and criminal sanctions can apply for failures to manage accounts in accordance with the requirements of the AL (see A.2.3 for applicable criminal sanctions). The basic administrative penalty applicable for violation of accounting rules is between EUR 290 to EUR 580; CAO, s. 173<sup>1</sup>(1)). A repeated breach is punishable by a fine of between EUR 145 to EUR 580; CAO, s. 173<sup>1</sup>(3).

### *Tax law*

201. The LTA generally requires taxpayers to keep accounts, and keep accounting documents and registers in accordance with procedures set out in law (LTA, s. 40(6)). More specifically, the LCIT requires all taxpayer entities to comply with the requirements of the AL in their keeping of accounts and preparation of financial statements. The accounts kept by the taxpayer entity must provide sufficient information for the purpose of calculating corporate income tax (LCIT, s. 57). This entails that the accounts must be sufficiently clear and detailed to allow, amongst other things, for the determination of income, including non-taxable income, and (deductible and non-deductible) expenses.

202. Similarly, the Law on VAT requires taxpayers to keep accounts in way that would allow the taxpayer's VAT obligations to be correctly determined (Law on VAT, s. 78). Therefore, as a minimum, the supply and receipt of goods and services by the taxpayer must be sufficiently documented in its accounting records.

203. In addition to the base financial penalties mentioned above, further administrative penalties can be imposed dependent upon the cause for failure and the amount of taxes involved:

- For negligent failures and the amount of tax involved: (i) is between EUR 1 131 to EUR 1 885, a fine of EUR 870 to EUR 1 450 can be imposed; (ii) exceeds LTL EUR 1 885, a fine of EUR 1450 to EUR 2 900 can be imposed (CAO, s. 173<sup>1</sup>(4) and (6)).
- For fraudulent failures and the amount of tax involved: (i) is between EUR 377 to EUR 1 885, a fine of EUR 2 900 to EUR 5 800 can be imposed; (ii) exceeds LTL 6 500, a fine of EUR 5 800 to EUR 116 000 can be imposed (CAO, s. 173<sup>1</sup>(5) and (7)).

### *Trust accounting records*

204. An individual resident in Lithuania is subject to the requirements of the AL where s/he is engaged in “individual activities” (AL, s. 1(1)). The

term “individual activity” is further defined in the LITI as an activity where an individual seeks to generate revenue or other economic benefits during a continuous period of time and includes, amongst other things, (i) independent commercial or industrial activities of any kind, (other than the sale or rental of immovable property); and (ii) creative, scientific, professional (including liberal professional) activities and other similar independent activities (LITI, s. 2(7)). A “liberal profession” is defined as a profession, where an individual acts as a qualified, personally engaged, responsible, professional and independent person, and provides intellectual services to customers and the public, including services such as legal, accountancy and auditing services, financial consultancy, the provision of tax advice, brokerage services, and other similar activities (LITI, s.2(35)). Where a Lithuanian resident individual acts as a professional trustee of a foreign trust, it is considered that s/he will be engaging in individual activities (by virtue of conducting a liberal profession), and will be subject to the accounting obligations under the AL. Similarly, a Lithuanian resident corporate trustee is subject to the AL by virtue of being an “economic entity”.

205. As mentioned above, economic entities can determine for themselves the list of accounts that they will keep to show the assets, liabilities, equity, income and expenses of the economic entity (AL, ss. 2(14), 7(2)). In this instance, the trustee is the “economic entity”, by virtue of being a resident individual conducting a liberal profession. The scope of this obligation, as described, covers the assets, liabilities, income and expenses of the professional trustee. However, the extent to which the account keeping obligation may cover the income and assets of the trusts managed by that trustee is not entirely clear.

206. The tax laws reinforce the accounting obligation set out in the AL, but do not provide further specific details regarding the accounting records to be kept. As discussed above, the LTA requires taxpayers to keep accounts, and keep accounting documents and registers in accordance with procedures set out in law (LTA, s. 40(6)). Taxpayers must provide “substantiated explanations concerning the sources of acquisition of property and receipt of income” upon request by the Lithuanian tax administration (LTA, s.41). Taxpayers are not required to submit accounting documents with their income tax return. The Lithuanian tax authorities indicated that the receipt of funds/income by a taxpayer (such as the trustee) is *prima facie* sufficient evidence to substantiate the tax administrator’s calculation of income tax on that entity/individual, i.e. the trustee (LTA, s. 67(1)). Where a taxpayer disagrees with the tax calculation by the tax administrator, he/she “must substantiate the incorrect calculation thereof.” (LTA, s. 67(2)). A trustee assessed on income tax for the trust income and assets s/he holds may bring such a challenge on the basis that the trust income and assets do not beneficially belong to him. However, this provision does not require the documents used by the trustee



(as taxpayer) to substantiate his/her disagreement with the amount of tax calculated to be in the form of accounting records.

207. In addition, individuals performing services gratuitously or in the course of a purely private non-business relationship (e.g. a resident trustee of a foreign trust) may not be subject to these record-keeping obligations under the accounting laws, if they are not considered as engaging in individual activities. If these individuals are otherwise subject to individual income tax they would be required to submit “substantiated explanations concerning the sources of acquisition of property and receipt of income” upon request by the Lithuanian tax administration (LTA, s. 41). As mentioned above, a concern exists as to whether the documentation which could satisfy this requirement would necessarily be in the form of trust accounting records that meet the requirements of the international standard. Furthermore, a gap remains as this obligation would not apply in relation to individuals that are not subject to individual income tax. It is considered that this situation is likely to be rare and not to prevent effective EOI.

208. In summary, although there are obligations under the Accounting Law for professional trustees to keep accounts, the scope of those obligations is not clear. Furthermore, a potential narrow gap could exist with respect to non-professional Lithuanian resident trustees.

209. Compliance with the requirement to maintain accounting records and underlying documentation by all legal or accounting entities under the tax law is monitored by the tax authorities. Lithuanian officials report not having seen trusts or related services in Lithuania. Peer input did not indicate any issue in this respect either. Lithuanian authorities have indicated, and feedback from peers has confirmed, that there have been no requests for this type of information during the review period.

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

210. The AL provides that all accounting entries must be supported by accounting documents (AL, s. 12(1)). An accounting document certifies the occurrence of the economic transaction or economic event and is issued during or after the completion of the relevant transaction or event (AL, ss. 2(1) and 12(1)). The Lithuanian authorities advised that, in general, contracts, invoices and receipts would fall under the term “accounting document” described above. As a minimum, accounting documents issued by Lithuanian entities must contain the following identifying details (AL, s. 13(1)):

- title of the accounting document
- the name and code of the economic entity issuing the accounting document;
- the date of issuance;

- content of the economic event or economic transaction;
- outcome of the economic event or economic transaction in monetary terms; and
- Name, signatures and job title/position of person entitled to draw up and/or sign the accounting document.

211. Although the above information is not mandatory in relation to accounting documents issued by foreign entities, these documents must nevertheless include details that identify the relevant economic event or economic transaction, including the identity of the transaction parties involved (AL, ss. 2(1) and 13(3)).

212. Accounting documents are also required to be maintained for Lithuanian tax purposes. In relation to both corporate and individual income tax, a taxpayer can only claim deductions if these can be substantiated with accounting documents evidencing the relevant expenses (LCIT, s. 11(4); LITI, s. 18(5)).

213. Under the VAT system, Lithuanian taxpayers must fulfil specific requirements regarding documentary evidence of transactions performed. In particular, they are required to keep all VAT invoices issued and received, which must set out similar details to those listed for “accounting documents” above (Law on VAT, s. 78(5) and (7)).

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

214. All relevant entities are required to keep accounting records and accounting documents for a minimum period of 10 years; financial statements must be maintained for 15 years (AL, ss. 19(2) and (5); Law on Documents and Archives, s. 13(2); General Index on Terms of Document Retention, paragraph 10.5). This minimum retention requirement is generally reinforced by the LTA (s. 40(6)). Financial statements submitted to governmental authorities (i.e. the Registrar) are kept indefinitely, (AL, s. 19(5)). There is no explicit requirement under the AL for accounting records and accounting documents to be kept in Lithuania. There are no express requirements under the Law on Archives for accounting records to be kept in Lithuania.

215. Under the Law on VAT, VAT invoices must be stored in their original form for 10 years from the date of their issuance. Electronic VAT invoices and records can only be kept outside of Lithuania if full on-line access to this data is guaranteed and the Lithuanian tax administration has been informed of the location where these records are kept (Law on VAT, s. 78(7)).

216. Criminal sanctions apply for a failure to manage accounts and keep accounting documents for the minimum period as required under the AL or

the Law on VAT if such failure prevents, in whole or in part, the determination of a person's activities or the amount or structure of their assets, equity or liabilities:

- For negligent failures: a fine of between LTL 65 000 to LTL 6 500 000 (EUR 18 850 to EUR 1 885 000) or imprisonment for up to two years can be imposed (Criminal Code, s. 223).
- For fraudulent failures: a fine of between LTL 130 000 to LTL 6 500 000 (EUR 37 700 to EUR 1 885 000) or imprisonment of up to four years can be imposed (Criminal Code, s. 222).

### *Conclusion and practice regarding the availability of accounting information*

217. All relevant entities and arrangements are required to maintain accounting records and the underlying documents for a minimum period of 10 year. Furthermore, financial statements must be maintained for 15 years.

218. As mentioned above, relevant entities have to file their approved financial statements with the Registrar. Although this information would flow into the tax authorities' information systems, statistics provided by the Lithuanian authorities indicate that in the majority of cases (79%) accounting information was obtained from the taxpayer. This would typically concern underlying documentation, such as contracts, transaction information and invoices, as this type of information is not part accounting information that is filed with the Registrar and therefore not in the tax authority's database.

219. The tax authorities explained that the tax base for corporate income tax purposes is determined based on the accounting records (LCIT, s. 57). Compliance with these legal accounting requirements is reviewed within the course of regular tax proceedings, e.g. during a tax audit by local and regional tax offices. Statistics provided demonstrate that the number of fines and the corresponding amounts for violating accounting rules have increased during the period under review, as stated in the table below.

Violations according to the Article 173<sup>1</sup> of CAO identified by the tax administrator:

CAO art. 173 <sup>1</sup>	Number of cases	The sum of fines (EUR)
Year 2011, months 6-12	626	25 985
Year 2012	1 400	54 701
Year 2013	2 111	54 659
Year 2014, months 1-6	1 383	33 309

220. As stated above certain taxpayers are subject to a statutory audit, and they are required to prepare an annual report, including the auditor's report and the financial statements. Because of this statutory obligation, relevant entities and arrangements (essentially large tax payers) must have their accounts audited.

221. The audits are to be carried out by certified auditors who are required to follow the principles of the Code of Ethics for Professional Accountants and possess the relevant qualifications. Auditors are also subject to this code of ethics and are supervised by the Lithuanian Chamber of Auditors, a professional self-governing body. Public oversight of the audit profession is provided by the Authority of Audit and Accounting, which can conduct investigations into audits. Both the Lithuanian Chamber of Auditors and the Authority of Audit and Accounting have the power to take disciplinary actions as prescribed by the Law on Audit. According to the public website of the Authority of Audit and Accounting, as of 24 May 2013, 394 auditors and 183 audit firms were registered.

222. Oversight on the performance of auditing activity takes place by the Authority of Audit and Accounting Public Audit (AAA). Supervision is independent from the auditors' profession. All auditors are subject to independent monitoring and review through on-site inspections. These inspections are carried out in co-operation with the Lithuanian Chamber of Auditors (LCA), and are performed by the external auditors-controllers that are approved by the AAA. Subsequent investigations are performed by the inspectors of the AAA. Lithuania explains that all auditors and audit firms are to be checked at least once per 6 years. During the inspections the adherence to accounting and (international) auditing standards is assessed, as well as the competence of the individual auditors. Both procedural aspects and the quality of the work are reviewed, and disciplinary measures have been taken as a result of the reviews.

223. The system of mandatory audits combined with independent review of the auditors ensures that reliable accounting records, supported by underlying documentation, are kept by all persons that have their accounts audited. Furthermore, the approved financial statements have to be filed with the Registrar, who makes them available to the tax authority. Compliance with the accounting requirements is reviewed within the course of regular tax proceedings, e.g. during a tax audit by local and regional tax offices.

224. Over the period of review Lithuania has received in total 439 requests for information. From these requests 249 requests (64%) pertained to accounting information. Underlying accounting documentation was requested in 134 cases. In all cases these requests related to companies.

225. Requests received mainly pertained to tax returns, accounting statements, current accounts/balances of clients and suppliers. Besides this information, copies of invoices, payment documents, delivery notes, transaction information and contracts (underlying documentation) are often requested.

226. The Lithuanian authorities report that the information requested was provided in virtually all cases. Lithuanian EOI partners who report having asked for accounting information have in general not reported any specific difficulties. One peer noted that in a request for accounting documents concerning the sale and purchase of goods (business transactions, including the identity of the transaction parties involved) the Lithuanian Competent Authority advised that they were unable to find this information. It was not possible in this specific case to distinguish the various parties based on the information that was available in the accounting registers of the company. However, peer input also demonstrated that this type of information was requested and that it was provided in other cases. Peer input is overall positive concerning the quality and the completeness of the information provided.

#### Determination and factors underlying recommendations

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

### A.3. Banking information

Banking information should be available for all account-holders.

227. Access to banking information is of interest to the tax administration when the bank has useful and reliable information about its customers' identity and the nature and amount of their financial transactions. The relevant obligations that ensure the availability of banking information are set out under Lithuania's AML, accounting and tax laws.

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

##### *Accounting requirements*

228. Both Lithuanian incorporated banks and Lithuanian branches of foreign banks fall under the scope of the AL, which governs accounting and bookkeeping in Lithuania. Covered persons are required to maintain

accounting documents to support the entries made in their accounting ledgers (LA, s. 12(1)). As discussed in A.2.2, accounting documents must contain information identifying the content of the transaction (ss. 2(1) and 13). Accounts and accounting documents are required to be kept for 10 years (AL, s. 19(2); Law on Documents and Archives, s. 13(2); General Index on Terms of Document Retention, paragraph 10.5). These requirements would ensure that banks maintain records documenting transactions conducted by their account holders. Criminal penalties apply with respect to both negligent and fraudulent breaches of accounting and record-keeping obligations under the AL (see A.2.3 above).

229. In addition, banks are required to prepare interim and annual financial statements which are submitted to the Bank of Lithuania, as their supervisory authority (Law on Banks, s. 61). Banks are required to have their annual financial statements audited, and the auditor is required to assess, as part of the auditor’s report, that a bank has in place adequate internal control and information systems (Law on Banks, s. 62(1)(6)). The Lithuanian authorities advised that in assessing whether adequate internal control and information systems are in place, the auditors would look to the bank’s compliance with its obligations to keep accounting records, underlying documentation and transaction records as required under the AL and the AML Law.

### ***Anti-Money Laundering and Countering the Financing of Terrorism Regime***

230. Lithuanian incorporated banks and credit institutions as well as Lithuanian branches of such foreign entities are subject to AML obligations by virtue of being “financial institutions” under the AML Law (s. 2(8)). Accordingly, they are required to conduct CDD on their customers in a variety of circumstances, including when:

- establishing a business relationship (s. 9(1)(1));
- carrying out monetary operations or concluding transactions amounting to more than EUR 15 000 (s. 9(1)(2));
- exchanging cash amounting to more than EUR 6 000 (s. 9(1)(3));
- performing internal and international remittance transfer services exceeding EUR 600 (s. 9(1)(4)); and
- performing transfers of funds that fall within the scope of EU Regulation 1781/2006 on wire transfers (s. 9(1)(5)).

Through this, identity information is maintained with respect to all bank account-holders and any beneficial owners of the customer (AML Law, ss. 2(12) and 9(8)). The banks must regularly review these customer records and ensure that the information is kept up-to-date (s. 9(10)).

231. Financial institutions, including banks, are prohibited from “issuing anonymous passbooks, opening anonymous accounts or accounts in a fictitious name” (AML Law, s. 19(6)). Furthermore, financial institutions are prohibited from conducting transactions through bank accounts, concluding business relationships and performing transactions where they have no possibility of identifying the customer and fulfilling their CDD obligations (AML Law, s. 9(11)). The prohibition on the opening of anonymous accounts and issuance of anonymous passbooks was introduced in 1998. The Bank of Lithuania confirmed that no anonymous account or passbook issued prior to that date currently remains in existence.

232. Banks are required to conduct on-going monitoring of their business relationships with the customers, including scrutinising transactions undertaken by the customer (AML Law, s. 9(9)). However, transaction documents are not required to be kept in all cases. Financial institutions are required to keep a register of the monetary operations within any of the descriptions in the second to the fifth bullet points above, and any suspicious and unusual monetary operations and transactions, performed by their customers who are not financial institutions (s. 16(1)). This record-keeping obligation only applies to a sub-set of transactions conducted by bank customers and does not ensure that full transactions records are available. However, as noted above, the availability of bank transaction records is ensured through obligations under the AL.

233. All CDD and transaction records (including underlying documents) are required to be kept for ten years from the termination of the business relationship or transaction (AML Law, s. 16(9) and (10)). Financial penalties apply for breaches of AML Law as follows:

- Breach of CDD obligations, including record retention obligations: An individual can be fined between EUR 580 to EUR 2 320 for the first breach and between EUR 1 450 to EUR 5 800 for subsequent breaches. The manager of a non-compliant entity can be fined between EUR 2 320 to EUR 5 800 for the first breach and between EUR 5 800 to EUR 10 150 for subsequent breaches (CAO, ss. 172<sup>14</sup>(1) and (4)).
- Breach of reporting of unusual monetary operations, including record retention obligations: An individual can be fined between EUR 870 to EUR 2 320 for the first breach and between EUR 1 450 to EUR 5 800 for subsequent breaches. The manager of a non-compliant entity can be fined between 2 320 to EUR 5 800 for the first breach and between EUR 5 800 to EUR 10 150 for subsequent failures (CAO, ss. 172<sup>14</sup>(2) and (4)).

### *Tax law*

234. The above record-keeping requirements are supplemented by tax obligations under Lithuanian law. The LTA reinforces the accounting and record-keeping requirements set out in the AL and requires the submission of such information to the tax administration where requested (ss. 40(6) and 49).

235. Furthermore, the LTA requires banks to report certain information to the Lithuanian tax administration. First, credit institutions, including banks, are required to provide information to the Lithuanian tax administration regarding the opening and closing of all types of accounts within three working days of such occurrence (LTA, s. 55).

236. Second, financial institutions (including banks) are required to furnish the Lithuanian tax administration with information that is necessary for complying with the Council Directive 2003/48/EC of 3 June 2003 on Taxation of Savings Income in the Form of Interest Payments, as amended (the EU Savings Directive; LTA, s. 61). Article 3 of the EU Savings Directive requires financial institutions that pay interest to their customers to hold information on account holders who are not resident in Lithuania but are resident in other EU Member States.

237. A failure to submit the requested information to the Lithuanian tax administration is punishable by the issuance of a notice or a fine of EUR 59 to EUR 145; LTA, s. 143 and CAO, s. 172<sup>1</sup>. A repeated breach of such requirements is punishable by a penalty of EUR 145 to EUR 290.

### *In practice*

238. The Bank of Lithuania is responsible for supervision of the compliance with all the requirements stemming from the AML Act, including the record keeping requirements for banks. The Bank of Lithuania supervises compliance with these requirements, as a part of the general supervision, but also through targeted on-site inspections focused on AML issues.

239. The Bank of Lithuania carried out a total of 14 on-site targeted inspections relating to AML/CFT in credit institutions regarding the years 2011, 2012 and 2013. Supervision is conducted by a special unit within the Bank of Lithuania, the Supervision Service, which started its operation at the beginning of 2012.

240. The supervision model takes into account a combination of on-site and off-site inspections. Off-site supervision consists of an analysis of the documents and reports that are submitted by financial institutions on a quarterly basis. On-site supervision on the other hand concentrates at the most risky financial sector areas. The Bank of Lithuania checks selected institutions on their compliance with Lithuanian anti-money laundering laws and



international standards, evaluates the adequacy of CDD measures taken and assesses the sufficiency of information on the client “profile”.

241. During an on-site visit of banks the AML inspection team would typically check whether customers’ files, CDD-related information and transaction records would be available and kept in line with the requirements. The inspection team would also ask for the audit report as a standard procedure. As noted above, banks are required to have their annual financial statements audited, and the auditor is required to assess, as part of the auditor’s report, that a bank has in place adequate internal control and information systems. Lithuanian officials further explain that transaction records were always available and would usually be looked at in the course of an on-site inspection. In addition to these inspections, the Bank of Lithuania aims to strengthen its formal and informal communication with financial sector and regularly organises meetings and training on AML-related topics. The purpose of these common gatherings is to give guidance to the insurance and banking sector on how to establish a consistent AML practice and also to educate other financial market participants such as credit unions, life insurance companies, financial brokerage firms and investment management firms that do not fall under the category of banks.

242. Regarding the number of penalties applied to Banks, eight AML/CFT on-site inspections were carried out in 2011. In two cases AML/CFT infringements were identified. As a result, one institution received a written warning and one licence has been withdrawn. In addition, four institutions received a written notice. This notice (Resolution of the Board of the Bank of Lithuania) requires a bank or financial institution to eliminate the deficiencies identified. In such a case the financial institution should implement an action plan and provide that action plan to the Bank of Lithuania. The Bank reviews the action plan and provides comments or recommendations if necessary. In 2012 three AML/CFT on-site inspections were carried out. In two cases an AML/CFT infringement was identified. Five persons were sanctioned with a fine amounting to a total of EUR 5500. In addition, two institutions received a written notice from Lithuania requiring them to eliminate the deficiencies identified. In 2013 three AML/CFT on-site inspections were carried out. In two cases an AML/CFT infringement was identified. In one case the bank received a written notice requiring it to eliminate the deficiencies identified. In another case the institution involved is awaiting a court decision as part of an administrative procedure that has been initiated. Statistics regarding 2014 were not available at the time of the assessment team’s on-site visit, as some of the AML/CFT on-site supervision processes were still on-going.

243. During the three-year review period, bank information was requested in 53 cases. In the majority of cases (85%) this information was obtained directly from the banks. Peers indicated that banking information was provided in all cases.

### ***Conclusion***

244. The legal and regulatory framework in Lithuania ensures the availability of banking information. Identity information on all account-holders is made available through the AML law and the availability of transaction records is primarily ensured through accounting obligations. Enforcement of these provisions is secured by the existence of substantial financial penalties under the accounting law and AML Law.

245. The customer identification obligations and record keeping obligations on all transactions require banking information to be available in Lithuania for all account holders. Compliance by banks in respect of these legal obligations is checked by independent auditors and supervised by the Bank of Lithuania. Through their inspections, it has been established that banks keep the required information on their clients and transactions. Experience of the Lithuanian competent authority, as well as peer input, confirms that banking information was available with banks and could be exchanged upon request.

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

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>Compliant</b>

## B. Access to information

### Overview

246. 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 Lithuania'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. It also assesses the effectiveness of this framework in practice.

247. The Lithuanian tax authorities' power to access information for EOI purposes is derived from its ability to use all its powers with respect to its domestic functions to provide assistance to the tax administrations of foreign jurisdictions, without requirement of a domestic tax interest. This general access power can be used with respect to requesting ownership, accounting or banking information from taxpayers and third parties. Enforcement measures are available to compel the disclosure of information in case a person refuses to provide the requested information, including powers to search premises, seize information and inspect property, as well as impose financial penalties.

248. The Lithuanian competent authority has direct access to a wide range of information collected as part of the registration and filing requirements applicable in Lithuania and stored in the Tax Inspectorate's institutional databases. During the review period, the Lithuanian competent authority was able to access information to reply to EOI requests concerning ownership and identity information, accounting information and other types of information.

249. Lithuania's legal framework recognises bank, commercial and professional secrecy. However, the obligation to provide information to the Lithuanian tax authorities overrides bank secrecy, commercial secrecy and

professional secrecy. In all cases banks have submitted the requested information at the request of the tax office. Finally, no legal rights or safeguards exist in Lithuania that would unduly prevent or delay effective exchange of information. In practice peer input did not identify any issues regarding professional secrecy of lawyers, auditors and notaries during the period under review. In addition, the Lithuanian competent authority reports that it did not encounter any practical difficulties with the application of professional secrecy.

## **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).

### *The competent authority*

250. Under Lithuania’s DTCs, the Minister of Finance or his/her authorised representative is the designated competent authority for EOI purposes in Lithuania. Pursuant to the Law on Tax Administration (LTA), competent authority is delegated to the State Tax Inspectorate (STI) which is empowered to co-operate with the tax administrations of foreign states (LTA, s. 25(17)).

251. Contact information for Lithuania’s competent authority is fully identifiable on the Global Forum website. The contact details are also listed on the EU websites (CIRCABC). Moreover, Lithuania generally provides the contact information of its competent authority to treaty partners when finalising treaty negotiations.

252. The Lithuanian competent authority has the power to access information for EOI purposes under the LTA. Section 28(4) states that: “When providing assistance to the tax administrations (competent authorities) of foreign states, the tax administrator shall have the same rights in respect of taxpayers or third persons as when performing the other functions assigned to it.”

253. Section 33(1) of the LTA sets out the general information gathering power:

When performing the functions assigned to it, the tax administrator (officer) has the right to obtain from persons, including credit institutions, the data required for the performance of its obligations, copies of documents, computer file data (copies thereof) concerning the assets, income, expenses and activities of

this or another person and to use information from the registers and databases administered and managed by itself or other legal persons...

254. A “person” is defined in the LTA as a natural or a legal person (LTA, s. 2(2)). The provisions of sections 28(4) and 33(1) of the LTA, when read together, provide the Lithuanian tax authorities with the power to obtain information from third parties as well as Lithuanian taxpayers for the performance of its functions, including for EOI purposes.

255. Generally, information must be provided to the tax administrator on request (LTA, s. 49(1)). The time limit for response is within 10 days of receipt of the request, unless otherwise specified. However, the LTA also provides that certain information would be automatically provided to the Lithuanian tax administration by third parties – such as, financial institutions, governmental authorities, bailiffs and notaries, as further discussed below.

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

256. The Lithuanian tax authorities hold certain information that could be relevant for EOI purposes by virtue of the following third party reporting requirements:

- The Registrar is required to provide certain registration information – such as, with respect to UABs and ABs: the date of registration, the name, legal form and identification code of the legal entity and identity information on the legal entity’s authorised representative – to the tax administration for the taxpayer register on a daily basis (LTA, s. 54; RRT, s. 39.6).
- Notaries are required to provide to the tax administration, within three days of occurrence, information on any real estate transaction and any other transaction valued at over LTL 50 000 (EUR 14 500) for which they act (LTA, s. 50; Order of the Minister of Finance, 21 June 2004, No 1K-241). Other transactions include transactions of moveable assets, gifts and donations and transfer of securities.
- Credit institutions are required to provide a range of information to the tax administration, including: (i) information on the opening and closing of customer accounts within three working days of the occurrence; (ii) information on mortgages provided and interest received; and (iii) information on account holders that are not resident in Lithuania but are resident in other EU Member States for the purposes of the EU Savings Directive (LTA, ss. 55, 56 and 61).

- Intermediaries for public trading of securities are required to provide information on the securities acquired by persons on an annual basis through which ownership information on publicly traded companies is made available to the Lithuanian tax administration (LTA, s. 57).

257. If more detailed information is required by the Lithuanian competent authority to assist with an EOI request, it may use its general information gathering power under section 33(1) of the LTA to collect any required information including ownership, accounting and bank information. This same power is used for requesting information from taxpayers, government authorities and other third parties.

258. As noted above, the time limit for response is within 10 days of receipt of the request, unless otherwise specified (LTA, s. 49(1)).

259. The main sources of information for the tax administration are:

- The tax databases – the main source of information of the tax administration. These contain information obtained from taxpayers' tax returns including accounting records (balance sheet and profit and loss account). Besides information related to withholding taxes, taxable income as well as deducted expenses incurred by individuals, the tax authorities' databases contain information collected about tax law infringements, cases of abuse and similar information. EU intra community trade related VAT information is available through the VAT information exchange system (VIES) and VAT tax payers register;
- The taxpayer's file at the local tax office – includes tax returns, financial reports, communication between the taxpayer and assessing officer and original documentation obtained from the taxpayer or audit reports;
- The taxpayer – the taxpayer is contacted in the majority of cases. This is typically the case where the information cannot be gathered from the internal databases or other information sources. A so called control action was initiated in order to reply to an EOI request in more than half of all requests;
- The main state registers, such as Real Property Register and Cadastre, the Register of Legal Entities, and the Address Register: Lithuanian tax offices have direct access to a wide range of information (including initial registration, the identification code of the legal entity and identity information on the legal entity's authorised representative, as well as change of name and change of address). Registration information is also publicly available. Tax officials involved can also directly contact the Commercial Registry and request its co-operation. Further

information available through the various databases includes details of social security payments, information regarding natural persons (data on individuals, their family members and registered residences), as well as business-related information such as business certificates and business licences;

- Banks (in respect of banking information). Banks submit the requested information upon the request of the tax office. Information regarding the existence of bank accounts is available to the tax authorities through the Central Register of Bank Accounts, held by the tax administration. During the three-year review period, bank information was requested in more than 53 cases. In the majority of cases (45 cases) this information was obtained from banks. In the remaining cases, bank information was obtained from the taxpayer (6 cases) or could be provided based on information that was internally available (2 cases).

260. The Lithuanian authorities have explained that in practice several ways of gathering information for EOI purposes may be used in order to provide a reply to one request, e.g. data from the tax authorities' database the information from third sources, etc.

261. In practice most EOI requests will be forwarded to a local tax office and will be followed by a local inspection (on-site investigation). This is typically the case where the information cannot be gathered from the databases or from the file of the taxpayer kept by the local tax office. Lithuanian officials estimate that an on-site visit (local inspection) takes place in more than 50% of all EOI requests. In some cases an audit will be launched. Both a local inspection and an audit can be based on an EOI request. In the case of a local inspection the taxpayer will receive a notice and is asked to prepare or present specific documents/information to the tax administrator. The taxpayer can be asked to answer questions and to provide documents and other information. The tax official will explain what he is looking for and why (for example to verify a transaction with foreign taxpayer). The tax official would mention the tax administration purposes without specifying that it is for the purpose of EOI or a request. In order to collect the information, the taxpayer is requested to come to the tax office to present the information and to answer questions.

262. During the period under review, the requested information was:

- already at the disposal of the EOI Unit in 12% of requests;
- already at the disposal of the tax administration in 13 % of requests;
- already at the disposal of another governmental authority in 3% of requests;

- in the possession or control of the taxpayer subject to the enquiry in 60% of requests;
- in the possession or control of a third party in 1% of requests;
- in the possession of a bank in 11% of requests.

263. As confirmed by peer input, the Lithuanian competent authority and the tax offices involved were able to access information to reply to EOI requests concerning ownership and identity information, accounting information, bank information and other types of information. In the great majority of cases the requests for ownership and identity information could be answered with information available in the tax database (tax returns and accounting information) and the commercial registry database (51 out of 63 cases). In nine cases, answers were provided based on information obtained from the tax payer. In two cases the information was obtained from other government authorities, while in one case the information was obtained from a third party. In order to reply to requests for accounting information or underlying information, in the majority of cases Lithuania contacted the taxpayer concerned (231 out of 294 cases). Requests for banking information were answered in the majority of cases with information obtained from the banks (45 out of 53 cases). In 6 cases they were answered with information obtained from the taxpayer himself. In the remaining 2 cases the information was internally available. In these two cases details of the requested transactions were available with the tax authorities and checked as part of an audit act or investigation report, and information was taken from the database of the opened bank accounts in Lithuania.

264. Peers were generally satisfied with the timeliness and completeness of the responses received from Lithuania.

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

265. 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.

266. There is no domestic tax interest requirement in Lithuania. As discussed above, section 28(4) of the LTA expressly provides that Lithuanian tax administrators can exercise the same powers with respect to taxpayers and third persons when providing assistance to the competent authorities of foreign states, as they do when performing their other functions.

267. With respect to the period under review the Competent Authority reports that it did not encounter any practical difficulties with the application of access powers employed for EOI purposes. The absence of peer comment



to the contrary supports the statement that no issue regarding domestic tax interest arose in practice.

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

268. Jurisdictions should have in place effective enforcement provisions to compel the production of information. The LTA, the Criminal Code and the COA provide for compulsory measures.

### ***Sanctions for non-disclosure***

269. Civil and criminal sanctions apply where a person fails to provide information to the Lithuanian tax administration as requested. Under the CAO, such failure is punishable by the issuance of a notice or a fine of LTL 200 to LTL 500 (EUR 58 to EUR 145; LTA, s. 143 and CAO, s. 172-1). A repeated breach of such requirements is punishable by a penalty of LTL 500 to LTL 1000 (EUR 149 to EUR 298). Furthermore, the failure to comply could be considered as a hindrance of the exercise of the rights of the tax authorities which are punishable by a fine of between LTL 50 and LTL 2000 (EUR 149 to EUR 596; CAO, s. 172-3).

270. Criminal sanctions apply where a legal or natural person continues to fail to submit documents in relation to a person's income, profit or assets after receiving a written reminder from the Lithuanian tax authorities (Criminal Code, s. 221(1)). In such case, the non-compliant person can be punished by community service, a fine (of up to LTL 6 500 (EUR 1 885) or arrest. Where the failure is due to an intention to avoid payment of taxes exceeding LTL 65 000 (EUR 18 850), that person can be punished by imprisonment of up to three years. (Criminal Code, s. 221(2)).

### ***Search and seizure***

271. The Lithuanian tax administration has the power to access a taxpayer's territory, buildings and premises for the purpose of a tax inspection or tax investigation by giving at least ten days' prior notice to the taxpayer (LTA, ss. 33(2), 122 and 135(3)). The prior notice must contain the date and time for the tax inspector's visit, the object of the visit, as well as the preliminary list of documents and other information for inspection (LTA, s. 212(1)). The Lithuanian authorities confirmed that the taxpayer is not informed in the notice whether the tax inspection or tax investigation is conducted for the purpose of assisting with an EOI request. A tax inspection or tax investigation can be commenced without prior notice where there are reasonable grounds for believing that the taxpayer may conceal or destroy the documents relevant for inspection or where prior notice would make the inspection

impossible or particularly difficult (LTA, s. 121(3)). The Lithuanian authorities advised that this exception can be equally invoked, i.e. on the same grounds, in the context of the exercise of this power for EOI purposes.

272. The Lithuanian tax administration has the power temporarily to take away the taxpayer's accounting documents for the purpose of a tax inspection or tax investigation (LTA, ss. 33(3), 124 and 135(3)). If a taxpayer does not present the documents when asked, he may be asked a second time. If the taxpayer does not co-operate, he will receive the tax administrator's order to present the documents. If the taxpayer does not provide the documents, an administrative sanction is imposed. In that case the tax administrator draws up an administrative offences report on the taxpayer's failure to comply with the order according to the Article 1723 of CAO. In this respect Lithuanian officials have explained that an order authorises tax officials to enter the office of a tax payer during on-site investigations. They can also enter private premises but only with the assistance of the Police (LTA s. 122). Lithuanian authorities have clarified that it was never necessary during the period under review to issue an order in respect of a tax payer or a third party in order to obtain information for an EOI request. The Lithuanian tax authorities can also enlist other law enforcement authorities, as necessary, to assist in a search of the taxpayer's premises during a tax inspection/investigation (LTA, s. 127(1)). These powers can be used in relation to tax inspections or investigations initiated against third party information holders in relation to their obligations under the LTA. The Lithuanian tax authorities further advised that a tax inspection or tax investigation can be commenced for the purpose of providing assistance to an EOI request, without requirement of a domestic tax interest.

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

273. 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. Lithuania has a number of secrecy provisions in various pieces of legislation.

#### ***Bank secrecy and corporate secrecy***

274. Although Lithuanian law provides for the concepts of bank secrecy and corporate secrecy, as described below, they do not hinder the Lithuanian tax administration's ability to obtain information under its general information gathering power contained in section 33(1) of the LTA.

275. The concept of bank secrecy is contained in the Civil Code, which states that: "The bank shall secure the confidentiality of the bank account, the deposit, all related operations and the client." Information which is subject to

bank secrecy may only be disclosed to the client or its agents, or to relevant government authorities as prescribed by law (CC, s. 6.925). Similarly, the Law on Banks provides that “a bank, the bank’s employees and any third parties being in the possession of the information which is considered a secret of the bank’s may not divulge such information for an indefinite period of time” (s. 55(2)). The Lithuanian authorities confirmed that this means the information subject to bank secrecy must never be divulged. However, this secrecy obligation is overridden where the bank is required to provide such information by law (Law on Banks, s. 55(5)).

276. In relation to commercial secrecy, the Civil Code provides that information would be considered a commercial (industrial) secret if the commercial value of the information lies in the fact that it is not known to third parties and the information cannot be freely accessible to third parties by reason of the owner’s and his/her agents’ efforts to keep such information confidential (CC, s. 1.116(1)). The board of a company can determine what information constitutes a commercial (industrial) secret with respect to a company (LC, s. 34(3)).

277. Both types of secrecy are overridden where the Lithuanian tax administration requests information for the purpose of carrying out their functions (which include EOI), as “commercial or bank secrets may not serve as grounds for the refusal to provide information” (LTA, ss. 28(4), 33(1) and 49(2)). Accordingly, neither bank secrecy nor corporate secrecy poses a barrier to accessing information for EOI purposes in Lithuania.

278. As Lithuania explained, there was no case during the period under review where the requested information was covered or might have been covered by corporate secrecy.

279. Regarding banking information, it can be noted that banks submit the requested information upon a request of the tax office. The Lithuanian competent authority state that banking information was provided in all cases. This is confirmed by peer input, stating that banking information was available and could be exchanged upon request.

### *Professional secrecy*

280. Lithuanian law provides for the concept of professional secrecy which covers, amongst others, lawyers, auditors and notaries as further described below. However, these forms of professional secrecy do not hinder the Lithuanian tax administration’s ability to obtain information under its general information gathering power contained in section 33(1) of the LTA.

281. The Civil Code sets out a broad definition of professional secrecy, which applies to lawyers, auditors and notaries, amongst other professionals (CC, s. 1.116(5)):

Information shall be considered to be a professional secret if, according to the laws or upon an agreement, it must be safeguarded by persons of certain professions (advocates, doctors, auditors, etc.). This information is received by the indicated persons in performance of their duties provided for by laws or contracts. The cases when the information received in exercise of professional rights and in performance of professional duties shall not be considered professional secret are established by laws.

282. The scope of secrecy for each profession is further specified in the legislation governing each of those professions:

283. Legal professional secrecy: Lawyers (or advocates) providing legal services are bound by legal professional secrecy, which is derived from the general principle of professional secrecy described above (Law on the Bar (LB), ss. 5(4), 19(2) and 63(5)). The following activities are considered as “legal services” in Lithuania and define the scope of the legal profession: (i) the provision of legal consultation/advice, (ii) drafting of legal documents, (iii) representation on legal matters, and (iv) defence and representation in legal proceedings (LB, s. 2(1)). Pursuant to the LB, legal professional secrecy applies to “the fact of consulting the advocate, the terms of the contract with the client, the information and data provided by the client, the nature of consultation and the information collected by the advocate by order of the client” (s. 46(5)). Lawyers can be subject to disciplinary action (including, censure, public reprimand and cancellation of professional licence) for breach of their duty of professional secrecy (LB, s. 53).

284. The scope of legal professional secrecy under Lithuanian law appears to cover any information provided by the client to the lawyer. It is not clear whether the information must be necessarily linked to the seeking of legal advice or to contemplated or actual legal proceedings in order to be considered secret. In addition, any information that is collected by the lawyer from third parties upon his/her client’s instructions would also appear to fall within the scope of Lithuanian legal professional secrecy, by virtue of being “information collected by the advocate by order of the client”. In both these respects, legal professional secrecy under Lithuanian law is wider than the exemption envisaged under the international standard (as articulated in the OECD Model TIEA and the commentary to Article 26(3) of the Model Tax Convention (paragraph 19.3). However, in any event as further explained below, legal professional secrecy is overridden by the Lithuanian tax

administrator’s power to obtain information from any natural or legal person for the purpose of carrying out his/her functions.

285. Audit secrecy: The Law on Audit (LA) provides that auditing firms and auditors must abide by the general principles of professional ethics, including that of confidentiality and professional secrecy, when conducting an audit (LA, s.4(2)). The principle of confidentiality and professional secrecy requires that: “an auditor and audit firm must conceal the information entrusted by the contractor and/or the audited entity and not to divulge it to third persons except in cases established by this law and other legal acts, and not to use the contractor’s and/or audited entity’s information received during the auditing for meeting the interests of the audit firm and/or third persons.” (LA, s. 4(2)(2)).

286. Furthermore, an audit firm must not transmit the working documents from an audit to any third persons without the consent of the audited entity and the contractor, except where otherwise provided by the LA (s.32(2)). “Working documents” include all materials collected and received by the auditor and documents which he/she prepares for drawing up the plan of audit of financial statements, for carrying out the audit of financial statements and for substantiating the auditor’s report (LA, s. 2(12)). Government authorities, including the tax administration, are only permitted to inspect or seize working documents in cases provided by law (LA, s. 32(4)).

287. Notarial secrecy: With respect to notaries, the Law on the Notarial Profession (LNP) provides that notaries must ensure the confidentiality of notarial acts, even after they have left their office as a notary (LNP, s. 14). Notarial acts include, amongst other things, the attestation of documents and authenticity of data to be submitted to the Registrar, the attestation of transactions and the authentication of signatures and documents (LNP, s. 26). Notaries are treated similarly to civil servant for disciplinary purposes and if found in breach of their confidentiality duty, they can be criminally sanctioned through a ban from acting as notary, a fine, arrest or imprisonment of up to five years (Criminal Code, s. 228(1)).

288. All these forms of professional secrecy are overridden where the Lithuanian tax administration exercised its information gathering power under section 33(1) LTA, which states that:

When performing the functions assigned to it, the tax administrator (officer) has the right to obtain from persons, including credit institutions, the data required for the performance of its obligations, copies of documents, computer file data (copies thereof) concerning the assets, income, expenses and activities of this or another person and to use information from the registers and databases administered and managed by itself or other legal persons...

289. This right to obtain information is expressly stated to extend to obtaining information from third parties, as well as from the taxpayers (s. 48, LTA). Section 49(2) LTA further clarifies the tax administrator’s information gathering power under section 33(1) LTA in relation to information subject to professional secrecy by providing that:

A professional secret may only serve as grounds for refusal to submit information where this is provided for in the laws and where this Law does not explicitly impose an obligation to submit the aforementioned information.

290. The concepts of professional secrecy of lawyers, auditors and notaries are provided for under Lithuanian law, as described above. However, the right of the tax administrator to obtain information under section 33(1) LTA sets out such an explicitly imposed obligation to submit information which is otherwise protected by professional secrecy to the Lithuanian tax authorities, where this information is necessary for them to carry out their functions. Therefore, in accordance with section 49(2) LTA, professional secrecy would not serve as a ground for refusal to submit information requested by the Lithuanian tax administration in accordance with section 33(1) LTA. As noted in B.1 above, the functions of the Lithuanian tax administration includes exchanging information for tax purposes. Accordingly, professional secrecy under Lithuanian law would not hinder the gathering of information by the Lithuanian tax administration for EOI purposes.

291. In practice peer input did not identify any issues regarding professional secrecy of lawyers, auditors and notaries during the period under review. Lithuania explained there was no case during the period under review where the requested information was covered or might have been covered by professional secrecy. In addition, the Lithuanian competent authority reports that they did not encounter any practical difficulties in practice with the application in this respect either.

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

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>Compliant</b>

## 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)*

292. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction). The legal and regulatory framework in Lithuania does not provide for any right or safeguard which would unduly prevent or delay effective exchange of information.

293. Taxpayers have the right to refuse to comply with a request for information where the requested information is not at their disposal and they are not required to maintain the information by law (LTA, s. 36(8)). The Lithuanian authorities confirmed that information would not be precluded from being “at the disposal of the taxpayer” solely by virtue of being located outside of Lithuania or in the physical possession of another person (e.g. the taxpayer’s lawyer or auditor). Furthermore, they interpret the provision in line with the scope of the phrase “in the possession or control” used in Article 2 of the OECD Model TIEA.

294. In exercising its power under section 33(1) of the LTA to access information, the Lithuanian tax administration is not required by law to inform the holder of the information of the reason(s) for its request for information. Where the request is issued to a third party information holder rather than the taxpayer, there is also no legal requirement to notify the taxpayer of the existence of the request. Consequently these issues did not come up in practice. Although prior notification is generally required in relation to accessing taxpayers’ premises for the purposes of a tax inspection or tax investigation, the Lithuanian authorities confirmed that the prior notice would not contain details which would disclose to the taxpayer that the tax investigation or inspection is conducted for EOI purposes. Furthermore, an exception from notification is provided where prior notice would make the inspection impossible or particularly difficult (LTA, s. 121(3)). Peer input did not identify any issues during the period under review and the Lithuanian authorities did not mention any issue in this respect.

295. Taxpayers have a general right to appeal against any action of the Lithuanian tax administration, in accordance with the procedures of the Law on Administrative Proceedings (LTA, ss. 36(12), 144 and 146). Such

appeals must be brought within one month of the contested act (Law on Administrative Proceedings, s.33). This right of appeal does not entail an obligation for the Lithuanian tax administration to provide the taxpayer with background information to its request for information prior to the commencement of legal proceedings. In addition, there is no legal requirement for the EOI procedure to be suspended if the right of appeal is exercised.

296. The Competent Authority reports that no appeals were made in relation to requests for information and that it did not encounter any practical difficulties (e.g. systematic delays or unduly burdensome restrictions) with the application of rights and safeguards.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>Compliant</b>



## C. Exchange of information

### Overview

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

298. Lithuania has an extensive treaty network that allows for exchange of information for tax purposes with all relevant partners. Lithuania has signed 55 DTCs, of which 53 are in force (see Annex 2). It is a signatory to the amended Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention), which entered into force in respect of Lithuania on 1 June 2014, and it also exchanges information under EU instruments. All of Lithuania's EOI instruments, with the exception of the DTC with Switzerland, incorporate provisions that allow Lithuania to exchange information according to the international standard.

299. All of Lithuania's EOI instruments contain confidentiality provisions that meet the international standard, and its domestic legislation also contains relevant confidentiality provisions. These provisions apply equally to all information in the requests received as well as to responses received from counterparts.

300. Lithuania's EOI instruments 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.

301. Finally, there are no legal restrictions on the ability of Lithuania's competent authority to respond to requests or to provide an update on the status of the request. Over the period of review from 1 July 2011 to 30 June 2014 Lithuania received 439 requests for information. Including the time taken by the requesting jurisdiction to provide additional information, the

requested information was provided within 90 days, 180 days and within one year in 64%, 90% and 99% of the time respectively.<sup>13</sup>

302. Lithuania has in place appropriate organisational processes to ensure effective exchange of information. However, Lithuania should provide status updates in cases where it is not in position to meet the 90 day deadline.

### C.1. Exchange of information mechanisms

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

303. The right to initiate international treaties on behalf of Lithuania is vested in the President, the Prime Minister, the Minister of Foreign Affairs, the Government and any government ministry or institution prescribed by the Government (Law on International Treaties (LIT), s.3). The Ministry of Finance is granted the power to negotiate and conclude EOI agreements (including both DTCs and TIEAs) through a specific mandate authorised by the President of Lithuania (Constitution, s. 138; LIT, ss. 5, 6(1) and (5) and 7(1)). The competent authority to request and provide information under Lithuania's DTCs and domestic laws is the Minister of Finance or his/her authorised representative. Competent authority is delegated to the State Tax Inspectorate (STI) under the LTA.

304. Lithuania has concluded 55 bilateral EOI instruments (all DTCs), of which 53 are in force. All but one of Lithuania's DTCs allows Lithuania to exchange information to the international standard. The DTC with Switzerland does not meet the standard due to the restriction of the EOI provision to information that is "necessary for carrying out the provisions of the Convention" only. This EOI agreement is not included further in the following analysis. It is recommended that Lithuania renegotiates an exchange of information mechanism with Switzerland that would allow for the exchange of information to the international standard. Nevertheless, it can be noted that these renegotiations started at the end of 2014 and that both Switzerland and Lithuania are signatories to the Multilateral Convention.

305. Lithuania signed the Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention) and the 2010 Protocol to the Convention on 7 March 2013. The Multilateral Convention, as updated by the Protocol, entered into force in Lithuania on 1 June 2014. The amended Convention provides for administrative co-operation between parties in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion in accordance with the standard. Lithuania's

13. These figures are cumulative.

exchange of information with 35 jurisdictions<sup>14</sup> will occur exclusively under this Convention once this is in force in Lithuania and the partner jurisdictions, as Lithuania has no bilateral agreements with them. The Multilateral Convention will also be a complementary basis for exchanging information with jurisdictions with which Lithuania is already linked by a bilateral EOI instrument.

306. As an EU member state, Lithuania also exchanges tax information under various other multilateral mechanisms, including:

- Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation (EU Administrative Cooperation Directive).
- Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments (EU Savings Directive). This Directive aims to ensure that savings income in the form of interest payments generated in an EU member state (and other specified territories) in favour of individuals or residual entities being resident of another EU member state are effectively taxed in accordance with the fiscal laws of their state of residence. It aims to ensure automatic exchange of information between member states.
- Council Regulation (EU) 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax.

307. When more than one legal instrument may serve as the basis for exchange of information – for example where there is a bilateral agreement with an EU member state which also applies Council Directive 2011/16/EU – the problem of overlap is generally addressed within the instruments themselves. There are no domestic rules in Lithuania requiring it to choose between mechanisms where it has more than one agreement involving a particular partner. However, as Lithuania explained, in this situation the Vienna Convention on the Law of Treaties (of 23 May 1969) will be applied, as article 30 of this convention provides for rules in respect of successive treaties relating to the same subject-matter.

308. In addition to the exchange of information on request, Lithuania sends information for tax purposes to other jurisdictions on a regular basis, both spontaneously and automatically.

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14. Albania, Andorra, Anguilla, Argentina, Aruba, Australia, Belize, Bermuda, Brazil, BVI, Cameroon, Colombia, Costa Rica, Curacao, Faroe Islands, Gabon, Ghana, Gibraltar, Greenland, Guatemala, Indonesia, Japan, Jersey, Liechtenstein, Monaco, Montserrat, New Zealand, Nigeria, San Marino, Saudi Arabia, Seychelles, Sint Maarten, South Africa, Tunisia and the Turks & Caicos Islands.

309. During the last three years Lithuania received spontaneous information regarding 124 cases from its EOI partners. The information is entered in the BYLDOK database so that it is internally available within the tax authority. Furthermore, Lithuania sent information spontaneously in 25 cases to 4 jurisdictions during the period under review.

310. With regard to automatic exchange of information, Lithuania sends information on a regular basis to a number of EOI partners under treaties as well as with EU member states under the EU Directive. During the period under review Lithuania sent information on an automatic basis in 92 cases and received information in 77 cases. Lithuania has explained that information is exchanged automatically on an annual basis. The EOI officer involved first collects the information from the appropriate databases, then generates and prepares files in the necessary format. Files are sent via CCN Mail II in respect of EU member states and by means of encrypted CD-ROMs in respect of non-EU countries. Lithuania has further clarified that EOI on an automatic basis with non-EU countries is based on the principle of reciprocity.

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

311. 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 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.

312. Lithuania’s DTCs are patterned on the Model Tax Convention and its commentary as regards the scope of information that can be exchanged. Only Lithuania’s DTCs with India, Kuwait, Mexico and Morocco use the term “foreseeably relevant”. The majority of Lithuania’s DTCs use the term “as is necessary” and two of its DTCs (with Canada and the United States) use the term “relevant” in lieu of “as is foreseeably relevant”. The Commentary to Article 26(1) of the Model Tax Convention refers to the standard of “foreseeable relevance” and states that the Contracting States may agree to an

alternative formulation of this standard that is consistent with the scope of the Article, for instance by replacing “foreseeably relevant” with “necessary”. Lithuania’s authorities confirmed that they interpret these alternative formulations as equivalent to the term “foreseeably relevant”.

313. No request for information during the period under review was declined by Lithuania on the basis that the requested information was not foreseeably relevant, and no clarifications in this respect were sought. Furthermore, no issue in respect of the interpretation of the foreseeable relevance was reported by peers.

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

314. 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.

315. Article 26(1) of the Model Tax Convention indicates that “[t]he exchange of information is not restricted by Article 1”, which defines the personal scope of application of the Convention and indicates that it applies to persons who are residents of one or both of the Contracting States. All of Lithuania’s DTCs contain this sentence, except for the DTCs with Germany and Singapore.

316. However, Article 26(1) of the DTCs with Germany and Singapore applies to “carrying out the provisions of the Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement”. As a result of this language, these DTCs would not be limited to residents because all taxpayers, resident or not, are liable to the domestic taxes listed in Article 2. Exchange of information in respect of all persons is thus possible under the terms of these two DTCs.

317. In practice, no issue restricting exchange of information in respect of the residence or nationality of the person to whom the information relates or of the holder of the information has been indicated by the Lithuanian authorities or their peers.

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

318. 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 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.

### *Bank information*

319. Only five of Lithuania's DTCs (with India, Kuwait, Mexico, Morocco and the United States) include provisions akin to Article 26(5) of the Model Tax Convention, which provides that a contracting party may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. Lithuania's policy is to include Article 26(5) in all of its new agreements and it is undertaking a program to update its older DTCs to include Article 26(5) wording.

320. The majority of Lithuania's DTCs do not contain wording akin to Article 26(5) of the Model Tax Convention. Most of these were signed prior to the 2005 revision of the Model Tax Convention in which Article 26(5) was introduced. In any event, it is noted that the absence of this paragraph does not automatically create restrictions on exchange of bank information in Lithuania. The commentary on Article 26(5) indicates that whilst paragraph 5 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. Lithuania has access to bank information for tax purposes in its domestic law (see Part B), and pursuant to its treaties is able to exchange this type of information when requested.

321. It is further noted in this regard that section 28(2) of the LTA provides that assistance to a foreign jurisdiction would be provided only under conditions of reciprocity unless the relevant EOI instrument provides otherwise. Lithuanian authorities interpret and apply "reciprocity" within the context of this provision by considering the overall nature of Lithuania's EOI relationship with a treaty partner, and not merely on the basis of whether a particular type of information can or has been provided by that treaty partner.

322. At least three of Lithuania's treaty partners (Austria, Luxembourg and Singapore) currently have restrictions in accessing bank information in the absence of a provision corresponding to Article 26(5) of the Model Tax Convention, which limits the effective exchange of information under this DTC, although the entry into force of the new EU Administrative Cooperation Directive rectifies this limitation with respect to Austria and

Luxembourg. Such restriction may also exist in other jurisdictions with which Lithuania has concluded a DTC but which have not yet been reviewed by the Global Forum<sup>15</sup>. It is recommended that Lithuania update its DTCs with relevant partners to remove this limitation.

323. In practice, Lithuania has not declined a request because the information was held by a bank, other financial institution, nominees or persons acting in an agency or fiduciary capacity or because the information related to an ownership interest. This has been confirmed by peers.

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

324. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party.

325. Only five of Lithuania’s DTCs (with Canada, India, Kuwait, Mexico and Morocco) contain provisions akin to Article 26(4) of the Model Tax Convention, obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest. The majority of Lithuania’s DTCs do not contain such a provision. However, the absence of this provision does not automatically create restrictions on the exchange of information. The Commentary to Article 26(4) indicates that paragraph 4 was introduced to express an explicit obligation to exchange information also in situations where the requested information is not needed by the requested State for domestic tax purposes. No domestic tax interest restrictions exist in Lithuania’s laws even in the absence of a provision corresponding with Article 26(4) of the Model Tax Convention.

326. In the context of the Phase 1 report it was noted that at least two of Lithuania’s treaty partners (Hungary and Singapore) have a domestic tax interest requirement in the absence of a provision corresponding to Article 26(4) of the Model Tax Convention, which limits the effective exchange of information under the DTC. With respect to Hungary, the wording of the treaty is not a concern in practice as Lithuania can exchange information with Hungary in line with the standard under the EU Directive and the Multilateral

15. The relevant jurisdictions are Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Serbia, Ukraine and Uzbekistan. It is noted that Georgia, Moldova and Ukraine are also signatories of the amended Multilateral Convention which contains wording akin to Art 26(5) of the Model Tax Convention.

Convention. With respect to the treaty with Singapore it can be noted that the peer review of Singapore, which took place before this review, indicated that information cannot be obtained from Singapore under the DTC unless there is a domestic tax interest.<sup>16</sup> However, as Singapore is a signatory of the Multilateral Convention this wording should not be a concern in practice once the Multilateral Convention comes into force in Singapore. Nevertheless, in some cases restrictions may exist in respect of jurisdictions with which Lithuania has concluded a DTC but which have not yet been reviewed by the Global Forum<sup>17</sup>. It is recommended that Lithuania update its DTCs with relevant partners to remove this limitation.

327. In practice no issues or difficulties were reported regarding the application of access powers employed for EOI purposes.

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

328. 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.

329. There are no dual criminality requirements in any of Lithuania's DTCs. Accordingly, there has been no case when Lithuania declined a request because of a dual criminality requirement.

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

330. 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").

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16. Singapore amended its domestic legislation in November 2013 with a view to being able to exchange information to the international standard under all of its DTCs on the basis of reciprocity. This legislation has not yet been reviewed by the Global Forum.

17. The relevant jurisdictions are Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Serbia, Ukraine and Uzbekistan. It is noted that Georgia, Moldova and Ukraine are also signatories of the amended Multilateral Convention which contains wording akin to Art 26(4) of the Model Tax Convention.



331. All of Lithuania's DTCs provide for exchange of information in both civil and criminal tax matters.

332. In practice, there has been no case where Lithuania declined a request because it related to a criminal tax matter, and no peers have raised any issues in this regard.

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

333. 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.

334. There are no restrictions in the exchange of information provisions in Lithuania's DTCs or laws that would prevent Lithuania from providing information in a specific form, as long as this is consistent with its own administrative practices. Lithuania's DTCs with Canada and the United States contain explicit provisions (under Article 26(3) and Article 27(3), respectively) that reinforce the need to provide information in the form requested.

335. Peer inputs indicate that Lithuania provides the requested information in adequate form and no issue in this respect has been reported.

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

336. 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.

337. The President, the Prime Minister, the Minister of Foreign Affairs, the Head of Diplomatic Mission in an international organisation or conference or any other government official who is granted a special mandate by the President can sign international treaties on behalf of Lithuania (LIT, ss. 5, 6(1) and (5) and 7(1)(9)). Signed treaties are presented by the President to the Seimas for ratification (Constitution, s. 84(2)). Of Lithuania's 52 DTCs, 50 are in force. Lithuania's DTCs with Kuwait (signed in April 2013) and Morocco (signed in April 2013) are not yet in force. However, it is noted that Lithuania has completed all procedures needed for ratification of these DTCs.

338. Lithuania signed the Multilateral Convention on 7 March 2013. The Multilateral Convention entered into force in respect of Lithuania on 1 June 2014. The average time for ratification of a treaty by Lithuania is between 6 months to three years.

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

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

340. The Constitution provides that international treaties become a constituent part of the Lithuanian legal system once ratified by the Seimas, which does so by adopting them as laws (Constitution, s. 138). The laws come into force once they are signed and officially promulgated by the President and published in the electronic registry of legal acts [www.e-tar.lt](http://www.e-tar.lt). All ratified international tax treaties prevail over national tax laws in Lithuania in case of a conflict between the provisions of the two (LTA, s. 5(1)).

341. Lithuania's legal and regulatory framework ensures that the authorities can access and provide information under its information exchange agreements. In practice, there has been no case where any issue in this regard came up, and no peers have raised any issues in this regard either.

**Determination and factors underlying recommendations**

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

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

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

342. 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 properly to administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

343. Lithuania has signed 56 agreements that provide for effective exchange of information in tax matters, of which 53 are in force. Although all bilateral EOI agreements that have been signed by Lithuania to date are in the form of DTCs, Lithuania is also open to the idea of negotiation of TIEAs. In addition, Lithuania signed the Multilateral Convention on 7 March 2013. The Multilateral Convention entered into force in respect of Lithuania on 1 June 2014. These bilateral and multilateral agreements are with counterparties which represent:

- all of its major trading partners (Germany, Latvia, Poland, Russia and the Netherlands);
- 90 of the Global Forum Member jurisdictions; and
- 34 of the OECD member economies.

344. In addition to the above, Lithuania can exchange information with other EU Member States in accordance with the EU Administrative Cooperation Directive. Lithuania is also able automatically to exchange information with EU Member States on interest income earned by EU resident individuals in accordance with the EU Savings Directive.

345. No jurisdiction has advised that Lithuania had refused to enter into negotiations or conclude an EOI agreement.

346. The wording of Lithuania’s domestic access powers permits access to information for the purpose of Multilateral Convention, to the same extent as it does for Lithuania’s DTCs and TIEAs.

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

<b>Phase 1 determination</b>	
<b>The element is in place.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
	Lithuania should continue to develop its exchange of information network with all relevant partners.
<b>Phase 2 rating</b>	
<b>Compliant</b>	

### 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)*

347. 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.

#### *Double Tax Conventions*

348. All exchange of information articles in Lithuania's DTCs have confidentiality provisions modelled on Article 26(2) of the Model Tax Convention, which must be respected by Lithuania as a party to these agreements. In fact, the confidentiality provisions of Lithuania's information exchange agreements can be applied directly according to section 138 of the Lithuanian Constitution.

349. EOI partners may wish to allow the sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities on certain high priority matters (e.g. to combat money laundering, corruption, terrorism financing). They may do so by adding a specific provision to this effect, in accordance with Article 8 of the Model TIEA and Commentary 12.3 to the Model Tax Convention. However, none of the DTCs entered into by Lithuania contains such provision.

#### *Lithuanian domestic law*

350. The confidentiality provisions of Lithuania's DTCs are backed by general confidentiality provisions in Lithuania's domestic tax legislation. Pursuant to sections 38 of the LTA, taxpayer information supplied to the tax administrator must be kept confidential and solely used for the legitimate purposes connected to the functions of the tax administrator. This confidentiality duty continues even after the tax administrator leaves his/her post (s. 39(7)). The scope of this confidentiality provision extends beyond the domestic context, since the term "taxpayer" under the LTA covers all persons

with an obligation to pay tax under Lithuanian tax law, EU customs legislation and/or Lithuania's international tax treaties (s. 2(7) and (15)). Certain types of taxpayer information are not considered confidential information, such as, the taxpayer identification number; date of registration and de-registration from the taxpayer register; amount of tax paid by a taxpayer that is a legal person; amount of arrears owed by the taxpayer; information concerning the taxpayer's guilt of a crime where this has been proven; and other information not considered as confidential under Lithuanian laws. However, Lithuanian authorities confirmed that personal information provided by an EOI partner under the treaty as regards the taxpayer is treated as confidential.

351. The LTA provides for exceptions from the above confidentiality duty. Confidential taxpayer information may be disclosed to foreign tax administrations (competent authorities), as well as EU competent authorities. Accordingly, the Lithuanian tax administration is able to exchange of information for tax purposes (LTA, s. 39(1)(2) and (3)).

352. However, the exceptions provided under section 39 of the LTA also encompass other circumstances for disclosure which appear wider than that envisaged under Article 26(2) of the Model Tax Convention. The list of permitted disclosures include, amongst others, to: (i) courts, law enforcement authorities and any other state institutions and agencies where necessary for the performance of their functions; (ii) any institution authorised by the Lithuanian government to conduct analysis of enterprise activities; and (iii) other persons (where so requested by the taxpayer). Furthermore, foreign competent authorities are permitted to pass on information supplied by the Lithuanian tax administration to the tax administrations of third countries, where this is necessary for the purpose of taxation or investigation of violations of tax laws (albeit with the prior consent, or lack of objection, from the taxpayer). It is noted that under Article 26(2), no such disclosure to a third jurisdiction is permissible, in particular, without the consent of the jurisdiction supplying such information.

353. Nevertheless, as noted above, the Lithuanian Constitution provides that ratified international treaties form part of Lithuanian domestic law and prevail over national legislation (Constitution, s 138; Civil Code, s. 1.13). In the context of tax administration, this position is further supported by section 5(1) of the LTA which states that:

Where the rules of taxation laid down in the international treaties of the Republic of Lithuania are other than stipulated in the relevant tax laws and where such treaties are ratified, brought into effect and applied in the Republic of Lithuania, the rules set forth in the aforementioned international treaties shall have primacy over respective national legislation.

354. The Lithuanian tax authorities interpret the term “rules of taxation” as including provisions relating to EOI which are contained in international tax treaties. Accordingly, it is considered that the wider scope of the confidentiality obligations set out in Lithuania’s DTCs would apply in relation to information received by the Lithuanian tax administration through EOI so as to ensure confidentiality in accordance with the standard.

355. Anyone who illegally disseminates classified taxpayer information can be fined between LTL 1 000 to LTL 5 000 (EUR 290 to EUR 1 450; CAO, s. 172<sup>12</sup>). The Lithuanian tax authorities advised that the scope of “classified taxpayer information” referred to in this provision is determined by reference to section 38 of the LTA.

356. As discussed above, the scope of confidentiality protected under Lithuania’s DTCs, as reflecting the international standard, is wider than that provided under the wording of sections 38 and 39 of the LTA. Nevertheless, by virtue of the primacy provided to international treaty provisions over domestic legislative provisions by section 5(1) of the LTA, it is considered that the confidentiality of EOI information would be protected under Lithuanian domestic law to the extent that is required by Lithuania’s international treaty obligations. However, it is not clear whether the same interpretation could be applied in the context of ensuring that penalties are applicable for the breach of confidentiality by tax administrators, since no penalties are specified in EOI agreements for breach of the confidentiality provision. The Lithuanian authorities confirmed that in practice they did not experience any difficulty or issue in this respect and peer input has not indicated that this risk materialised in practice.

357. Civil servants may also be subjected to criminal sanction of either a fine or imprisonment of up to two years for failing to perform, or inappropriately performing, his/her duties (including by way of breaching confidentiality) if the act or omission results in “a major damage to the State, the EU, a legal or natural person” (Criminal Code, s. 229). Given the general wording used in this provision, this enforcement provision would apply equally to breach of the confidentiality obligation set out in the LTA or in Lithuania’s EOI agreements. “Major damage” is interpreted under Lithuanian case law as requiring significant monetary and/or non-monetary loss to a particular natural or legal person, and would therefore apply only in serious cases of a breach of confidentiality of EOI information.

358. As highlighted above, a gap in enforcement measures exists as the civil penalty would not apply where EOI information is disclosed contrary to Lithuania’s confidentiality obligation under its DTCs but where the disclosure is nevertheless permitted under Lithuania’s domestic tax law. However, the gap only relates to a limited number of circumstances since the confidentiality obligation under section 38 of the LTA and Lithuania’s DTCs largely

overlap except for the permitted disclosures mentioned in paragraph 262 above. Furthermore, the Lithuanian tax authorities confirmed that information obtained in through an EOI request would not be used in such manner which would contravene Lithuania’s confidentiality obligations under its DTCs. Lithuanian authorities do not report any difficulty or issue in this respect and peer input has not indicated that this risk materialised in practice.

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

359. The confidentiality provisions in Lithuania’s exchange of information agreements and domestic law do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As noted above, the taxpayer information covered by the domestic law confidentiality provision extends to information relating to persons obliged to pay tax under Lithuania’s international tax treaties (LTA, s. 2(7) and (15) and 38). Furthermore, this confidentiality provision is required to be interpreted in line with Lithuania’s obligations under its international tax treaties (LTA, s. 5(1)). As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

### *In practice*

360. All officials dealing with information on taxpayers are obliged to keep all the information confidential. The confidentiality rules are provided mainly in the Law on Tax Administration (LTA), as well as in the provisions on confidentiality contained in bilateral agreements. They are also part of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

361. Information obtained from a treaty partner, including the EOI request itself, is never disclosed to the taxpayer unless such disclosure is necessitated by tax court proceedings or the like.

362. The requests received by the EOI office are uploaded and stored in the BYLDOK database, which is accessible only by authorised officials. Paper documents are safely stored in secure cabinets in the EOI Unit. Access to the files is restricted to authorised officials only. Each new recruit to the tax authority has to attend special training on security, use of the data and confidentiality.

363. Entry to the premises of the tax office is restricted and protected. Information obtained in relation to requests that is kept in the respective taxpayer’s file can be accessed only by the authorised assessing officer

responsible for the respective taxpayer’s assessment. It can be distinguished from information obtained from domestic sources and is clearly identifiable.

364. No breach of confidentiality was encountered during the last three years either in a domestic or in an exchange of information context.

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

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>Compliant</b>

### **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)***

365. 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.

366. The limits on information which must be exchanged under Lithuania’s DTCs mirror those provided for in the international standard. That is, information which would disclose any trade, business, industrial, commercial or professional secret or trade process; or would be contrary to public policy, is not required to be exchanged. It is noted that “professional secret” is not defined in the DTCs.

367. These limits on EOI are also contained in Lithuania’s domestic law. Section 28(2)(3) of the LTA provides that the provision of assistance by the Lithuania tax administration to an EOI request is subject to the condition that such assistance “will not violate the legitimate interests of the Republic of Lithuania or its subject or entities and no state, official, professional, commercial or other type of secret information protected by law will be disclosed”.

368. However, as discussed in B.1.5, the Lithuanian tax administration has the power to override professional secrecy and obtain information for the purpose of conducting its functions, including EOI (ss. 28(4), 33(1) and 49(2), LTA). Accordingly, these rights and safeguards would not hinder Lithuania’s ability to engage in effective exchange of information.



369. The Lithuanian competent authority reports that, during the period under review, there have been no instances where attorney-client privilege or other professional privileges have been claimed in Lithuania in order not to provide information to the tax authorities in cases related to exchange of information.

#### Determination and factors underlying recommendations

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

### C.5. Timeliness of responses to requests for information

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

#### *Responses within 90 days (ToR C.5.1)*

370. 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.

371. There are no specific legal or regulatory requirements in place which would prevent Lithuania from responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request.

372. During the period of review from 1 July 2011 to 30 June 2014 Lithuania received 439 requests for information. Including the time taken by the requesting jurisdiction to provide additional information, the requested information was provided within 90 days, 180 days and within one year in 64%, 90% and 99% of the time respectively.<sup>18</sup>

373. The following table shows the time taken to send the final response to incoming EOI requests including the time taken by the requesting

18. These figures are cumulative.

jurisdiction to provide clarification (if asked) over the 3 year period from 1 July 2011 to 30 June 2014.

	1 July-31 Dec 2011		2012		2013		1 Jan-30 June 2014		Total	
	num.	%	num.	%	num.	%	Num.	%	Num.	%
Total number of requests received*	73	100.00	171	100.00	137	100.00	58	100.00	439	100.00
Full response:										
≤90 days	45	61.64	119	69.59	81	59.12	34	58.62	279	63.55
≤180 days (cumulative)	54	73.97	166	97.08	119	86.86	57	98.28	396	90.21
≤1 year (cumulative)	70	95.89	170	99.42	135	98.54	58	100.00	433	98.63
>1 year	1	1.37	1	0.58	0	0.00	0	0.00	2	0.46
Declined for valid reasons	2	2.74	0	0.00	0	0.00	0	0.00	2	0.46
Failure to obtain and provide information requested	0	0.00	0	0.00	2	1.46	0	0.00	2	0.46
Requests still pending at date of review	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00

\*Lithuania's' method of counting requests is as follows: a request is counted as one where one Lithuanian taxpayer and one foreign taxpayer are involved. The same goes for a situation where other individuals or companies are involved, if these persons can't be separated from the scope of the request. A further request for information concerning the same matter is counted as the same request. However, if the matter goes beyond the scope of the original request, it would be treated as a new request for information.

374. As the table shows the number of requests was fairly stable during the period under review at around 150 per year, with a slight drop of the number of requests in the first half of 2014 (58 requests in total). Most requests were received from Belarus, Latvia, Poland, Norway, Sweden and Russia (in order of significance). As the Lithuanian authorities have pointed out, these jurisdictions are mainly neighbouring countries and many taxpayers are active in or earn cross-border income from one of these jurisdictions. Lithuania notes that the United Kingdom is also a very important EOI partner, especially in relation to outgoing requests, as many Lithuanians live and work in the United Kingdom and tax-related information from the UK is often relevant for tax purposes in Lithuania.

375. Lithuania provided the requested information within 90 days for 64% of requests. Lithuanian officials have explained that cases where a response could not be provided within 90 days were not related to a specific type of information, but rather to the complexity of the request involved. However, they add that certain types of information related to more simple requests such as banking information or information regarding residency or addresses

can be provided well within the three months period in the majority of cases. An additional 26% of the requests are answered in the time period of three up to six months, also depending on complexity of the case. Requests that require assistance from the regional tax offices or large tax payers office, such as more complex audits of the taxpayers for inquiries and accountancy examinations, typically would take longer than 90 days to answer.

376. Response times have remained stable over the period under review as Lithuania was able to reply to around 63% of the requests within the period of 90 days from 2011 to 2014. By comparison, it may also be noted that the percentage of responses provided within 180 days increased quite significantly from 74% in 2011 to 98% in the first half of 2014, indicating that a larger percentage of cases was responded to more rapidly and within the timeframe of between 90 and 180 days.

377. In around 0.5% of all received requests over the period under review it took Lithuania more than one year to respond. Lithuanian officials have explained that the delay in these cases was mainly due to investigations that are more complicated and require more time for the collection of requested information, or due to the circumstance that the taxpayers involved are abroad or do not co-operate.

378. In 2.5% of requests (11 cases) Lithuania was unable to obtain the information requested.

- In five cases this concerned a request for information (verification) regarding a situation where a loan is supposed to be provided by a natural person living in Lithuania to an individual living in the requested jurisdiction. In all these cases Lithuania conducted a complete check of all available databases (Lithuanian Residents' register, State Social Insurance Fund Board database). As these actions didn't lead to the sought whereabouts of the person involved an announcement was made on the STI internet site and the name of the person was included in the database of noncompliant taxpayers. Lithuania explained that this announcement means that the information about the person has been published on STI's Internet website. Lithuania further clarifies that this is a legal obligation when all other means to find a person are exhausted. In these cases the Lithuanian natural person found that the individual involved concerned an unemployed person with no permanent residence place, and no further contact information could be found. The Lithuanian authorities responded in these five cases that the person involved could not be reached by Lithuanian tax officials. Lithuanian authorities further clarified that their impression is that in these types of situations the position of homeless persons is misused by criminals to act as (supposed) lenders of the loans.

- In four other cases this concerned a more or less comparable situation where the request for information (verification) regarded a natural person living in Lithuania who was acting as an official of a Latvian company. In these four cases Lithuania also conducted a complete check of all available databases (Lithuanian Residents' register, State Social Insurance Fund Board database). As these actions didn't lead to the sought whereabouts of the person involved an announcement was made on the STI internet site and the name of the person was included in the database of noncompliant taxpayers. In these cases the Lithuanian natural person found that the individual involved concerned an unemployed person with no permanent residence place, and no further contact information could be found. The Lithuanian authorities responded in these four cases that the person involved could not be reached by Lithuanian tax officials.

In the remaining two cases information could be partially provided:

- In one of these cases underlying accounting information was requested. However, the company involved was liquidated and struck off the register as it didn't meet the requirements as set by the registry. In this case Lithuania conducted a complete check of all available databases (Legal entities register, internal databases on tax returns, data collected from third sources), however it turned out that some documents needed for answering the request were lacking in the central archive. As the powers of bankruptcy administrator had expired, it was impossible to fully respond to the request.
- The last request that could only be partially answered also regarded underlying accounting information. This request consisted of 8 different questions. The item that could not be provided concerned a list of companies and contracts concerning the onward sale of goods previously purchased from the taxpayer in the requesting jurisdiction. As Lithuanian officials explain general information in this respect was available in the accounting registers, however the company sold goods to a large number of different EU companies, and it was not possible to distinguish the specific buyers from this information. However, in this case the remaining seven questions could be answered, and copies of all documents involved in these questions were provided.

379. Regarding the first 9 cases mentioned in the previous paragraph it can be noted that the PRG in earlier reports has taken the position in similar situations that, where information is not provided *by reason of the fact that it did not exist* (e.g. because the request was in respect of an entity that did not exist in the requested jurisdiction) and this information was communicated to the requesting jurisdiction, this would be included as a response in the table

rather than as a declined request.<sup>19</sup> For these reasons these 9 cases have been included in the category responses rather than the category “failure to obtain and provide information requested”.

380. Where information required to process the request is missing the Lithuania in general supplements the missing information with information already at the disposal of the tax administration from its databases. Only if this is not possible does Lithuania request clarification regarding the facts of the request. Peers did not raise any issues in this regard.

### *Updates*

381. During the period under review Lithuanian authorities did not regularly provide an update on the status of the request where, for any reason, Lithuania had not been able to obtain and provide the information requested within 90 days of receipt of the request. The Lithuanian authorities report that their internal procedures require the reply to be sent within 180 days after receiving the request, and Lithuania is able to answer most requests within this deadline. Consequently Lithuania did not systematically provide updates where it was not able to respond to a request within the 90 day period. Lithuania is recommended to provide status updates to its EOI partners within 90 days where relevant.

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

382. Lithuania’s legal and regulatory framework relevant to exchange of information for tax purposes is presided over by the Ministry of Finance. Administration of the exchange of information under Lithuania’s treaty network is the responsibility of Lithuania’s competent authority, i.e. the Minister of Finance or his/her authorised representative. Competent authority is delegated to the central tax administrator under the LTA, i.e. the State Tax Inspectorate under the Ministry of Finance (the STI).

383. Within the STI, the International Information Exchange Division (hereinafter – IIED or EOI Unit) has the overall responsibility for exchange of information. The EOI unit is staffed with 12 officials in total.

384. Out of the 12 employees working within the EOI Unit (including the head of unit and his deputy) about seven persons are dealing with direct taxes and exchange of information on request, as well as spontaneous exchange of

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19. Given that substantial efforts were made and that the requesting partner was told for 9 of the cases that the person was unemployed with no fixed address presumably this was (already) quite useful information for the partners’ investigation as it would allow them for instance to disallow the relevant transactions involved.

information. At the same time 6 of them also deal with information exchange in VAT area (EU legal acts), dividing their time between the direct taxes and VAT, while one person deals exclusively with direct taxes. The remaining 5 employees are mainly dealing with other administrative tasks and IT functions.

385. All international requests for information are handled and processed by the EOI Unit. The EOI Unit is responsible for communication with the other competent authorities and for the administration of gathering the requested information. This includes checking whether the responses sent by the regional county tax offices include all the requested information and are in the requested format, and, if the requested information cannot be provided, ensuring that the tax office provides an explanation as to why it was not able to provide all the requested information.

### *Handling of EOI requests*

386. Once an EOI request is received the request will first be stamped and registered in the tax authority's Work Organisation and Document Management System (DODVS) and in the EOI office's own internal registration database known as BYLDOK ("Accounting of International Information Exchange Files", maintained by IIED). All EOI related information is kept separately and treated as confidential. Access to the files is restricted to authorised officials only.

387. After registering, the management of the EOI Unit checks whether the request meets all legal and procedural requirements under the EOI agreement. In cases where a request is unclear or incomplete, additional clarification or information is always asked from the requesting jurisdiction, if necessary. However, Lithuania notes that they never send an immediate refusal to a request when it does not appear to be complete enough or duly substantiated. In such a case, Lithuania would go back to the requesting EOI partner asking for clarification or submission of additional information before stating that the request is not foreseeably relevant or duly substantiated. Lithuania further confirmed that they would refuse to provide information if the request in the end turned out to be not foreseeably relevant. After a thorough checking, an acknowledgement is sent to the requesting jurisdiction, and the request is allocated to one of the officials in the EOI office that will be responsible for handling and processing the request. The request is treated as confidential and appropriate security precautions are in place.

388. The actual processing of the request involves the following steps:

389. First a staff member of the EOI office assesses the request to see whether a reply to the request can be prepared on the basis of information that is available in the internal EOI databases. If that is the case the staff member

collects requested information from the databases. If banking information is requested the staff member sends a request to the bank to provide it. This request to the bank is registered and can be followed through BYLDOK and DODVS.

390. Only if the staff member of the EOI office cannot prepare a reply to a request on his/hers own, and other officials would need to be involved, a request will be translated into Lithuanian. After translation, the request is registered in the internal registration database BYLDOK, included in the documents management system DODVS, and forwarded to one of the regional offices (County State Tax Inspectorate – CSTI) or the Large Taxpayers Unit (LTPD). The EOI Office has contact persons within all the regional CSTI offices as well as the Large Taxpayers Unit/LTPD. The regional offices are in charge of the collection of the information. Coordination of the request is done by the EOI Office together with the contact person.

391. Once the translated request is received at the regional level the request is analysed and one of the following actions will be selected to collect the requested information (in order of relevance):

- Operational check;
- Thematic/complex audit;
- Tax investigation;
- Other procedures for selection and analysis of information.

392. After the information is collected a staff member of the regional CSTI Office or the LTPD will prepare a reply to be forwarded to the EOI Office. The reply is co-ordinated with the contact person involved and he also checks whether the response is correct and complete. The reply is registered in DODVS, signed and forwarded to the EOI office. After receipt of the reply at the EOI Office, the reply will be registered in BYLDOK and DODVS. The reply will be checked by a staff member of the EOI Office and if there is no need for any correction, the staff member will translate the information and prepare a reply that can be sent to the requesting jurisdiction. The staff member stamps and registers an outgoing reply in DODVS and BYLDOK. After final signature by the management of the EOI Office, the requested information is sent by CCN Mail II or by ordinary mail to the requesting jurisdiction.

### *Internal deadlines*

393. The EOI Act sets deadlines within which the EOI office is required to provide the requested information to the requesting jurisdiction. After receiving the request, the EOI office must confirm receipt of the request to the

other state without undue delay and no later than within seven working days after receiving the request (s. 10(1) EOI Act). The EOI office must provide the requested information within two months after receiving the request. However, this period is extended to six months if the EOI office is not in possession of the requested information, unless a longer time limit is agreed with the requesting state (s. 10(2) EOI Act). The EOI Act further sets out that if the EOI office is unable to provide the requested information within this timeframe, it will notify the requesting state within three months from the date of receipt of the request, of the reasons for non-provision of the information and of the date when it can be expected that it will provide the requested information (S. 10(3) EOI Act). No official further time frames and deadlines are provided for the individual steps regarding handling of requests and obtaining information.

394. Lithuania explains that their internal procedures are designed in such a way that a reply is sent within a timeframe of 180 days. Their goal is to provide a reply within 90 days in 50% of cases. Lithuanian statistics demonstrate that Lithuania was able to give a full response to EOI requests within 90 days in over 60% of the cases during the period under review.

#### *IT tools, monitoring, training*

395. The main IT tool used for tracking cases/requests is the special registration database BYLDOK and its internal applications. Every incoming piece of information is registered. BYLDOK is a database specifically developed for international information exchange and mutual assistance cases and access to it is granted to a very limited number of STI staff.

396. All information received in the context of EOI receives a special case number, and is registered either as being in respect of a request for information, or as information spontaneously exchanged or information automatically exchanged. In addition a number of other case specific details are registered, such as the legal basis for the request, the requesting country, the taxpayer (companies/individuals) involved in the request, the IIED staff member in charge of the request, the CSTI unit in charge of the collection of information (LTPD) and the deadline for the request.

397. After the initial registration of the request itself, all follow up actions concerning each specific case are registered in BYLDOK (e.g. “request for information received”, “forwarded to the appropriate office”, “reply received”, “reply forwarded to the requesting state”, “additional request received”, “forwarded to the appropriate office” and so on). Additional information received within the context of the original case is treated as the same request. Only when the additional request goes beyond the original scope of the case, is it registered as a new request for information and does it receive a new case number.



398. All incoming pieces of information and subsequent movement of documents are also registered in the general document registration system (DODVS), which is used both by the Central Tax Administration and CSTI. When a request for information is registered in DODVS, the EOI Unit can follow the request as it goes from the level of the EOI unit to the level of the specialist who will be working on it. There is a direct link between BYLDOK and DODVS, and this makes it relatively easy to access documents related to the EOI request or to get more information about the handling of the request.

399. The Lithuanian authorities have explained that BYLDOK can produce many different reports. IIED staff is able to easily monitor the handling of requests, check the deadlines for replies, the outcome of investigations and additionally assessed amounts and to produce various pieces of statistics.

400. At the level of the EOI office, a list of upcoming deadlines for the replies is produced each month for the IIED staff. Each IIED staff member who deals with requests for information is required to ensure that all necessary reminders are sent to the contact person and auditor in charge of the investigation to guarantee receipt of a timely reply. This involves direct emails, phone calls and official letters (if needed). A special Excel sheet filled in by each IIED staff member details the mistakes and shortcomings of the replies received from the auditors. These cases are then discussed during annual meetings with the contact persons and auditors.

401. At the regional and local level, contact persons and auditors themselves have a tool to keep track of all the cases in which they are involved. It is a web-based application, linked to BYLDOK, and is available through the intranet. Access to this application is granted by an IIED staff member, who deals with internal IT issues.

402. At the end of each year an inventory is performed on all open cases and additional reminders are sent in those cases where a reply has not been received from the auditor.

403. Officers of the EOI Unit are well trained and appropriately educated. All officers receive regular training on internal guidelines and directives. IIED staff is informed through monthly meetings as well as ad hoc meetings about important changes or any other relevant news in the area of mutual assistance. Daily problems are discussed and best practice shared. New staff is trained by a specially appointed and experienced IIED member. It is on-the-job training, which lasts as long as necessary and is adapted to the skills and qualifications of the new employee. No formal training is provided for a new employee of IIED in respect of exchange of information. However, each new staff member has to attend special training on security, use of data and confidentiality.

404. Officers in the EOI Unit also attend international fora on EOI (e.g. EU committees, FISCALIS seminars, Global Forums Competent Authority meetings, OECD WP10 meetings, so as to keep up-to-date with global developments as well as establish network of personal contacts for more effective exchanges. In addition annual meetings take place with representatives from CSTI, LTPD and IIED contact persons in order to exchange experiences and discuss new EOI instruments and EOI related daily topics.

405. A special intranet site is available for EOI staff. It contains all legal acts and rules, separate letters concerning specific topics and documents discussed during EU Committees and working groups, minutes from the annual meetings and training material, etc.

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

406. 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 laws or regulatory practices in Lithuania that impose restrictive conditions on exchange of information.

**Determination and factors underlying recommendations**

Phase 1 determination	
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.	
Phase 2 rating	
Compliant	
Factors underlying recommendations	Recommendations
In a number of cases, Lithuania has not provided status updates within the 90 day period.	Lithuania should provide status updates to its EOI partners within 90 days where relevant.

## Summary of determinations and factors underlying recommendations

Overall Rating		
<b>COMPLIANT</b>		
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.</b>	Ownership information on foreign companies having sufficient nexus with Lithuania (in particular, having their place of effective management in Lithuania) and on foreign partnerships carrying on business in Lithuania or deriving taxable income is not consistently available.	Lithuania should ensure that ownership information on foreign companies with sufficient nexus with Lithuania (in particular, having their place of effective management in Lithuania) and on foreign partnerships carrying on business in Lithuania or deriving taxable income is available in all cases.
<b>Phase 2 rating: Compliant.</b>		
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>		
<b>Phase 2 rating: Compliant.</b>		
Banking information should be available for all account-holders ( <i>ToR A.3</i> )		
<b>The element is in place.</b>		
<b>Phase 2 rating: Compliant.</b>		

Determination	Factors underlying recommendations	Recommendations
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>		
<b>Phase 2 rating: Compliant.</b>		
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>		
<b>Phase 2 rating: Compliant.</b>		
Exchange of information mechanisms should allow for effective exchange of information ( <i>ToR C.1</i> )		
<b>The element is in place.</b>		
<b>Phase 2 rating: Compliant.</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>		Lithuania should continue to develop its exchange of information network with all relevant partners.
<b>Phase 2 rating: Compliant.</b>		
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>		
<b>Phase 2 rating: Compliant.</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>		
<b>Phase 2 rating: Compliant.</b>		

Determination	Factors underlying recommendations	Recommendations
The jurisdiction should provide information under its network of agreements in a timely manner ( <i>ToR C.5</i> )		
<b>This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.</b>		
<b>Phase 2 rating: Compliant.</b>	In a number of cases, Lithuania has not provided status updates within the 90 day period.	Lithuania should provide status updates to its EOI partners within 90 days where relevant.



## **Annex 1: Jurisdiction’s response to the review report<sup>20</sup>**

This annex is left blank because Lithuania has chosen not to provide any material to include in it.

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20. 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 exchange of information mechanisms

### Multilateral agreement

Lithuania signed the Convention on Mutual Administrative Assistance in Tax Matters, as amended by its protocol, which entered into force on 1 June 2011. The Multilateral Convention has entered into force for Lithuania on 1 June 2014. The Multilateral Convention has entered into force for Lithuania on 1 June 2014 and is currently in force with respect to 63 parties. The chart of signatures and ratification of the multilateral convention is available at [www.oecd.org/ctp/eoi/mutual](http://www.oecd.org/ctp/eoi/mutual).

### European Union instruments

#### *Lithuania exchanges information under:*

EU Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation. This Directive is in force since 11 March 2011. It repeals Council Directive 77/799/EEC of 19 December 1977 and provides inter alia for exchange of banking information on request for taxable periods after 31 December 2010 (Article 18). All EU members were required to transpose it into national legislation by 1 January 2013. The current EU members, covered by this Council Directive, are: Austria, Belgium, Bulgaria, Cyprus<sup>21</sup>, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and United Kingdom.

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21. 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.



EU Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments. This Directive aims to ensure that savings income in the form of interest payments generated in an EU member state in favour of individuals or residual entities being resident of another EU member state are effectively taxed in accordance with the fiscal laws of their state of residence. It also aims to ensure exchange of information between member states.

EU Council Regulation 904/2010 of 7 October 2010 on administrative co-operation and combating fraud in the field of value added tax.

## Bilateral and multilateral arrangements

Exchange of information relationships providing for tax information exchange on request agreements signed by Lithuania as at May 2015 in alphabetical order:

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
1	Albania	Multilateral Convention	Signed	01 June 2014
2	Andorra	Multilateral Convention	Signed	01 June 2014
3	Anguilla	Multilateral Convention	Extension	01-June 2014
4	Argentina	Multilateral Convention	Signed	01-June 2014
5	Aruba	Multilateral Convention	extension	01-June 2014
6	Armenia	DTC	13 Mar 2000	26 Feb 2001
7	Australia	Multilateral Convention	Signed	01-June 2014
8	Austria	DTC	6 Apr 2005	17 Nov 2005
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	signed	01 Dec 2014
9	Azerbaijan	DTC	2 Apr 2004	13 Nov 2004
		Multilateral Convention	Signed	Not yet in force
10	Belarus	DTC	18 Jul 1995	26 Jun 1996
11	Belgium	DTC	26 Nov 1998	05 May 2003
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 April 2015
12	Belize	Multilateral Convention	Signed	01 Sept 2013
13	Bermuda	Multilateral Convention	Extension	01 June 2014
14	Brazil	Multilateral Convention	Signed	Not yet in force
15	British Virgin Islands	Multilateral Convention	Extension	01 June 2014

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
16	Bulgaria	DTC	9 May 2006	27 Dec 2006
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
17	Cameroon	Multilateral Convention	Signed	Not yet in force
18	Canada	DTC	29 Aug 1996	12 Dec 1997
		Multilateral Convention	Signed	1 June 2014
19	China, Peoples republic of	DTC	3 Jun 1996	18 Oct 1996
		Multilateral Convention	Signed	Not yet in force
20	Colombia	Multilateral Convention	Signed	01 July 2014
21	Costa Rica	Multilateral Convention	Signed	01 June 2014
22	Croatia	DTC	04 May 2000	30 Mar 2001
		Multilateral Convention	Signed	01 June 2014
23	Curacao	Multilateral Convention	Extension	01 June 2014
24	Cyprus <sup>c</sup>	EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		DTC	21 Jun 2013	01 Jan 2015
		Multilateral Convention	Signed	01 April 2015
25	Czech Republic	DTC	27 Oct 1994	8 Aug 1995
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 Feb 2014
26	Denmark	DTC	13 Oct 1993	30 Dec 1993
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 June 2014
27	Estonia	DTC	21 Oct 2004	8 Feb 2006
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 Nov 2014
28	Faroe Islands	Multilateral Convention	Extension	01 June 2014
29	Finland	DTC	30 Apr 1993	30 Dec 1993
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 June 2014
30	Former Yugoslav Republic of Macedonia	DTC	29 Aug 2007	27 Aug 2008
31	France	DTC	7 Jul 1997	1 May 2001
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 June 2014

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
32	Gabon	Multilateral Convention	Signed	Not yet in force
33	Georgia	DTC	11 Sep 2003	20 Jul 2004
		Multilateral Convention	Signed	01 June 2014
34	Germany	DTC	22 Jul 1997	11 Nov 1998
		Multilateral Convention	Signed	Not yet in force
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
35	Ghana	Multilateral Convention	Signed	01 June 2014
36	Gibraltar	Multilateral Convention	Extension	01 June 2014
37	Greece	DTC	15 May 2002	5 Dec 2005
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 June 2014
38	Greenland	Multilateral Convention	Signed	01 June 2014
39	Guatemala	Multilateral Convention	Signed	Not yet in force
40	Guernsey	TIEA	20 June 2013	
		Multilateral Convention	Extension	01 Aug 2014
41	Hungary	DTC	12 May 2004	22 Dec 2004
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 March 2015
42	Iceland	DTC	13 Jun 1998	17 Jun 1999
		Multilateral Convention	Signed	01 June 2014
43	India	DTC	26 Jul 2011	10 Jul 2012
		Multilateral Convention	Signed	01 June 2014
44	Indonesia	Multilateral Convention	Signed	01 May 2015
45	Ireland	DTC	18 Nov 1997	5 Jun 1998
		Multilateral Convention	Signed	01 June 2014
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
46	Isle of Man	Multilateral Convention	Extension	01 June 2014
47	Israel	DTC	11 May 2006	1 Dec 2006
48	Italy	DTC	4 Apr 2006	3 Jun 1999
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 June 2014
49	Japan	Multilateral Convention	Signed	01 June 2014
50	Jersey	Multilateral Convention	Extension	01 June 2014

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
51	Kazakhstan	DTC	7 Mar 1997	11 Dec 1997
		Multilateral Convention	Signed	Not yet in force <sup>a</sup>
52	Korea	DTC	20 Apr 2006	14 Jul 2007
		Multilateral Convention	Signed	01 June 2014
53	Kuwait	DTC	18 Apr 2013	Not yet in force
54	Kyrgyzstan	DTC	15 May 2008	20 Jun 2013
55	Latvia	DTC	17 Dec 1993	30 Dec 1994
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	Not yet in force
56	Liechtenstein	Multilateral Convention	Signed	Not yet in force
57	Luxembourg	DTC	22 Nov 2004	14 Apr 2006
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 Nov 2014
58	Malta	DTC	17 May 2001	2 Feb 2004
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 June 2014
59	Mexico	DTC	23 Feb 2012	29 Nov 2012
		Multilateral Convention	Signed	01 June 2014
60	Moldova	DTC	18 Feb 1998	7 Sep 1998
		Multilateral Convention	Signed	01 June 2014
61	Monaco	Multilateral Convention	Signed	Not yet in force
62	Montserrat	Multilateral Convention	Extension	01 June 2014
63	Morocco	DTC	19 Apr 2013	1 January 2015
		Multilateral Convention	Signed	Not yet in force
64	Netherlands	DTC	16 Jun 1999	31 Aug 2000
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 June 2014
65	New Zealand	Multilateral Convention	Signed	01 June 2014
66	Nigeria	Multilateral Convention	Signed	Not yet in force
67	Norway	DTC	27 Apr 1993	30 Dec 1993
		Multilateral Convention	Signed	01 June 2014

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
68	Poland	DTC	20 Jan 1994	19 Jul 1994
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 June 2014
69	Portugal	DTC	14 Feb 2002	26 Feb 2003
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 March 2015
70	Romania	DTC	26 Nov 2001	15 Jul 2002
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 Nov 2014
71	Russian Federation	DTC	29 Jun 1999	5 May 2005
		Multilateral Convention	Signed	Not yet in force <sup>b</sup>
72	San Marino	Multilateral Convention	Signed	Not yet in force
73	Saudi Arabia	Multilateral Convention	Signed	Not yet in force
74	Serbia	DTC	28 Aug 2007	12 Jun 2009
75	Seychelles	Multilateral Convention	Signed	Not yet in force
76	Singapore	DTC	18 Nov 2003	28 Jun 2004
		Multilateral Convention	Signed	Not yet in force
77	Sint Maarten	Multilateral Convention	Extension	01 June 2014
78	Slovak Republic	DTC	15 Mar 2001	16 Dec 2002
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 June 2014
79	Slovenia	DTC	23 May 2000	1 Feb 2002
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 June 2014
80	South Africa	Multilateral Convention	Signed	01 June 2014
81	Spain	DTC	22 Jul 2003	29 Dec 2003
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 June 2014
82	Sweden	DTC	27 Sep 1993	31 Dec 1993
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 June 2014
83	Switzerland	DTC	27 May 2002	18 Dec 2002
		Multilateral Convention	Signed	Not yet in force

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
84	Tunisia	Multilateral Convention	Signed	01 June 2014
85	Turkey	DTC	24 Nov 1998	17 May 2000
		Multilateral Convention	Signed	Not yet in force
86	Turkmenistan	DTC	18 Jun 2013	1 January 2015
87	Turks & Caicos Islands	Multilateral Convention	Extension	01 June 2014
88	Ukraine	DTC	23 Sep 1996	25 Dec 1997
		Multilateral Convention	Signed	01 June 2014
89	United Arab Emirates	DTC	30 Jun 2013	Not yet in force
90	United Kingdom	DTC	19 Mar 2001	29 Nov 2002
		EU Directive 2011/16/EU	15 Feb 2011	1 Jan 2013
		Multilateral Convention	Signed	01 June 2014
91	United States	DTC	15 Jan 1998	30 Dec 1999
		Multilateral Convention	Signed	Not yet in force
92	Uzbekistan	DTC	18 Feb 2002	30 Oct 2002

*Notes:* a. It will enter into force on 1 August 2015.

b. It will enter into force on 1 July 2015.

c. See footnote 21.

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

### **Constitution and Codes**

- Constitution of the Republic of Lithuania, 1992 (as amended)
- Civil Code (18 July 2000 No VIII-1864, as last amended by 25 September 2014 No XII-1154)
- Criminal Code (26 September 2000 No VIII-1968, as last amended by 15 May 2014 No XII-892)
- Code of the Administrative Offences (23 December 1997 No VIII-588, as last amended by 25 September 2014 No XII-1152)

### **Commercial Laws**

- Accounting Law (6 November 2001 No IX-574, as last amended by 18 December 2003 No IX-1914)
- Law on Agricultural Companies (16 April 1991 No I-1222, as last amended by 21 September 2010 No XI-1020)
- Law on Companies (13 July 2000 No VIII-1835, as last amended by 17 July 2014 No XII-1072)
- Law on Co-operative Societies (1 June 1993 No I-164, as last amended by 21 September 2010 No XI-1021)
- Law on European Companies (29 April 2004 No IX-2199, as last amended by 17 November 2011 No XI-1694)
- Law on European Co-operative Societies (15 July 2006 No X-696, as last amended by 15 December 2009 No XI-566)
- Law on European Economic Interest Groupings (22 December 2003 No IX-1939)

- Law on Financial Statements of Entities (6 November 2001 No IX-575, as last amended by 26 June 2008 No X-1633)
- Law on Partnerships (16 October 1990 No I-676, as last amended by 17 July 2014 No XII-1076)
- Law on Small Partnerships (29 July 2012 No XI-2159, as last amended by 17 July 2014 No XII-1075)
- Law on the Register of Legal Entities (12 June 2001 No IX-368, as last amended by 26 June 2014 No XII-983)
- Regulation of Register of Legal Entities (12 November 2003 No-1407, as last amended by 2 October 2013 No 892)
- Rules on the Administration of the Personal Securities Accounts of Shareholders of Private Limited Liability Companies (Non-material Shares Owners) and Rules on Registration of Material Shares Owners in Private Limited Liability Companies (23 August 2004 No. 1041)

## **Financial Laws**

- Law on Banks (30 March 2004 No IX-2085, as last amended on 22 December 2011 No XI-1883)
- Law on Financial Institutions (10 September 2002 No IX-1068, as last amended by 22 December 2011 No XI-1872)
- Law on Markets in Financial Instruments (18 January 2007 No X-1024, as last amended by 22 December 2011 No XI-1881)
- Law on the Prevention of Money Laundering and Terrorist Financing (19 June 1997 No VIII-275, as last amended by 22 December 2011 No XI-1885)
- Rules on Accounting of Financial Instruments and their Circulation (12 July 2012 No 03-161)

## **Taxation Laws**

- Law on Income Tax of Individuals (2 July 2002 No IX-1007)
- Law on Corporate Income Tax (20 December 2001 No IX-675, as last amended by 23 November 2010 No XI-1157)
- Law on Value Added Tax (5 March 2002 No IX-751, as last amended on 12 January 2006 No X-487)



Law on Tax Administration (13 April 2004 No IX-2112, as last amended by 8 November 2007 No X-1318)

Regulation of the Register of Taxpayers (6 September 2000 No 1059, as last amended by 7 September 2011 No 1058)

## **Miscellaneous**

Law on Audit (15 June 1999 No VIII-1227, as amended by 3 July 2008 No X-1676)

Law on the Bar (18 March 2004 No IX-2066, as last amended on 15 April 2008 No X-1494)

Law on Charity and Sponsorship Funds (14 March 1996 No I-1232, as last amended by 19 June 2012 No XI-2076)

Law on Documents and Archives (5 December 1995 No I-1115, as last amended by 2 October 2012 No XI-2243)

Law on International Treaties (22 June 1999 No. VIII-1248, as last amended by 6 November 2012 No. XI-2346)

Law on Notarial Profession (15 September 1992 No I-2882, as last amended by 23 December 2011 No XI-1916)

General Index on Terms of Document Retention (9 March 2011 No. V-100, as last amended by 31 May 2011 No. V-109)



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

## PEER REVIEWS, PHASE 2: LITHUANIA

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

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

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

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

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

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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).

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