



Global Forum on Transparency  
and Exchange of Information for Tax Purposes



# SUPPLEMENTARY PEER REVIEW REPORT

Phase 2

## Implementation of the Standard in Practice

BRITISH VIRGIN ISLANDS



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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. In 2013, the Global Forum evaluated the British Virgin Islands for its implementation of the standard in practice. The British Virgin Islands was rated Non-Compliant overall. This supplementary report evaluates the progress made by the British Virgin Islands since then. It concludes that the British Virgin Islands is now rated Largely Compliant overall.

2. The Phase 2 report concluded that the British Virgin Islands was Compliant for elements A.3 (Availability of Banking Information), B.2 (Rights and Safeguards), C.1 (EOI Mechanisms), C.2 (Network of EOI Mechanisms), C.3 (Confidentiality) and C.4 (Rights and Safeguards), Partially Compliant for element A.1 (Availability of Ownership and Identity Information), and Non-Compliant for elements A.2 (Availability of Accounting Information), B.1 (Access to Information) and C.5 (Exchanging Information).

3. The legal and practical implementation of the standard for elements A.3, B.2, C.1, C.2, C.3 and C.4 have remained Compliant.

4. For element A.1, it was found in the Phase 2 report that company ownership information was not exchanged in some cases, notwithstanding that the registered agent of the company was required by law to have this information. The Phase 2 report also contained a recommendation to closely monitor whether the registered agents keep full ownership information on the owners of bearer shares. During the two-year review period of this supplementary report, company ownership information has been exchanged in more than 400 cases, including one case where bearer shares were involved. There is also an adequate system in practice of monitoring the obligations on registered agents to keep legal ownership information, including on the owners of bearer shares. The rating for element A.1 has therefore been upgraded to Compliant.

5. The Phase 2 report contained two recommendations under element A.2 for the British Virgin Islands to ensure that its legal framework requires that reliable accounting records are kept with respect to all relevant entities and arrangements. With the legal amendments made by the British Virgin Islands in April 2015, the legal framework is now in accordance with the standard. Nevertheless, the British Virgin Islands should monitor the

implementation of the new obligation on trustees to keep reliable accounting records in respect of trusts.

6. Also with respect to element A.2, the Phase 2 report noted that accounting information had not been provided to requesting jurisdictions in many cases. Although it was not clear whether this was due to the fact that the information was unavailable, it was found that no adequate system of monitoring of compliance with accounting record keeping requirements was in place. Although such a system has now been introduced by the British Virgin Islands, this system has limitations. Firstly, only a selection of records are reviewed. In addition, monitoring of the availability of accounting information in respect of companies that were struck off or dissolved less than five years prior to inspection is limited. It is therefore recommended that the British Virgin Islands enhances its monitoring of the availability of accounting records with respect to companies and limited partnerships.

7. In practice, more than half of the peers providing input were satisfied with the accounting information received in response to EOI requests received during the two-year review period. The remaining peers indicated that they had not received the requested accounting information in one or more cases. These cases, however, comprise a large number of EOI requests, which are all still pending (see, however, element C.5). Many pending cases relate to companies that have been struck off the Registry of Corporate Affairs or have otherwise been dissolved. Accounting information should be available for at least five years regardless of whether the company was struck off or otherwise dissolved, but almost 100 of EOI requests where this is the case are still pending. In these cases, the British Virgin Islands authorities have limited ways to enforce availability, as the information is generally kept outside the British Virgin Islands and no person in the British Virgin Islands can be held accountable. A recommendation has been made for the British Virgin Islands to ensure that company accounting records be available for a period of at least five years, notwithstanding that the company has been struck off or has otherwise been dissolved.

8. Balancing the improvements made and the issues that still exist, the rating for element A.2 has been upgraded to Partially Compliant.

9. Under element B.1, the Phase 2 report established that it was the practice to only serve a Notice on the registered agent of the company or limited partnership, regardless of whether the registered agent was obliged to keep the information sought. As a result, not all information was obtained in all cases. In addition, the British Virgin Islands had not used its compulsory powers in cases where non-compliance had occurred. Both practices have changed since the Phase 2 report, and the British Virgin Islands now seeks to obtain the information from a person that is legally required to keep it. Also, compulsory powers have been used and prosecutions for

non-compliance are underway. However, there are also many cases where the response to the Notice to Produce Information is still outstanding. These cases mostly relate to companies having been granted an extension to respond to the Notice. However, in a number of cases this has resulted in the situation that EOI requests are pending for a long time. It is recommended that the British Virgin Islands review its procedures to ensure that there are no delays in applying its compulsory powers where appropriate in these cases. Taking these developments into account, the rating for element B.1 has been upgraded to Largely Compliant.

10. For element C.5, the Phase 2 report concluded that the organisational process in place at that time was not adequate, as the information obtained was generally not checked before forwarding it to the requesting jurisdiction. As a result, the British Virgin Islands had exchanged incomplete and, in some cases, inaccurate information. Although the organisational process of the British Virgin Islands competent authority now seems adequate, several issues arose during the two-year review period of this supplementary report.

11. In the two-year review period, the British Virgin Islands received a total of 411 requests for information from 16 partners. This is a significant increase compared to the three-year review period of the Phase 2 report, and is mainly caused by the receipt of approximately 250 requests in early 2014 from one EOI partner. It is clear that this sudden increase in requests put the British Virgin Islands in a difficult situation. Although regular communication (i.e. acknowledgements of receipt, interim responses and requests for clarification) regarding these requests has been ongoing, in these circumstances a more collective approach (instead of the approach taken for any other individual EOI requests received) would have been more appropriate, and might have assisted in responding to a proportion of these requests. It is therefore recommended that the British Virgin Islands take a more tailored approach in handling EOI requests in circumstances which are not encountered on a day-to-day basis and are likely to result in longer response times.

12. Despite the efforts of the British Virgin Islands, many EOI requests received during the two-year review period have been pending for more than a year, including a significant percentage of the requests received in the second half of 2012 and in 2013.

13. Overall, when compared to the review period of the Phase 2 report, response times have increased and the number of pending cases is high, although it should be noted that the statistics in the Phase 2 report do not reflect the fact that a significant proportion of the responses sent by the British Virgin Islands at that time were incomplete or inaccurate. This is no longer the case, as confirmed by peer input. It can therefore be concluded that the quality of responses has improved but the timeliness has declined, although this has to be seen in the context of the spike in EOI requests



received in early 2014. A few peers did comment that the information was not always provided in a timely manner with respect to EOI requests sent in the two-year review period. Even though part of the delays is caused by reasonable steps taken by the British Virgin Islands to process the EOI requests, the long response times and the fact that many cases are still pending lead to the recommendation that the British Virgin Islands should ensure that it responds to EOI requests in a timely manner. On balance, the rating for element C.5 is now Partially Compliant.

14. As a result of this supplementary review, the British Virgin Islands rating for each of the 10 essential elements and its overall rating have been revised. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of the British Virgin Islands legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, the British Virgin Islands has been assigned the following ratings: Compliant for elements A.1, A.3, B.2, C.1, C.2, C.3 and C.4, Largely Compliant for element B.1, and Partially Compliant for elements A.2 and C.5. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for the British Virgin Islands is Largely Compliant.

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

## Introduction

### **Information and methodology used for the supplementary peer review of the British Virgin Islands**

16. The assessment of the British Virgin Islands legal and regulatory framework as well as its practical implementation made in this supplementary peer review report was prepared following a request pursuant to paragraph 60 of the Global Forum’s *Methodology for Peer Reviews and Non-member Reviews* (version adopted in November 2013). It considers recent changes to the legal and regulatory framework of the British Virgin Islands, as well as to the effectiveness of this framework in practice, based on the international standards for transparency and exchange of information as described in the Global Forum’s *Terms of Reference*.

17. The British Virgin Islands informed the Peer Review Group (a subsidiary body of the Global Forum) in July 2014 of the steps it had taken to address the recommendations made in its Phase 2 report. Progress was reported on elements A.1, A.2, B.1 and C.5 and a request for a supplementary review was made. On the basis of the progress reported, the Peer Review Group agreed that a supplementary review be launched.

18. The supplementary report takes the opportunity to review the implementation of all recommendations, whether progress was reported or not. Similarly, this report also reviews changes made to the British Virgin Islands legal and regulatory framework and relevant changes in the practical implementation of that framework since the Phase 2 report, which took into account the situation as at May 2013.

19. The supplementary report is based on information available to the assessment team, which included the laws, regulations, and exchange of information arrangements in force or effect as at 19 May 2015, as well as information supplied by the British Virgin Islands and partner jurisdictions. It follows the Phase 2 Report of the British Virgin Islands which was adopted and published by the Global Forum in July 2013.

20. The assessment was conducted by an assessment team which consisted of two expert assessors and one representative of the Global Forum Secretariat: Mr. Robert Gray, States of Guernsey Income Tax; Mr. Jean-Marc Seignez, Ministry of Economy and Finance of France; and Mr. Mikkel Thunnissen from the Global Forum Secretariat. The assessment team conducted an on-site visit in the British Virgin Islands on 9-10 December 2014.

21. The *Terms of Reference* break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses the British Virgin Islands legal and regulatory framework as well as the practical implementation of that 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. In addition, to reflect the Phase 2 component of the review, recommendations are made concerning the British Virgin Islands practical application of each of the essential elements and a rating of either: (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant is assigned to each element. An overall rating is also assigned to reflect the British Virgin Islands overall level of compliance with the standards.

22. An updated summary of determinations and factors underlying recommendations in respect of the 10 essential elements of the *Terms of Reference*, which takes into account the conclusions of this supplementary report, can be found at the end of this report.

## Overview of the British Virgin Islands

23. The Territory of the British Virgin Islands<sup>1</sup>, geographically located in the north of the Caribbean, consists of approximately sixty islands, islets and cays, twenty of which are inhabited. The largest island is Tortola, which is approximately 20 km long and 5 km wide, and on which the capital, Road Town, is situated. The total population of the British Virgin Islands is around 32 500 according to a 2014 estimate<sup>2</sup>, the vast majority of whom reside on Tortola.

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1. The name of the Territory is the “Virgin Islands”, but since 1917 the Territory has been universally referred to as the “British Virgin Islands” (or BVI) to distinguish the islands from the American Territory, the United States Virgin Islands.
  2. <https://www.cia.gov/library/publications/the-world-factbook/geos/vi.html>.

24. The GDP of the British Virgin Islands has been stable in recent years at just over USD 900 million. Tourism and other services industries are responsible for most of this amount.

25. The British Virgin Islands is one of the Overseas Territories of the United Kingdom. It is governed by a democratically elected National Assembly which comprises 13 elected members, the Speaker of the House and the Attorney General who is an *ex officio* member, and by a Cabinet presided over by a Governor, an appointee of the British Crown. The Governor sitting as the representative of the United Kingdom is responsible for external affairs, internal defence, security and the administration of the courts. The British Virgin Islands court system is part of the Eastern Caribbean court system which was established in 1967 and now has a specialist commercial court, the headquarters of which is located in the British Virgin Islands. The final court of appeal is the UK Privy Council.

26. The British Virgin Islands is a common law jurisdiction which derives its law from English common law and British Virgin Islands statutes, including Orders-in-Council made by the United Kingdom and extended to the British Virgin Islands.

27. Since the mid 1980s the British Virgin Islands has offered a wide range of financial services and now has a well-established financial services business. A well-known aspect of this business is company registration. The number of companies registered in the British Virgin Islands is impressive with almost 460 000 registered active companies as at December 2014 in a small economy.

28. The financial services industry is regulated by a number of different laws which ensure that service providers operate in accordance with the requirements of financial and regulatory standards, apply corporate governance procedures and that money laundering and terrorist financing are prevented. Persons carrying on financial services business in or from within the British Virgin Islands, are only allowed to do so if licensed by the Financial Services Commission (“FSC”). These regulated businesses are:

- Company management business: the formation of companies in the British Virgin Islands, providing registered agent and registered office services, providing directors or officers and providing nominee shareholders. Licenses are granted either under the Company Management Act or the Banks and Trust Companies Act.
- Trust business: acting as a professional trustee, protector or administrator of a trust or settlement; or managing or administering any trust or settlement. Licenses are granted under the Banks and Trust Companies Act.

- Banking business: accepting deposits of money and the employment of such deposits (e.g. by giving loans or making investments) for the account and the risk of the person accepting such deposits. Licenses are granted under the Banks and Trust Companies Act. There are currently seven licensed banks, holding approximately USD 2.5 billion in assets.
- Insurance business: undertaking liability under a contract of insurance to indemnify or compensate a person in respect of loss or damage, including life insurance business and reinsurance business. Licenses are granted under the Insurance Act.
- Financing business: providing credit (either as a business or in the course of another business) or leasing property to a resident in the British Virgin Islands. Licenses are granted under the Financing and Money Services Act.
- Money services business: money transmission services, cheque cashing services, currency exchange services, and the issuance, sale or redemption of money orders or traveller's cheques. Licenses are granted under the Financing and Money Services Act.
- Investment business: dealing in investments or arranging such deals, managing investments, providing investment advice, providing custodial or administration services with respect to investments and operating an investment exchange. Licenses are granted under the Securities and Investment Business Act.

29. The FSC is also the regulatory body which monitors all financial services businesses and has a wide range of enforcement powers in its regulatory toolkit including the power to impose fines or suspend or revoke licenses. Some monitoring tasks are shared with the Financial Investigation Agency. The British Virgin Islands provides the names of licensees on the website of the FSC ([www.bvifsc.vg](http://www.bvifsc.vg)).

30. The British Virgin Islands does not levy income tax from individuals or corporate entities. However, several other taxes are levied, such as payroll tax, property taxes, stamp duty and customs duties. Another important source of income for the British Virgin Islands government are the fees to obtain and maintain a license to conduct financial services and for incorporating and maintaining companies.

## Recent developments

31. Based on the outcomes of the thematic inspections carried out by the FSC on registered agents, the British Virgin Islands is currently evaluating the regime for the situation where a company is introduced to the registered agent by another service provider (“the introducer”), which could be located in another jurisdiction (“introduced business”). In these types of arrangements the relationship between the registered agent and the introducer is formalised by an agreement which permits the registered agent to request certain information from the introducer in relation to the company, which should be provided without delay. Although requirements already exist for the introducer to produce documents, it is envisaged that under the new regime the agreements between the registered agent and the introducer should contain specific requirements relating to how such documents are to be produced, the timing and form of any updates, and the termination of the relationship with the introducer. This should better ensure the availability of relevant information, including on the legal and beneficial owners of the company. All existing agreements would have to be updated when this new regime becomes applicable. It is expected that the new guidance on this issue will be issued by the FSC before the end of 2015.



## Compliance with the Standards

### A. Availability of information

#### Overview

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

33. The availability of company ownership information in the British Virgin Islands is mainly ensured by the obligation on the registered agents of these companies to keep the register of members, combined with the monitoring of this obligation by the FSC. Nevertheless, it was found that in the three-year review period of the Phase 2 report company ownership information was not exchanged in some cases, notwithstanding that the registered agent was required by law to have this information. During the two-year review period of this supplementary report, company ownership information was requested in more than 400 cases. As confirmed by peers, the register of members has been available and was exchanged, even in cases where the company itself was not active anymore. The recommendation that the British Virgin Islands should ensure that ownership information in respect of companies is available in all cases in practice has therefore been removed.



34. The Phase 2 report contained a recommendation to closely monitor whether the registered agents keep full ownership information on the owners of bearer shares. Since the introduction of this obligation in July 2012, the aspect of bearer shares has been a standard part of the on-site inspections of the registered agents, by the FSC, and no non-compliance has been detected. One EOI request in the two-year review period included ownership information with respect to bearer shares and this information was exchanged. Considering these developments as well as the fact that only a very limited and decreasing number of companies may issue bearer shares, the relevant recommendation has been removed.

35. No significant developments occurred with respect to partnerships and trusts. For all relevant entities and arrangements, it can be concluded that there is effective monitoring and enforcement in the British Virgin Islands of the obligations to keep ownership and identity information. Overall, the rating for element A.1 has been upgraded to Compliant.

36. With the amendments made to the relevant legislation in April 2015, which introduced among other things comprehensive obligations on general partnerships and trusts, all relevant entities and arrangements are now subject to clear obligations to keep reliable accounting records, including underlying documentation, for a period of at least five years. This means that the relevant Phase 1 recommendations can be removed. However, as the obligation for trustees has only very recently been introduced and approximately 40 000 trusts are managed from the British Virgin Islands, it is recommended that the British Virgin Islands monitor the implementation of this new obligation.

37. The Phase 2 report also noted that accounting information was not provided to requesting jurisdictions in many cases. Although it was not clear whether this was due to the fact that the information was unavailable, it was found that, except for records to be kept by entities that are subject to licensing with the FSC, no system of monitoring of compliance with accounting record keeping requirements was in place.

38. In practice, more than half of the peers providing input were satisfied with the accounting information received in response to EOI requests received during the two-year review period. The remaining peers indicated that they had not received the requested accounting information in one or more cases. These cases, however, comprise a large number of EOI requests, which are all still pending (see, however, element C.5). Many pending cases relate to companies that have been struck off the Registry of Corporate Affairs or have otherwise been dissolved. Where the strike off or dissolution occurred more than five years prior to the receipt of the request, there is no obligation for the British Virgin Islands under the *Terms of Reference* to have the information available. In all other cases, accounting information should be available, but to date information has been exchanged in approximately 55 cases only, while

almost 100 of these EOI requests are still pending. In these cases, the British Virgin Islands authorities have limited ways to enforce availability, as the information is generally kept outside the British Virgin Islands and no person in the British Virgin Islands can be held accountable. A recommendation has been made for the British Virgin Islands to ensure that company accounting records be available for a period of at least five years regardless of whether the company has been struck off or has otherwise been dissolved.

39. The monitoring of accounting record keeping obligations is carried out by the FSC through its inspections of licensed service providers. In respect of trusts, the service provider is typically the trustee which is expected to keep the trust accounting records. However, in the case of companies and limited partnerships, the accounting records are generally kept by the entity itself and the selection of records and the number of entities subject to review are limited. In addition, monitoring of the availability of accounting information in respect of companies that were struck off or dissolved less than five years prior to inspection is also limited. It is recommended that the British Virgin Islands enhance its monitoring of the availability of accounting records with respect to companies and limited partnerships.

40. Overall, clear improvements have been made since the Phase 2 report with respect to the availability of accounting records. Firstly, the British Virgin Islands amended its laws to strengthen the accounting record keeping requirements on all relevant entities and arrangements. Second, a system has been put in place to monitor compliance with accounting record keeping requirements, although it is recommended that this system needs enhancement. Third, accounting information has been exchanged in many cases in response to EOI requests received during the two-year review period, although it is the case that more than half of the EOI requests where accounting information was sought are still pending. A gap remains in the availability of accounting records of companies that were struck off the Registry of Corporate Affairs or that were otherwise dissolved less than five years previously. In addition, the system of monitoring the availability of accounting records has limitations. On balance, the rating for element A.2 has been upgraded to Partially Compliant.

41. No relevant changes occurred in the British Virgin Islands legal and regulatory framework to ensure that all records pertaining to the accounts as well as to related financial and transactional information is required to be kept by all banks. In practice, banking information has always been available with British Virgin Islands banks. It should be noted that in a number of cases, the banking information requested did not relate to an account with a British Virgin Islands bank. In these cases, the information was requested from another person within the territorial jurisdiction of the British Virgin Islands where possible (see also element B.1).

## 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.

42. The Phase 2 report concluded that the British Virgin Islands had a legal framework in place to ensure the availability of ownership and identity information for all relevant entities and arrangements. Nevertheless, it was found that in practice ownership information in respect of the shareholders of companies was not exchanged in some cases, notwithstanding that the person (the registered agent) who was requested to produce the information was required by law to have this information.

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

43. The British Virgin Islands Registry of Corporate Affairs holds details of all company registrations. As at December 2014, there were 457 971 active companies registered. The overwhelming majority of these companies are companies limited by shares, while less than 0.1% consists of companies limited by guarantee and unlimited companies. All companies are subject to the same registration conditions as well as the same supervision and monitoring mechanisms.

44. The British Virgin Islands authorities explained that recently the total lifespan of companies incorporated in the British Virgin Islands has increased and companies which are only set up for less than a year, usually for a single purpose, are less common than was previously the case. This has resulted in the total number of registered companies remaining stable in the two-year period between December 2012 and December 2014, even though the number of annual new company registrations has decreased from just over 64 000 in 2012 to almost 51 000 in 2014.

45. Companies in the British Virgin Islands are incorporated and registered through a service provider, which would typically be the (future) registered agent of the company. The registered agent must obtain customer due diligence information before establishing a business relationship, and is required, in any event, to keep the register of members of the company (see also below).

46. Companies must pay an annual registration fee to the Registry of Corporate Affairs. Under section 236 and Schedule I of the BVI Business Companies Act (BCA), the two main rates are USD 350 for companies authorised to issue 50 000 shares or less and USD 1 100 for companies authorised to issue more than 50 000 shares. Fees must be paid through an online process accessible by registered agents only. The system automatically calculates a 10% or 50% penalty for payments made up to two months late or more than two months after the due date respectively. In the years 2012-14,

on average 8.3% of the fee payments were made late and therefore incurred penalties. Whenever a company has not paid its fee in a timely manner, it is considered an “inactive” company until it either pays the outstanding fee and penalty, or is struck off.

47. A company is liable to be struck off the register when, amongst other things, the fee (and penalty) has not been paid by the due date (s. 213 BCA). The Registrar must then provide notice to the company before striking it off, and also publish a notice of intention to strike off in the publicly available official Gazette (s. 213 BCA). In practice, the time between the date that the annual fee becomes due and the time of strike off (if the fee and penalty have not been paid in the meantime), is generally five months. The company can be restored at any time up to seven years (this was ten years until June 2012) upon payment of all outstanding fees and penalties as well as a restoration charge (s. 216 BCA). After seven years, the company will be regarded as dissolved by operation of law (s. 216 BCA). It can then only be restored by Court Order on application, within ten years of dissolution, of a person that can establish an interest in having the company restored (s. 218 BCA). All registered details are kept in the system in the meantime. In the years 2012-14, a total of 146 698 companies were struck off for not having paid their fees, while 21 420 companies were restored. These figures showed an increase of 14.7% and 6.7% respectively over these years.

48. As mentioned in the Phase 2 report, all companies are required to identify a registered office and a registered agent in the British Virgin Islands upon registration, and any subsequent changes must be registered as well. The years 2013 and 2014 showed a slight increase in changes of registered agent compared to the previous years, with a little over 10 000 notices of change of registered agent filed with the FSC in each year (compared to around 7 500 per year in the three years prior), commonly accompanied by a change of the company’s registered office to the address of the new registered agent. This would usually happen for commercial reasons and affects around 2% of the companies on an annual basis.

49. The registered agent of a company may resign from its position. Circumstances under which a registered agent may resign include a failure to obtain updates on customer due diligence information, non-payment of the fees by the company and the loss of contact with the company. The number of resignations has decreased from 1 045 in 2012, to 572 in 2013 and to 537 in 2014. In approximately 85%-90% of these cases, the company has failed to appoint another registered agent and was struck off the register. The decrease in resignations is a result of the FSC encouraging registered agents to make a more active effort to restore the relationship with the company before resigning, so this now typically only happens where there is no co-operation from the company at all.

50. The FSC is the authority responsible for licensing registered agents and maintains a Register of Approved Registered Agents, recording the name of the approved registered agent, its address, the date when the registered agent was issued a license under the Company Management Act or the Banks and Trust Companies Act and when it obtained the approval to provide registered agent services, and in the case it ceased to be an approved registered agent the date on which this occurred and the reason. As at December 2014, there were 131 companies authorised by the FSC to offer registered agent services, compared to 145 licensees as at December 2012.

### *Legal framework to keep ownership information on companies*

51. The Phase 2 report identified two main ways in which the British Virgin Islands legal framework ensured the availability of company ownership information. Firstly, the company itself is required to keep a register of members containing all relevant details. The register or a copy thereof must be kept at the office of its registered agent.

52. Second, the registered agent must in its own right keep adequate and orderly records of anything that is required to be maintained under the BCA, which includes the register of members. The registered agent is also required to collect information on its clients, including the companies it acts as a registered agent for, under the Anti-Money Laundering Regulations (AMLR) and the Anti-Money Laundering and Terrorist Financing Code of Practice (CoP). This includes information on the ownership of the company. The registered agent has to retain all records and information referred to in this paragraph for at least five years after the end of its business relationship with the company.

53. In addition to these obligations, a company may elect to file a copy of its register of members with the Registry of Corporate Affairs. In 2013 and 2014, respectively 656 and 568 companies filed their register of members, representing less than 1.5% of the newly incorporated companies in those years compared to approximately 2% over the years 2010-12.

54. No material changes have occurred in this respect in the British Virgin Islands legal framework since the Phase 2 report. This also applies to the framework with respect to nominee shareholders and foreign companies.

### *Practical availability of ownership information on companies*

55. The availability of company ownership information is in practice monitored by the FSC through its supervision of the registered agents operating in the British Virgin Islands, which are required to keep full legal ownership information. The monitoring is carried out by the Compliance

Inspections Unit through both off-site monitoring and on-site inspections. Further details are described under A.1.6 below.

56. The Phase 2 report found that in the three-year review period of that report, ownership information in respect of the shareholders of companies was not exchanged in some cases, notwithstanding that the person (the registered agent) who was requested to produce the information was required by law to have this information. The report noted that this may have been partly due to the failure of the British Virgin Islands competent authority to check that the information was included in the response before transmitting it to the requesting jurisdiction and the failure to exercise enforcement measures. A recommendation was included for the British Virgin Islands to ensure that ownership information in respect of companies is available in all cases in practice.

57. During the two-year review period of this supplementary report, ownership information was sought in 95% of the cases, i.e. in almost 400 EOI requests. This included both legal and beneficial ownership information. In these cases, the British Virgin Islands competent authority has always requested the registered agent to produce the register of members and/or information regarding the beneficial owners of the company, as none of the companies involved had elected to file a copy of its register of members with the Registry of Corporate Affairs.

58. According to the British Virgin Islands authorities, and as confirmed by peers, the register of members (legal ownership information) has been available with the registered agents and has been exchanged, even in cases which are still pending because other information requested has not yet been exchanged. Information has also been available in situations where the business relationship between the registered agent and the company had already ended but the registered agent was still under an obligation to keep the records as it was ended less than five years previously. In many of these cases, the company was liquidated, dissolved or otherwise struck off the Register of Companies but the information on the last known registered agent could be retrieved and this registered agent was able to produce the register of members.

59. Three peers indicated that beneficial ownership information has not always been available, mostly where the company was introduced to the registered agent by a service provider from another jurisdiction (see also Introduction – Recent developments). It is noted that with respect to company ownership information, the *Terms of Reference* applicable to this supplementary report require jurisdictions to have information available on the legal owners, but they do not require that beneficial ownership information is available. The fact that beneficial ownership information was not available in all cases does therefore not lead to a recommendation and does not affect the rating of element A.1.

### *Conclusion*

60. The availability of company ownership information in the British Virgin Islands is mainly ensured by the obligation on the registered agents of these companies to keep the register of members, combined with the monitoring of this obligation by the FSC. Nevertheless, it was found that in the three-year review period of the Phase 2 report company ownership information was not exchanged in some cases, even though the registered agent was required by law to have this information.

61. During the two-year review period of this supplementary report, ownership information was requested in almost 400 cases. Legal ownership information (i.e. the register of members) has been available and was exchanged, even in cases where the company itself was not active anymore. This has been confirmed by peers. The availability of legal ownership information on companies does therefore not seem to be an issue, and the unavailability identified in the Phase 2 report may be attributed for the most part to other factors, as noted in the Phase 2 report. The recommendation that the British Virgin Islands should ensure that ownership information in respect of companies is available in all cases in practice has therefore been removed.

62. Whilst it should be noted that beneficial ownership information on companies has not been available in all cases during the two-year review period, the current *Terms of Reference* do not require the availability of this information.

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

63. British Virgin Islands companies may issue bearer shares if this is provided for in their memorandum. The Phase 2 report analysed the custodial arrangement that is in place in the British Virgin Islands to immobilise these bearer shares. Under the BVI Business Companies Act, all physical bearer shares and information that identifies the owner(s) of the bearer shares must be in the possession of either an authorised or a recognised custodian. Custodians can be established either in the British Virgin Islands or abroad.

64. In addition, since July 2012 the registered agent of a company that has issued bearer shares is also required to maintain full information on the owners of bearer shares. This information is available from the person depositing the share(s) or the custodian, who are required to submit the ownership information to the registered agent. The obligation on the registered agent to keep information on the owners of bearer shares ensures that this information is kept by a person within the territorial jurisdiction of the British Virgin Islands. As this obligation had only been recently introduced, the Phase 2 report recommended that the British Virgin Islands should closely monitor whether registered agents keep the information on the owners of bearer shares under the new requirement.



65. No changes have occurred in the legal framework with respect to bearer shares in the British Virgin Islands since the Phase 2 report.

### *Practical implementation*

66. The Phase 2 report stated that, as at December 2012, there were 539 companies incorporated in the British Virgin Islands authorised to issue bearer shares according to their memorandum. This number referred to both active companies as well as inactive companies. The number of active companies that may have issued bearer shares as at December 2012 was 323, and this has decreased to 275 as at December 2014, which represents 0.06% of all active companies registered. There are currently 13 persons approved by the FSC to act as authorised custodians, of which five are foreign authorised custodians, and 11 institutions are recognised by the FSC to act as recognised custodians.

67. The Compliance Inspections Unit of the FSC may conduct on-site inspections on authorised custodians to verify their compliance with relevant record keeping requirements. The Phase 2 report mentioned that on-site inspections were conducted with respect to 11 authorised custodians from 2010 to 2012. Since then, one additional on-site inspection on an authorised custodian was carried out in 2013, with satisfactory findings. Recognised custodians are not subject to inspections by the FSC, as these must be an investment exchange or a clearing organisation carrying on business in a jurisdiction that is a member of the Financial Action Task Force.

68. With the introduction of the direct obligation on the registered agent of the company to keep information on the owners of the bearer shares as well, the focus of the supervision of this aspect has shifted from the authorised custodians to the registered agents. As indicated in the Phase 2 report, the on-site inspections by the FSC on registered agents include, since the second half of 2012, a verification of compliance with the obligation to keep information on the owners of bearer shares where their client is a company that has issued bearer shares. To ensure this aspect is examined, the preparation of the on-site inspection includes a check by the inspection team of who the clients of the registered agent are, in order to identify any companies that may have issued bearer shares. Where this is the case, which occurred in all six on-site inspections in 2013, and in 15 on-site inspections in 2014, a sample of these files is always included in the on-site inspection to verify whether identity information on the owners of the bearer shares is kept. Since the introduction of the obligation on registered agents to keep this information, no non-compliance has been detected through these on-site inspections.

69. In the two-year review period, the British Virgin Islands received one EOI request which included ownership information of a company that



had issued bearer shares. This information was available and provided to the requesting jurisdiction.

### *Conclusion*

70. The British Virgin Islands legal framework regarding bearer shares was already found to be in place in the Phase 2 report and no changes in this respect have occurred since. However, the Phase 2 report did contain a recommendation to closely monitor whether the registered agents keep full ownership information on the owners of bearer shares, since this obligation had been introduced recently (July 2012) at that time. Since the introduction of this obligation, the aspect of bearer shares has been a standard part of the on-site inspections of the registered agents and no non-compliance has been detected. One EOI request in the two-year review period included ownership information with respect to bearer shares and this information was exchanged. Considering these developments as well as the fact that only a very limited and decreasing number of companies may issue bearer shares, the recommendation to closely monitor whether registered agents keep full ownership information on the owners of bearer shares has been removed.

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

71. The Phase 2 report found no issues with the British Virgin Islands legal framework with respect to partnerships or its practical implementation. No changes have occurred in the legal framework or its practical implementation affecting the availability of ownership information on partnerships in the British Virgin Islands since the Phase 2 report.

72. The number of limited partnerships registered in the British Virgin Islands has increased from 547 in December 2012 to 638 as at December 2014. The estimation of the number of 200 general partnerships registered with the Commissioner of Inland Revenue as mentioned in the Phase 2 report was not accurate, as further research revealed that as at December 2012 only 39 general partnerships were so registered. This number has increased to 50 as at December 2014.

73. As was the case during the three-year review period in the Phase 2 report, the British Virgin Islands has not received any EOI requests pertaining to information relating to the identity of partners in a partnership during the two-year review period of this supplementary report.

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

74. The Phase 2 report concluded that the British Virgin Islands legal framework with respect to trusts was in place and no concerns were raised in respect of its practical implementation. No changes have occurred in the legal framework or its practical implementation affecting the availability of ownership information on trusts in the British Virgin Islands since the Phase 2 report.

75. Trust business in the British Virgin Islands has not significantly changed since the Phase 2 report. There are still approximately 200 companies licensed to carry on trust business in the British Virgin Islands which together administer an estimated 40 000 trusts. The number of VISTA trusts, created under a specific law providing for a special opt-in trust regime for shares of British Virgin Islands companies, has increased from 1 155 as at December 2012 to 1 371 as at December 2014.

76. It was reported in the Phase 2 report that in the three-year review period covered, the British Virgin Islands received 14 EOI requests for identity information in respect of trusts, and that in two cases the information was not exchanged for reasons not necessarily related to the availability of information. The British Virgin Islands indicated that in the two-year review period of this supplementary report, only three EOI requests pertaining to trust identity information were received. These cases are under ongoing bilateral discussions between the British Virgin Islands and the peer that sent these requests.

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

77. The British Virgin Islands law does not allow for the establishment of foundations.

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

78. In the Phase 2 report it was found that enforcement provisions were in place with respect to all key requirements that ensure the availability of ownership and identity information. No material changes have occurred in the legal framework in this respect.

79. Except in the case of general partnerships and trusts with a non-professional trustee, the Phase 2 report noted that in the British Virgin Islands ownership and identity information must be in the possession of a licensed service provider (in addition to obligations placed directly on the entity). Service providers include registered agents of companies and limited partnerships as well as professional trust service providers. The assessment of the

monitoring and enforcement programme in the years 2010-12 with respect to these service providers led to the conclusion that effective enforcement of the obligations to keep ownership and identity information on relevant entities and arrangements is in place in the British Virgin Islands.

80. The FSC is responsible for the licensing and supervision of service providers in the British Virgin Islands. The FSC has approximately 150 officers across divisions including the Compliance Inspections Unit, Legal and Enforcement, Operations, Finance, IT, Investment Business, Banking and Fiduciary Services, Insurance, Insolvency, Policy, and the Registry of Corporate Affairs. All relevant FSC staff are given annual training in AML/CFT, training on the inspection process as well as other financial services matters.

81. The Compliance Inspections Unit co-ordinates the off-site monitoring and on-site inspections of licensed service providers. Since the end of 2012, the staff in this unit doubled to a total of 12 by December 2014. The main reasons for the staff increase are the general workload and the implementation of the 2012 revision of the anti-money laundering (AML) and counter-financing of terrorism (CFT) standards of the Financial Action Task Force (FATF). The increased number of staff is also intended to strengthen the overall monitoring and enforcement programme.

82. In 2013, a new approach to the monitoring and enforcement programme was developed. The main change consists of the introduction of thematic inspections in addition to the full on-site inspections of service providers. These thematic inspections focus on a specific compliance area and/or specific types of service providers, and allow for a more thorough examination of the compliance in that area and/or by that type of service provider. Because of the development of this new approach as well as the need to deal with the backlog of final reports to be drafted following on-site inspections carried out in 2012, only seven new on-site inspections were conducted in 2013 including the inspection of an authorised custodian as referred to under element A.1.2 (*Bearer shares*) above.

83. In 2014, the Compliance Inspections Unit carried out a total of 90 on-site inspections on service providers (compared to 40-60 on-site inspections each year during the period 2010-12). Half of these were full inspections covering all aspects of supervision, including compliance with licensing requirements, regulatory rules and AML/CFT legislation. The risk-based approach to these inspections has not changed since the Phase 2 report. Factors taken into account to determine which service providers should be subject to inspection include the number of clients, the nature of the business of the clients and previous non-compliance. In addition, the continuing off-site monitoring carried out by each regulatory division within the FSC may trigger an on-site inspection.

84. The other half of the on-site inspections carried out in 2014 were thematic inspections, focused on the compliance by trust and company service providers with the obligation to keep beneficial ownership information on their clients in general and zooming in on situations where clients were introduced by another service provider (“introduced business”). The service providers covered in these inspections included the 20 registered agents with the highest number of clients, which together are responsible for approximately 85%-90% of the company registrations.

85. The manner in which the full on-site inspections are carried out is generally the same as described in the Phase 2 report. In summary, and as far as relevant to ownership and identity information, the inspection team takes samples of ownership and identity information of the clients kept by the service provider. Determination of the sample size is based on criteria such as type of business and size of organisation. For example the on-site inspection would include reviewing information kept on end-user clients, trust clients, clients who utilise bearer shares, clients to whom nominee director and shareholder services are offered, as well as clients with which the business relationship has already ended (for example because the company was struck off). For each one of these types/categories of clients separate sample sizes of files are reviewed. Depending on the outcome of the risk assessment, the sample size of clients/files reviewed could range from 30 to 200. In addition, where irregularities are found during the inspection, more files will be checked.

86. A similar approach was followed during the 2014 thematic inspections on beneficial ownership and introduced business, using sample sizes ranging from 20 to 40 clients/files. Where significant non-compliance was detected in the thematic inspection, the service provider has been scheduled for a full on-site inspection in 2015.

87. Following the inspection, the Compliance Inspections Unit reports to the Enforcement Committee, which decides on the appropriate action to be taken. The inspection reports assign ratings to the different compliance areas similar to the approach of the FATF. In most cases where non-compliance is detected, the service provider is first given two to six weeks to rectify this non-compliance. This is found to be sufficient in the majority of the cases. Where the service provider does not rectify the non-compliance within the prescribed time limit, the Enforcement Committee may take further enforcement actions.

88. The statistics on enforcement actions taken by the FSC show that in the years 2012-14 a total of 685 enforcement actions were taken, ranging from imposing an administrative penalty (approximately 50 such penalties have been applied) to the revocation of a license (there have been more than 30 such cases). The total amount of penalties levied in this period was USD 1 123 100. Other examples of enforcement actions taken by the FSC from 2012 to 2014 include 21 warning letters for various contraventions,

22 public statements alerting the public of entities that are not licensed, 21 cease and desist orders to entities carrying on unauthorised business and 13 directives to comply with specific FSC instructions. Specific non-compliance relating to insufficient customer due diligence and record keeping, including failure to keep comprehensive and up-to-date ownership and identity information, has led to the imposition of penalties in 15 cases in the years 2012-14.

89. Compared to the period 2010-12 as reviewed in the Phase 2 report, the period 2012-14 (2012 is included in both periods) shows a doubling of the number of enforcement actions and a significant increase in the total amount of penalties levied. The latter is mainly due to an increase of the maximum penalty amounts in the legislation in 2012 (administrative penalties may now be imposed up to USD 75 000 in certain cases), resulting in higher penalties being imposed. The increase in enforcement actions in general may be attributed to the higher number of on-site inspections in 2014, half of which were thematic inspections focusing on specific issues.

*Conclusion*

90. Service providers are required to keep ownership and identity information on relevant British Virgin Islands entities. Since the Phase 2 report, the British Virgin Islands has strengthened its monitoring and enforcement programme on these service providers with the introduction of thematic inspections while maintaining the full on-site inspections covering all areas with obligations service providers must comply with. A doubling of the staff at the FSC has facilitated this. No significant non-compliance with ownership and identity record keeping requirements was detected in the years 2012-14, and where such non-compliance did exist, appropriate enforcement actions have been taken. It can therefore be concluded that there is effective monitoring and enforcement of the obligations to keep ownership and identity information on relevant entities and arrangements in the British Virgin Islands.

**Determination and factors underlying recommendations**

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

Phase 2 rating	
Partially Compliant.	
Factors underlying recommendations	Recommendations
During the three-year review period (1 July 2009 until 30 June 2012), ownership information in respect of the shareholders of companies was not exchanged in some cases, while the person (the registered agent) who was requested to produce the information was required by law to have this information.	The British Virgin Islands should ensure that ownership information in respect of companies is available in all cases in practice.
The obligation on the registered agent of a company that has issued bearer shares to keep full ownership information on the owners of these bearer shares has been recently introduced.	The British Virgin Islands should closely monitor whether registered agents keep full ownership information on the owners of bearer shares where their client is a company that has issued such shares.

## A.2. Accounting records

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

### *General requirements (ToR A.2.1), Underlying documentation (ToR A.2.2) and 5-year retention standard (ToR A.2.3)*

91. The Phase 2 report concluded that some obligations were in place for all relevant entities and arrangements to keep accounting records, but two deficiencies existed in the British Virgin Islands legal and regulatory framework. Firstly, it was found that there were no consistent obligations for general partnerships and trusts to keep reliable accounting records, including underlying documentation, for a period of at least five years. Second, the report noted that the requirements on companies and limited partnerships to keep underlying documentation do not specify the type of underlying documentation to be kept, which could result in an uneven application of the obligation to keep underlying documentation. These deficiencies resulted in the determination that element A.2 was in place, but certain aspects of the legal implementation of the element needed improvement.

92. In addition, the Phase 2 report noted that accounting information was not provided to requesting jurisdictions in many cases, leading to a rating

of element A.2 of Non-Compliant. Although it was not clear whether this was due to the fact that the information was unavailable, it was found that, except for records to be kept by entities that are subject to licensing with the FSC, no system of monitoring of compliance with accounting record keeping requirements was in place. Also, the Phase 2 report stated that a number of accounting record keeping obligations had only been introduced recently and were therefore untested in practice.

### *Legal and regulatory framework*

93. Following earlier amendments made in 2012, the British Virgin Islands further amended its laws in April 2015 to strengthen the accounting record keeping requirements. Firstly, the Mutual Legal Assistance (Tax Matters) Act (“MLAA”) and the Partnership Act were amended to provide guidance on the types of underlying documentation to be kept by companies and limited partnerships. It is now clear that this includes “invoices, contracts and similar documentation” (section 5A(5)(c) MLAA and section 81(3)(a) Partnership Act). The recommendation related to this issue has therefore been removed.

94. Second, the Partnership Act was amended to include an obligation for general partnerships to keep accounting records, including underlying documentation, for a period of at least five years. Section 81 of the Partnership Act, holding an obligation for partnerships to keep accounting records that are sufficient to show and explain the partnership’s transactions and will, at any time, enable the financial position of the partnership to be determined with reasonable accuracy, now also applies to general partnerships. To that end, a definition of the term “partnership” was added to section 2 of the Partnership Act which comprises a general partnership, a limited partnership or any other partnership formed under the laws of the British Virgin Islands. Also, section 85A was added to the Partnership Act to provide for a penalty for wilful contravention of the requirement to keep reliable accounting records. Each partner who wilfully contravenes the obligation will be liable to a penalty of USD 100 per day.

95. Third, the Trustee Act was amended and, similar to the amendment of the Partnership Act, now includes an explicit obligation for trustees to keep accounting records, including underlying documentation, for a period of at least five years (section 2A of the Trustee Act). Trustees failing to comply with this obligation are liable on summary conviction to a fine not exceeding USD 100 000 or to imprisonment for a term not exceeding five years (s. 2A(5) Trustee Act). This obligation also applies to trustees of VISTA trusts, as no exception is included in the British Virgin Islands Special Trusts Act.

96. The obligations to keep accounting records in respect of companies, partnerships and trusts are now all aligned and cover all aspects, including an obligation to keep underlying documentation and to keep all documentation



for a period of at least five years. Penalties for non-compliance are also provided for. This means that the relevant Phase 1 recommendations can be removed. As the obligation for trustees has only very recently been introduced and approximately 40 000 trusts are managed from the British Virgin Islands, it is recommended that the British Virgin Islands monitor the implementation of this new obligation.

### *Practical availability of accounting records*

97. Generally, accounting records do not have to be provided to the British Virgin Islands authorities on a regular basis. The obligation to keep accounting records lies with the relevant entity or, in case of a trust, with the trustee. Companies and limited partnerships may keep their accounting records either at the office of their registered agent (for companies) or their registered office (for limited partnerships), or at another location. In practice, accounting records for companies and limited partnerships are almost always kept outside the British Virgin Islands. With respect to professionally managed trusts, the accounting records are mostly kept within the British Virgin Islands at the office of the British Virgin Islands trustee, which would be a licensed trust service provider.

### Monitoring of compliance

98. Monitoring of compliance with accounting record keeping requirements is done through inspections by the FSC of licensed service providers, i.e. the registered agents of the companies and limited partnerships, as well as the trust service providers. Since 2014, on-site inspections of registered agents include a check of whether the accounting records of a sample of companies and limited partnerships (the clients of the registered agent) are kept at the office of the registered agent and if not, whether the location of the accounting records is documented. The 2014 full on-site inspections, approximately 45 in total, confirmed that the accounting records of companies and limited partnerships are almost always kept at a location outside the British Virgin Islands. In these cases, the FSC asks the registered agent to produce a copy of the latest balance sheet and, if available, other financial statements on a sample of companies and, where applicable, limited partnerships (no statistics were kept on the number of entities included in the sample for the period covered by this supplementary review). These records are typically produced very quickly where they relate to an active entity.

99. The current system of monitoring the availability of accounting records with respect to companies and limited partnerships has only recently been introduced and has limitations. Firstly, only a selection of records is reviewed. This selection is mostly limited to the most recent balance sheet,



and would for example not include underlying documentation, and would also not include records from earlier years, although the British Virgin Islands authorities have indicated that where appropriate further checks will be made.

100. Second, the monitoring does not comprehensively cover companies that were struck off or otherwise dissolved less than five years prior to the inspection. Even though a selection of such companies may be targeted for inspection, the accounting records are not kept within the British Virgin Islands and neither the registered agent nor the FSC has the power, in practice, to enforce their production. In some cases, the contact between the registered agent and the individuals behind the company has been lost or the last known directors would simply not respond to a request to produce records. As described under element A.1.1, almost 150 000 companies were struck off in the years 2012-2104 for not having paid the annual fee to the Registry of Corporate Affairs. This is a significant number, both in real terms and compared to the normal population of active companies, and the monitoring of the availability of accounting records with respect to these companies is limited.

101. Considering the two factors described above, it would be difficult for the British Virgin Islands authorities to build a comprehensive picture of the degree of compliance. It is therefore recommended that the British Virgin Islands enhance its monitoring of the availability of accounting information with respect to companies and limited partnerships.

102. Before 2014, the FSC on-site inspections already included a check of whether the service provider kept adequate accounting records for its own business, and transaction records with respect to the transactions of its clients in which the service provider was involved (for AML/CFT purposes). Generally, the FSC found such records to be present and adequate. In respect of trust service providers acting as the trustee of a trust, this check would usually already have encompassed accounting records of the trust, as the trustee can be expected to be involved in the transactions of the trust. In addition, the trustee has a general obligation under common law to keep the accounting records of the trust (*Pearse v. Green* (1819) 37 E.R. 327 at 329 and *Re Tillot* [1892] 1 Ch. 86), although it is not clear whether this obligation ensures that reliable accounting records are available in all cases.

103. Under the current system for on-site inspections, the availability of accounting records of the trusts managed by the trust service provider is more explicitly checked, and it will be further enhanced in light of the recent changes to the Trustee Act. In addition, in the few EOI requests where trust accounting information was requested, this information has been available. However, as the checks on the availability of trust accounting records have only recently been enhanced and will be further brought in line with recent changes to the Trustee Law, the British Virgin Islands is recommended to monitor its oversight in this respect.

## Practical experience

104. During the two-year review period of this supplementary report, accounting information was sought in approximately 375 EOI requests. In all but one case the information related to a British Virgin Islands company. As described in the Phase 2 report, accounting information was previously only requested from the registered agent of the company, which has no legal obligation to keep the information resulting in many cases where the accounting information was not exchanged. Since July 2012, the British Virgin Islands competent authority requests the company to produce the accounting records through the procedures described under element B.1.

105. More than half of the peers providing input indicated that they have received accounting information in all cases in a satisfactory manner. The other peers indicated that, although accounting information was received in some cases, they have not received accounting information in one or more cases. The input of these peers suggests that there may be two main issues: (i) full financial statements have not been available, and (ii) the company for which records were sought had been struck off the Registry of Corporate Affairs.

106. In total, more than 200 of the 375 EOI requests where accounting information was sought, are still pending (see, however, element C.5). Although a large number of these requests relate to struck off or dissolved companies (see below), it also includes more than 100 EOI requests relating to active companies. The British Virgin Islands authorities indicated that they are trying to obtain the information in these cases and that cases of non-compliance of active companies (for struck off companies no person in the British Virgin Islands can be held accountable) will be considered for prosecution (however, see also under B.1.4).

## Financial statements

107. The *Terms of Reference* require that the available accounting records should allow for the preparation of financial statements. However, where financial statements are requested in an EOI request, there is no obligation on the requested jurisdiction to have such statements produced if they do not already exist, in particular where the domestic law of that jurisdiction does not require financial statements to be prepared. It may be expected that any accounting records from which financial statements could be prepared should be exchanged in these cases.

108. The British Virgin Islands law ensures the availability of reliable company accounting records but does not require companies to prepare financial statements. Where financial statements are indeed not prepared, the British Virgin Islands would therefore not be expected to exchange these but

other available accounting records (correctly explaining all transactions and enabling the financial position to be determined with reasonable accuracy) should be available.

109. Two peers specifically indicated that they have received financial statements as requested during the two-year review period. In other cases where financial statements were requested, other accounting information was exchanged. This includes documentation to prove ownership of assets, creation of liabilities and evidence of monetary and non-monetary transactions, as well as copies of invoices and contracts. The British Virgin Islands indicated that the cases where no accounting information at all was exchanged, either related to companies that were no longer active (see immediately hereafter) or related to companies against which prosecution has been initiated (see element B.1.4).

### Companies that were struck off or dissolved

110. In approximately 215 EOI requests during the two-year review period, accounting information was requested on a British Virgin Islands company that was no longer active because it had been dissolved or struck off the Registry of Corporate Affairs. These cases can be divided into two categories:

- The company was struck off or dissolved more than five years prior to the receipt of the EOI request. In these cases, there is no requirement under the *Terms of Reference* for the British Virgin Islands to have this information available, as the retention period which should be ensured is (at least) five years. Nevertheless, according to the British Virgin Islands authorities, no EOI request has been declined (or partially declined) in this regard without having established that the information is not available. The number of cases in this category is approximately 70.
- The company was struck off or dissolved less than five years prior to the receipt of the EOI request, and accounting information is requested in respect of (accounting) periods less than five years prior to the receipt of the request during which the company was still in existence. In these cases, the *Terms of Reference* require accounting information to be available to the British Virgin Islands authorities notwithstanding that the company was struck off or dissolved. The number of cases in this category is (approximately) 145.

111. Most of the cases involving companies that were struck off or dissolved less than five years prior to the receipt of the EOI request, include a request for accounting information in respect of (accounting) periods more **and** less than five years prior to the receipt of the request, for example from 1997-2013. The British Virgin Islands has so far not provided accounting information in most of these cases.

112. In total, in around 31% (approximately 66 cases) of the 215 cases the accounting information has been found to be available and was exchanged, as confirmed by peers, which include at least 10 cases related to companies that were struck off or dissolved more than five years prior to the receipt of the EOI request. In another 26% (approximately 55 cases) of the 215 cases, it was established by the British Virgin Islands that the accounting information was not available. Although the majority of these requests relate to companies that were struck off or dissolved more than five years prior to the receipt of the EOI request, it also includes at least 10 cases where the accounting information should have been available under the *Terms of Reference*.

113. In the remainder of the cases (approximately 94), the British Virgin Islands is still making efforts to establish the availability of the accounting information. However, these cases have generally been pending for more than a year and in some cases for two or three years. One difficulty that arose was the unresponsiveness of the director(s), who would typically be outside the British Virgin Islands, which may have been caused by the contact details no longer being valid (in particular where the company had been struck off a long time ago) or by an unwillingness to co-operate. In some cases, the former director(s) responded that the records were not available. As noted under element B.1, a struck off or dissolved company can no longer be prosecuted for failing to produce accounting records. The former director(s) may only be subject to prosecution where gross neglect or fraud can be proven, which would not usually be the case, and then only within the jurisdiction. This means that even in cases where accounting records may still exist, they may not be available to the British Virgin Islands authorities. The authorities also have limited ways to enforce production of the records in the case of struck off or dissolved companies, which is also caused by the fact that the information is generally kept outside the British Virgin Islands and no person in the British Virgin Islands can be held accountable.

114. Where the accounting records are related to a period less than five years prior, these should be available regardless of the company being struck off or dissolved. It is clear from peer input and practical experience that these records are in practice often not readily available in the British Virgin Islands, and in some cases may not be available at all. It is therefore recommended that the British Virgin Islands ensure that company accounting records be available in practice for a period of at least five years notwithstanding that the company has been struck off or has otherwise been dissolved.

### *Conclusion*

115. With the amendments made to the relevant legislation in April 2015, all relevant entities and arrangements are now subject to clear obligations to keep reliable accounting records, including underlying documentation, for a

period of at least five years. This means that the relevant Phase 1 recommendations can be removed. However, as the obligation for trustees has only very recently been introduced and approximately 40 000 trusts are managed from the British Virgin Islands, it is recommended that the British Virgin Islands monitor the implementation of this new obligation.

116. In practice, the availability of accounting information in response to EOI requests received during the two-year review period shows mixed experience. More than half of the peers providing input were satisfied with the accounting information received. The remaining peers indicated that they had not received accounting information in one or more cases. These cases, however, add up to more than 200 EOI requests, which are all still pending (see, however, element C.5). Approximately 100 of these requests relate to active companies, and the British Virgin Islands is trying to obtain this information (please note the issues raised under element B.1.4).

117. The other pending cases relate to companies that have been struck off the Registry of Corporate Affairs or have otherwise been dissolved. Where the strike off or dissolution occurred more than five years prior to the receipt of the request, there is no obligation for the British Virgin Islands under the *Terms of Reference* to have the information available; this is the case for 70 EOI requests. In all other cases, accounting information should be available, but to date information has been exchanged in approximately 55 cases only, while almost 100 of these EOI requests are still pending (see also elements C.1 and C.5). In these cases, the British Virgin Islands authorities have limited ways to enforce availability, as the information is generally kept outside the British Virgin Islands and no person in the British Virgin Islands can be held accountable. It is recommended that the British Virgin Islands ensure that company accounting records are available for a period of at least five years notwithstanding that the company has been struck off or has otherwise been dissolved.

118. The monitoring of the availability of accounting records is carried out by the FSC through its inspections on licensed service providers. In respect of trusts, the service provider is typically the trustee which is normally expected to keep the trust accounting records. However, in the case of companies and limited partnerships, the service provider is only required to have a record of the location of the accounting records, the accounting record keeping obligation being on the entity itself. The selection of records that are being reviewed is therefore limited. In addition, monitoring of the availability of accounting information in respect of companies that were struck off or dissolved less than five years prior to inspection is also limited. It is recommended that the British Virgin Islands enhance its monitoring of the availability of accounting records with respect to companies and limited partnerships.

119. Overall, clear improvements have been made since the Phase 2 report. Firstly, the British Virgin Islands amended its laws to strengthen the accounting record keeping requirements on all relevant entities and arrangements, which are now in accordance with the international standard. Second, a system has been put in place to monitor compliance with accounting record keeping requirements, although it is recommended that this system needs enhancement. Third, accounting information has been exchanged in many cases in response to EOI requests received during the two-year review period, although it is also the case that a significant number of the EOI requests where accounting information was sought are still pending. A gap remains in the availability of accounting records of companies that were struck off the Registry of Corporate Affairs or that were otherwise dissolved less than five years prior. In addition, the system of monitoring the availability of accounting records has limitations. On balance, the rating for element A.2 has been upgraded to Partially Compliant.

#### 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>	
<del>There are no consistent obligations for general partnerships and trusts to keep reliable accounting records, including underlying documentation, for a period of at least five years.</del>	<del>The Virgin Islands should ensure that reliable accounting records, including underlying documentation, are required to be kept by general partnerships and trusts for a period of at least five years in all cases.</del>
<del>The requirements on companies and limited partnerships to keep underlying documentation do not specify the type of underlying documentation to be kept, which could result in an uneven application of the obligation to keep underlying documentation.</del>	<del>The Virgin Islands should clarify its requirements that underlying documentation must be kept in respect of companies and limited partnerships.</del>

Phase 2 rating	
<b>Non-Partially Compliant.</b>	
Factors underlying Recommendations	Recommendations
<p>Accounting information was not provided to requesting jurisdictions in many cases. It is not clear whether this was due to the fact that the information was unavailable. However, it is the case that, except for records to be kept by entities that are subject to licensing with the FSC, no system of monitoring of compliance with accounting record keeping requirements is in place, which may cause the legal obligations to keep accounting records to be difficult to enforce. In addition, a number of accounting record keeping obligations have only been introduced recently and are therefore untested in practice.</p>	<p>The British Virgin Islands should ensure that its monitoring and enforcement powers are sufficiently exercised in practice to support the legal requirements which ensure the availability of accounting information in all cases.</p>
<p><u>Explicit monitoring of the availability of trust accounting records has only started recently. In addition, a new obligation for trustees to keep reliable accounting records, including underlying documentation, for a period of at least five years in respect of trusts of which they are the trustee, has recently been introduced.</u></p>	<p><u>The British Virgin Islands should monitor the implementation of the new obligation on trustees to keep reliable accounting records in respect of trusts.</u></p>
<p><u>The system of monitoring the availability of accounting records in respect of companies and limited partnerships has only recently been introduced and has limitations. Firstly, only a selection of records is reviewed, which does not normally include underlying documentation. In addition, monitoring of the availability of accounting information in respect of companies that were struck off or dissolved less than five years prior to inspection is limited.</u></p>	<p><u>The British Virgin Islands should enhance its monitoring of the availability of accounting records with respect to companies and limited partnerships.</u></p>



Phase 2 rating	
Non-Partially Compliant.	
Factors underlying Recommendations	Recommendations
<p><u>Accounting information has not been readily available in practice in a number of cases related to companies that were struck off the Registry of Corporate Affairs or that were otherwise dissolved less than five years previously, and almost 100 EOI requests are still pending in this regard. In these cases, the British Virgin Islands has limited means of enforcing availability, as the information is generally kept outside the British Virgin Islands and no person in the British Virgin Islands can be held accountable.</u></p>	<p><u>The British Virgin Islands should ensure that company accounting records are available for a period of at least five years in all cases, notwithstanding that the company has been struck off or has otherwise been dissolved.</u></p>

### A.3. Banking information

Banking information should be available for all account-holders.

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

120. The Phase 2 report did not raise any concerns with respect to the availability of banking information. Banks must keep all relevant financial and transactional information as well as account files under the Regulatory Code and AML/CFT legislation. These obligations have not changed since the Phase 2 report.

121. The banking industry in the British Virgin Islands has not significantly changed since the Phase 2 report. There are still seven licensed banks operating in or from within the British Virgin Islands. Five of these banks are branches of overseas banks, while there is also a local retail bank and a bank operating under a Restricted Class I Banking License conducting inter-company banking. The total assets held in these banks are around USD 2.5 billion and their liabilities are around USD 2 billion.

122. As licensed service providers, all banks are subject to the monitoring and enforcement programme as described under element A.1.6 (*Enforcement provisions to ensure availability of information*) to check their compliance



with record keeping obligations. During on-site inspections, the FSC takes samples of customer files to verify whether sufficient information is being kept. Banks are subject to an on-site inspection at least every two years. In 2012, all banks were subjected to an on-site inspection. Because 2013 was used to develop a new approach to the monitoring and enforcement programme, the new two-year cycle started in 2014. Three banks were subject to an on-site inspection in 2014, while the other banks are scheduled for 2015.

123. The FSC reported that the compliance rate is generally high, and where deficiencies were detected these were resolved immediately. Deficiencies detected did not relate to the non-keeping of information on their client's accounts. In 2013, one cease and desist order was imposed in connection with issues unrelated to record keeping, and this order was lifted after the issues were resolved. It has not been necessary to take any other enforcement actions on banks in 2013 or 2014.

124. During the review period of this supplementary report, banking information was requested in almost 70% of the EOI requests, i.e. in approximately 300 cases. Most peers providing input confirmed that they received the information requested, but three peers indicated that banking information was not provided in all cases. The British Virgin Islands authorities explained that in these cases (representing more than 75% of the 300 cases) no bank account with a British Virgin Islands bank could be identified, and that the EOI partners were informed of this fact. Where possible, the banking information (relating to accounts held outside the British Virgin Islands) is then requested from another person within the territorial jurisdiction of the British Virgin Islands, and exchanged when obtained (see under element B.1.1 (*Ownership and identity information – Banking information*)). No case has occurred where a British Virgin Islands bank did not have (all) information available on accounts held by that bank.

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

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

## B. Access to information

### Overview

125. 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 ownership and identity and accounting information with respect to all relevant entities. This section of the report examines whether the British Virgin Islands legal and regulatory framework provides its competent authority access powers that cover all relevant persons and information, and whether the practical implementation of this framework is effective.

126. The Phase 2 report found that, since July 2011, the British Virgin Islands competent authority has had a broad general power to obtain any information held by any person believed to be in possession or control of that information, without any further conditions. This power is still in place, and has been exercised by serving a Notice to Produce Information on the perceived information holder.

127. However, it was established that during the three-year review period of the Phase 2 report it had been the practice to only serve a Notice on the registered agent of a company or limited partnership, regardless of whether the registered agent was obliged to keep the information sought. As a result, not all information was obtained in all cases, particularly where it concerned accounting information. It was recommended that the British Virgin Islands ensure that the access powers of its competent authority are used effectively to obtain all information included in an EOI request. In addition, the British Virgin Islands had not used its compulsory powers during the three-year review period of the Phase 2 report when non-compliance had occurred. It was therefore recommended that the British Virgin Islands ensure that compulsory powers are applied where appropriate.

128. Since the start of the two-year review period of this supplementary report, July 2012, the practice of only serving a Notice to Produce Information

on the registered agent of a company has been abandoned and information is now sought from the person that is required or reasonably believed to keep it.

129. Efforts are made to obtain the information even if the competent authority is unsuccessful in the first instance. For example, it is often found, by asking all relevant banks, that no bank account appears to exist in the British Virgin Islands. In these cases, the British Virgin Islands competent authority seeks to obtain this information, even in relation to accounts held outside the British Virgin Islands, from another person within its territorial jurisdiction (usually the perceived account holder), if possible. Also, where the company name referred to in the EOI request did not appear in the Registry of Corporate Affairs (which only occurred in relation to requests of one EOI partner), the competent authority informed the requesting jurisdiction and asked for additional information which may help in identifying a British Virgin Islands company.

130. The compulsory powers of the British Virgin Islands were expanded in September 2014 to include the possibility of imposing a penalty or imprisonment on summary conviction (in addition to conviction on indictment), which is a relatively fast process that could be used for straightforward non-compliance with a Notice. In practice, and in contrast with the review period of the Phase 2 report, these powers have been used in relation to EOI requests received in the two-year review period of the supplementary report. This shows the willingness of the British Virgin Islands competent authority to take the necessary steps to obtain the requested information. However, there are many cases where the response to the Notice to Produce Information is still outstanding. These cases mostly relate to companies having been granted an extension to respond to the Notice. However, in a number of cases this has resulted in the situation that EOI requests are pending for a long time. It is recommended that the British Virgin Islands review its procedures to ensure that there are no delays in applying its compulsory powers where appropriate in these cases.

## **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).

131. The Financial Secretary or a person or authority designated by him is the competent authority of the British Virgin Islands. On 9 July 2012, the International Tax Authority (ITA) was established and given the day-to-day responsibility for exchange of information. Before that date, the execution of requests for information was delegated to the Commissioner of Inland Revenue.

***Ownership and identity information (ToR B.1.1), Accounting records (ToR B.1.2) and Use of information gathering measures absent domestic tax interest (ToR B.1.3)***

132. Since July 2011, the British Virgin Islands competent authority has had broad powers, derived from the Mutual Legal Assistance (Tax Matters) Act (MLAA), to obtain any information held by any person, including other government authorities, believed to be in possession or control of that information. These powers are not subject to the British Virgin Islands requiring such information for its own tax purposes, and have not changed since the Phase 2 report.

133. In addition to the powers of the competent authority, the FSC may also use its powers to obtain information for EOI purposes since July 2011 under section 32 of the Financial Services Commission Act. A general Memorandum of Understanding between 14 British Virgin Islands authorities was signed in April 2014 to formalise the co-operation and information exchange between them for different purposes, which specifically includes tax matters (Article 2.2 of the Memorandum of Understanding). In practice, the British Virgin Islands competent authority has so far not needed to request the FSC to use its own access powers to gather information for EOI purposes. In any case, the need for involvement of the FSC has been reduced since the ITA has obtained direct online access to the Registry of Corporate Affairs, which holds certain key information on British Virgin Islands companies. This has allowed the British Virgin Islands competent authority to quickly obtain and exchange this information, most importantly incorporation documents. It should be noted that all EOI requests require obtaining other information as well, so no EOI request received in the two-year review period could be fully responded to with information from the Registry of Corporate Affairs only.

*Gathering information in practice*

134. The Phase 2 report noted that in the vast majority of cases the information, or at least part of the information, requested in an EOI request is in the possession of a third party, i.e. not the competent authority or another government authority. As almost all EOI requests are related to a British Virgin Islands company, this third party is usually either the registered agent of that company or that company itself. A Notice to Produce Information is served on the person thought to be in possession of the information. During the three-year review period of the Phase 2 report it was the practice to only serve a Notice on the registered agent of the company or limited partnership, regardless of whether the registered agent was obliged to keep the information sought. As a result, not all information was obtained in all cases, particularly where it concerned accounting information. It was recommended

that the British Virgin Islands ensures that the access powers of its competent authority are used effectively to obtain all information included in an EOI request.

135. With the establishment of the ITA as the British Virgin Islands competent authority in July 2012, the practice of not using the available access powers to their full extent has changed. The new practice of gathering information starts when an administrative assistant logs the incoming EOI request in the database. At that time, the assistant also searches the Register of Companies where the request relates to a British Virgin Islands company. Relevant information, which includes details of the registered agent and registered office, the company's status (active, in liquidation, dissolved or struck off), and incorporation documents, is printed and put into the file.

136. With respect to approximately 20-25 EOI requests from one EOI partner, the company name as identified in the EOI request did not appear in the Registry of Corporate Affairs. The ITA officer in collaboration with the FSC, where the Registry of Corporate Affairs is held, then searched the register for any similarly named companies. In approximately 60% of the cases similar company names were found, but it was often not clear that there was any connection to the EOI request.

137. Whether or not a similar company name was found, the British Virgin Islands competent authority asked the requesting jurisdiction if it held additional information (see also element C.1), such as the registration number, the year of incorporation and/or the name of the registered agent. This has resulted in identifying the correct company in many instances. It should be noted that non-publicly available information on companies with a similar name as identified in the EOI request can often not be provided without additional information from the requesting jurisdiction, as information should not be provided unless there is a sufficiently clear connection with the EOI request and it is not unusual for companies to have similar names yet have no links with one another.

138. In all cases, the ITA officer asks whether the person(s) identified in the EOI request is/are known to the Inland Revenue Department and if so, whether they have any of the requested information in their possession. A response usually comes back on the same day or within a few days. In no cases so far has the subject of the request been known to the Inland Revenue Department.

139. With respect to companies, once the registered agent and the registered office of the company have been identified through the information in the Register of Companies, a Notice to Produce Information is served on the registered agent. The information that is usually requested includes the register of members and the list of directors of the company, as well as beneficial

ownership information if this is part of the EOI request. Depending on the EOI request, a Notice is simultaneously served on the company. This happens when:

- information is requested by the requesting jurisdiction which is likely to be in possession of the company and not in the possession of another person in the British Virgin Islands (this is typically the case with accounting records); and
- the requesting jurisdiction has not asked the British Virgin Islands to refrain from contacting the taxpayer(s) under investigation.

140. In many cases where the requesting jurisdiction has asked the British Virgin Islands to refrain from contacting the taxpayer(s) under investigation or examination, it is likely that this taxpayer is a director of the British Virgin Islands company and would be the natural person who receives the Notice. It is therefore necessary to determine whether this is the case before serving a Notice on the company. This determination can be made once the list of directors has been received from the registered agent. If the taxpayer is indeed a director of the British Virgin Islands company, the competent authority will inform the requesting jurisdiction and ask them whether or not to proceed with obtaining the information from the company. If the taxpayer is not a director of the British Virgin Islands company, a Notice will be served on the company immediately.

141. The Notice on the company is in the first instance served at the address of its registered office, which is generally also the address of its registered agent. The Notice is served in a sealed envelope with a cover letter asking the registered agent to forward it to the directors of the company. Where follow up is required, for example because no response is received, this is done directly with the directors where contact details have been provided by the registered agent. Where information must be obtained from companies that are no longer active and have been struck off the register, the Notice is sent to the last known director(s). Notices served on the registered agent and to the registered office of the company are hand-delivered, as they are located in the British Virgin Islands. Notices served on the company directly are sent by courier. Proof of receipt is kept in the file of the ITA.

142. More than 95% of the EOI requests received have related to information on British Virgin Islands companies. Where this is not the case, the Notice will similarly be served on the person believed to be in possession of the information, which may be a trust service provider or a bank. In no cases during the two-year review period did the British Virgin Islands competent authority have to obtain information from an individual acting in a personal capacity (i.e. other than a licensed service provider or director of a company).

143. The standard time for a person to provide the information requested as given in the Notice is ten working days. The person served the Notice may ask for an extension. In practice, registered agents generally comply with the Notice within the initial timeframe. Extensions are often requested by companies and sometimes by banks, and are usually granted for another ten working days if the reason for asking the extension is reasonable (for example, when many accounting records need to be compiled). The deadlines given in the Notices and the extensions granted do not impede effective exchange of information.

144. To further ensure that a Notice is being fully complied with, it is standard practice to ask for an affidavit to accompany the information being provided to the British Virgin Islands competent authority. Through this affidavit the person states under oath that, to the best of his/her knowledge, the information provided to the British Virgin Islands competent authority is true and/or factually correct. Where so requested by the requesting jurisdiction, the affidavit is sent along with the information. In other cases, it is kept in the file of the ITA.

### *Banking information*

145. In relation to banking information, the competent authority sends the Notice directly to the bank identified in the EOI request. In more than 95% of the cases during the two-year review period, however, the bank was not identified by the requesting jurisdiction. In these cases, the British Virgin Islands competent authority usually uses a two-step approach. First, a Notice is served on the five banks that are branches of overseas banks. If a bank account is indeed maintained by the person identified in the EOI request in the British Virgin Islands, it is considered most likely that it will be maintained at one of these banks, as the other two banks are a local retail bank and an inter-company bank.

146. In almost all cases where this approach was taken, the five banks have responded that the person identified did not have a bank account with them. As this person is often a British Virgin Islands company, the second step then is to request bank information from the company itself (which may involve non-British Virgin Islands banks). This step is taken even where the EOI request only refers to a bank account in the British Virgin Islands. While it may be that the company does not maintain an account with a British Virgin Islands bank, it can be expected that a bank account may exist with a bank in another jurisdiction. This step is not taken where the bank account is not associated with a person within the territorial jurisdiction of the British Virgin Islands.

147. Three peers have indicated that banking information was not provided in all cases. The British Virgin Islands authorities indicated that in all of these cases no account with a bank in the British Virgin Islands was found.



Any banking information therefore would have to come from another person (usually the perceived account holder) within the territorial jurisdiction of the British Virgin Islands. Where possible, the information was requested from such other person but was not always obtained. It should be noted that where the banking information is requested from the account holder, it can be considered part of the account holder's accounting records. In addition, the information available with the account holder is not necessarily the same as the information available with the bank. For example, the bank may have more detailed information regarding transactions and account opening information, and it may keep information for a longer time than the account holder.

148. Cases where the banking information was not obtained from the account holder mostly involve British Virgin Islands companies which had been struck off and the information was no longer available or no contact at all could be established with the former directors. These are cases where other accounting records may also not have been available. Finally, it should be noted that no clear obligation to keep all underlying documentation existed in the British Virgin Islands legislation before April 2015. In any case, the fact that banking information was not obtained in these cases cannot be attributed to a lack of general access powers or an inefficient way of using these powers.

### *Conclusion*

149. The British Virgin Islands competent authority has had broad access powers to obtain information for EOI purposes. Since the establishment of the ITA in July 2012, which coincides with the start of the two-year review period, these powers have been used in an effective manner. The practice of only serving a Notice to Produce Information on the registered agent of a company, even where the record keeping obligation was on the company itself, has been abandoned and information is now sought from the person that is required to keep it.

150. Most EOI requests relate to information on British Virgin Islands companies and ask for a combination of ownership and identity information, accounting information and banking information. Ownership and identity information is generally obtained from the company's registered agent, while accounting records are usually obtained from the company itself. With respect to banking information, it is often found, by asking all relevant banks, that no bank account exists in the British Virgin Islands. In these cases, the British Virgin Islands competent authority nevertheless seeks to obtain this information from another person within its territorial jurisdiction where possible.

151. In the practical process of obtaining information, due consideration is given to the wishes of the requesting jurisdiction, in particular where it



asked the British Virgin Islands to refrain from contacting the taxpayer under investigation or examination. Where a company name does not appear in the Registry of Corporate Affairs, the competent authority informs the requesting jurisdiction and asks whether it holds additional information which may help in identifying a British Virgin Islands company.

152. In conclusion, the process of obtaining information put in place in July 2012 allows the British Virgin Islands competent authority to effectively obtain the information pursuant to an EOI request. Not only are the most efficient ways sought to obtain the information in the first instance, other possible avenues are also pursued. Therefore, the recommendation that the British Virgin Islands should ensure that its access powers are used effectively to obtain all information included in an EOI request has been removed.

### *Compulsory powers (ToR B.I.4)*

153. It was stated in the Phase 2 report that a person that fails to comply with a Notice to Produce Information without lawful or reasonable excuse is liable on summary conviction to a fine not exceeding USD 100 000 or to imprisonment for a term not exceeding five years, or both (s. 5(6) MLAA). It will be decided by the Court whether a person indeed does have a lawful or reasonable excuse. Contrary to what was stated in the Phase 2 report, the penalty for failing to comply with a Notice could in fact only be imposed on conviction on indictment, not on summary conviction.

154. In order to have a wider range of penalties available, the MLAA was amended in September 2014 and now includes the possibility for penalties to be imposed on summary conviction. Any person who, without lawful or reasonable excuse, fails to comply with a Notice or any other request made by the competent authority commits an offence and is now liable (s. 5(6) MLAA):

- (i) on summary conviction to a fine not exceeding USD 5 000 or to imprisonment for a term not exceeding two years, or both; or
- (ii) on conviction on indictment, to a fine not exceeding USD 100 000 or to imprisonment for a term not exceeding five years, or both.

155. Offences where a penalty can be imposed on summary conviction fall within the jurisdiction of the Magistrate's Court, while offences where a penalty can be imposed on conviction on indictment fall within the High Court's jurisdiction. The process before the Magistrate's Court generally takes less time (generally between 3 months and 14 months) and would be used for cases of straightforward non-compliance. The process to prosecute on indictment, which could take between 10 months and 3 years, would be chosen where the nature of the non-compliance is more serious, for example in a case of gross negligence or fraud.

156. As described in the Phase 2 report, the authorities may also apply to a Magistrate for a search warrant where a person fails to comply or only partially complies with a Notice, or where issuing a Notice could result in the documents or information being removed, tampered with or destroyed (s. 6(1) MLAA). For a search warrant to be issued without further inquiry, it shall be sufficient that the competent authority give a certificate that the issue of a search warrant is required for the purposes of complying with a request. It was concluded that the British Virgin Islands has sufficiently strong compulsory powers to compel the production of information. With the addition of the possibility to have penalties imposed on summary conviction, the range of compulsory powers has become more broad as well.

### *Use of compulsory powers in practice*

157. In practice the British Virgin Islands had not used its compulsory powers during the three-year review period of the Phase 2 report, while non-compliance had occurred. It was therefore recommended that the British Virgin Islands ensure that compulsory powers are applied where appropriate in cases where information is not produced.

158. As noted in the Phase 2 report, the Notice to Produce Information indicates the penalties that apply under the MLAA. The template Notice has been updated to be in conformity with the MLAA as amended in September 2014. Where a person does not produce the information, the ITA would normally first contact the person again to explain that the information should be produced. Where the person still does not comply, the matter will be referred to the Director of Public Prosecutions for further processing, and input from the ITA is requested where necessary.

159. With respect to EOI requests received in the two-year review period of this supplementary report, initial non-compliance with a Notice by licensed service providers (registered agents, banks, etc.) occurred in less than 10% of the cases. In all of these cases, the information was either produced after an intervention by the ITA or it was established that the information was not and did not have to be in the possession of the service provider.

160. Initial compliance with a Notice by companies occurred in approximately 50% of the cases, meaning that all of the requested information was provided within the deadline of 10 days. In another 20% of the cases, the company asked for an extension of the deadline and provided the information at a later stage. In 30% of the cases, no response at all was received from the company within 10 days. In respect of the 232 EOI requests that are still pending at the date of this supplementary review, this 30% represents approximately 480 Notices (many EOI requests relate to multiple companies). So far, information has been obtained under no more than approximately 50 of these Notices.

161. Out of these 480 Notices, approximately 140 relate to companies that have been struck off or otherwise dissolved. As these companies do not legally exist anymore, they cannot be prosecuted. The former director(s) may only be subject to prosecution where gross neglect or fraud can be proven, which would not usually be the case. The British Virgin Islands is making a lot of effort to obtain the information, in most cases by asking the last known directors or secretaries to provide the information.

162. In another 270 cases, the recipient of the Notice was granted an extension of the time to produce the information, in most cases for one or more of the following reasons:

- the extent of the information requested was voluminous;
- the periods asked for were old periods so more time was needed to gather the information;
- the company was seeking legal advice on their obligation to respond to the Notice; and/or
- the Notice was not received in time because of where the holder of the information was located.

163. In relation to the approximately 20 remaining Notices, the British Virgin Islands has either started formal prosecution (three cases), has already made the decision to do so and is in the final stages of preparation (six cases), or is obtaining legal advice from the Attorney-General. It is noted that there is no intermediate step between granting an extension and referring a case for prosecution, such as the possibility to impose an administrative penalty.

164. Before reaching the stage of prosecution, the ITA usually first follows up informally with both the registered agent of the company and, where contact details are available, also with the directors of the company. In a number of cases, in particular where the company is still active, the informal follow up process resulted in the information being provided.

165. Where the non-compliance persists, formal steps are taken towards prosecution. In regular circumstances, the competent authority would refer the case for prosecution after a refusal to provide information after receipt of the initial Notice and one formal follow-up letter. However, before this stage is reached, it has been the case for a number of EOI requests received in the two-year review period that the company challenged the Notice on the basis of a “lawful or reasonable excuse” based on section 5(6) MLAA. In these cases, the British Virgin Islands authorities respond to explain whether the challenge is considered lawful or reasonable and why, and this has taken some time. This part of the process may result in the British Virgin Islands authorities obtaining the information without formal prosecution, but where non-compliance persists the case will still be referred for prosecution. It should be noted that

where the British Virgin Islands authorities have determined that the recipient of the Notice has not demonstrated a legal or reasonable excuse for not providing the information, the matter is immediately referred for prosecution.

166. The number of 270 Notices (relating to an estimated 132 EOI requests) which are outstanding and where an extension of time to respond has been granted by the British Virgin Islands authorities, is high. As indicated above, the usual extension granted would only be another ten working days, unless there is a legal element in the reason for the extension (such as asking for legal advice). However, in most cases it seems that the response to the Notice has been outstanding for much longer. Although the reasons for the extensions are reasonable, this should not result in unreasonably long delays, which then result in the situation that EOI requests are pending for a long time.

167. It should be noted that in many of these cases, a Notice could not be issued before responses were received from the British Virgin Islands EOI partners on their request for clarification (see element C.1). Nevertheless, several months have passed in most of these cases since the clarification was received. In addition, not in all cases has there been a need to wait for the Notice to be issued, and still a significant amount of time seems to have passed since its issuance, while the usual extension granted would only be another ten working days. It is therefore recommended that the British Virgin Islands review its procedures to ensure that there are no delays in applying its compulsory powers where appropriate in these cases.

168. In addition to the cases where prosecutions have been initiated, in six cases the competent authority has applied for a search warrant. In these cases, the directors of the company on file with the registered agent, which were also the persons identified in the EOI requests, claimed that they or their spouse had no link with the British Virgin Islands whatsoever. The ITA decided to apply for a warrant to search the premises of the registered agent to establish whether such a link could be demonstrated through the documentation collected by the registered agent as part of their customer due diligence procedures. The warrants were all granted within one day of application. The searches were successful and revealed links between the persons identified in the EOI request and British Virgin Islands companies. This information has been exchanged with the requesting jurisdiction.

### *Conclusion*

169. The British Virgin Islands legal and regulatory framework contains sufficient possibilities to address (potential) non-compliance with a Notice to Produce Information, including monetary penalties, imprisonment and search and seizure powers. In contrast with the review period of the Phase 2 report, these powers have been used in relation to EOI requests received

in the two-year review period of the supplementary report. This shows the willingness of the British Virgin Islands competent authority to take the necessary steps to obtain the requested information. However, there are many cases where the response to the Notice to Produce Information is still outstanding. These cases mostly relate to companies having been granted an extension to respond to the Notice. However, in a number of cases this has resulted in the situation that EOI requests are pending for a long time. It is recommended that the British Virgin Islands review its procedures to ensure that there are no delays in applying its compulsory powers where appropriate in these cases.

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

170. The Phase 2 report found that even though the powers of the competent authority do not apply to items subject to legal privilege, the information covered by legal privilege in the British Virgin Islands is in accordance with the standards. There are also no other secrecy provisions which would prevent information from being obtained. No material changes have occurred in the British Virgin Islands legal framework since the Phase 2 report in this respect. In practice, no person has ever invoked legal privilege to refuse the production of information for EOI purposes.

**Determination and factors underlying recommendations**

Phase 1 determination	
The element is in place.	
Phase 2 rating	
<b>Non-Largely Compliant.</b>	
Factors underlying Recommendations	Recommendations
In the three-year review period, the British Virgin Islands competent authority's practice was to serve a Notice to Produce Information only on the registered agent of the company or limited partnership, regardless of whether the registered agent was obliged to keep the information sought. This resulted in the British Virgin Islands competent authority not always obtaining all information.	The British Virgin Islands should ensure that the access powers of its competent authority are used effectively to obtain all information included in an EOI request.

Phase 2 rating	
Non-Largely Compliant.	
Factors underlying Recommendations	Recommendations
<p>The British Virgin Islands has not applied any compulsory powers in the three-year review period, even where information that should have been in the possession of the person who was served the Notice to Produce Information was in fact not produced in some cases.</p> <p><u>Although with respect to several EOI requests received in the two-year review period, the British Virgin Islands has applied its compulsory powers, there are many cases where the response to the Notice to Produce Information is still outstanding, and in a number of cases this has resulted in the situation that EOI requests are pending for a long time.</u></p>	<p>The British Virgin Islands should <u>review its procedures to ensure that there are no delays in applying compulsory powers are applied</u> where appropriate in cases where information is not produced.</p>

## B.2. Notification requirements and rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

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

171. As described in the Phase 2 report, there is no requirement in the British Virgin Islands domestic legislation that the taxpayer under investigation or examination must be notified of a request. In addition, the template Notice to Produce Information emphasises that the particulars of the Notice must be kept confidential. Any person breaching such confidentiality is subject (i) on summary conviction to a fine not exceeding USD 5 000 or to imprisonment for a term not exceeding two years, or both, or (ii) on conviction on indictment, to a fine not exceeding USD 100 000 or to imprisonment for a term not exceeding five years, or both (s. 9(2) MLAA).

172. As noted in the Phase 2 report, a decision to issue a Notice to Produce Information may be subject to judicial review. One application for judicial review has been made by a British Virgin Islands company in relation

to an EOI request received in the two-year period under review. The application was granted by the Court. However, the case was withdrawn following subsequent submissions, and the company provided the requested information to the ITA. This information was vetted and exchanged with the EOI partner.

**Determination and factors underlying recommendations**

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

## C. Exchanging information

### Overview

173. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. This section of the report examines whether the British Virgin Islands has a network of information exchange arrangements that would allow it to achieve effective exchange of information in practice. It also assesses the procedures and processes in place in the competent authority to handle incoming EOI requests.

174. Since the Phase 2 report, the number of EOI partners has substantially increased to 76 as a result of the conclusion of three more TIEAs and the extension of the multilateral Convention on Mutual Administrative Assistance in Tax Matters to the British Virgin Islands.

175. In the two-year review period of this supplementary report, the British Virgin Islands received a total of 411 requests for information from 16 partners, 25 of which were received from seven jurisdictions that had not sent EOI requests to the British Virgin Islands before. This is a significant increase compared to the three-year review period of the Phase 2 report, and mainly caused by the receipt of approximately 250 requests in early 2014 from one EOI partner. The handling of this sudden increase in EOI requests received firstly presented a considerable challenge in terms of resources. The British Virgin Islands competent authority had to hire four additional staff and train them at short notice. While new staff were being trained, the ITA continued processing requests and provided interim responses where possible.

176. Nevertheless, it is clear that the receipt of approximately 250 requests at once in early 2014 from one EOI partner put the British Virgin Islands in a difficult situation. Although regular communication (i.e. acknowledgements of receipt, interim responses and requests for clarification) regarding the individual EOI requests received from that EOI partner has been ongoing, in these circumstances a more collective approach (instead of the approach taken for any other individual EOI requests received) would have been more appropriate, and might have assisted in responding to a proportion of these requests. It is therefore recommended that the British Virgin Islands take a more tailored



approach in handling EOI requests in circumstances which are not encountered on a day-to-day basis and are likely to result in longer response times.

177. Despite the efforts of the British Virgin Islands, many EOI requests received during the two-year review period have been pending for more than a year, including a significant percentage of the requests received in the second half of 2012 and in 2013.

178. Overall, when compared to the review period of the Phase 2 report, response times have increased and the number of pending cases is high, although it should be noted that the statistics in the Phase 2 report do not reflect the fact that a significant proportion of the responses sent by the British Virgin Islands at that time were incomplete or inaccurate. This is no longer the case, as confirmed by peer input. It can therefore be concluded that the quality of responses has improved but the timeliness has declined, although this has to be seen in the context of the spike in EOI requests received in early 2014. Without that spike, the timeliness would be better than as reflected in the table above, although still worse than in the three-year review period of the Phase 2 report. In any case, a few peers did comment that the information was not always provided in a timely manner with respect to EOI requests sent in the two-year review period. Even though part of the delays is caused by reasonable steps taken by the British Virgin Islands to process the EOI requests, the long response times and the fact that many cases are still pending lead to the recommendation that the British Virgin Islands should ensure that it responds to EOI requests in a timely manner.

179. The British Virgin Islands asked clarifications to the requesting jurisdiction in more than 100 cases. In the majority of the cases, clarifications were necessary to obtain the information requested in a manner that was in accordance with the EOI agreements, the British Virgin Islands domestic legislation and the EOI requests, most notably whether information could be obtained from the taxpayer under investigation while the requesting jurisdiction had indicated to refrain from contact. Peer input confirms that the requests for clarification were generally justified.

## C.1. Exchange of information mechanisms

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

180. The Phase 2 report noted that the British Virgin Islands had concluded 23 Tax Information Exchange Agreements (TIEAs), which all contain provisions sufficient to allow the British Virgin Islands to exchange all foreseeably relevant information. In addition, a Double Taxation Convention (DTC) with Switzerland is in force (this is an extension of a former DTC (1954) between the United Kingdom and Switzerland), which does not allow for information exchange in accordance with the international standard.

181. Since the Phase 2 report, the British Virgin Islands has signed three more TIEAs, with Japan, Korea and Poland. In addition, the multilateral Convention on Mutual Administrative Assistance in Tax Matters (“the Multilateral Convention”) has been extended to the British Virgin Islands with an entry into force date of 1 March 2014. This has substantially expanded the number of EOI partners, which now amounts to 76 and includes Switzerland (see Annex 2).

### ***Other forms of exchange***

182. The British Virgin Islands has endorsed the Standard for Automatic Exchange of Financial Account Information in Tax Matters (the AEOI Standard). It has committed to making the first exchanges under the AEOI Standard in 2017, and to that end it has signed a multilateral competent authority agreement under the Multilateral Convention. Amendments to the MLAA have already been made to create a domestic legal basis for exchanges under the AEOI Standard. It should be noted that the British Virgin Islands already exchanges certain information on an automatic basis with the European Union Member States on the basis of bilateral agreements equivalent to the European Union Savings Directive since 2012.

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

183. The Phase 2 report concluded that the British Virgin Islands TIEAs signed at that time all allowed for exchange of information in accordance with the foreseeably relevant standard. This is also the case for the TIEAs signed since the Phase 2 report as well as for the Multilateral Convention. The Phase 2 report also noted that, since July 2012, the ITA has used a checklist to verify that all information to establish the foreseeable relevance of the request has been provided by the requesting jurisdiction. This checklist was updated in June 2013 to better reflect the requirements in the British Virgin Islands TIEAs. Where requests under the Multilateral Convention are received, a new field will be created to include a review of the reservations made to the Multilateral Convention by the requesting jurisdiction. In cases where the information is not sufficient for the ITA to determine the foreseeable relevance of the request, the ITA will contact the requesting jurisdiction to ensure that this information is provided.

184. During the review period of the Phase 2 report, the British Virgin Islands never asked for clarifications regarding the foreseeable relevance of a request and no EOI request was declined on that basis. This has been different in the two-year review period of this supplementary report. Approximately half of the peers that provided input to this review indicated that the British Virgin Islands has asked them for clarification, although only two peers mentioned that clarifications were sought in more than one case. In total, clarifications have

been requested in approximately 115 cases in relation to EOI requests received during the two-year review period, typically regarding the following issues:

- insufficient or no information at all was provided in the EOI request about the reasons why it was believed that there was a link between the taxpayer under examination or investigation and the British Virgin Islands entity on which information was requested. This was particularly the case where information was requested regarding more than one British Virgin Islands entity and such a link was only made between the taxpayer under examination or investigation and one of the British Virgin Islands entities – generally no or very little further background information was provided in these cases (approximately 20 cases);
- whether the EOI request related to a criminal or civil case, as this was not indicated by the requesting jurisdiction in cases where the information requested related to taxable years before the entry into force of the relevant TIEA, and the TIEA only provides for information exchange for criminal tax matters in these circumstances (approximately 5 cases);
- the name of the company on which information was requested did not appear in the Registry of Corporate Affairs, so additional identification information was sought (between 20-25 cases, see also under element B.1); and
- whether the British Virgin Islands should proceed with obtaining the information, as it could only be obtained from the taxpayer under investigation, in cases where the requesting jurisdiction had asked the British Virgin Islands to refrain from contacting this person (approximately 75 cases, see also under element B.1). Some of these cases also included a request for banking information without an indication of the bank where accounts would be held.

185. With respect to the first issue mentioned in the list above, without a sufficiently clear link between the taxpayer under examination or investigation and the British Virgin Islands entity on which information was requested, the EOI request cannot be deemed foreseeably relevant, necessitating further clarification by the requesting jurisdiction. Similarly, in respect of the other three issues mentioned in the list above, clarifications were considered necessary to obtain the information being requested in a manner that was in accordance with the EOI agreements, the British Virgin Islands domestic legislation and the EOI requests.

186. From the information provided by the British Virgin Islands, it can be concluded that the instances where the British Virgin Islands asked for clarification were justified. This has also been confirmed by the EOI partner that was the recipient of most of the requests for clarification. It should be

noted that the British Virgin Islands and that EOI partner held a meeting in February 2015 in an effort to resolve any outstanding clarification requests.

***In respect of all persons (ToR C.1.2), Obligation to exchange all types of information (ToR C.1.3), Absence of domestic tax interest (ToR C.1.4), Absence of dual criminality principles (ToR C.1.5), Exchange of information in both civil and criminal tax matters (ToR C.1.6) and Provide information in specific form requested (C.1.7)***

187. The Phase 2 report found that all TIEAs concluded by the British Virgin Islands at that time (May 2013) allowed for exchange of information in accordance with the international standard. The three TIEAs signed by the British Virgin Islands since then follow the wording generally found in the other TIEAs concluded by the British Virgin Islands and also allow the British Virgin Islands to exchange all information in accordance with the international standard. The same can be concluded with respect to the Multilateral Convention, which was extended to the British Virgin Islands with an entry into force date of 1 March 2014.

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

188. The process in the British Virgin Islands to allow TIEAs to be brought into force encompasses the publication of an Order signed by the Minister of Finance in the official Gazette. This can be done very quickly if necessary and in practice has taken two months on average for the four TIEAs that have been signed since May 2013. Three of these TIEAs (with Guernsey, Korea and Poland) are now in force, and in respect of the TIEA with Korea a notification has been sent to the Korean authorities that the procedure for entry into force in the British Virgin Islands has been finalised.

189. It is noted that the TIEAs with Curaçao, the Faroe Islands, Greenland, New Zealand, Portugal and Sint Maarten are also not yet in force. The British Virgin Islands has sent the authorities of these jurisdictions a notification that the ratification procedure in the British Virgin Islands has been finalised (in most cases in 2011). In any event, the Multilateral Convention is now in force between the British Virgin Islands and these jurisdictions so information can be exchanged in accordance with the standard under this arrangement.

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

190. For the British Virgin Islands to be able to use its access powers under its exchange of information agreements, an Order signed by the Minister of Finance has to be made to the MLAA. Orders have been provided

for in respect of all TIEAs concluded by the British Virgin Islands. The Order giving effect to the Multilateral Convention was made on 22 August 2014 with an entry into force date of 1 March 2014. During the two-year review period, no issues have arisen with respect to the giving of effect to the TIEAs or the Multilateral Convention through domestic law.

#### Determination and factors underlying recommendations

Determination	
The element is in place.	
Phase 2 rating	
Compliant.	

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

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

191. The Phase 2 report concluded that the British Virgin Islands network of information exchange agreements covered all relevant partners. As indicated under element C.1, this network was significantly expanded in 2013 and 2014 through the conclusion of three more TIEAs and the extension of the Multilateral Convention to the British Virgin Islands, and the number of EOI partners is currently 76 (see Annex 2).

192. Comments were sought from the jurisdictions participating in the Global Forum in the course of the preparation of this supplementary report, and no jurisdiction advised the assessment team that the British Virgin Islands had refused to negotiate or conclude an EOI agreement with it.

#### Determination and factors underlying recommendations

Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	The British Virgin Islands should continue to develop its EOI network with all relevant partners.
Phase 2 rating	
Compliant.	

### C.3. Confidentiality

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

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

193. The Phase 2 report found that the British Virgin Islands legal and regulatory framework contained adequate provisions to ensure the confidentiality of information received. All of the exchange of information agreements concluded by the British Virgin Islands contain a provision ensuring the confidentiality of information exchanged and limiting the disclosure and use of information received, which has to be respected by the British Virgin Islands as a party to these agreements. In addition, any person involved in the processing of an EOI request or becoming in any way aware of an EOI request that discloses information related to that request to any other person (except where disclosure is in accordance with the agreement under which the request has been received), is liable on conviction on indictment to a fine not exceeding USD 100 000 or to imprisonment for a term not exceeding five years, or both (s. 9 MLAA).

194. In September 2014, the possibility to impose a fine on summary conviction not exceeding USD 5 000 or to imprisonment for a term not exceeding two years, or both, was introduced for unlawfully disclosing information pertaining to an EOI request (s. 9(2)(a) MLAA). This provides the British Virgin Islands authorities with a wider range of penalties to be applied where appropriate. According to the British Virgin Islands, no unlawful disclosure of information concerning an EOI request has occurred during the two-year review period, and no peers have reported any issues in respect of confidentiality.

195. The British Virgin Islands has also taken adequate measures to ensure that information related to an EOI request is kept confidential in practice. As described in the Phase 2 report, the template Notice to Produce Information only contains the minimum information that needs to be disclosed in order to enable the person who is served the Notice to locate and produce the information sought. Information contained in the EOI request is only included in the Notice where necessary. The Notice is always hand-delivered where the person who is served the Notice is physically present in the British Virgin Islands, which is the case for service providers. In other cases, commonly with respect to Notices served on companies, the Notice is served in a sealed envelope with a cover letter asking the registered agent to forward it to the directors of the company. Where follow up is required, for example because no response is received, this is done directly with the directors where contact details have been provided by the registered agent.

196. Correspondence, both incoming and outgoing, with the requesting jurisdiction often occurs electronically through emails using WinZip. In many cases, EOI requests are sent to the generic email address of the ITA which is followed by the sending of the password to the personalised email address of the ITA officer that acknowledged receipt of the request. Information in response to EOI requests is always sent both via email and courier.

197. One change that has occurred since the Phase 2 report, is the move of the offices of the ITA from a space shared with the Inland Revenue Department to a dedicated floor in a different building. Only ITA officers have access to this floor and all paper files are now kept in these offices in locked filing cabinets. This makes it less burdensome for the ITA officers to keep all files confidential on a day-to-day basis.

#### Determination and factors underlying recommendations

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

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

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

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

198. The Phase 2 report did not raise any issues leading to a recommendation with respect to the legal and regulatory framework in relation to the rights and safeguards of taxpayers and third parties. It was also noted that no issues had been encountered in practice, nor had they been raised by any of the British Virgin Islands exchange of information partners. This situation has remained the same for the two-year review period.

#### Determination and factors underlying recommendations

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



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

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

199. During the three-year period reviewed in the Phase 2 report (1 July 2009-30 June 2012), the British Virgin Islands received 123 requests for information from nine partners. The Phase 2 report concluded that the organisational process in place at that time was not adequate, as the information obtained was generally not checked before forwarding it to the requesting jurisdiction. As a result, the British Virgin Islands had exchanged incomplete and, in some cases, inaccurate information. In terms of timeliness, a final response was provided within 90 days in 64% of cases, and within 180 days in 80% of the cases. However, it was not standard practice to send a status update where the information could not be provided within 90 days. The deficiencies identified led to a Non-Compliant rating for element C.5.

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

200. In the two-year review period of this supplementary report, the British Virgin Islands received a total of 411 requests for information from 16 partners, 25 of which were received from seven jurisdictions that had not sent EOI requests to the British Virgin Islands before. This is a significant increase compared to the three-year review period of the Phase 2 report. This increase is almost exclusively caused by the receipt of almost 250 requests in early 2014 from one EOI partner. Otherwise, the number of EOI requests received by the British Virgin Islands has been stable since 2012, with an average of almost 44 requests every six months. The spike in requests received in early 2014 was an unprecedented situation and was not anticipated by the British Virgin Islands, and therefore required considerable resource allocation from the British Virgin Islands competent authority.

201. In addition to the new EOI requests received during the two-year review period, the British Virgin Islands, after consulting with some of its main EOI partners, has re-opened 40 requests that were initially not satisfactorily responded to. All but two these re-opened requests have now been fully responded to. The re-opened requests are not reflected in the table below, as they are considered as a follow up from requests predating the two-year review period. However, it does show willingness on the side of the British Virgin Islands to fully co-operate with its EOI partners. In addition to the re-opened requests, the ten requests that were pending at the time of the Phase 2 report have now all been finally responded to.



202. The response times for the EOI requests received by the British Virgin Islands during the two-year review period are reflected in the following table.

**Response times for requests received during the two-year review period**

	Jul-Dec 2012		2013		Jan-Jun 2014		Total	Average
	num.	%	num.	%	num.	%	num.	%
Total number of requests received* (a+b+c+d+e+f)	39		81		291		411	
Full response** ≤90 days	4	10	12	15	28	10	44	11
≤180 days (cumulative)	9	23	31	38	33	11	73	18
≤1 year (cumulative) (a)	18	46	48	59	40	14	106	26
1 year+ (b)	6	15	9	11	1	0	16	4
Declined for valid reasons (c)								
Failure to obtain information requested (d)								
Partial information exchanged and closed (e)					57	20	57	14
Requests still pending at date of review (f)	15	39	24	30	193	66	232	56

\* A request is regarded as a single request irrespective of the number of subjects involved for which information is requested.

\*\* The time periods in this table are counted from the date of receipt of the request to the date on which the final response was issued.

203. The table shows that a relatively low percentage of the requests have been responded to within 90 or 180 days, or even within one year of receipt. In fact, more than 50% of the requests received during the two-year review period are still pending. The main reason for this lies in the challenges faced by the British Virgin Islands in handling the EOI requests received in early 2014. More EOI requests were received by the British Virgin Islands in the first two months of 2014 than it had received in total since its first TIEA became effective in 2006, while the number of requests received went down to the level of 2013 after this.

204. It should be noted that the statistics reflected in the table above are heavily influenced by the spike in EOI requests received in early 2014 and the accompanying challenges faced by the British Virgin Islands. It is important to mention that the large majority of peers indicated that they have received the information requested and that they are content with the co-operation with the British Virgin Islands competent authority. This is a significant improvement compared to the Phase 2 report, where almost all peers had indicated that they had not received all information requested.

205. It is clear that the sudden increase of EOI requests in early 2014 presented a huge challenge to the British Virgin Islands competent authority. This is in the first place caused by the sheer number of EOI requests, which

triggered the need for an increase in resources. As explained below under C.5.2 – *Resources*, new staff were in place within three months, which is reasonable considering that the spike in requests could not have been foreseen. As the new staff also needed extensive training, this affected the number of requests that could be processed in the meantime.

206. Secondly, as noted above, the spike in requests was caused by the receipt of almost 250 requests from one EOI partner. The fact that in almost half of these requests there was a need for the British Virgin Islands to ask for clarifications, in combination with the time taken by the EOI partner to respond to these requests (between three and ten months, while some of them have still to be answered), also affected the timeliness of responses. Finally, the fact that more than half of these requests related to British Virgin Islands companies which had been struck off the Registry of Corporate Affairs or had otherwise been dissolved (see element A.2) resulted in difficulties with respect to the availability of information.

207. In fact, as a result of the difficulties related to the availability of accounting information of struck off companies, the British Virgin Islands has closed approximately 57 requests without exchanging accounting information. It is important to note that in these cases, ownership information was exchanged at an earlier stage. The British Virgin Islands authorities indicated that they had exhausted all avenues to obtain the accounting information in these cases, and that the reason for not exchanging the accounting information was explained to the EOI partner. In some cases, the information related to companies which were struck off more than 5 years before these requests were received by the British Virgin Islands (meaning that there is no requirement under the *Terms of Reference* to have this information available).

208. Similarly, in almost all requests that are still pending, the British Virgin Islands has reported, and peers have confirmed, that certain information (mostly ownership and general incorporation information) was exchanged, while the British Virgin Islands is still in the process of obtaining accounting information.

209. The reasons explained above for the delays and the high number of pending requests, are either reasonable (time needed to hire additional staff and the high number of clarifications necessary) or have been dealt with under another element (i.e. element A.2). In addition to these reasons, a significant amount of time is also spent by the British Virgin Islands competent authority addressing non-compliance with a Notice to Produce Information, either through a formal challenge or informally (see also element B.1.4). In general, many requests have been pending for more than a year, including approximately one-third of the requests received in the second half of 2012 and in 2013. This reduces the likelihood of the information still being useful to the requesting jurisdiction.

210. When compared to the review period of the Phase 2 report, response times have increased and the number of pending cases is high, although it should be noted that the statistics in the Phase 2 report do not reflect the fact that a significant proportion of the responses sent by the British Virgin Islands at that time were incomplete or inaccurate. This is no longer the case, as confirmed by peer input. It can therefore be concluded that the quality of responses has improved but the timeliness has declined, although this has to be seen in the context of the spike in EOI requests received in early 2014. Without that spike, the timeliness would be better than as reflected in the table above, although still worse than in the three-year review period of the Phase 2 report.

211. Most peers have indicated that they were generally satisfied with the timeliness of responses. However, a few peers did comment that the information was not always provided in a timely manner with respect to EOI requests sent in the two-year review period, which is confirmed by the statistics showing that less than 30% of the requests have been responded to within one year. Considering the long response times and the fact that many cases are still pending, it is recommended that the British Virgin Islands ensures that it responds to EOI requests in a timely manner.

212. On the provision of status updates, the Phase 2 report noted that it was not standard practice to send a status update where the information could not be provided within 90 days, and a recommendation was made in this respect. In July 2012, the British Virgin Islands competent authority introduced a standard practice to acknowledge receipt of an EOI request and, where no response could be provided within 90 days, to provide a status update. Where part of the information is provided within 90 days, the letter from the British Virgin Islands competent authority also indicates that it is in the course of obtaining the rest of the information. This letter is then regarded as a status update. Peer input suggests that status updates are now provided most of the time, although a few peers have indicated that no status updates were received. There seems to be improvement on the sending of status updates and, whilst there is also room for further progress, the relevant recommendation has been removed from the box, but the British Virgin Islands is still encouraged to ensure that status updates are provided in all cases.

213. For the reasons described above, it is clear that the spike in EOI requests received in early 2014 presented a huge challenge to the British Virgin Islands competent authority. As noted previously, this spike was the result of the receipt of almost 250 requests from one EOI partner.

214. While it should be acknowledged that in this case the EOI partner sent a large number of requests without notifying the British Virgin Islands competent authority in advance, it was clear from the outset that responding to all of these requests would take longer than usual. It could therefore

have been helpful if a dialogue, targeted on responding to these requests, would have been initiated at an early stage. This could have included, for example, the establishment of priorities and agreement on realistic indicative timelines. In addition, a clear categorisation of the requests could have been made to identify at an early stage which difficulties related to which requests (e.g. type of clarification, struck off companies, etc.). This could have been done relatively quickly, as the requests were generally not very lengthy and the administrative assistant of the ITA searches for relevant information in the Registry of Corporate Affairs upon logging the request in the database, and puts that information, including the status of the company, in the file (see also under element B.1.1). Such a collective approach might have assisted in responding to a proportion of these requests sooner. It would also have alerted the EOI partner at an early stage of the specific difficulties faced by the British Virgin Islands authorities.

215. Although regular communication (i.e. acknowledgements of receipt, interim responses and requests for clarification) regarding the individual EOI requests received from that EOI partner has been ongoing, the receipt of approximately 250 requests at once put the British Virgin Islands in a difficult situation. In these circumstances, a more collective approach (instead of the approach taken for any other individual EOI requests received) would have been more appropriate, and might have assisted in responding to a proportion of these requests sooner. It is therefore recommended that the British Virgin Islands take a more tailored approach in handling EOI requests in circumstances which are not encountered on a day-to-day basis and are likely to result in longer response times.

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

216. The British Virgin Islands Ministry of Finance is responsible for all matters regarding tax, including the exchange of information in tax matters. The competent authority with respect to the exchange of information under the British Virgin Islands TIEAs is the Financial Secretary or a person or authority designated by him. At the beginning of the two-year review period, on 9 July 2012, the International Tax Authority (ITA) was established and appointed as the designated competent authority to replace the Commissioner for Inland Revenue. The ITA reports directly to the Financial Secretary.

### *Organisational process*

217. During the three-year review period of the Phase 2 report, the organisational process in place in the British Virgin Islands to handle incoming EOI requests was not adequate, as the practice of not vetting the information obtained, together with the lack of explanation as to why some information

was missing, prevented the effective exchange of information in a number of cases.

218. Together with the establishment of the ITA in July 2012, the internal process of handling incoming EOI requests was laid down in an Operations' Manual and a checklist for processing incoming requests. In addition, standard Notices to Produce Information which are used in the execution of requests were developed. These tools, put in place since the formation of the ITA and updated where appropriate, are based on the provisions of the agreements signed by the British Virgin Islands and the MLAA. The organisational process, templates used and guidelines to be followed to obtain and exchange information following a request from an EOI partner as described in the Phase 2 report have not significantly changed other than in respect of ways of gathering the information in practice. These are described under element B.1 in this supplementary report.

219. The organisational process currently in place in the British Virgin Islands is adequate and does not prevent the British Virgin Islands from effectively exchanging information in a timely manner. It includes in practice the verification of information obtained to ensure that it matches the information requested in the EOI request, although this step is not included in the Operations' Manual. Peer in put confirms that the information exchanged now either matches their request or it is explained why certain information has not (yet) been exchanged. The recommendation pertaining to the verification of information obtained has therefore been removed.

### *Resources*

220. The Phase 2 report mentioned that the ITA was composed of two full time personnel to handle incoming EOI requests. Considering the volume of requests received at that time, this was considered appropriate. However, it was also stated that the number of EOI requests was likely to increase in the near future, and that the British Virgin Islands should monitor that the resources allocated to its competent authority remain sufficient to deal with the increasing workload.

221. As the number of incoming EOI requests seemed to stabilise in the 2<sup>nd</sup> half of 2012 and in 2013 to between 40 and 60 requests every six months, the spike in the number of EOI requests received by the British Virgin Islands in early 2014 batch presented a substantial challenge in terms of resources. In addition, developments on automatic exchange of information added to the workload of the ITA.

222. It was clear that in order to handle the sudden increase of EOI requests in early 2014, additional staff were needed in the ITA. A recruitment process was immediately started resulting in four additional staff being hired

on short notice. Before they could start independently handling EOI requests, internal training was provided. The whole process of recruitment and training was finalised in less than three months, showing the versatility of the British Virgin Islands authorities in facing this challenge.

223. However, during this time the two existing staff had to spend some of their time on the recruitment and training of the new staff and the new staff could not yet process EOI requests. It should be noted that there is virtually no existing knowledge base in the British Virgin Islands in this field outside the ITA, which meant that the training needed was extensive. While new staff were being trained, the ITA continued to process requests and provide interim responses where possible. Nevertheless, the hiring and training process caused some slowdown in sending initial responses. However, it is difficult to see how the British Virgin Islands authorities could have handled the addition of staff much faster, also taking into account that the spike in EOI requests received in early 2014 could not have been foreseen.

224. The current composition of the ITA includes a Director, a Deputy Director, two Senior Analysts, two Research Officers and two Assistant Research Officers. Although this structure was already decided upon in December 2013, in anticipation of the increase in EOI partners, caused by the extension of the Multilateral Convention to the British Virgin Islands in March 2014, most positions were not filled in early 2014. The current resources of the ITA seem sufficient to deal with the current workload.

### ***Conclusion***

225. In the two-year review period of this supplementary report, the British Virgin Islands received a total of 411 requests for information from 16 partners. This is a significant increase compared to the three-year review period of the Phase 2 report, and mainly caused by the receipt of the approximately 250 requests in early 2014 from one EOI partner. The handling of this sudden increase in EOI requests received firstly presented a challenge in terms of resources. The British Virgin Islands competent authority had to hire and train four additional staff at short notice. While new staff were being trained, the ITA continued processing requests and provided interim responses. The new staff were in place within three months, which is reasonable considering that the spike in requests could not have been foreseen.

226. It is clear that the receipt of approximately 250 requests at once in early 2014 from one EOI partner put the British Virgin Islands in a difficult situation. Although regular communication (i.e. acknowledgements of receipt, interim responses and requests for clarification) regarding the individual EOI requests received from that EOI partner has been ongoing, in these circumstances a more collective approach (instead of the approach

taken for any other individual EOI requests received) would have been more appropriate, and might have assisted in responding to a proportion of these requests. It is therefore recommended that the British Virgin Islands take a more tailored approach in handling EOI requests in circumstances which are not encountered on a day-to-day basis and are likely to result in longer response times.

227. Despite the efforts of the British Virgin Islands, many EOI requests received during the two-year review period have been pending for more than a year, including a significant percentage of the requests received in the second half of 2012 and in 2013.

228. Overall, when compared to the review period of the Phase 2 report, response times have increased and the number of pending cases is high, although it should be noted that the statistics in the Phase 2 report do not reflect the fact that a significant proportion of the responses sent by the British Virgin Islands at that time were incomplete or inaccurate. This is no longer the case, as confirmed by peer input. It can therefore be concluded that the quality of responses has improved but the timeliness has declined, although this has to be seen in the context of the spike in EOI requests received in early 2014. Without that spike, the timeliness would be better than as reflected in the table above, although still worse than in the three-year review period of the Phase 2 report.

229. Most peers have indicated that they were generally satisfied with the timeliness of responses. However, a few peers did comment that the information was not always provided in a timely manner with respect to EOI requests sent in the two-year review period. Even though part of the delay was caused by reasonable steps taken by the British Virgin Islands to process the EOI requests, the long response times and the fact that many cases are still pending lead to the recommendation that the British Virgin Islands should ensure that it responds to EOI requests in a timely manner.

230. Taking into account the improvements made in the organisational process leading to an increase in the quality of responses on the one hand, and the decline of timeliness and handling of the spike in EOI requests received in early 2014 on the other hand, the rating for element C.5 has been upgraded to Partially Compliant.

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

231. As noted in the Phase 2 report, there are no specific legal and practical requirements in place which impose restrictive conditions on the British Virgin Islands exchange of information practice.



### 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.

Phase 2 rating
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**Non-Partially Compliant.**

Factors underlying recommendations	Recommendations
During the three-year review period, the British Virgin Islands practices in accessing and exchanging information have resulted in sending incomplete responses in a significant proportion of the cases according to the input from peers.	The British Virgin Islands should ensure that the responses it provides to EOI requests are sufficiently complete and provided in a timely manner.
The British Virgin Islands did not provide status updates where a request could not be answered within 90 days unless requested to do so. The procedures put in place by the new authority competent for exchange of information (the ITA) could not be assessed.	The British Virgin Islands should monitor that status updates are provided to the requesting jurisdictions where relevant.
Prior to the establishment of the ITA, no formal verification as to the content of the information transmitted to the requesting jurisdictions was made.	The British Virgin Islands should ensure that its organisational processes provide for effective exchange of information.
<u>Although the quality of responses has improved since the Phase 2 report, the timeliness has declined, as the average response time is long (less than 30% of the EOI requests received in the two-year review period have been responded to within one year) and many cases are still pending. It is noted that part of the delay was caused by reasonable steps taken by the British Virgin Islands to process the EOI requests, and in almost all pending cases, partial information has been provided.</u>	<u>The British Virgin Islands should ensure that it responds to EOI requests in a timely manner.</u>



Phase 2 rating	
<b>Non-Partially Compliant.</b>	
Factors underlying recommendations	Recommendations
<p><u>While regular communication was ongoing regarding the large number of EOI requests in early 2014, a more collective approach (instead of the approach taken for any other EOI request received) would have been more appropriate, and might have assisted in responding to a proportion of these requests sooner.</u></p>	<p><u>The British Virgin Islands should take a more tailored approach in handling EOI requests in circumstances which are not encountered on a day-to-day basis and are likely to result in longer response times.</u></p>

## Summary of determinations and factors underlying recommendations

Overall Rating		
<b>LARGELY COMPLIANT</b>		
Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities ( <i>ToR A.1</i> )		
<b>The element is in place.</b>		
<b>Phase 2 rating: Compliant.</b>		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements ( <i>ToR A.2</i> )		
<b>The element is in place.</b>		
<b>Phase 2 rating: Partially Compliant.</b>	Explicit monitoring of the availability of trust accounting records has only started recently. In addition, a new obligation for trustees to keep reliable accounting records, including underlying documentation, for a period of at least five years in respect of trusts of which they are the trustee, has recently been introduced.	The British Virgin Islands should monitor the implementation of the new obligation on trustees to keep reliable accounting records in respect of trusts.

Determination	Factors underlying recommendations	Recommendations
<b>Phase 2 rating:</b> <b>Partially Compliant</b> <i>(continued)</i>	<p>The system of monitoring the availability of accounting records in respect of companies and limited partnerships has only recently been introduced and has limitations. Firstly, only a selection of records is reviewed, which does not normally include underlying documentation. In addition, monitoring of the availability of accounting information in respect of companies that were struck off or dissolved less than five years prior to inspection is limited.</p>	<p>The British Virgin Islands should enhance its monitoring of the availability of accounting records with respect to companies and limited partnerships.</p>
	<p>Accounting information has not been readily available in practice in a number of cases related to companies that were struck off the Registry of Corporate Affairs or that were otherwise dissolved less than five years previously, and almost 100 EOI requests are still pending in this regard. In these cases, the British Virgin Islands has limited means of enforcing availability, as the information is generally kept outside the British Virgin Islands and no person in the British Virgin Islands can be held accountable.</p>	<p>The British Virgin Islands should ensure that company accounting records are available for a period of at least five years in all cases, notwithstanding that the company has been struck off or has otherwise been dissolved.</p>
Banking information should be available for all account-holders ( <i>ToR A.3</i> )		
<b>The element is in place.</b>		
<b>Phase 2 rating:</b> <b>Compliant.</b>		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) ( <i>ToR B.1</i> )		
<b>The element is in place.</b>		
<b>Phase 2 rating: Largely Compliant.</b>	Although with respect to several EOI requests received in the two-year review period, the British Virgin Islands has applied its compulsory powers, there are many cases where the response to the Notice to Produce Information is still outstanding, and in a number of cases this has resulted in the situation that EOI requests are pending for a long time.	The British Virgin Islands should review its procedures to ensure that there are no delays in applying compulsory powers where appropriate in cases where information is not produced.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information ( <i>ToR B.2</i> )		
<b>The element is in place.</b>		
<b>Phase 2 rating: Compliant.</b>		
Exchange of information mechanisms should allow for effective exchange of information ( <i>ToR C.1</i> )		
<b>The element is in place.</b>		
<b>Phase 2 rating: Compliant.</b>		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners ( <i>ToR C.2</i> )		
<b>The element is in place.</b>		The British Virgin Islands should continue to develop its EOI network with all relevant partners.
<b>Phase 2 rating: Compliant.</b>		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received ( <i>ToR C.3</i> )		
<b>The element is in place.</b>		

Determination	Factors underlying recommendations	Recommendations
<b>Phase 2 rating: Compliant.</b>		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties ( <i>ToR C.4</i> )		
<b>The element is in place.</b>		
<b>Phase 2 rating: Compliant.</b>		
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>		
<b>Phase 2 rating: Partially Compliant.</b>	Although the quality of responses has improved since the Phase 2 report, the timeliness has declined, as the average response time is long (less than 30% of the EOI requests received in the two-year review period have been responded to within one year) and many cases are still pending. It is noted that part of the delay was caused by reasonable steps taken by the British Virgin Islands to process the EOI requests, and in almost all pending cases, partial information has been provided.	The British Virgin Islands should ensure that it responds to EOI requests in a timely manner.

Determination	Factors underlying recommendations	Recommendations
<b>Phase 2 rating:</b> <b>Partially Compliant</b> <i>(continued)</i>	While regular communication was ongoing regarding the large number of EOI requests in early 2014, a more collective approach (instead of the approach taken for any other EOI request received) would have been more appropriate, and might have assisted in responding to a proportion of these requests sooner.	The British Virgin Islands should take a more tailored approach in handling EOI requests in circumstances which are not encountered on a day-to-day basis and are likely to result in longer response times.



## **Annex 1: Jurisdiction’s response to the review report<sup>3</sup>**

This annex is left blank because the British Virgin Islands have chosen not to provide any material to include in it.

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



## Annex 2: List of exchange of information mechanisms

The Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010 (the Multilateral Convention), was extended by the United Kingdom to the British Virgin Islands, where it entered into force on 1 March 2014.

Exchange of information agreements allowing for information exchange on request applicable in the British Virgin Islands, as at May 2015 in alphabetical order:

	Jurisdiction	Type of Eol arrangement	Date signed/extended	Date in force/Status
1	Albania	Multilateral Convention	Signed	1 March 2014
2	Andorra	Multilateral Convention	Signed	Not yet in force in Andorra
3	Argentina	Multilateral Convention	Signed	1 March 2014
4	Aruba <sup>a</sup>	TIEA	11 September 2009	11 July 2013
		Multilateral Convention	Extended	1 March 2014
5	Australia	TIEA	27 October 2008	19 April 2010
		Multilateral Convention	Signed	1 March 2014
6	Austria	Multilateral Convention	Signed	1 December 2014
7	Azerbaijan	Multilateral Convention	Signed	Not yet in force in Azerbaijan <sup>a</sup>
8	Belgium	Multilateral Convention	Signed	1 April 2015
9	Belize	Multilateral Convention	Signed	1 March 2014
10	Brazil	Multilateral Convention	Signed	Not yet in force in Brazil
11	Cameroon	Multilateral Convention	Signed	Not yet in force in Cameroon
12	Canada	Multilateral Convention	Signed	1 March 2014

	Jurisdiction	Type of Eol arrangement	Date signed/extended	Date in force/Status
13	Chile	Multilateral Convention	Signed	Not yet in force in Chile
14	China (People's Republic of)	TIEA	7 December 2009	30 December 2010
		Multilateral Convention	Signed	Not yet in force in China
15	Colombia	Multilateral Convention	Signed	1 July 2014
16	Costa Rica	Multilateral Convention	Signed	1 March 2014
17	Croatia	Multilateral Convention	Signed	1 June 2014
18	Curaçao <sup>a</sup>	TIEA	11 September 2009	
		Multilateral Convention	Extended	1 March 2014
19	Cyprus <sup>c</sup>	Multilateral Convention	Signed	1 April 2015
20	Czech Republic	TIEA	13 June 2011	19 December 2012
		Multilateral Convention	Signed	1 March 2014
21	Denmark	TIEA	18 May 2009	15 April 2010
		Multilateral Convention	Signed	1 March 2014
22	Estonia	Multilateral Convention	Signed	1 November 2014
23	Faroe Islands <sup>d</sup>	TIEA	18 May 2009	
		Multilateral Convention	Extended	1 March 2014
24	Finland	TIEA	18 May 2009	15 April 2010
		Multilateral Convention	Signed	1 March 2014
25	France	TIEA	17 June 2009	18 November 2010
		Multilateral Convention	Signed	1 March 2014
26	Gabon	Multilateral Convention	Signed	Not yet in force in Gabon
27	Georgia	Multilateral Convention	Signed	1 March 2014
28	Germany	TIEA	5 October 2010	4 December 2011
		Multilateral Convention	Signed	Not yet in force in Germany
29	Ghana	Multilateral Convention	Signed	1 March 2014
30	Greece	Multilateral Convention	Signed	1 March 2014

	<b>Jurisdiction</b>	<b>Type of Eol arrangement</b>	<b>Date signed/extended</b>	<b>Date in force/Status</b>
31	Greenland <sup>d</sup>	TIEA	18 May 2009	
		Multilateral Convention	Extended	1 March 2014
32	Guatemala	Multilateral Convention	Signed	Not yet in force in Guatemala
33	Guernsey	TIEA	17 April 2013	11 November 2014
34	Hungary	Multilateral Convention	Signed	1 March 2015
35	Iceland	TIEA	18 May 2009	28 February 2011
		Multilateral Convention	Signed	1 March 2014
36	India	TIEA	9 February 2011	22 August 2011
		Multilateral Convention	Signed	1 March 2014
37	Indonesia	Multilateral Convention	Signed	1 May 2015
38	Ireland	TIEA	7 December 2009	28 February 2011
		Multilateral Convention	Signed	1 March 2014
39	Italy	Multilateral Convention	Signed	1 March 2014
40	Japan	TIEA	18 June 2014	11 October 2014
		Multilateral Convention	Signed	1 March 2014
41	Kazakhstan	Multilateral Convention	Signed	Not yet in force in Kazakhstan <sup>e</sup>
42	Korea	TIEA	5 December 2014	
		Multilateral Convention	Signed	1 March 2014
43	Latvia	Multilateral Convention	Signed	1 November 2014
44	Liechtenstein	Multilateral Convention	Signed	Not yet in force in Liechtenstein
45	Lithuania	Multilateral Convention	Signed	1 June 2014
46	Luxembourg	Multilateral Convention	Signed	1 November 2014
47	Malta	Multilateral Convention	Signed	1 March 2014
48	Mexico	Multilateral Convention	Signed	1 March 2014
49	Moldova	Multilateral Convention	Signed	1 March 2014
50	Monaco	Multilateral Convention	Signed	Not yet in force in Monaco

	Jurisdiction	Type of Eol arrangement	Date signed/extended	Date in force/Status
51	Morocco	Multilateral Convention	Signed	Not yet in force in Morocco
52	Netherlands	TIEA	11 September 2009	11 July 2013
		Multilateral Convention	Signed	1 March 2014
53	New Zealand	TIEA	13 August 2009	
		Multilateral Convention	Signed	1 March 2014
54	Nigeria	Multilateral Convention	Signed	Not yet in force in Nigeria <sup>f</sup>
55	Norway	TIEA	18 May 2009	15 April 2010
		Multilateral Convention	Signed	1 March 2014
56	Philippines	Multilateral Convention	Signed	Not yet in force in the Philippines
57	Poland	TIEA	28 November 2013	1 January 2015
		Multilateral Convention	Signed	1 March 2014
58	Portugal	TIEA	5 October 2010	
		Multilateral Convention	Signed	1 March 2015
59	Romania	Multilateral Convention	Signed	1 November 2014
60	Russia	Multilateral Convention	Signed	Not yet in force in Russia <sup>g</sup>
61	San Marino	Multilateral Convention	Signed	Not yet in force in San Marino
62	Saudi Arabia	Multilateral Convention	Signed	Not yet in force in Saudi Arabia
63	Seychelles	Multilateral Convention	Signed	Not yet in force in the Seychelles
64	Singapore	Multilateral Convention	Signed	Not yet in force in Singapore
65	Sint Maarten <sup>a</sup>	TIEA	11 September 2009	
		Multilateral Convention	Extended	1 March 2014
66	Slovak Republic	Multilateral Convention	Signed	1 March 2014

	Jurisdiction	Type of Eol arrangement	Date signed/extended	Date in force/Status
67	Slovenia	Multilateral Convention	Signed	1 March 2014
68	South Africa	Multilateral Convention	Signed	1 March 2014
69	Spain	Multilateral Convention	Signed	1 March 2014
70	Sweden	TIEA	18 May 2009	16 May 2010
		Multilateral Convention	Signed	1 March 2014
71	Switzerland	DTC	August 1963	1 January 1961
		Multilateral Convention	Signed	Not yet in force in Switzerland
72	Tunisia	Multilateral Convention	Signed	1 March 2014
73	Turkey	Multilateral Convention	Signed	Not yet in force in Turkey
74	Ukraine	Multilateral Convention	Signed	1 March 2014
75	United Kingdom	TIEA	29 October 2008	12 April 2010
76	United States	TIEA	3 April 2002	10 March 2006
		Multilateral Convention	Signed	Not yet in force in the United States

Notes: a. Extension of the Multilateral Convention by the Kingdom of the Netherlands.

b. Azerbaijan deposited its instrument of ratification on 29 May 2015, and the Multilateral Convention will enter into force on 1 September 2015.

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

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

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

e. Kazakhstan deposited its instrument of ratification on 8 April 2015, and the Multilateral Convention will enter into force on 1 August 2015.

f. Nigeria deposited its instrument of ratification on 29 May 2015, and the Multilateral Convention will enter into force on 1 September 2015.

g. Russia deposited its instrument of ratification on 4 March 2015, and the Multilateral Convention will enter into force on 1 July 2015.

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

Mutual Legal Assistance (Tax Matters) (Amendment) Act, 2014  
Mutual Legal Assistance (Tax Matters) (Amendment) Act, 2015  
Mutual Legal Assistance (Tax Matters) Order, 2014  
Mutual Legal Assistance (Tax Matters) (No. 2) Order, 2014  
Mutual Legal Assistance (Tax Matters) (No. 3) Order, 2014  
Mutual Legal Assistance (Tax Matters) (No. 4) Order, 2014  
Mutual Legal Assistance (Tax Matters) (No. 5) Order, 2014  
Mutual Legal Assistance (Tax Matters) (Amendment of Schedule) Order,  
2014  
Partnership (Amendment) Act, 2014  
Partnership (Amendment) Act, 2015  
Trustee (Amendment) Act, 2015

## **Annex 4: Persons interviewed during on-site visit**

Officials from the International Tax Authority

Officials from the Ministry of Finance

Officials from the BVI Financial Services Commission (including the  
Registry of Corporate Affairs)

Representative of the BVI Association of Registered Agents

For more information  
**Global Forum on Transparency and  
Exchange of Information for Tax Purposes**  
[www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency)  
[www.eoi-tax.org](http://www.eoi-tax.org)  
Email: [gftaxcooperation@oecd.org](mailto:gftaxcooperation@oecd.org)