

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

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

**UGANDA**





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

PHASE 1: LEGAL AND REGULATORY FRAMEWORK

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

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## About the Global Forum

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

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

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

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

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

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to [www.oecd.org/tax/transparency](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 Uganda. The international standard which is set out in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority’s ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information (EOI) partners. Uganda has a well-developed legal and regulatory framework, although the report identifies some areas where its legal infrastructure could be improved to more effectively implement the international standard. The recommendations that have been made are mainly in regards to the availability of ownership and accounting information for all entities and the renegotiation, signing and ratification of EOI agreements with all relevant partners.

2. Uganda is an emerging economy located in East Africa with approximately 36 million inhabitants and a GDP in 2013 of 21.48 billion USD. The economy can be broadly divided into three sectors: agriculture, industry and services. Over the past five years, agriculture has contributed approximately 24% of GDP, while the industrial and service sectors have contributed approximately 26% and 50% respectively. The confirmed discoveries of commercial oil in Western Uganda, along with Uganda’s transition from oil exploration to oil production expected in 2017 is fuelling business confidence. Uganda has a fully developed tax system including an income tax and a value added tax.

3. Relevant entities include companies, partnerships, trusts and co-operative societies. Companies and co-operative societies are required to maintain a register of members and in most cases the list of members must be furnished to the authorities on a regular basis. Partnerships must be registered with the tax authorities and details of each partner must be provided upon registration. Subsequent changes must also be submitted. Ownership and identity information on companies, partnerships and co-operative societies is therefore generally available. However, some improvements are needed to Uganda’s legal and regulatory framework with respect to the availability of ownership and identity information in the case of share warrants to bearer in public companies and company ownership information where the shares are held by nominees.

4. All trusts that are tax resident in Uganda have to be registered for tax purposes and submit an annual tax return. Trustees may also be subject to common law fiduciary duties which include the maintenance of trust ownership information and ownership information is also maintained pursuant to the anti-money laundering (AML) regime.

5. All legal and natural persons that carry on a business in Uganda are obliged to maintain a full range of accounting records. However, other than provisions in the Value Added Tax Act, there is no general requirement on entities to hold underlying documentation. Full bank information, including all records pertaining to account holders as well as related financial and transaction information, is required to be kept by Ugandan banks under AML and banking legislation.

6. In respect of access to information, the Ugandan Revenue Authority (URA) has a range of powers under the Income Tax Act to obtain relevant information from taxpayers and from third parties both for domestic purposes and in response to an EOI request. These powers include search and seizure powers and enforcement of these provisions is secured by the existence of penalties for non-compliance. In terms of rights and safeguards, information can be obtained directly by the URA and there is no requirement to notify the taxpayer.

7. Uganda's network of EOI agreements covers 17 jurisdictions, and Uganda is currently taking steps to sign the Convention on Mutual Administrative Assistance in Tax Matters which would significantly expand the treaty network. The signed agreements include 11 bilateral Double Tax Conventions (DTCs), a multilateral DTC between members of the East African Community and the ATAF Agreement on Mutual Assistance in Tax Matters (AMATM). Nine of these agreements are in force and meet the internationally agreed standard containing sufficient provisions to enable Uganda to exchange all relevant information. Nonetheless, it is noted that the time-frame to bring the treaties signed into force has in some cases taken several years. Uganda should ensure the timely ratification of its EOI agreements.

8. Uganda's response to the findings in this report, in particular the recommendations made, as well as the application of the legal framework and the implementation of the international standard in practice, will be considered in detail in the Phase 2 review of Uganda which will be launched in the fourth quarter of 2015.

## Introduction

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

9. The assessment of the legal and regulatory framework of Uganda was based on the international standards of transparency and exchange of information as described in the Global Forum’s *Terms of Reference*, and was prepared using the *Methodology for Peer Reviews and Non-Member Reviews*. The assessment was based on the laws, regulations and exchange of information mechanisms in force or effect as at 22 May 2015, other information, explanations and materials supplied by Uganda, and information supplied by partner jurisdictions.

10. The *Terms of Reference* (“ToR”) 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) exchanging information. This review assesses Uganda’s legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element, a determination is made that either: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. A summary of the findings against the elements is set out at the end of this report.

11. The assessment was conducted by a team which consisted of two expert assessors and a representative of the Global Forum Secretariat: Mr. Thanduxolo Twala, Manager: International Development and Treaties, South African Revenue Service, South Africa; Meritxell Salvat Perarnau, International Relations Specialist, Ministry of Finance, Andorra and Ms. Kathryn Dovey from the Global Forum Secretariat. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Uganda.

## Overview of Uganda

### *Governance and Economic Context*

12. Uganda is a unitary state located on the East coast of Africa. It has been a sovereign state since gaining independence from the British Crown in 1962. The country covers an area of approximately 199 810 square kilometres bordering United Republic of Tanzania (Tanzania) to the South, Rwanda to the South West, Democratic Republic of Congo to the West, South Sudan to the North and Kenya to the East. The country is made up of 112 districts and the capital and main commercial centre is Kampala. The two official working languages are Swahili and English. The Uganda shilling (UGX) is the national currency. As at 26 February 2015, UGX 2916 = USD 1.<sup>1</sup>

13. The Ugandan economy can be broadly divided into three sectors: agriculture, industry and services. In recent years the services sector has become increasingly dominant, surpassing the agricultural sector. Over the past five years, agriculture has contributed approximately 24% of GDP, while the industrial and service sectors have contributed approximately 26% and 50% respectively. Within the agricultural sector, cash crops and food crops constitute approximately 8% and 55%, respectively, while livestock and fishing constitute approximately 9% and 10%, respectively of the overall output of the sector. Forestry constitutes approximately 18%. The industrial sector is composed of mining and quarrying, manufacturing, electricity and water supply, and construction. Over the last five years, construction and manufacturing have constituted approximately 60% and 28%, respectively of the total industrial output. The other sub-sectors combined, constitute approximately 22% of the overall output of the industrial sector.

14. Gross Domestic Product (GDP) in Uganda expanded by 4.73% in the first quarter of 2014 as compared to the same quarter in 2013. The GDP Annual Growth Rate in Uganda averaged 6.84% from 2005 until 2014, reaching an all-time high of 12.61% in the third quarter of 2007 and a low of 1.35% in the fourth quarter of 2011.<sup>2</sup> The main imports into Uganda are oil, pharmaceutical products and capital goods. Uganda's main import partners are China, India, Kenya and the United Arab Emirates. Uganda's main exports are agricultural products which make up 80% of total exports, followed by coffee, tea, cotton, copper and fish. Uganda's main export partners are Sudan, Kenya, Democratic Republic of the Congo, Netherlands, Germany, South Africa and United Arab Emirates.

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1. [www.oanda.com/currency/converter/](http://www.oanda.com/currency/converter/).

2. The GDP Annual Growth Rate in Uganda is reported by the Uganda Bureau of Statistics.

15. Uganda is a member of the East African Community (EAC), the Common Market for East and Central Africa (COMESA), the Intergovernmental Authority on Development (IGAD), the United Nations (UN), the World Customs Organization (WCO) and the World Trade Organization (WTO), among others. Since October 2012, Uganda has been a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

### ***Legal and Regulatory context***

16. Uganda is a common law jurisdiction which derives its laws from English common law and Ugandan statutes.

17. Uganda acquired independence from the United Kingdom in 1962. The Constitution of Uganda (Constitution) established a unitary state with an elected president as head of state. The Government takes the form of a parliamentary and executive democracy. Among the written laws are the Constitution, legislation enacted by the Parliament, and subsidiary legislation made by bodies in accordance with the powers conferred upon them by Acts of Parliament. Any law, including customary law that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.

18. The Constitution establishes the three arms of government. Article 77 establishes the Parliament and article 79(2) gives it legislative authority and exclusive powers to make provisions having force of law. Article 98 creates the office of the president in whom executive authority is vested. Article 126 of the Constitution creates the Judiciary and article 128 establishes the independence of the judiciary which shall not be subject to the control and or direction of any person or authority.

19. In terms of hierarchy, section 14 of the Judicature Act Cap 13, as read together with the Constitution, provides that the Constitution is the supreme law followed by written law, including any law in force immediately before the commencement of the Judicature Act, the common law and the doctrines of equity, any established and current custom or usage, the powers vested in, and the procedure and practice observed by the High Court.

20. Furthermore, a law of a higher rank will prevail over a law of a lower rank when they concern the same subject matter, and a law which is later in time will prevail over an older law of equal hierarchy. International treaties and conventions on tax matters will always prevail over domestic tax law, provided that they do not violate the Constitution (s. 88 of the Income Tax Act).

### *Financial sector*

21. Uganda has a well-developed financial sector regulated under the Financial Institutions Act 2004. The Central Bank of Uganda (Central Bank) is established under the Bank of Uganda Act. The main objectives of the Central Bank are to formulate and implement monetary policy by issuing legal tender, maintaining external reserves and promoting the stability of the currency and a sound financial structure conducive to a balanced and sustained rate of growth of the economy. The banking sector is made up of 24 licensed commercial banks, three licensed credit institutions, 224 licensed forex bureaux, 49 licensed money remitters and three licensed microfinance deposit-taking institutions. The total assets held by banks in Uganda as at the end of June 2014 were UGX 18.6 trillion (USD 6.5 billion). The minimum capital requirement for banks is 1 250 000 currency points (UGX 25 000 000 000 [USD 8 573 388]); for credit institutions 50 000 currency points (UGX 1 000 000 000 [USD 342 935]) and for Micro Finance Deposit Taking Institutions (MDIs) 25 000 currency points (UGX 500 000 000 [USD 171 467]).

22. The Anti-Money Laundering Act, 2013 (AMLA) created the Financial Intelligence Authority (Uganda's Financial Intelligence Unit) and a Financial Intelligence Board. The FIU is responsible for ensuring compliance with the AMLA, collecting information on money laundering made available to it by competent authorities and exchanging the information in accordance with the international agreements in place.

23. Capital markets in Uganda are regulated by the Capital Markets Authority (CMA) which is a semi-autonomous body responsible for promoting, developing and regulating the capital markets industry in Uganda, with the overall objectives of investor protection and market efficiency. Its mandate is the development of all aspects of the capital markets with particular emphasis on the removal of impediments to, and the creation of incentives for longer term investments in productive enterprises. This includes creation, maintenance and regulation, through implementation of a system in which the market participants are self-regulatory to the maximum practicable extent, and of a market in which securities can be issued and traded in an orderly, fair and efficient manner; the protection of investor interests and the operation of an Investor Compensation Fund. The governing Act is the Capital Markets Authority Act Cap 84.

24. The Capital market institutions include stockbrokers, investment banks, investment advisers, fund managers, authorised depositories (all authorised depositories are licenced banks), approved collective investment schemes and other approved institutions. The securities exchange in Uganda is called the Uganda Securities Exchange (USE). The products traded at the USE are shares and bonds. The stock market capitalisation for Uganda as at 31 December 2011

stands at 26.2% of GDP. The latest value for market capitalisation of listed companies in Uganda was USD 7 294 133 000 as of 2012.

25. The insurance industry in Uganda is regulated and supervised by the Insurance Regulatory Authority (IRA) under the Insurance Act Cap 213. The authority is responsible for the licensing of insurance companies, medical insurance providers, brokers, agents, insurance surveyors, insurance investigators and claim settling agents. As at September 2014 there are 22 insurance companies, one reinsurance company, 26 insurance brokers, six loss assessors, nine insurance adjusters in Uganda.

26. Relevant professionals in Uganda include accountants and lawyers who are regulated under the Accountants Act Cap 266 and Advocates Act Cap 267. The Accountants Act establishes an Institute of Certified Public Accountants of Uganda (ICPAU) which provides for a council responsible for the management of the institute, for the requisition and control of accountants along with the disciplining of accountants and the maintenance of professional standards. Section 7 of the act sets out the procedure for disqualification from registration which includes instances where a person is convicted by a court in Uganda of an offence involving fraud or dishonesty. Part VI of the act provides for disciplinary provisions and section 27 provides for professional misconduct. The Advocates Act Cap 267 sets out the requirements for admission as an advocate in part IV of the act and part V deals with offences and the discipline of advocates and clerks.

### ***Taxation and international cooperation***

27. The Uganda Revenue Authority (URA) was established by the Uganda Revenue Authority Statute of 1991 and set up in September of the same year as a central body for assessment and collection of specified revenue, to administer and enforce the laws relating to such revenue and to provide for related matters. The Commissioner General is the head of the URA and is appointed by the Minister of Finance.

28. Uganda taxes resident companies and individuals on their worldwide income. Non-resident companies and individuals are taxed only on Uganda-sourced income. Both resident and non-resident companies are charged corporate tax at a rate of 30%, and mining companies at a rate ranging from 25-40%. A company is deemed to be tax resident in Uganda if it is incorporated under Ugandan law; if the management and control of its affairs are carried out in Uganda; or if the majority of its operations are carried out in Uganda. The law governing income taxation is the Income Tax Act Cap 340 (ITA) and income tax is charged on a residency and source basis (s. 17 ITA). Value Added Tax is charged under the VAT Act (Cap 349) and customs duties are levied under East Africa Customs and Management Act 2004 (EACMA).

Excise Tax is levied under the Excise Tariff Act Cap 338. Dividends are taxed at the corporate tax rate but they are exempt if a recipient company resident in Uganda controls at least 25% of the voting power of a payer company resident in Uganda. Furthermore, foreign-source dividends are taxable in Uganda. There is a withholding tax of 15% applied to dividends paid to a non-resident company in situations where the rate is not reduced under a tax treaty. The standard rate of VAT is 18% which is uniform across all industries. Financial services are exempt from VAT (section 1 (c) and 2 (b) under the 2nd Schedule of the VAT Act Cap 349).

29. In September 2014 the Parliament of Uganda passed the Tax Procedures Code (TPC) and it will come into force once a statutory instrument has been issued by the Minister responsible. This is expected to occur in July 2015. The Tax Procedures Code will regulate the procedures for the administration of specified tax laws in Uganda in order to harmonise and consolidate the tax procedures under existing tax laws.

30. Uganda has signed 11 DTCs, of which 9 are in force, and two multilateral agreements, no TIEAs have been signed to date. The Competent Authority designated in Uganda's DTCs is the Minister of Finance, however for the DTCs with Mauritius and South Africa the Commissioner General is designated as the Competent Authority. As of March 2014, the Minister of Finance delegated competent authority power to the Commissioner General of the Uganda Revenue Authority for all DTCs indicating the Minister of Finance as competent authority.

31. Section 88 of the ITA provides for the operationalisation of international agreements. International agreements are defined as including DTCs and bilateral or multilateral administrative agreements which would include TIEAs (s. 88(6)). Pursuant to this section, when a DTC or TIEA is in force, it takes precedence over all other sections of the ITA in cases of inconsistency. Uganda is currently in negotiation with two other jurisdictions to conclude DTCs and is taking steps to sign the Convention on Mutual Administrative Assistance in Tax Matters and to ratify the ATAF Agreement on Mutual Assistance in Tax Matters (AMATM).

## Recent developments

32. Amendments to the ITA were introduced in 2014 by the Income Tax Amendment Act which took effect as of July 2014. These included an amendment to section 88 of the ITA to ensure that both DTCs and TIEAs take precedence over the ITA as well as any other domestic law of Uganda. In addition, a new penalty was introduced with respect to the general obligation in the ITA on taxpayers to hold books and records in Uganda and in respect of the access powers of the Tax Commissioner to such records. Furthermore,



the Financial Intelligence Authority, the body mandated to implement the Anti Money Laundering Law, was put in place in July 2014.

33. Uganda is also planning to make legislative amendments to the Companies Act (CA) some of which will address concerns raised in this report. Proposed amendments to the CA would remove provisions relating to share warrants to bearer, ensure disclosure of details of nominee shareholders, ensure quick and timely reporting of changes to share registers and any information relating to a company. In addition a requirement will be created for foreign companies headquartered in the commonwealth to keep accounting records.

34. Similarly, amendments are planned to the Trustees Act which would complement existing requirements under common law. These include provisions that relate specifically to foreign trusts, setting out the duties of trustees in relation to trust property, introducing a duty on trustees to keep specific records, ensuring trustees hold a register of names of past and present beneficiaries, settlors and any non-resident trustees, ensuring that trust property is kept separate from the trustee's property and creating sanctions for cases of non-compliance with these requirements. It is expected that these amendments to the Trustees Act and the Companies Act will come into effect by the end of 2015.



## Compliance with the Standards

### A. Availability of information

#### *Overview*

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

36. Availability of ownership and identity information in respect of companies is generally ensured by the requirement to keep an up to date register of members. However, public companies may issue share warrants to bearer and no requirements exist to identify the owners. While there is no evidence of any share warrants to bearer in existence, there are currently insufficient mechanisms in place to ensure the availability of identity information regarding the owners of such share warrants. A recommendation has been made in respect of this deficiency.

37. In respect of nominee ownership information, service providers that are subject to the AML regime in Uganda are obliged to maintain beneficial ownership information if they establish a business relationship with a company. Some of these service providers may act as nominees but otherwise,

there are no requirements in place for other nominees to maintain ownership information for those persons for which they act. Therefore, Uganda is recommended to implement requirements for all nominees to maintain ownership information in all cases for clients for which they act.

38. Partnerships must be registered with the tax authorities and details of each partner must be furnished upon registration. Any change in this respect must also be submitted, ensuring the availability of up to date ownership information on partnerships. Cooperative societies are required to keep an up to date register of members, and a list of members must also be provided to the Registrar of Companies.

39. Where a trust is tax resident in Uganda then the trust, trustee and beneficiaries must be registered for tax purposes and the trust must file a tax return. Under common law, trustees may have the obligation to maintain certain trust information. In addition, under AML legislation where certain businesses and professionals act as trustees or provide services to a trust, they will have the obligation to identify their customer and the beneficial owner.

40. All legal and natural persons that carry on business in Uganda are obliged to maintain accounting records for a period of ten years. However, other than provisions in the Value Added Tax Act, there is no general requirement on entities to hold underlying records and a recommendation has been made in this respect.

41. In respect of bank information, the AML and banking legislation ensures that all records pertaining to the accounts as well as to related financial and transactional information are required to be kept by Ugandan banks.

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

## A.1 Ownership and identity information

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

### *Companies (Tor A.1.1)*

43. The Companies Act (CA) is the central piece of legislation governing the establishment of and further arrangements with respect to companies. Under the CA, three types of companies may be incorporated in Uganda (s. 4 CA):

- Companies limited by shares: the liability of the members of this type of company is limited to the amount unpaid (if any) on their shares.
- Companies limited by guarantee: the liability of the members of this type of company is limited to the amount defined in the memorandum of the company that the members undertake to contribute to the assets of the company if it is wound up.
- Unlimited companies: there is no limit on the liability of the members.

44. A company can also be either a private or a public company. Private companies must have no more than 100 members, must restrict the right to transfer shares and other securities in their articles and cannot invite the public to subscribe for any shares or debentures of the company (s. 5 CA). As of 4 March 2015, there were approximately 200 000 private companies registered in Uganda. A public company is defined as any company that does not meet the definition of a private company (s. 6 CA). As of 4 March 2015, there were approximately 600 public companies registered in Uganda. In total there were approximately 200 600 registered companies in Uganda as at 4 March 2015.

45. The rules described below on the availability of ownership information apply to all companies, unless indicated otherwise.

46. All companies incorporated under the CA are required to indicate in the memorandum of association that the registered office of the company is to be in Uganda (s. 7 CA). The company must have a registered office and a registered postal address within 14 days of incorporation (s. 115(1) CA). If this is not complied with the Registrar of Companies may deregister the company, furthermore fines may be imposed on the company and the company officers of twenty five currency points (UGX 500 000 or USD 171) (s. 115(4) and (5) CA).

*Ownership information held by companies*

47. All companies incorporated under the CA are required to keep a register of members. This requirement applies to companies with a share capital and those without a share capital. This register should contain the following information (s. 119 CA):

- (a) the names and postal addresses of the members;
- (b) the date on which each person was entered in the register of members; and
- (c) the date on which any person ceased to be a member.

48. If the company has a share capital, a statement of shares held by each member shall be entered into the register, distinguishing each share by its number and the amount paid or agreed to be paid. Section 119(2) of the CA provides that the register of members shall be kept at the registered office of the company however it is also possible to keep it at another office of the company or, if another person handles the register, at the office of that other person. In any case, the register must always be kept in Uganda. The company is required to send notice to the Registrar of Companies of the place where the register is kept and to inform of any change (s. 119(3)). Not keeping a register of members can lead to a daily fine of twenty five currency points (UGX 500 000 or USD 171) being enforced on the company and any officer in default (s. 119(6)). If a company does not have a share capital but has more than one class of members, the class to which each member belongs is required to be entered in the register, in addition to the information set out above. Failure to comply with this provision for a period of 14 days can lead to a daily fine of twenty five currency points (UGX 500 000 or USD 171) being enforced on the company and any officer in default (s. 119(6) CA).

49. A company which has more than fifty members is required to keep an index of the names of the members of the company if the register itself is not in the form of an index. Any changes in the register must be made to the index within 14 days after the date on which the change occurs (s. 120(1) CA). The index must be kept in the same place as the register of members (s. 120(3) CA). Failure to comply with these provisions can lead to a daily fine of twenty five currency points (UGX 500 000 or USD 171) being enforced on the company and any officer in default (s. 120(4) CA).

50. Transfers of shares will be registered by a company in Uganda only upon delivery of a proper instrument of transfer to the company (s. 85 CA). Furthermore, a certificate of transfer confirms that the transferee has title to the shares (s. 90 CA) and companies are required within 2 months after lodging a transfer of shares to deliver the certificate for all shares (s. 91 CA).

*Ownership information held by the authorities*

## Companies law

51. All companies incorporated under the CA are required to file their memorandum and articles of association (if any) with the Registrar of Companies, who will retain these documents, register them and assign a registration number to each company so registered (s. 19 CA). The entity responsible for registering companies in Uganda is the Uganda Registration Services Bureau as established by the 2004 Uganda Registration Services Bureau Act Cap 210. The memorandum for companies with a share capital (whether limited by shares, limited by guarantee or unlimited) must contain the names and addresses of the initial members of the company and the number of shares they own (s. 7 and Second schedule, Tables B, D and E, CA). For companies without share capital, there is no requirement for the names of members to be included in the memorandum in section 7 although the example format provided for in Table C in the Second Schedule to the CA requires subscribers to be identified.

52. Companies must also file an annual return with the Registrar of Companies within 42 days of the annual general meeting (ss. 132 and 133 CA). For companies with a share capital the return must contain details of the registered office of the company, the register of members and debenture holders, shares and debentures indebtedness, past and present members and directors and secretary (s. 132 CA). Consequently, the annual return shows any changes in the shareholding of the company. In respect of companies not having a share capital there is no obligation to include information on its members in the return. Although the return must state the address of the registered office or in the case of the register of members being kept elsewhere, the address of where it is kept must be provided (s. 133 CA). Such companies are nevertheless required to hold a register which will include the names and addresses of the members. Non-compliance with the provisions to file an annual return can lead to a fine being imposed on the company and the company officers of twenty five currency points (UGX 500 000 or USD 171) (ss. 132(4) and 133(3) CA).

53. Private companies limited by shares and companies limited by guarantee with a share capital are required to file a return with the Registrar of Companies following any allocation of shares. This needs to be done within 60 days of the allocation. The return should include the number and nominal amount of the shares, the names, addresses and descriptions of the recipients and the amount (if any) paid or due and payable on each share (s. 61 CA). Failure to comply with this provision is punishable on any officer of the company with a fine of twenty five currency points (UGX 500 000 or USD 171) and an additional fine of five currency points (UGX 100 000 or USD 34) for every day during which the default continues (s. 61(3) CA).

## Tax law

54. When companies register with the URA they are required as part of the application to submit their certificate of incorporation, details of directors and secretaries and details of any name change of the company but not their articles or memorandum of association. Registration takes place on-line. Upon registration, the Commissioner issues a Tax Identification Number (TIN) to every taxpayer registered (s. 135 ITA).

55. For companies resident in Uganda, income is taxable on a world-wide basis; for non-resident persons, only Uganda-source income is taxable (s. 17(2) ITA). Taxpayers are required to furnish annual tax returns within six months of the end of the income year (s. 92 ITA). The different types of tax returns include Pay As You Earn (PAYE) which is filed monthly, withholding tax return which is also filed monthly, individual return which is filed annually, partnership return which is filed annually and income tax non-individual return which is filed annually. Failure to furnish a monthly return to the URA within fifteen days of the deadline of the end of the month to which it relates is an offence and is punishable with a fine of fifteen currency points (UGX 300 000 or USD 103). If the person convicted fails to furnish the return within the period specified by the court, that person commits an offence and is liable on conviction to a fine not exceeding twenty currency points (UGX 400 000 or USD 137) (s. 137 ITA). Furthermore, the failure to file can lead to a penalty of the greater of 2% of the tax payable or 10 currency points (UGX 200 000 or USD 69) per month for the period the return is outstanding (s. 151 ITA). Ownership information regarding the directors who held office in the company and shareholders who held at least 10% of the company's shares during the particular income year is required to be included in the tax return. This provision applies to both domestic and foreign companies resident in Uganda.

### *Ownership information held by service providers*

56. Service providers in Uganda are governed by the Anti-Money Laundering Act 2013 (AMLA). According to this act, all “accountable persons” are required to undertake customer due diligence measures including obtaining, recording and verifying the identity of the client in order to be able to enter into a business with the client or carry out a transaction for the client (s.6 AMLA). Accountable persons are defined to include financial institutions, advocates, notaries, accountants, other legal professionals, a board of executors or a trust company or any other person that invests, keeps in safe custody, controls, or administers trust property within the meaning of the Trustees Act, casinos, real estate agents, dealers in precious metals and gems, trust and company service providers, brokers, dealers, investment advisors, insurance companies, licensing authorities in Uganda, NGOs, churches and



other charitable organisations along with all other persons conducting the business of private banking, lending, financial leasing, etc. (Second Schedule AMLA). If the client is acting on behalf of another person, the service provider must obtain, record and verify the identity of the other person, similarly if another person is acting on behalf of the client the same requirement applies (s. 6 AMLA).

57. All “accountable persons” are required to hold the information obtained regarding the true identity of the person on whose behalf a business relationship is initiated or a transaction is conducted for at least ten years (s. 7 AMLA), similarly records relating to business relations should be held for at least ten years after their conclusion. Records on customer identification, account files, and business correspondence should be held for at least five years after the account has been closed. Furthermore, there is a requirement to hold records to enable the reconstruction of transactions that need to be reported under the act for at least ten years after the conclusion of the transaction. Such records include the parties to the transaction and their addresses, date of the transaction, types of currency involved, the accounts involved and the documents obtained to verify the identity of the client (s. 7 AMLA).

### *Foreign companies*

58. According to the *Terms of Reference*, where a company or body corporate has a sufficient nexus to another jurisdiction (for example, because it is resident by reason of having its place of effective management or administration there), that other jurisdiction will also have the responsibility of ensuring that ownership information is available.

59. In Uganda a foreign company is defined as a company incorporated outside of Uganda that establishes a place of business in Uganda (s. 251 CA). A “place of business” is defined in section 261 of the CA to include a share transfer or share registration office. The Ugandan authorities give the term “place of business” a wide definition which would include a local representative office of the company. All foreign companies must register at the Registrar of Companies within 30 days of establishment of a place of business (s. 252 CA). As at November 2014, there were 2 578 foreign companies registered with the Registrar of Companies in Uganda.

60. The registration process with the Registrar of Companies includes the furnishing of certain information (s. 252(1) CA) including:

- a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, and, where the instrument is not written in the English language, a certified translation of the instrument;

- a list of the directors and secretary of the company including name and address;
- a statement of all subsisting charges created by the company;
- the name and postal address of one or more persons resident in Uganda authorised to accept service of process or notices on behalf of the company; and
- the address of the registered or principal office.

61. Any change in these details must be notified to the Registrar of Companies within 60 days (s. 254(1) CA). Registration at the Registrar of Companies does not require the furnishing of ownership information at the time of registration, but such information may be provided by submitting the memorandum of the company; it would then depend on the law of the jurisdiction where the company was incorporated whether its memorandum contains ownership information. Nevertheless, ownership information in respect of shareholders holding at least 10% of the company would be available through the tax return as set out below. Furthermore, the CA provides that if the law in any part of the Commonwealth allows companies incorporated under that law to keep branch registers in Uganda of their members resident in Uganda, the Minister may order such branch registers to be kept in Uganda and for the penalties associated with not keeping a register in Uganda to apply (s. 123 and s. 131 CA).

62. When foreign companies register with the URA they are required as part of the application to submit their certificate of incorporation, details of directors and secretaries and details of any name change of the company but not their articles or memorandum of association. Registration takes place on-line. As noted above, it would then depend on the law of the jurisdiction where the company was incorporated whether or not its memorandum contains ownership information.

63. Therefore, while registration at the URA does not require the furnishing of ownership information, such information may be included in the memorandum of the company. Similarly, as is the case for domestic companies, foreign companies that are tax resident in Uganda will be required to submit to the tax authorities an annual tax return containing ownership information in respect of directors and shareholders holding at least 10% of the shares of the company. Foreign companies that are managed and controlled in Uganda will be considered tax resident in Uganda (s. 10 ITA).

64. Any changes in information submitted must be notified to the Registrar of Companies on the relevant company forms, as is the case for local companies. Failure to do so can result in a fine being imposed on the company and officers in default of up to 25 currency points (UGX 500 000 or

USD 171). In addition, any changes following the registration of the company with the URA must be notified to the Commissioner General. The company is required to amend registration details using the registration amendment form and attach the relevant forms, for instance if it relates to a change in director – company form 8 must be attached; if it relates to a change in address – the rental agreement must be attached.

### *Nominees*

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

66. In Uganda, nominee shareholders are provided for in the law but the Ugandan authorities note that they have not yet come across the use of the mechanism in practice. There is no requirement for any nominee shareholders to retain identity information on the persons for whom they act as legal owner. Ugandan company law does not contain any obligation to indicate the fact that shares are held in a nominee capacity. Where the Registrar of Companies believes there is good reason to do so he/she may appoint one or more competent inspectors to investigate and report on the membership of any company in order to determine the true persons who are financially interested in the success or failure of the company or who are able to control or materially influence the policy of the company (s. 181 CA). However, this would not ensure that ownership information in respect of nominees is available in all cases.

67. No indication needs to be given in the share registers or information filed with the URA when shares or other interests in companies are held by nominees on behalf of a third party. The URA will generally not know who is a nominee shareholder unless this has been ascertained in the course of an audit or if they have been alerted to this fact in some other way and they can then proceed to access this information.

68. There are certain requirements for the identification of persons on whose behalf nominees act under the AML framework. First, nominees that are “accountable persons” for the purposes of the AMLA are obliged to conduct customer due diligence (CDD) on their customers and thus maintain full information on the persons on whose behalf they hold an interest in the company. In addition, if the client is acting on behalf of another person,

the service provider must obtain, record and verify the identity of the other person, similarly if another person is acting on behalf of the client the same requirement applies (s. 6 AMLA).

69. Documentation in respect of the CDD carried out must be maintained for at least ten years after the end of the business relationship with the person for whom they act (s. 7 AMLA).

70. However, the CDD requirements under the AMLA only apply to “accountable persons” and will not apply to those nominees that do not fall into this category. It is therefore recommended that Uganda introduces requirements for nominees to maintain ownership and identity information in respect of all persons for whom they act as the legal owner.

### *Conclusion*

71. All companies incorporated under the CA are required to keep a register of members, this applies to companies with a share capital and those without a share capital. In addition, the Registrar of Companies keeps a register of all companies and the information available includes ownership information where the company has a share capital. Foreign companies must be registered with the Registrar of Companies when establishing a place of business in Uganda or when they are managed and controlled in Uganda. The URA also maintains a register on all companies chargeable to tax and information must be included in the tax return concerning shareholders that own at least 10% of the company’s shares. Foreign companies chargeable to tax must also register for tax purposes and file an annual return. Under AML legislation, there are certain requirements for the identification of persons on whose behalf nominees act, but those requirements are not applicable to all cases where shares of a company are held by a nominee. Uganda is therefore recommended to ensure that ownership information is available in all cases where shares are held by a nominee.

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

72. In Uganda it is not possible to own shares in a company without having the shareholders name entered in the register of members. Membership (being a shareholder) of a company is limited to the subscribers of the memorandum, whose names shall be entered in the register of members, and every other person who agrees to become a member and whose name is entered in the register of members. Thus bearer shares as such do not exist.

73. However, section 95 of the CA provides that a company limited by shares may, if so authorised by its articles of association, issue share warrants to bearer. This form of share warrant is issued with respect to any fully

paid-up share and entitles the bearer thereof to the shares specified. It also may provide for the payment of future dividends by means of coupons or otherwise. The bearer of a share warrant may, if the articles of association of the company so provide, be deemed to be a member of that company (s. 121(5) CA). Upon delivery of the warrant, the bearer will receive the shares specified and the warrant is cancelled (s. 121(2) CA).

74. There is no requirement in Uganda for the register of members of the company to indicate that a share warrant to bearer has been issued. Although it is possible in accordance with section 181 of the CA for the Registrar of Companies to appoint one or more competent inspectors to investigate and report on the membership of any company in order to determine the true persons who are financially interested in the success or failure of the company or who are able to control or materially influence the policy of the company. This does not, however, ensure the availability of information on the owners of share warrants to bearer. Therefore, these characteristics mean that share warrants to bearer as permitted by public companies in Uganda may present the same (tax) risks as bearer shares.

75. With regards to private companies, while the law does not expressly prohibit bearer share warrants, it follows from a number of sections of the CA that private companies are not permitted to issue share warrants to bearer. First, the issuance of share warrants to bearer by a private company is prohibited in view of the restriction on the transfer of shares by private companies under section 85 of the CA. This section provides that the delivery of a proper instrument of transfer to the company is required for the company to register the share transfer. Shares, which are transferred by simple delivery of a share warrant, would be in conflict with this restriction. Secondly, Table A in the Second Schedule to the CA contains regulations for private companies and specifically provides that private companies do not have the power to issue share warrants to bearer. Although it is not mandatory for a company to adopt these regulations, they represent the recommended form as set out in the CA. The Registrar of Companies has also reported that no private company has been found in Uganda with articles of association permitting the issuance of share warrants to bearer.

76. Public companies, however, may issue share warrants to bearer. As at 4 March 2015, there were 600 public companies registered in Uganda representing approximately 0.3% of the total registered companies in Uganda. A total of 16 public companies are listed on the Uganda Securities Exchange and subject to disclosure requirements set out in the Uganda Securities Exchange Listings Rules 2003. Pursuant to the requirements as set out under the Third Schedule of the CA, the annual return must specify the total amount of shares for which share warrants to bearer are outstanding since the date of the last return and the total amount of share warrants to bearer issued

and surrendered since the date of the last return. While there is no requirement for ownership information on the share warrants to be provided, this requirement ensures that the Registrar of Companies is aware of all share warrants that have been issued and that are in existence in Uganda. The Registrar has reported that, in a comprehensive search of public companies, none were found to have provision for the issuance of bearer share warrants in their Articles of Association.

77. Further, the Ugandan authorities have confirmed that the provision allowing for the issuance of share warrants to bearer is due to be abolished following legal reforms. However, at present, no provisions exist to identify the owners of share warrants to bearer, with the result that ownership information in respect of public companies is currently not ensured in Uganda. While there is no evidence of any share warrants to bearer in existence, it is recommended that Uganda introduces legal requirements to ensure the availability of ownership information in respect of bearers of share warrants in all cases.

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

78. Under the Partnership Act a partnership is defined as “the relation which subsists between persons carrying on a business in common with a view of profit” (s. 2(1) Partnership Act). In Uganda there is currently one form of partnership available and it is not possible to create limited liability partnerships.

79. In a partnership in Uganda, every partner is liable jointly with the other partners for all debts and obligations of the firm (partnership) incurred while he or she is a partner (s. 10 Partnership Act).

### *Registration of partnerships*

80. Partnerships are required to register with the Registrar which is provided by the Uganda Registration Services Bureau and upon doing so must submit a statement of particulars containing the following information as set out in section 4 of the Business Names Registration Act Cap 109 (1919):

- (a) Name of the partnership;
- (b) Principal place of business;
- (c) Name, former name, age, nationality, usual place of residence and any other business occupation of the partners;
- (d) Where a corporate is a partner – corporate name and registered or principal office will be declared;
- (e) Date of commencement of the partnership.

81. If there is a change in any of the details registered in respect of the partnership, the partnership must send a written statement to the Registrar setting out the change and the date of the change within 14 days. If this is not done, every partner in the firm commits an offence and is liable to a daily penalty of UGX 150 (USD 0.05), similarly the court can order a statement of the change to be sent to the Registrar within a certain time period (s. 8 Business Names Registration Act Cap 109 (1919).

82. These registration requirements and the obligation to submit any change ensure the availability of ownership information in respect of partnerships formed under Ugandan law and carrying on a business in Uganda.

### *Tax law*

83. Partnerships are considered transparent for tax purposes, which means that the partners are taxed separately for their share in the partnership's income and will be required to file an annual tax return in respect of this income (s. 67 ITA). The gross income of a resident partner for a year of income includes the partner's share of partnership income for that year and the gross income of a non-resident partner includes the share attributable to sources in Uganda (s. 67 (1) and (2) ITA). The partnership is also required to file a tax return but is not liable to pay tax on the income (s. 65(3) ITA). Information contained in the partnership return includes details of the identity of the partners (age, gender, profession, permanent address, telephone and place of residence.) A partnership is considered resident in Uganda if at any time during the assessment year a partner of the partnership was resident in Uganda (s. 12 ITA). A non-resident (foreign) partnership carrying on business in Uganda would be required to comply with the same tax filing requirements applicable to resident partnerships.

### *Conclusion*

84. All partnerships carrying on a business in Uganda (including foreign partnerships carrying on business in Uganda) must be registered with the Registrar and details of all partners must be submitted.

85. All partnerships must be registered for tax purposes and are subject to annual tax return filing requirements. These obligations ensure that ownership information regarding all partnerships incorporated in Uganda, carrying on business, or with income, deductions or credits for tax purposes will be made available.

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

86. Trusts are recognised in Uganda under both common and statutory law. At common law, trusts are generally created when assets are transferred by a person (the settlor) to a trustee for the benefit of another person (the beneficiary). There are no prohibitions for a Ugandan resident to act as a trustee or otherwise in a fiduciary capacity in relation to a trust formed in Uganda or under foreign law. Likewise, there are no apparent prohibitions for a resident of Uganda from administering a trust or acting as a protector of a trust governed under foreign law. The law of trusts in Uganda is derived from the common law and the United Kingdom Trustees Act of 1860. Trust law was developed by the English Courts of equity and is a part of the common law which evolved into the laws of Uganda and is still retained as part of the existing law (s. 14 Judicature Act Cap 13).

87. The other statutes concerning trusts in Uganda are the Trustees Incorporation Act Cap 154 (1939),<sup>3</sup> The Trustees Act Cap 164 (1954),<sup>4</sup> Public Trustee Act Cap 161 (1937). The Public Trustee Act regulates the public trustee managed at the Administrator General's office.<sup>5</sup> As a general rule, for any trust business conducted in Uganda, the same legal and regulatory framework applies regardless of whether the settlors are resident or non-resident, or whether assets settled in the trust are located within Uganda or outside.

### *Tax Filing*

88. The income of a trust is taxed either on the trustees or the beneficiaries (s. 71(1) ITA). All trusts that are resident in Uganda are taxable on the worldwide income for that year; all foreign trusts are taxable on any Ugandan-source income for that year (s. 72(6) and (7) ITA). A trust is considered resident in Uganda if it was established (i.e. created) in Uganda, if a trustee of the trust

3. The Trustees Incorporation Act provides for the incorporation of the trustees of certain bodies and associations of persons. Trustees may be appointed by any body or any association of persons established for any religious, educational, literary, scientific, social or charitable purpose and may apply to the Minister for a certificate of registration of the trustees or trustee as a corporate body.
4. The Trustee Act sets out the powers that may be exercised by Ugandan resident trustees administering trusts in Uganda. These powers include the power to sell trust property, employ agents and to delegate trust functions.
5. The Public Trustee Act creates the office of the Public Trustee and provides the holder with corporate status. The Public Trustee then operates as a trustee empowered by the Minister to administer the properties of mentally incapacitated persons. If the trust instrument does not state all the powers of the trustee and the rights of the beneficiaries, the Courts are left to follow English common law on trusts.



was resident in Uganda or if the trust has its management and control exercised in Uganda (s. 11 ITA). Upon registration with the URA, the trust deed must be attached which contains details of the settlors, trustees, beneficiaries of the trust or the class of beneficiaries, along with the subject matter of the trust. As of November 2014, there were 1 047 trusts registered with the URA.

89. The income of trusts is deemed to be income of the trustee, with the tax on this income payable either by the trustee or the beneficiaries (s. 71(1) ITA). Section 92 of the ITA obliges all persons with chargeable income to file an annual tax return with the URA. Trustees are required to file returns in accordance with the general provision of the ITA (s. 92 ITA). The return must state the trust's income for the year and include the names and addresses of the beneficiaries. In addition, all beneficiaries of resident or foreign trusts who receive an income from the trust would also be required to submit an annual tax return to the URA (s. 92 ITA).

90. Failure to furnish a return to the URA within fifteen days of the deadline is an offence and is punishable with a fine of fifteen currency points (UGX 300 000 or USD 103). If the person convicted fails to furnish the return within the period specified by the court, that person commits an offence and is liable on conviction to a fine not exceeding twenty currency points (UGX 400 000 or USD 137) (s. 137 ITA). Furthermore, a penal tax equal to the greater of 2% of the tax payable or ten currency points per month (UGX 200 000 or USD 69) is chargeable (s. 151 ITA).

#### *Trust ownership and identity information required to be held by the trust*

91. There are no statutory obligations imposed in respect of trusts for any person such as the trustee to maintain any particular identity or ownership information relating to the trust including its settlors or beneficiaries.

92. Uganda has confirmed that English common law relating to trusts and the fiduciary duties of the trustee as applicable to trustees operating in Uganda is followed and this is also set out under statute (Judicature Act). Pursuant to English common law requirements, for a trust to be valid, the trust needs to meet the three certainties: the certainty of intention, the certainty of subject matter and the certainty of object. This means that a trust is only valid if evidenced by a clear intention on behalf of the settlor to create a trust, clarity as to the assets that constitute the trust property and identifiable beneficiaries (*Knight v. Knight* (1849) 3 Beav 148). A written declaration of trust may not exist or not identify the settlor on the face of the document. However, trustees have a duty of care to act in accordance with the wishes of the settlor. As a matter of good practice trustees would keep sufficient records to enable them to perform their duties.

93. Trustees should obtain “good receipt” from beneficiaries when they distribute trust property. This requires trustees *inter alia* to establish that the person receiving the trust property is the correct beneficiary of the trust property being distributed (*Evans v. Hickson* (1861) 30 Beav 136). The trustee is obligated to administer the trust solely in the interests of the beneficiaries. Therefore, as a matter of good practice, it is likely that the beneficiaries of the trust or the class of beneficiaries will have to be made clearly identifiable in the trust deed.

94. In the event of non-compliance with these duties by the trustee, beneficiaries have the right to enforce the trust (*Beswick v Beswick* [1968] AC 58). In such circumstances, the settlor or beneficiaries can commence legal proceedings against the trustee. In the case of foreign trusts having a trustee resident in Uganda, it is not certain whether the law of the trust would conform with the common law obligations under Ugandan law. An in-depth assessment of the effectiveness of this common law regime will be considered as part of the Phase 2 Review of Uganda.

#### *Information held by service providers*

95. The AMLA defines service providers as financial institutions, advocates, notaries, accountants, other legal professionals, a board of executors or a trust company or any other person that invests, keeps in safe custody, controls, or administers trust property within the meaning of the Trustees Act, casinos, real estate agents, dealers in precious metals and gems, trust and company service providers, brokers, dealers, investment advisors, insurance companies, licensing authorities in Uganda, NGOs, churches and other charitable organisations along with all other persons conducting the business of private banking, lending, financial leasing, etc. (Second Schedule AMLA). As such, all trustees acting in a professional capacity would be caught by the provisions of the AMLA. Service providers that come within the scope of the AML regime (see section A.1.1 *Ownership information held by service providers*) are obliged to undertake customer due diligence to verify the identity of the beneficial owner of the account in the case of legal persons and other arrangements (s. 6(c)(ii) AMLA). In addition, service providers are required to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting a transaction for an occasional customer (s. 6(d) AMLA).

96. All such service providers are required to hold information obtained regarding the true identity of the person on whose behalf a business relationship is initiated or a transaction is conducted for at least ten years (s. 7 AMLA), similarly records relating to business relations should be held for at least ten years after their conclusion. Records on customer identification, account files, and business correspondence should be held

for at least five years after the account has been closed. Furthermore, there is a requirement to hold records to enable the reconstruction of transactions that need to be reported under the act for at least ten years after the conclusion of the transaction. Such records include the parties to the transaction and their addresses, date of the transaction, types of currency involved, the accounts involved and the documents obtained to verify the identity of the client (s.7 AMLA). The requirement under the AMLA for service providers covered by the AMLA to identify the beneficial owners of a trust ensures that identity information regarding the settlors and beneficiaries of the trust would be available.

97. Non-professional trustees of foreign trusts are not covered under Uganda's AML laws and the materiality of this issue will be further examined in the course of Uganda's Phase 2 review.

### *Conclusion*

98. All Ugandan trusts and foreign trusts chargeable to tax in Uganda must be registered for tax purposes and file the trust deed which includes information on the settlors, trustees and beneficiaries, in addition they must file an annual tax return with the URA detailing ownership information in respect of the beneficiaries. Trustees may also be under a common law duty to be able to identify the settlors and beneficiaries of the trust. In many cases, the identity of beneficiaries and settlors would have to be established by the trustee because the trustee acts in a professional capacity and is subject to the AML regime or where they transact with or engage a service provider subject to the AML regime. As such, ownership information in respect of trusts would generally be available in Uganda.

99. Where a trust is created under the laws of Uganda which has no other connection with Uganda, there may be no information about the trust available in Uganda. In these situations trust information should be available in the jurisdiction where the trustee is located as the relevant records would be situated there.

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

100. The Ugandan legal and regulatory framework does not provide for the establishment of foundations.

### *Other relevant entities and arrangements*

101. Under the Cooperative Societies Act Cap 112 (CSA), co-operative societies can be established for the promotion of the welfare and economic interests of their members. The following types of co-operative societies can be formed in Uganda:

- Primary society: a registered society under the terms of the CSA, the membership of which is restricted to individual persons and must consist of at least 30 members;
- Secondary society: a society formed by two or more primary societies;
- Apex society: a society formed by two or more secondary societies;
- Cooperative union: a registered society under the terms of the CSA, the membership of which is restricted to primary societies

102. As at February 2015, there were over 12 000 co-operative societies registered in Uganda.

103. According to section 15 of the CSA, no company incorporated or registered under the Companies Act and no unincorporated body of persons can become a member of a registered society, except with permission of the Registrar of co-operative societies. No member is permitted to be a member of more than one registered society with unlimited liability.

104. Cooperative societies are required to maintain a register of members and any such register or list of members or of shares which is kept by any registered society is evidence of the date on which the a person was entered in the register or list of members, or the date on which such person ceased to be a member (s.39 CSA).

105. Primary co-operative societies must have at least thirty members, who must be individuals over eighteen years of age and resident within or in occupation of land within the society’s area of operation as prescribed by the relevant bylaw (s. 13 CSA). The word “co-operative” has to form part of the name of the co-operative society (s. 11 CSA) and only co-operative societies that have been given approval via the Registrar of co-operative societies may trade or carry on a business under any name that includes the word “co-operative” (s. 78 CSA). Therefore, all co-operative societies must be registered and must have as their objective to promote the economic and social interests of their members in accordance with the co-operative principles (s. 3 CSA).

106. If the Registrar of co-operative societies is satisfied that a society has complied with the CSA and regulations made under it and that its proposed bylaws are not contrary to the provisions of the CSA, he or she will register the society and its bylaws on probation for a period not exceeding twenty-four

months. If at the expiration of twenty-four months the Registrar of co-operative societies is satisfied with the performance of the society, he or she will register the society permanently. If not, the Registrar of co-operative societies can either cancel the registration or extend the probationary period by a further 12 months. If after extension, the Registrar of co-operative societies is still not satisfied, he or she will cancel the registration. The society registered on probation is required to indicate this in all official publications and outside any premises, failure to do so is an offence and the society and any officer operating on its behalf is liable to a fine of maximum UGX 10 000 (USD 3) and in the case of a continuing offence a further daily fine of UGX 1 000 (USD 0.34). Failure to register a co-operative society amounts to an offence by the society, officer or member and a possible fine of maximum UGX 5 000 (USD 2) or imprisonment of maximum six months (s. 80 CSA)

107. Cooperative societies must submit a registered address at the time of registration and must notify the Commission of any changes to this address within one month from the date of the change (s. 20 CSA). Cooperative societies are obliged to keep a list of members at their registered address which is open to inspection by any person free of charge at all times during business hours (s. 21 CSA).

108. In addition, the register of members of a co-operative society must contain details of the date on which any person became a member and the date on which they ceased to be a member (s. 39 CSA) (although there is no requirement to indicate the number of shares held by each member). Any changes to membership must therefore be recorded.

109. For tax purposes, co-operative societies are treated the same as companies and will therefore be subject to the penalties for non-registration and non-filing of tax returns under the ITA as set out above.

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

110. Jurisdictions should have in place effective enforcement provisions to ensure the availability of ownership and identity information, one possibility among others being sufficiently strong compulsory powers to access the information. This subsection of the report assesses whether the provisions requiring the availability of information with the public authorities or within the entities reviewed in section A.1 are enforceable and failures are punishable.

111. Companies and co-operative societies are required to keep a register of members. For companies, not keeping a register of members can lead to a daily fine of twenty five currency points (UGX 500 000 or USD 171) being enforced on the company and any officer in default (s. 119(6)). Foreign

companies are also under an obligation to register with the Registrar of Companies, failure to do so or failure to provide details of changes to the charter, statutes or memorandum and articles of association; to the details of the directors or secretary; to the name or address of the persons authorised to accept service on behalf of the company or to the address of the registered office of the company within 60 days can lead to a fine of 1 000 currency points (UGX 20 000 000 or USD 6 859) being imposed on the company and officer in default. If the offence continues, a daily fine of five currency points (UGX 100 000 or USD 34) can be imposed (ss. 254 and 260 CA). Where a co-operative society does not comply with the requirement to maintain a register of members, a fine of maximum UGX 5 000 (USD 2) or imprisonment of six months maximum can be imposed on the co-operative society and any officer or member in default (s. 80 CSA).

112. A company which has more than fifty members is required to keep an index of the names of the members of the company if the register itself is not in the form of an index. Any changes in the register must also be reflected in the index within 14 days after the date on which the change occurs (s. 120(1) CA). The index must be kept in the same place as the register of members (s. 120 (3) CA). Failure to comply with these provisions can lead to a daily fine of twenty five currency points (UGX 500 000 or USD 171) being enforced on the company and any officer in default (s. 120(4) CA).

113. Domestic companies must also provide an annual return containing updated information on members to the Registrar of Companies. For companies that do not comply with annual filing requirements, this can lead to a default fine being imposed on the company and any officer in default of twenty five currency points (UGX 500 000 or USD 171) (sections 132(4) and 133(3) CA). If a company does not submit annual returns for a period of over five years, the Registrar of Companies will require the company to file a statement of insolvency and ask the company to demonstrate why it should not be struck off the register (s. 134(5) CA) if the company does not demonstrate why it should not be struck off the register, the Registrar of Companies will publish in the press the details of the striking off of the company from the register.

114. Companies must register their initial members with the URA. Foreign companies must also register for tax purposes and submit their memorandum at the time of registration which may contain membership information. Additionally, domestic companies and foreign companies that are tax resident in Uganda must file an annual tax return which contains ownership information in respect of shareholders holding at least 10% of the company's shares. Failure to file a tax return amounts to an offence and will lead to a penalty of the greater of 2% of the tax payable or 10 currency points

(UGX 200 000 or USD 69) per month for the period the return is outstanding (s. 151 ITA).

115. Partnerships must register with the Uganda Registration Services Bureau. Upon registration details of each partner must be furnished. Changes are required to be updated. Partnerships also have to register for tax purposes and will be subject to annual filing requirements with updated ownership information. Failure to file a tax return amounts to an offence and will lead to a penalty of the greater of 2% of the tax payable or 10 currency points (UGX 200 000 or USD 69) per month for the period the return is outstanding (s. 151 ITA).

116. All trustees subject to tax are under an obligation to file an annual tax return. Failure to file a tax return amounts to an offence and will lead to a penalty of the greater of 2% of the tax payable or 10 currency points (UGX 200 000 or USD 69) per month for the period the return is outstanding (s. 151 ITA). In respect of trustees of ordinary trusts, in the event of non-compliance with their duties under common law, the settlor or beneficiaries can commence legal proceedings which may result in fines or other penalties such as injunctions being enforced on the trustee.

117. Service providers that come within the scope of the AML regime (see section A.1.1 *Ownership information held by service providers*) are obliged to undertake customer due diligence to verify the identity of the beneficial owner of the account in the case of legal persons and other arrangements (s. 6 AMLA). Failure to carry out CDD or to maintain the documentation for at least seven years can lead to imprisonment for up to five years or a fine of up to 33 000 currency points (UGX 660 000 000 or USD 226 337) or both (s. 120 and 136 AMLA). Where the offence is committed by a legal person, punishment is in the form of a fine of up to 70 000 currency points (UGX 1 400 000 000 or USD 480 109) (s. 136 AMLA).

118. All co-operative societies must be registered. Any person carrying on business as a co-operative society without registration shall be subject to penalties. Failure to register a co-operative society amounts to an offence by the society, officer or member and a possible fine of maximum UGX 5 000 (USD 2) or imprisonment of six months maximum (s. 80 CSA).

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

### Determination and factors underlying recommendations

Phase 1 determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendations
Nominees that are not subject to AML obligations are not required to maintain ownership and identity information in respect of persons for whom they act as legal owners.	An obligation should be established for all nominees to maintain relevant ownership and identity information where they act as the legal owners on behalf of any other persons.
Although bearer shares cannot be issued, the issuance of share warrants to bearer is allowed by public companies. There are currently no legal requirements to identify the owners of share warrants to bearer in public companies.	Uganda should ensure the availability of ownership information in respect of bearers of share warrants in all cases.

## A.2 Accounting records

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

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

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

121. Every company is responsible for ensuring that proper books of account are kept that explain all monies received and expended by the company and the matters in respect of which the receipt and expenditure takes place, all sales and purchases of goods by the company and its assets and liabilities (s. 154(1) CA). Such books of account must give a true and fair view of the state of the company's affairs and must explain its transactions (s. 154(2) CA). The books of account must be maintained at the registered office of the company or at such other place in Uganda as the directors think fit and shall at all times be open to inspection by the directors (s. 154(3) CA). If a director of a company fails to take all reasonable steps to comply with these obligations, he/she is subject to a fine not exceeding 100 currency



points (UGX 2 000 000 or USD 686) or to imprisonment not exceeding one year, or both (s. 154(4) CA) however imprisonment will only be applied if the offence is committed wilfully (s. 154(5)(b) CA). The act indicates that it will be a defence for a company director to prove that he or she had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that the requirements were complied with and was in a position to discharge that duty (s. 154(5)(a) CA).

122. Company directors are required to annually prepare a profit and loss account and balance sheet for the general meeting. Not complying with this requirement can lead to imprisonment of up to five years or a fine of up to 1 000 currency points (UGX 20 000 000 or USD 6 859), or both (s. 155 CA). Section 256(1) of the CA provides that every foreign company shall, in every calendar year, make out a balance sheet and profit and loss account and deliver copies of those documents to the registrar for registration. There is an exception to this provision in s. 256(2) which states that a foreign company does not have to comply with s. 256(1) if it was incorporated in any part of the Commonwealth. As such, section 256(2) implies that a foreign company incorporated in any part of the Commonwealth is not legally obliged to keep books of accounts nor to prepare a balance sheet, in accordance with section 154 and 155 of the CA. However, as for domestic companies, companies incorporated in the Commonwealth that are managed and controlled in Uganda will be considered tax resident in Uganda (s. 10 ITA) and therefore required to submit accounting information with their tax returns. As such the information will be available in Uganda.

123. Public companies and private companies that have at least one public company shareholder must annex their balance sheet, auditors report and directors report to the annual report to be submitted to the Registrar of Companies (s. 135 CA). Not doing this can lead to a penalty on the company and any officers of 25 currency points (UGX 500 000 or USD 171). Where the Registrar of Companies has reasonable cause to believe that any provisions of the Act, including the obligation to maintain accounting records, is not being complied with, it may call on the company to produce this information, including accounting records, for inspection at any time (s. 172(1) CA), any refusal to do so can result in a penalty of 100 currency points (UGX 2 000 000 or USD 686) or imprisonment of up to one year. If the Registrar of Companies finds the information or explanation provided to be unsatisfactory, the circumstances of the case will be reported to the court (s. 172(5) CA).

124. Every partner in a partnership is bound to render true accounts and full information of all things affecting the partnership to any partner or his or her legal representatives (s. 31 PA). Partners that fail to maintain accounting records are subject to the penalties set out under the ITA (see section *Tax law obligations* below).

125. At common law, all trustees of Ugandan trusts are subject to a fiduciary duty to the beneficiaries to keep proper records and accounts of their trusteeship. In addition, all resident trusts in Uganda will be subject to statutory requirements to maintain accounting records necessary for computing tax as prescribed by the ITA and set out below. Pursuant to the Judicature Act, the principles set out under English common law, including those pertaining to the fiduciary duties of trustees, are followed in Uganda. Under common law, all trustees are subject to a fiduciary duty to the beneficiaries to keep proper records and accounts of their trusteeship. Uganda has reported that the common law requirements are those principles as set out under English common law. It is a well-established principle of English common law that it is the “duty of a trustee to keep clear and distinct accounts of the property he administers and to be constantly ready with his accounts”. These accounts should be open for inspection at all times by the beneficiary and should trustees default in rendering their accounts, the beneficiary is entitled to have the accounts seized by the court. In that event, trustees would be held liable for paying the costs of the order and in certain cases may also be removed. Furthermore, where trustees are found guilty of active breaches of trust or wilful default or omission, they may be held personally liable for any loss. An in-depth assessment of the effectiveness of this common law regime will be considered as part of the Phase 2 Peer Review of Uganda.

126. In addition, all co-operative societies with income deemed to have accrued in or to be derived from Uganda will be subject to statutory requirements to maintain accounting records as prescribed by the ITA and set out below. The accounts of every co-operative society must be audited by an independent auditor annually (s. 22(1) CSA) and must file a copy of the balance sheet and audited accounts to the Registrar of co-operative societies three months after the end of the financial year (s. 22(5) CSA). Failure to have these accounts audited shall result in the committee of that society being deemed to have relinquished its office. The Registrar of co-operative societies will then convene a special general meeting to elect a new committee unless the registrar is satisfied that the failure was due to circumstances beyond the committee’s control (s. 22(5) CSA).

### *Tax law obligations*

127. Any person carrying on business will be subject to the requirement to file a tax return (s. 92 ITA). The tax return contains a section for income statements and balance sheet line items which must be completed. Section 129 of the ITA provides that that all taxpayers are required to keep in Uganda such records as may be necessary to explain the information provided in a tax return or to enable an accurate determination of the tax payable by the taxpayer.

128. Any person who contravenes this requirement is liable to a penalty not exceeding 100 currency points (UGX 2 000 000 or USD 686) (s. 140 ITA).

129. Similar to companies, partners will be also subject to the obligations as outlined above to maintain accounting records for tax purposes. Partners who contravene this requirement are liable to a penalty not exceeding 100 currency points (UGX 2 000 000 or USD 686) (s. 140 ITA).

130. The obligations as set out above under the ITA to maintain records will also apply to trusts that are taxpayers in Uganda including foreign trusts with resident trustees.

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

131. The accounting record keeping obligations under the CA requires proper books of account to be kept with respect to (s. 154(1) CA):

- Sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- Sales and purchases of goods by the company; and
- Assets and liabilities of the company.

132. There is no requirement under the CA for companies to maintain underlying documents to accounts and returns. This represents a gap in the availability of accounting information in Uganda. Companies must be obliged to maintain documents such as invoices, contracts, receipts, etc. Uganda is recommended to introduce consistent obligations for companies to maintain underlying documents in all cases.

133. The Partnerships Act does not define accounting records and there is no explicit provision requiring partnerships to hold underlying records. Similarly the Trustees Act does not require underlying documents to be held by the trustee. As such, Uganda is recommended to introduce consistent obligations for partnerships and trusts to maintain underlying documents in all cases.

134. In respect of co-operative societies, the accounts must be audited by an independent auditor (s. 22 CSA). The auditor is required to have access at all times to all books, accounts, papers and securities of the society and every officer of the society is required to furnish such information in regard to the transactions and working of the society as the auditor may require. Therefore, it may be expected that where there is an obligation to have the accounts audited and access to detailed documentation permitted, sufficient underlying documentation is kept in respect of all co-operative societies in Uganda.

### *Tax law obligations*

135. As indicated above, the ITA requires all taxpayers to retain in Uganda such records as may be necessary to explain the information provided in a tax return or to enable an accurate determination of the tax payable by the taxpayer. This provision does not include specific reference to underlying documents. There is however a requirement set out in section 46 of the Value Added Tax Act to hold underlying records for VAT purposes. This provision requires a person liable to tax under the act to maintain in Uganda the following documents:

- (a) Original tax invoices, copies of tax invoices, credit notes and debit notes received;
- (b) A copy of all tax invoices, credit notes and debit notes issued;
- (c) Customs documentation relating to imports and exports made and;
- (d) Any other accounts and records as may be prescribed by the Commissioner General.

Nevertheless, in the absence of a more general provision to hold underlying documents, Uganda is recommended to introduce consistent obligations for companies, partnerships and trusts to maintain underlying documents in all cases.

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

136. The tax law contains the explicit requirement that the records required to be kept must be retained for at least five years (s. 129(3) ITA). These requirements will cover all Ugandan incorporated companies, foreign companies, co-operative societies, partnerships (including foreign partnerships) and trusts (including foreign trusts with a resident trustee) in Uganda (see also section A.2.2).

### ***Conclusions on A.2***

137. The Companies Act, the Cooperative Societies Act and the Partnership Act contain obligations for companies, partnerships and co-operative societies respectively to keep accounting books and records. Whilst the entity acts do not specify a time retention period for accounting documents to be retained, there is a clear requirement for companies, partnerships, and co-operative societies in Uganda to keep reliable accounting records for at least five years under the tax law. However, there is no requirement on companies, partnerships or trusts to keep underlying records. Uganda is therefore recommended

to introduce consistent obligations for all relevant entities and arrangements to maintain underlying documentation in all cases.

### Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement	
Factors underlying recommendations	Recommendations
Other than for VAT purposes, there is no express requirement that companies, partnerships and trusts keep underlying documentation. The new Tax Procedures Code which is not yet in force in Uganda will create a legal basis requiring taxpayers to keep underlying documentation as required by the international standard.	Uganda should introduce consistent obligations for companies, partnerships and trusts to maintain underlying documents in all cases for a period of at least five years.

## A.3 Banking information

Banking information should be available for all account-holders.

138. No person is allowed to engage in deposit-taking or any other financial institution business without a licence issued by the Central Bank of Uganda (s. 4(1) Financial Institutions Act 2004 (FIA)). The Central Bank is the regulatory and supervisory body for the Ugandan banking industry. There are 27 banks in Uganda of which 24 are licensed commercial banks and three are licensed credit institutions. Of the 27 banks, 20 are foreign-owned and seven are locally owned.

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

139. All financial institutions are required to keep in Uganda financial ledgers and other financial records which show a complete, true and fair state of its affairs and explain its transactions and financial position to enable the Central Bank to determine whether the financial institution is complying with the act (s. 46(1) and s. 46(4) FIA). These records are to be held for a period of at least ten years (s. 46(6) FIA). Similarly, banks and other financial institutions defined as “accountable persons” under the AMLA are obliged to keep records of all transactions for a period of at least ten years from the date the relevant business or transaction was completed (s. 7 AMLA).

140. Section 7 of the AMLA requires all reporting institutions to keep records of the following information in respect of all transactions:

- (a) The amounts involved;
- (b) The types of currency involved;
- (c) The parties to the transaction and their addresses;
- (d) The accounts involved;
- (e) The nature of the transaction;
- (f) The manner in which the identity of the client and the person acting on behalf the client was established;
- (g) The name of the person who obtained the information; and
- (h) The documents obtained to verify identity.

141. These records must be maintained for a period of at least ten years after termination of the business relationship. Failure to carry out CDD or to maintain the documentation for ten years is considered an offence (s. 120 AMLA) and can lead to imprisonment for up to five years or a fine of up to 33 000 currency points (UGX 660 000 000 or USD 226 337) or both (s. 136 AMLA).

*Conclusion*

142. The customer identification obligations and record keeping obligations set out under the AML regime require banking information to be available in Uganda for all transactions by all account holders.

**Determination and factors underlying recommendations**

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

## **B. Access to information**

### **Overview**

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

144. The URA has broad access powers derived from a number of general provisions within the ITA which permit the Commissioner to obtain ownership, banking and accounting information. The power to search buildings and seize documents is also provided for. In addition, penalties including imprisonment and administrative fines may be imposed where a person fails to produce the information requested. Any secrecy obligations, including bank secrecy, are waived when a person is asked to produce information. Attorney-client privilege as defined in the law must be respected but there is an exception to privilege set out in the access powers of the tax administration which ensures that this is in line with the international standard.

145. There are no statutory secrecy provisions in Ugandan law that impede effective exchange of information in tax matters and all rights and safeguards are compatible with effective exchange of information.

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

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

146. In Uganda, the Competent Authority designated in DTCs is the Minister of Finance, however for the DTCs with Mauritius and South Africa, the Commissioner General is designated as the Competent Authority. As of March 2014, the Minister of Finance delegated competent authority power to the Commissioner General of the Uganda Revenue Authority for all DTCs indicating the Minister of Finance as competent authority.

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

147. The URA has broad access powers to obtain bank, ownership and identity information and accounting records from any person for domestic tax purposes as provided for in the ITA.

148. Section 131 of the ITA provides that the Commissioner has full and free access to any premises, place, book, record or computer “in order to enforce a provision” of the ITA. Section 132 states that the Commissioner can by notice in writing require any person (whether or not liable for tax under the ITA) to furnish any information required by the notice within a time period set out in the notice. The Commissioner may also require any person to attend an examination on oath regarding their income or the income of any other person (s. 132(1)(b) ITA). Section 132(5) notes that the access provisions have effect notwithstanding any rule of law relating to privilege or the public interest in relation to the production of or access to documents. Failure to comply with this provision is an offence and can result in a fine of 100 currency points (UGX 2 000 000 or USD 686). Furthermore, section 92(8) of the ITA provides that the Tax Commissioner may require by written notice the tax payer or the tax payer’s trustee, to provide a tax return by the date specified in the notice.

### *Bank information*

149. The powers described above in regards to ownership and identity information apply equally where banking information must be obtained. Bank confidentiality in Uganda is provided for based on the common law principles set out in the case of *Tournier v. National Provincial and Union Bank of England*. However, the access powers of the tax administration as set out in sections 131 and 132 of the ITA allow for sufficiently broad access to banking information and as such, banking information is accessible in Uganda.



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

150. The powers described under the previous subsection (B.1.1 *Ownership and identity information*) apply equally where accounting information must be obtained.

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

151. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. The international standard requires a jurisdiction to be able to use its information gathering powers, notwithstanding that it may not need the information for its own tax purposes.

152. Uganda’s access powers are set out in section 131 of the ITA which provides for full and free access to any premises, place, book, record or computer “in order to enforce a provision of this act” and section 132 of the ITA whereby a notice may be issued by the Commissioner in order to obtain information from any person “whether or not liable for tax under this act”.

153. Section 88 of the ITA stipulates that DTCs and TIEAs will take precedence over the ITA or any other law of Uganda dealing with matters covered by the agreement. Uganda made an amendment to the ITA in 2014 for the purposes of enabling effective EOI to ensure that TIEAs as well as DTCs would prevail over the ITA and other laws covered by the agreement (s. 88(6)(b)).

154. In light of this, although it is unclear whether section 131 could be used for accessing information for EOI purposes, according to the Ugandan authorities it is possible that section 88 of the ITA which allows for DTCs and TIEAs to prevail over domestic law could be relied upon to use section 131 for EOI purposes. Notwithstanding this, section 132 of the ITA sets out sufficiently broad powers of the tax administration to access information which would include for EOI purposes. An assessment of the use of Uganda’s access powers for EOI purposes will be made as part of the Phase 2 Review of Uganda.

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

155. Jurisdictions should have in place effective enforcement provisions to compel the production of information. As previously described, the URA has powers to compel the production of information from natural and legal persons, whether or not liable to tax under the ITA, in response to an exchange of information request.

156. Search and seizure powers under the supervision of a judge are also provided for under the ITA. According to s. 131 of the ITA, in order to enforce a provision of the ITA, the Commissioner may seize any book or record that in their opinion amounts to material evidence in determining tax liability. Failure to comply with this provision is an offence and can result in a fine of 100 currency points (UGX 2 000 000 or USD 686).

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

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

#### *Bank secrecy*

158. The powers described above in regard to ownership and identity information apply equally where banking information must be obtained. There are no secrecy provisions in Uganda which limit the competent authority's ability to respond to an EOI request.

159. Bank confidentiality in Uganda is provided for based on the common law principles set out in the case of *Tournier v. National Provincial and Union Bank of England*. According to this case, banks owe their customers a contractual duty of confidentiality. However, the access powers of the tax administration as set out in sections 131 and 132 of the ITA allow for sufficiently broad access and the common law provision would not be a barrier to this access for EOI purposes. In addition, the Ugandan authorities confirmed that they access banking information for domestic purposes on a regular basis and use the access powers set out in section 132 of the ITA for this purpose which override the common law principle of bank secrecy.

160. A specific provision exists in the Bank of Uganda Act requiring the Bank of Uganda to not “publish or disclose any information regarding the affairs of a financial institution unless the consent of the institution or the customer has been obtained.” (s.40(3)) however this specific provision only applies to the central bank. The Ugandan authorities confirmed that there are no limitations on the ability of the competent authority to obtain, directly or indirectly, information held by a bank or other financial institution in response to a request for information.

#### *Legal privilege (attorney-client privilege)*

161. Attorney-client privilege in Uganda is set out in the Advocates (Professional Conduct) Regulations S.I. 267-4 which came into force in 1977 under the Advocates Act Cap 267. These regulations provide in Rule 7 that “an advocate shall not disclose or divulge any information obtained or acquired as a result of his or her acting on behalf of a client except where this becomes

necessary in the conduct of the affairs of the client, or otherwise required by law.” Although the provision is broad, the exception would ensure it is in line with the international standard. A further exception to the use of professional privilege exists in the access powers of the tax administration which are set out in section 132 of the ITA. The exception in section 132(5) provides that “[t]his section has effect notwithstanding any rule of law relating to privilege or the public interest in relation to the production of or access to documents.” As such, although the definition of attorney-client privilege in Uganda is broad, the exceptions provided for in the regulations and in the access powers of the tax administration ensure that it is in line with the international standard.

#### Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

## 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.

162. 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).

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

163. The URA is not obliged to inform any persons that are the subject of an EOI request of the existence of the request or to notify them prior to contacting third parties to obtain information. The procedure to obtain information is described under section B.1.

164. There is no requirement in Uganda’s domestic legislation that the taxpayer under investigation or examination must be notified of a request. There is an appeal procedure set out in the ITA however this appeal procedure will only apply in the case of a notice of assessment and not in relation to any notice requiring information in response to an EOI request.

#### Determination and factors underlying recommendations

Phase 1 determination
The element is in place.



## C. Exchanging information

### Overview

165. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Uganda, the legal authority to exchange information derives from its EOI agreements. This section of the report examines whether Uganda has a network of information exchange agreements that would allow it to achieve effective exchange of information in practice.

166. Uganda's network of EOI agreements covers 17 jurisdictions, and it is currently taking steps to sign the Convention on Mutual Administrative Assistance in Tax Matters which would significantly expand the treaty network. The signed agreements include 11 bilateral DTCs, a multilateral DTC between members of the East African Community and the ATAF Agreement on Mutual Assistance in Tax Matters (AMATM). Nine of these agreements are in force and meet the internationally agreed standard containing sufficient provisions to enable Uganda to exchange all relevant information. Nonetheless, it is noted that the timeframe to bring the treaties signed into force has in some cases taken several years. For this reason, element C.1 was found to be in place but needing improvement.

167. Uganda has signed 13 EOI agreements with nine of these in force. Uganda is presently reviewing its policy on negotiation of tax treaties to ensure all treaties are in line with the international standard. Prior to this decision, Uganda was in the process of negotiating DTCs with the following jurisdictions: Serbia, Seychelles and the United Arab Emirates. No TIEAs are presently under negotiation. Comments were sought from Global Forum members in the course of the preparation of this report, and in no cases has Uganda refused to enter into an EOI agreement. Consequently, element C.2 was found to be in place.

168. All EOI articles in Uganda's agreements contain confidentiality provisions which meet the international standard and its domestic legislation also contains relevant confidentiality provisions and enforcement measures for tax officials to keep information secret and confidential. While some of

the articles vary slightly in wording, these provisions generally contain all of the essential aspects of Article 26(2) of the OECD Model Tax Convention. Breach of this confidentiality obligation is an offence and may lead to the enforcement of fines or imprisonment. Consequently, element C.3 was found to be in place.

169. All of Uganda’s DTCs protect rights and safeguards in accordance with the standard, by ensuring 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. As such, element C.4 was found to be in place.

170. There appear to be no legal restrictions on the ability of Uganda’s competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request. The present report does not address this element further, as it involves issues of practice that will be dealt with in the Phase 2 review (see section C.5 below).

## C.1 Exchange of information mechanisms

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

171. To date, Uganda has concluded 11 double tax conventions (DTCs), nine of which are in force, as well as being a signatory since 2010 to the Multilateral East African Community (EAC) tax treaty<sup>6</sup> with four other members of the EAC and to the ATAF Agreement on Mutual Assistance in Tax Matters (AMATM) since March 2014. The AMATM Agreement has been signed and ratified by Lesotho, Mozambique and South Africa to date and it will enter into force 30 days after five ATAF member states submit their instruments of ratification. In total, Uganda’s network of signed agreements covers 17 jurisdictions (see Annex 2). Uganda is presently reviewing its policy on negotiation of tax treaties to ensure all treaties are in line with the international standard. Prior to this decision, Uganda was in the process of negotiating DTCs with the following jurisdictions: Serbia, Seychelles and the United Arab Emirates. No TIEAs are presently under negotiation. This section of the report explores whether the EOI agreements allow Uganda to effectively exchange information.

6. The “East African Community treaty” is an economic treaty including double tax and exchange of information provisions between member states of the East African Community (EAC); its full title is: Treaty for the Establishment of the East African Community. The other member states are Burundi, Kenya, Rwanda and Tanzania.

172. Under article 123(1) of the 1995 Constitution of Uganda, the President or a person authorised by the President is able to make treaties, conventions, agreements or other arrangements between Uganda and any other country. The law governing ratification of treaties in Uganda is the Ratification of Treaties Act Cap 204 which came into force in 1998. Under the Constitution, treaties must be read, perused and approved for clearance by the Attorney General (Article 119(4)(b)) before being passed to Cabinet for approval and subsequently laid before Parliament. Following this the instrument of ratification is signed, sealed and deposited by the Minister responsible for Foreign Affairs.

173. Section 88 of the ITA stipulates that international agreements providing for relief from double taxation and the prevention of fiscal evasion along with international bilateral or multilateral agreements providing for administrative assistance in tax matters will take precedence over the ITA or any other law of Uganda dealing with matters covered by the agreement.

174. As regards EOI requests and provision of information, the competent authority under Uganda’s EOI agreements and domestic laws is the Minister of Finance who has delegated this role to the Commissioner General of the URA. An exception is found in the DTCs with Mauritius and South Africa where the Commissioner General has been designated directly as the Competent Authority.

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

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

The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for 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 of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

176. The 2012 commentary to Article 26(1) of the OECD Model Tax Convention refers to the standard of “foreseeable relevance” and states that the Contracting States may agree to an alternative formulation of this standard that

is consistent with the scope of the Article, for instance by replacing “foreseeably relevant” with “necessary”. The DTC signed with People’s Republic of China (China) which is not yet in force expressly provides for the exchange of information which is “foreseeably relevant for the carrying out of the provisions of the agreement or for the administration or enforcement of the domestic laws concerning taxes of every kind” thus meeting the international standard. A further ten<sup>7</sup> DTCs signed by Uganda along with the AMATM Agreement provide for exchange of information that is either “necessary” or “relevant” for “carrying out the provisions of this Convention or for the administration or enforcement of domestic laws” or contain language which has similar meaning. The Ugandan authorities have confirmed that the terms “necessary” and “relevant” under these EOI agreements is interpreted in accordance with Commentary to Article 26(1) of the OECD Model Tax Convention. Therefore, these ten DTCs also meet the foreseeably relevant standard.

177. The EAC agreement and the DTC with Mauritius contain a provision allowing the competent authorities, through consultation, to develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance. The EAC agreement is not yet in force and so no such consultations have taken place. With regards the Mauritius agreement, Uganda and Mauritius have held EOI interactions and consultative engagements intended to facilitate working together. In addition, Mauritius has asked Uganda to amend Article 26 of the DTC to bring it into conformity with the amended OECD Model Tax Convention.

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

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

179. Article 26(1) of the OECD Model Tax Convention indicates that “[t]he exchange of information is not restricted by Article 1”, which defines the personal scope of application of the Convention and indicates that it applies to persons who are residents of one or both of the Contracting States. Ten<sup>8</sup>

7. DTCs signed with Belgium, Denmark, the East African Community (Burundi, Kenya, Rwanda and Tanzania), India, Italy, Mauritius, Netherlands, Norway, South Africa and the United Kingdom.
8. Belgium, China, Denmark, East African Community (Burundi, Rwanda, Kenya and Tanzania), India, Italy, Mauritius, Netherlands, Norway and South Africa.



of Uganda's 12 DTC agreements contain this sentence, allowing for EOI in respect of all persons. The AMATM Agreement also provides for exchange of information in respect of all persons.

180. The DTCs with the United Kingdom and Zambia do not specifically include a provision which extends the scope of the exchange of information article to persons other than residents of one of the Contracting States. The DTC with the United Kingdom provides for the exchange of information as is necessary for carrying out the provisions of the convention, or of the domestic laws of the Contracting States concerning taxes covered by the Convention. The DTC with Zambia provides for exchange of information which is available under the respective taxation laws of the contracting states, as is necessary for the carrying out of the provisions of the convention. To the extent that the domestic (tax) laws are applicable to non-residents as well as to residents, information under these agreements can be exchanged in respect of all persons, and the agreements meet the standard.

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

181. 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, as well as ownership information. Both the OECD Model Convention (Article 26(5)) and the OECD Model TIEA (Article 5(4)), 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.

182. As several of Uganda's agreements were concluded before the update of the OECD Model Tax Convention in 2005, they generally do not contain a provision corresponding to Article 26(5), which was introduced at that update. Only the DTC with China which is not yet in force contains such a provision. However, the absence of this provision does not automatically create restrictions on the exchange of information held by banks, other financial institutions, nominees, agents and fiduciaries, as well as ownership information. The Commentary to Article 26(5) indicates that while 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. Uganda's domestic laws allow it to access and exchange bank information even in the absence of such provision in the DTC. Nevertheless, Uganda is encouraged to ensure all future DTCs conform to Article 26.

183. As some of Uganda’s EOI partners (Burundi, Rwanda, Tanzania and Zambia) have not been assessed for compliance with the international standard, it is unclear as to whether some of these countries have restrictions to the access of bank information in their domestic law. Uganda should continue to renegotiate its DTCs to include a provision similar to Article 26(5) of the OECD Model Tax Convention and ensure that negotiations are carried out expeditiously.

184. The AMATM Agreement contains a provision similar to Article 5(4) of the OECD Model TIEA, which ensures that the requested jurisdiction shall not decline to supply the information requested solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person.

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

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

186. As several of Uganda’s DTCs were concluded before the update of the OECD Model Tax Convention in 2005, they generally do not contain a provision corresponding to Article 26(4), which was introduced at that update and which stipulates that a domestic tax interest may not be a reason to decline an information request. Only the DTC with China which is not yet in force contains 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 implicit obligation to exchange information also in situations where the requested information is not needed by the requested State for domestic tax purposes. Ugandan domestic law allows the Ugandan authorities to use the same powers to gather and exchange information with foreign partners as those conferred on them for domestic purposes (see B.1). Uganda can therefore exchange information with its partners even if it has no domestic tax interest in doing so and without any explicit reference to the concept of domestic tax interest in its agreements.

187. The DTC with Zambia applies to information that is “available” under the respective taxation laws of the contracting parties as is necessary for the carrying out of the Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to

the taxes which are the subject of the Convention. However, Uganda regards all information that can be obtained by virtue of their access powers as information that is available under its taxation laws. Nevertheless, there is a possibility that the language may be interpreted more restrictively by Zambia which has not yet been reviewed by the Global Forum and as such Uganda should take steps to ensure the language is in line with the international standard.

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

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

189. None of the agreements concluded by Uganda apply the dual criminality principle to restrict the exchange of information.

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

190. 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”).

191. All of the EOI agreements concluded by Uganda provide for the exchange of information in both civil and criminal tax matters in all cases. Most of Uganda’s DTCs and the AMATM Agreement contain a similar wording to the one used in Article 26(1) of the OECD Model Tax Convention, which refers to information foreseeably relevant “for carrying out the provisions of this Convention or to the administration and enforcement of the domestic [tax] laws”, without excluding either civil nor criminal matters. In addition, the agreements with Belgium, the EAC, India, Italy, Mauritius, Norway, South Africa and Zambia specifically mention that the information exchange will occur including for the prevention of fraud and/or evasion in relation to taxes.

192. It is nevertheless noted that the confidentiality provision in Uganda’s DTC with Zambia does not expressly provide that the competent authority may disclose the information received to other persons or authorities concerned with the enforcement or prosecution in respect of taxes. Nor does the

provision expressly mention courts as being an authority to which information may be disclosed. However, the DTC does provide for the disclosure of information to “persons...concerned with the assessment or collection of the taxes which are subject to this Convention, or with the determination of appeals in relation thereto”. This wording appears wide enough to extend to the use of information for tax related court proceedings concerning both civil and criminal matters. Therefore, this wording permits the exchange of information in both civil and criminal tax matters.

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

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

194. No restrictions apply in any agreement concluded by Uganda regarding the specific form in which information may be provided.

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

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

196. Uganda’s network of EOI agreements covers 17 jurisdictions, and it is currently taking steps to sign the Convention on Mutual Administrative Assistance in Tax Matters which would significantly expand the treaty network. The signed agreements include 11 bilateral DTCs, a multilateral DTC between members of the East African Community and the ATAF Agreement on Mutual Assistance in Tax Matters (AMATM). Nine of these agreements are in force. Agreements with Belgium (2007), China (2012), the EAC (2010) and the AMATM (2014) are not yet in force.

197. On analysis of the Ugandan treaty network, it can be seen that the time taken between the signature of an EOI arrangement and its entry into force can be quite long. In the case of the DTC with Italy, ratification took over five years and the DTC with South Africa took almost four years. Of the signed agreements, the DTC with Belgium was signed in 2007 and is still not ratified. The Ugandan authorities confirmed that the delays are partly caused

by domestic legal requirements as provided for by the Ratification of Treaties Act. This Act requires all branches of government to participate in the ratification process and can result in delays in ratification. Uganda is recommended to take steps to ensure the timely ratification of its EOI agreements.

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

198. For information exchange to be effective, the parties to an EOI arrangement need to enact any legislation necessary to comply with the terms of the arrangement.

199. Under article 123(1) of the 1995 Constitution of Uganda, the President or a person authorised by the President is able to make treaties, conventions, agreements or other arrangements between Uganda and any other country. The law governing ratification of treaties in Uganda is the Ratification of Treaties Act Cap 204 which came into force in March 1998. Under the Constitution, the treaties must be read, perused and approved for clearance by the Attorney General (Article 119(4)(b)) before being passed to Cabinet for approval and subsequently laid before Parliament. Following this the instrument of ratification is signed, sealed and deposited by the Minister responsible for Foreign Affairs.

200. Section 88 of the ITA stipulates that international agreements providing for relief from double taxation and the prevention of fiscal evasion along with international bilateral or multilateral agreements providing for administrative assistance in tax matters will take precedence over the ITA or any other law of Uganda dealing with matters covered by the agreement. Section 88(6) defines international agreements to include DTCs and TIEAs.

201. All of Uganda's DTCs that are in force have been given effect in the manner described above.

**Determination and factors underlying recommendations**

<b>Phase 1 Determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
Of the 13 EOI agreements signed by Uganda, nine are in force. The ratification of EOI arrangements can take several years.	Uganda should ensure the timely ratification of all of its EOI agreements.

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

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

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

203. Uganda has DTCs in force with nine jurisdictions, including five of its main trading partners (India, South Africa, Netherlands, United Kingdom and Mauritius). All of these agreements allow for exchange of information according to the international standard.

204. Uganda is presently reviewing its policy on negotiation of tax treaties to ensure all treaties are in line with the international standard. Prior to this decision, Uganda was in the process of negotiating DTCs with the following jurisdictions: Serbia, Seychelles and the United Arab Emirates. No TIEAs are presently under negotiation. Uganda is also currently taking steps to sign the Convention on Mutual Administrative Assistance in Tax Matters and ratify the ATAF Agreement on Mutual Assistance in Tax Matters (AMATM) which would significantly expand Uganda's treaty network. It can therefore be concluded that Uganda is taking action to expand its treaty network.

205. Three jurisdictions (India, Mauritius and Netherlands) have asked to renegotiate the existing DTC to introduce an exchange of information provision as provided in Article 26 of the OECD Model Tax Convention and these renegotiations are currently underway. Uganda has not refused to enter into an EOI agreement with any jurisdiction making such a request.

### Determination and factors underlying recommendations

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

### C.3 Confidentiality

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

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

206. 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, under domestic law.

207. All of the arrangements for the exchange of information concluded by Uganda contain a provision ensuring the confidentiality of information exchanged and limiting the disclosure and use of information received, which has to be respected by Uganda as a party to these agreements.

#### *Exchange of information agreements*

208. All of Uganda's DTCs have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the DTCs. While each of the EOI provisions might vary slightly in wording, these provisions generally contain all of the essential aspects of Article 26(2) of the OECD Model Tax Convention and specifically spell out to whom the information exchanged can be disclosed and the purposes for which the information can be used. The AMATM Agreement ensures confidentiality of the information provided in line with the standard as set out in Article 8 of the agreement.

#### *Domestic law*

209. All staff of the Uganda Revenue Authority are required to take an oath of secrecy on commencement of their official duties. Furthermore, Uganda's domestic law contains confidentiality requirements as set out in section 157 of the ITA. This section provides that tax officials are obliged to regard and deal with all documents and information which may come to their possession or knowledge in connection with the performance of their official duties under the act as secret and are obliged to not disclose any information or document except in accordance with the provisions in the act.

Section 157(3)(d) of the ITA provides an exception to this rule for the provision of information to the competent authority of the government of another country with which Uganda has entered into a DTC or a TIEA.

210. As such, documents and information related to EOI are treated as confidential pursuant to the provisions of Section 157(1) of the ITA and section 88(1) of the same Act which incorporates international agreements into Uganda's domestic law. As a result information which is received from a treaty partner cannot be divulged beyond the extent permitted under the international agreement. The penalty for breaching the confidentiality provision is a fine of up to 25 currency points (UGX 500 000 or USD 171) and/or imprisonment for a maximum term of one year.

211. Furthermore, section 88 of the ITA includes a provision that DTCs and TIEAs override domestic tax legislation. Therefore, if a DTC or TIEA establishes confidentiality requirements which are stricter than those set forth under the ITA, the DTC or TIEA will take precedence over domestic tax law.

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

212. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, background documents to such requests, and any other documents or communications reflecting such information.

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

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

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

214. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other listed secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many jurisdictions. However, communications between a client and an attorney or other admitted legal representative are, generally, only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative.

215. Where attorney-client privilege is more broadly defined it does not provide valid grounds on which to decline a request for exchange of information. To the extent, therefore, that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule.

216. The EOI agreements concluded by Uganda meet the standards for protection of rights and safeguards of taxpayers and third parties, which are provided in Article 26(3) of the OECD Model Tax Convention. That is, information which is subject to legal privilege; which would disclose any trade, business, industrial, commercial or professional secret or trade process; or which would be contrary to public policy, is not required to be exchanged.

217. Attorney-client privilege in Uganda is set out in the Advocates (Professional Conduct) Regulations S.I. 267-4 which came into force in 1977 under the Advocates Act Cap 267. These regulations provide in Rule 7 that “an advocate shall not disclose or divulge any information obtained or acquired as a result of his or her acting on behalf of a client except where this becomes necessary in the conduct of the affairs of the client, or otherwise required by law.” Although the provision is broad, the exception would ensure it is in line with the international standard. A further exception to the use of professional privilege exists in the access powers of the tax administration which are set out in section 132 of the ITA. The exception in section 132(5) provides that “[t]his section has effect notwithstanding any rule of law relating to privilege or the public interest in relation to the production of or access to documents.” As such, although the definition of attorney-client privilege

in Uganda is broad, the exceptions provided for in the regulations and in the access powers of the tax administration ensure that it is in line with the international standard.

218. In respect of its DTCs, Uganda relies on the guidance in the commentary of Article 26 of the OECD Model Tax Convention to determine circumstances where requests for exchange of information should be declined.

### Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

## 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)*

219. In order for exchange of information to be effective it needs to be provided in a timeframe which allows the 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.

220. There are no specific legal or regulatory requirements in place which would prevent Uganda 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.

221. As regards the timeliness of responses to requests for information, the assessment team is not in a position to evaluate whether this aspect is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

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

222. As regards EOI requests and provision of information, the competent authority under Uganda's EOI agreements and domestic laws is the Minister of Finance who has delegated this role to the Commissioner General of the URA. A review of Uganda's organisational process and resources will be conducted in the context of its Phase 2 review.

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

223. There are no specific legal and regulatory requirements in place which impose restrictive conditions on Uganda’s exchange of information practice. However, the assessment team is not in a position to evaluate whether this aspect is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

**Determination and factors underlying recommendations**

**Phase 1 determination**

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



## Summary of determinations and factors underlying recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities ( <i>ToR A.1</i> )		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	Nominees that are not subject to AML obligations are not required to maintain ownership and identity information in respect of persons for whom they act as legal owners.	An obligation should be established for all nominees to maintain relevant ownership and identity information where they act as the legal owners on behalf of any other persons.
	Although bearer shares cannot be issued, the issuance of share warrants to bearer is allowed by public companies. There are currently no legal requirements to identify the owners of share warrants to bearer in public companies.	Uganda should ensure the availability of ownership information in respect of bearers of share warrants in all cases.
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, but certain aspects of the legal implementation of the element need improvement.</b>	Other than for VAT purposes, there is no express requirement that companies, partnerships and trusts keep underlying documentation. The new Tax Procedures Code which is not yet in force in Uganda will create a legal basis requiring taxpayers to keep underlying documentation as required by the international standard.	Uganda should introduce consistent obligations for companies, partnerships and trusts to maintain underlying documents in all cases for a period of at least five years.

Determination	Factors underlying recommendations	Recommendations
Banking information should be available for all account-holders ( <i>ToR A.3</i> )		
<b>The element is in place.</b>		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) ( <i>ToR B.1</i> )		
<b>The element is in place.</b>		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information ( <i>ToR B.2</i> )		
<b>The element is in place.</b>		
Exchange of information mechanisms should allow for effective exchange of information ( <i>ToR C.1</i> )		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	Of the 13 EOI agreements signed by Uganda, nine are in force. The ratification of EOI arrangements can take several years.	Uganda should ensure the timely ratification of its EOI agreements.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners ( <i>ToR C.2</i> )		
<b>The element is in place.</b>		Uganda should continue to develop its EOI network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received ( <i>ToR C.3</i> )		
<b>The element is in place.</b>		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties ( <i>ToR C.4</i> )		
<b>The element is in place.</b>		
The jurisdiction should provide information under its network of agreements in a timely manner ( <i>ToR C.5</i> )		
<b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</b>		

## **Annex 1: Jurisdiction’s response to the review report<sup>9</sup>**

Uganda is grateful to several organizations and individuals such as the OECD, the Global Forum (GF), the African Tax Administration Forum (ATAF), the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) and the East African Community (EAC) which have all been instrumental in providing assistance both prior and during the peer review process. This has enabled advances in the field of exchange of information (EOI) and as a result Uganda set up an EOI Unit and developed a manual for EOI in line with international best practice.

Uganda is committed to ensuring that the legal and regulatory framework is in line with the international standard and pleased that many of the elements under review were found to be in place. We agree with the recommendations made both in respect to the elements in place and those that require strengthening.

In this regard, the peer review has coincided with a number of amendments to some of the Acts which are currently being processed by the relevant government agencies. These developments will effectively address the recommendations made.

Following this review, Uganda hopes to widen the scope for EOI through increasing treaty partners and ultimately strengthening tax compliance management.

Finally, we are grateful to the Global Forum Secretariat for giving us highly competent assessors who exhibited professionalism and dedication in ensuring that Uganda’s report is as accurate as possible.

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

## Annex 2: List of all exchange-of-information mechanisms in force

List of EOI agreements signed by Uganda as at April 2015, including 11 bilateral Double Tax Conventions (DTCs) and one multilateral Double Tax Convention. Uganda is a party to the EAC multilateral DTC signed on 30 November 2010, which provides for the necessary legal basis to enhance co-operation and EOI among the five revenue authorities under its Article 27. Furthermore, a “Memorandum of Understanding on the Exchange of Information on Tax Expertise and Other Related Matters” (MoU) was signed on 10 November 2010 by the five revenue authorities which provides for detailed rules and procedures for EOI on tax matters, in line with the 2002 OECD Model TIEA.

Uganda signed the African Tax Administration Forum Agreement on Mutual Assistance in Tax Matters (AMATM) on 26th March 2014. The AMATM Agreement has been signed and ratified by Lesotho, Mozambique and South Africa to date and it will enter into force 30 days after five African Tax Administration Forum member states submit their instruments of ratification. The AMATM Agreement is open to all ATAF members to sign.

	<b>Jurisdiction</b>	<b>Type of EOI arrangement</b>	<b>Date signed</b>	<b>Date entered into force</b>
1	Belgium	DTC	26 July 2007	Not in force
2	Burundi	EAC DTC	30 November 2010	Not in force
3	China, People's Republic of	DTC	11 January 2012	Not in force
4	Denmark	DTC	14 January 2000	8 May 2001
5	India	DTC	30 April 2004	27 August 2004
6	Italy	DTC	6 October 2000	21 January 2006
7	Kenya	EAC DTC	30 November 2010	Not in force
8	Lesotho	AMATM	15 May 2014	Not in force
9	Mauritius	DTC	19 September 2003	21 July 2004
10	Mozambique	AMATM	7 November 2014	Not in force



	<b>Jurisdiction</b>	<b>Type of EOI arrangement</b>	<b>Date signed</b>	<b>Date entered into force</b>
11	Netherlands	DTC	31 August 2004	10 September 2006
12	Norway	DTC	7 September 1999	16 May 2001
13	Rwanda	EAC DTC	30 November 2010	Not in force
14	South Africa	DTC	27 May 1997	9 April 2001
		AMATM	1 September 2013	Not in force
15	Tanzania	EAC DTC	30 November 2010	Not in force
16	United Kingdom	DTC	23 December 1992	21 December 1993
17	Zambia	DTC	24 August 1968	1 April 1964

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

### **Commercial laws**

Companies Act (2012)  
Cooperative Societies Act Cap 112 (1991)  
Business Names Registration Act Cap 109 (1918)  
Partnership Act Cap 114 (1950)  
Public Trustee Act Cap 161 (1937)  
Trustees Act Cap 164 (1954)  
Trustees Incorporation Act Cap 154 (1939)  
Uganda Registration Services Bureau Act Cap 201 (2004)

### **Financial sector laws**

Accountants Act Cap 266 (2013)  
Anti-Money Laundering Act (2013)  
Bank of Uganda Act Cap 51 (1993)  
Capital Markets Authority Act Cap 84 (1996)  
Financial Institutions Act (2004)  
Financial Institutions (Anti-Money Laundering) Regulations, 2010 statutory instrument No. 46 of 2010.  
Insurance Act Cap 213 (2011)  
Uganda Securities Exchange Listing Rules (2003)

**Taxation laws**

Income Tax Act Cap 340 (1997)

Tax Procedures Code Act (2014)

Uganda Revenue Authority Act Cap (1991)

**Miscellaneous**

Advocates Act Cap 267 (1970)

The Constitution of the Republic of Uganda (1995)

Judicature Act Cap 13 (1996)

Non-Governmental Organisations Act Cap 113 (1989)

The Ratification of Treaties Act Cap 204 (1998)

Uganda Registration Services Bureau Act Cap 210 (1998)



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

## PEER REVIEWS, PHASE 1: UGANDA

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

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

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

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

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

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

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