GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

COLOMBIA

OECD

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

PHASE 2: IMPLEMENTATION OF THE STANDARD IN PRACTICE

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About the Global Forum

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

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

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

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

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

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

Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Colombia. The international standard which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information (EOI) partners. The recommendations that have been made concern the scope of attorney-client privilege and the expeditious ratification of EOI agreements with all relevant partners.

2. Colombia is a country of 48.2 million inhabitants covering 1 138 910 square kilometres in north-western South America. Colombia's GDP, which amounted to approximately USD 378 billion in 2014, has grown more than 4.3% per year for the past three years, continuing almost a decade of strong economic performance. Colombia is rich in natural resources, its main exports including petroleum, coal, coffee and other agricultural products. Colombia has signed two Tax Information Exchange Agreements (TIEA) and ten Double Tax Conventions (DTCs). In addition, it is also covered by the Andean Community Directive which contains certain DTC like provisions including one which provides for the exchange of information in tax matters, and a party to the Convention on Mutual Administrative Assistance in Tax Matters, as amended (Multilateral Convention).

3. Relevant legal entities in Colombia include: joint stock companies, simplified stock companies, partnerships limited by shares, collective partnerships, SRLs and limited liability partnerships. Whilst trusts are not recognised in Colombia, there is the possibility of establishing a *Fiducia Mercantil* or to transfer property by means of a *Fideicomiso,* both of which have certain trust like characteristics. Obligations to ensure availability of ownership and identity information exist for all of the above named entities. There is no prohibition for a Colombian resident to act as a trustee for a foreign trust or for a foreign trust to invest in Colombia. Colombian authorities have reported that to date they have not encountered any incidence of foreign trusts. However, in the case that a Colombian resident were to act as a trustee

for a foreign trust or if a foreign trust were to invest in Colombia, there are a combination of requirements under the Commercial Code, the Tax Statute and the regulatory laws in place ensuring the availability of trustee, settlor and beneficiary ownership information in all cases. Foundations are possible in Colombia but may only be formed as not for profit entities.

4. In practice, the tax authorities and the *Superintendencia de Sociedades* require most companies and partnerships, including foreign companies to submit updated ownership information annually. There is a high rate of compliance with these requirements which are closely monitored by via the audit inspection programme in place by the National Tax and Customs Directorate (DIAN, *Dirección de Impuestos y Aduanas Nacionales*) and the supervision unit of the *Superintendencia de Sociedades* respectively. All financial entities are also closely monitored by the *Superintendencia Financiera*. All companies and partnerships are also subject to requirements to maintain an updated shareholder register and in the event of non-compliance with these requirements; there are penalties in place, which have been systematically enforced over the review period.

5. All relevant entities are subject to the provisions of the Commercial Code, which requires all "merchants" (Commercial Entities) to maintain a full range of accounting records, including underlying documentation for a period of ten years. The requirements of the legal and regulatory framework to maintain accounting records and underlying documentation are also appropriately applied in practice. Financial statements of most entities have to be filed with the Chambers of Commerce and the *Superintendencia de Sociedades* and requirements to maintain accounting information are also monitored by the DIAN in the course of their audit programme.

6. Full bank information, including all records pertaining to account holders as well as related financial and transaction information, is required to be kept by Colombian banks under Anti-Money Laundering (AML) legislation. The legal obligations to keep banking information are effectively monitored and enforced by the *Superintendencia Financiera de Colombia* and the DIAN, ensuring that banking information is available in practice.

7. In practice, the obligations in place to ensure the availability of ownership and identity information, as well as accounting and banking information for account holders are accompanied by appropriate penalties for non-compliance. Over the review period, no issues have arisen in Colombia with respect to the availability of ownership, accounting or banking information.

8. Colombia's competent authority is the Minister for Finance who delegates this power to the Commissioner of the DIAN who has significant information resources at its disposal, including ownership, identity, banking and accounting information.

9. In respect of access to information, the DIAN is invested with broad powers to compel the provision of any information not already contained in its possession. These measures can be used for EOI purposes in the same way as for domestic purposes. Enforcement of these provisions is secured by the existence of significant penalties for non-compliance. Whilst there are statutory provisions in place protecting the disclosure of banking information in Colombia, these can be overridden for the purposes of accessing information for EOI purposes and do not restrict the tax authorities' access powers or prevent effective exchange of information. The access powers of the competent authority have been tested for the four requests received over the review period and no issues have arisen in practice.

10. Colombia has a wide EOI network covering 90 treaty partners and 13 EOI mechanisms comprised of two TIEAs, ten bilateral DTCs and one directive containing EOI provisions which facilitates the exchange of information in tax matters between members of the Andean Community. In addition, Colombia became a signatory to the multilateral Convention in May 2012, which entered into force for Colombia on 1 July 2014. Twelve of these agreements are in force and of these twelve; eleven meet the internationally agreed standard containing sufficient provisions to enable Colombia to exchange all relevant information.

11. As EOI commenced relatively recently in Colombia (2012), over the review period, EOI was carried out on an ad-hoc basis and was processed by officials from the *Dirección de Gestión de Fiscalización* (Auditing Directorate) of the DIAN.

12. During the review period, Colombia received four EOI requests related to ownership and accounting information. A final response was provided within 90 days in three cases and within 180 days in one case. While generally no peer raised an issue concerning the processing of EOI requests by Colombia, it is noted that as EOI was administered on an ad-hoc basis over the review period, three out of the four requests received over the review period were inadvertently actioned by the competent authority for exchange of customs information and the Commissioner (being the competent authority for the exchange of taxation information) was neither aware of the existence of these requests nor of this information being shared with the treaty partner. Further, Colombia only became aware of these requests on receipt of peer input during the review process and therefore it can be concluded that a clear system of oversight and monitoring of all EOI activity was not in place over the review period. This combined with the fact that Colombia processed only four requests over the review period means that the organisational processes for EOI have not been sufficiently tested in practice. Therefore, Colombia is recommended to implement a formal process for the exchange of information

and to closely monitor its EOI processes to ensure all requests are processed in a clear, communicative and efficient manner.

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

14. A follow up report on the steps undertaken by Colombia 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 peer review of Colombia

15. The assessment of the legal and regulatory framework of Colombia was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference*, and was prepared using the Global Forum's *Methodology for Peer reviews and Non-Member Reviews*.

16. Colombia's Phase 1 review was launched in July 2013 and the assessment was based on the laws, regulations, and exchange-of-information mechanisms in force or effect as at 29 January 2014, other materials supplied by Colombia, and information supplied by partner jurisdictions. Colombia's Phase 2 review was launched in February 2015. Colombia was fully co-operative in course of the preparation of the Phase 2 review including submission of a fully completed questionnaire, attendance and organisation of the onsite visit with the assessment team and supplying all necessary materials.

17. 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 Colombia's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element, a determination is made that either *(i)* the element is in place, *(ii)* the element is in place but certain aspects of the legal implementation of the element need improvement, or *(iii)* the element is not in place. These determinations are accompanied by recommendations on how certain aspects of the system could be strengthened (see Table 1).

18. The Phase 1 assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Mr. Jaime Mas, International Tax Coordinator, General Directorate of Taxation, Ministry of Finance and Public Administrations, Spain; Ms. Kezia Azzopardi, International Taxation Unit, Inland Revenue Department, Malta; and Ms. Mary O'Leary of

the Global Forum Secretariat. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange-of-information mechanisms in Colombia.

19. The Phase 2 assessment was conducted by a team which consisted of two assessors and two representatives of the Global Forum Secretariat: Mr. Jaime Mas, International Tax Co-ordinator, General Directorate of Taxation, Ministry of Finance and Public Administrations, Spain; Ms. Kezia Azzopardi, International Taxation Unit, Inland Revenue Department, Malta; Ms. Mary O'Leary and Ms. Wanda Montero Cuello from the Global Forum Secretariat.

Overview of Colombia

20. Colombia is a country of 1 138 910 square kilometres located in north-western South America, bordered to the northwest by Panama; to the north by the Caribbean Sea; to the east by Venezuela and Brazil; to the south by Ecuador and Peru; and to the west by the Pacific Ocean. Colombia has approximately 48.3 million inhabitants. Spanish is the official and spoken language, although English is often used in commerce and international trade. Its currency is the Colombian peso (COP), with USD 1 equal to 2 937 pesos as at 13 August 2015.

General information on the Legal System

21. Colombia is a unitary constitutional republic, with its system of government based on the 1991 Constitution and made up of three separate branches: the executive, legislature and the judiciary. As the head of the executive branch, the President of Colombia serves as both head of state and head of government, followed by the Vice President and the Council of Ministers. Presidential elections take place every four years and the president, elected by popular vote, is limited to two four year terms in office. At the provincial level, executive power is vested in department governors, municipal mayors and local administrators for smaller administrative subdivisions.

22. The structure of Colombia's government is provided for in the Constitution. At the national level, legislative power is exercised by the Colombian Parliament which is a bicameral house comprising a 166-seat Chamber of Representatives and a 102-seat Senate. Members of both houses are elected by popular vote and are elected to serve four-year terms. At the provincial level, department assemblies and municipal councils as part of the administration, exercise power (Articles 299 and 312 Constitution). All regional elections are held one year and five months after the presidential election.

23. The judicial system consists of the Constitutional Court, the Supreme Court (Article 234 Constitution), the Council of State of Colombia (Article 236 Constitution), Superior Tribunals, Regional Courts and Administrative Courts (Article 176 Constitution). The Constitutional Court, which is the highest court in the Colombian judicial branch of government regarding constitutional matters, reviews the constitutional validity of laws adopted by the Legislature, certain decrees issued by the Executive and has jurisdiction over cases related to the protection of fundamental constitutional rights. The Supreme Court is the court of highest instance in Colombia regarding penal, civil and agrarian, and labour matters and consists of 25 judges. The judicial branch also includes the Council of State which has special responsibility for administrative law and also provides legal advice to the Executive. The Colombian territory is divided into 33 judicial districts each having a Superior Tribunal which hears appeals from and supervises the lower regional courts in the district.

24. The Colombian legal system is a civil law one. The hierarchy of laws is: the Constitution of the Republic of Colombia; statutory and organic Laws (which deal with the core aspects of fundamental constitutional rights and require special quorums for their approval by Congress); ordinary Laws, decrees (which are enacted by the Executive setting out how to deal with certain matters set out under ordinary laws) and international treaties including DTCs and TIEAs; and regulations and other administrative instructions (referred to as "*circulares*" or "*resoluciones*") as issued by the Executive. A law of a higher rank will prevail over a law of a lower rank when they concern the same subject matter, and a law which is later in time will revoke an older law of equal hierarchy.

25. Generally, the provisions in an international treaty ratified by Colombia are incorporated into the domestic legal system via an ordinary law and as a result are generally granted the same legal hierarchy as other ordinary laws. However, the provisions of a treaty ratified by Colombia establishing specific rules prevail over Colombian ordinary laws, insofar as they are deemed as "*lex specialis"* (special legislation) which will override general legislation "*lex specialis derogat legi generali"*. Colombia has confirmed that DTCs and TIEAs are always attributed "*lex specialis"* status and therefore they will always prevail over other Colombian ordinary laws. Additionally, under a supplementary rule in Colombia, "*lex posterior generalis non derogate legi priori speciali",* future general legislation does not overrule earlier special legislation. Therefore, changes in domestic law will not affect treaties in force. Further, Decision C-468 of 25 September 1997 of the Constitutional Court expressly states that provisions in a treaty cannot be repealed by domestic laws. Moreover, Colombia became a party to the Vienna Convention on the Law of Treaties (VCLT) and therefore it is a matter of law in Colombia that the provisions of internal law may not be invoked as justification for failure to perform the obligations set out under a treaty (Article 27, VCLT).

26. Colombia is also a member of the Andean Community (*Comunidad Andina*), an international body comprised of the South American countries of Bolivia, Colombia, Ecuador, and Peru, with the aim of promoting greater economic integration amongst its members. The union came into existence with the signing of the Cartagena Agreement in 1969 and was called the Andean Pact until 1996. Pursuant to Article 150(16) of the Colombian Constitution, the Colombian congress is empowered to approve treaties with other states and on the basis of such treaties, Colombia may then transfer specific law making powers to international organisations for the promotion of economic integration with other states. Therefore, the Andean Community may legislate for specific matters which are directly applicable in Colombia without the approval of Congress.

27. Further, according to Article 3 of the *Tratado de Creación del Tribunal de Justicia del Acuerdo de Cartagena* (Treaty creating the Court of Justice of the Cartagena Agreement), decisions of the Andean Community, once published in the official gazette of the Cartagena Agreement, are directly applicable in Colombia without being ratified by Congress. Article 5 sets out that member countries of the Andean Community must refrain from adopting any measures contrary to the provisions of these decisions or that would restrict their application. Therefore, in the event of a conflict with an ordinary law, a decision of the Andean Community will take precedence in Colombia.

The Colombian Economy

28. Colombia's GDP was approximately USD 378 billion in 2014 and GDP has grown more than 4% per year for the past three years, continuing almost a decade of strong economic performance. Colombia is rich in natural resources, and its main exports include petroleum, coal, coffee and other agricultural products, gold, textiles, industrial chemicals, plastics and ferroalloys. Colombia is also known as the world's leading source of emeralds constituting 50–95% of the world production, with the number depending on the year, source and grade. Colombia's main export partners are the USA (39.4%), Spain (5.1%), China (4.9%) and the Netherlands (4.3%). In 2014, imports to Colombia grew by approximately 7.5%. The main imports are industrial equipment, transportation equipment, consumer goods, chemicals, paper products, fuels and electricity. Colombia's main import partners are the USA (30.2%), China (11.5%), Mexico (10.3%), and Brazil (5.2%).[1]

29. Colombia, as the most industrially diverse member of the Andean Community, has four major industrial centres: Bogota, Medellin, Cali, and Barranquilla, each located in a distinct geographical region. Colombia's industries include textiles and clothing, leather products, processed foods and

1. www.banrep.gov.co/es/balanza-comercial.

beverages, paper and paper products, chemicals and petrochemicals, cement, construction, iron and steel products, and metalworking.

30. Colombia attracts one of the highest levels of foreign direct investment per capita in Latin America. In 2014, foreign direct investment reached USD 16.3 billion. Foreign direct investment was primarily directed to the mining (petroleum and coal), manufacturing and financial sectors. Other sectors receiving significant overseas investment were electricity, water and gas, cumulatively receiving USD 819 523 million in foreign direct investment.[2]

31. The Colombian government has introduced a number of investment incentives over the last few years designed to promote and attract foreign investment, buttress employment and increase economic development. Free trade zones in Colombia were established under Law 1004 which was passed in 2005. These include Permanent Free Trade Zones which have a 15% total income tax rate, Single Enterprise Free Trade Zones which allow companies to establish themselves anywhere in the country, as well as various other investment incentives such as income tax exemptions for particular industrial sectors and "Plan Vallejo" which is a special import-export system for services.

32. Colombia is a member of the Andean Community, the Inter-American Development Bank, the International Monetary Fund (IMF), the Latin American Integration Association (LAFTA), the United Nations (UN) and the World Trade Organization (WTO), amongst others. Since February 2011, Colombia has been a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Financial Services in Colombia

33. The financial sector in Colombia is composed of different activities including banking, insurance and reinsurance activities, stock exchange related activities, the administration of investment funds, fiduciary services (see section A.1.4 *Trusts*) and the administration of pension funds. Banking is the most significant component of the financial services sector in Colombia. As of June 2015, there were 25 banks operating in Colombia. As of August 2015, the total in assets held in banks in Colombia amounted to COP 465 trillion (approximately USD 172 billion). The Bank of the Republic (*Banco de la República*) is the state-run central bank of the Republic of Colombia.

34. The Colombian Superintendency for Financial Institutions (SFC, *Superintendencia Financiera de Colombia*) regulates all financial entities. The *Superintendencia Financiera* is also the body responsible for monitoring compliance with (AML) laws by financial entities. In Colombia, financial

2. www.banrep.gov.co/es/inversion-directa.

sector activity is deemed to be of public interest and all financial entities must receive prior government authorisation from the *Superintendencia Financiera* (Article 335 Constitution).

35. The Colombian securities exchange is the *Bolsa de Valores de Colombia (*BVC*)*.with an annual turnover of approximately USD 28 billion. Twenty three brokerage companies currently participate in the exchange. As well as coming under the supervision of the *Superintendencia Financiera*, the BVC is also supervised by the *Autoregulador del Mercado de Valores* (AMV), which also supervises brokerage houses, corporations for administering investment funds, issuers of securities, non-banking financial enterprises and custodian entities.

Taxation

36. The National Tax and Customs Direction (DIAN, *Dirección de Impuestos y Aduanas Nacionales*) is an independent government agency responsible for revenue collection on behalf of the Government of Colombia. The Director of the DIAN is the Commissioner of Taxation (Commissioner) who is appointed by the President.

37. The imposition of income tax is governed by the Tax Statute (*Estatuto Tributario)* which also sets out the general tax principles, rules for the administration of taxes, penalties, procedures and collections.

38. Colombia taxes its residents (companies and individuals) on their world-wide income. Non-resident companies and individuals are taxed only on Colombia-source income. A company is resident in Colombia if it is incorporated under the laws of Colombia or its day to day management and control are exercised in Colombia at any time during the year of assessment. Foreign companies and entities and branches of foreign companies not having their effective management and control in Colombia are subject to income tax on certain income from sources in Colombia, such as income attributable to a permanent establishment in Colombia.

39. Colombia imposes a range of taxes which are collected at the national level by DIAN, the main ones being income tax and capital gains tax (*impuesto sobre la renta y complementarios*), a national tax on wealth (*impuesto a la riqueza*), a value added tax (*impuesto sobre el valor agregado*), a financial transactions tax (*gravamen a los movimientos financieros*), and the recently enacted pro-equity income tax (*impuesto sobre la renta para la equidad*). Social security (*seguridad social*) and payroll (*parafiscales*) contributions are other national taxes which lie outside the jurisdiction of DIAN and are determined and monitored by the Pension and Social Securities Unit (UGPP, *Unidad de Gestión Pensional y Parafiscales).*

40. Local taxes are levied through territorial entities with the most common taxes being the industry, trade and billboard tax (*impuesto de industria, comercio y su complementario de avisos y tableros*), the real estate/immovable property tax (*impuesto predial*) and the registry tax (*impuesto de registro*).

41. Tax rates for individuals are progressive with a maximum rate of 33% (Article 249 Tax Statute). In January 2013, the income tax rate for resident companies and permanent establishments of non-resident companies was reduced from 33% to 25% and an additional tax on profits, locally referred to as CREE (*impuesto sobre la renta para la equidad*), was imposed on these companies, which was levied at a rate of 9%. In 2015, the maximum rate for foreign companies not having a branch or permanent establishment in Colombia is 39%. A lower rate of 15% applies to those companies located in free trade zones. Dividends paid to any resident or non-resident shareholder (be they individuals or entities) are not taxable if the profits from which the dividends have been paid have been taxed at the corporate level. Otherwise, tax on dividends is imposed at a rate of 33%. Withholding tax on interest is levied at 14% on non-residents (Article 408 Tax Statute) and in the case of royalties paid to non-residents, the withholding rate is 33% (with an exception for certain technical services and consultancy who are subject to a withholding rate of 10%) (Article 408 Tax Statute).

Recent developments

42. In October 2014, Colombia entered into a Memorandum of Understanding (MOU) with Panama to facilitate the negotiation of a DTC with an exchange of information provision by September 2015. As of August 2015, Colombia and Panama had held four rounds of negotiations in this regard. As this agreement has yet to be finalised, the scope and content of these negotiations is confidential as agreed by both parties. In November 2014 Colombia signed an EOI agreement with Barbados and in June 2015, Colombia signed a DTC with France; as of August 2015, these two agreements have not yet come into force.

Compliance with the Standards

A. Availability of information

Overview

43. Effective exchange of information (EOI) requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If the information is not kept or maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report assesses the adequacy of Colombia's legal and regulatory framework on the availability of information.

44. In respect of ownership and identity information, the comprehensive obligations consistently imposed on domestic and foreign companies and partnerships ensure that information is available either in the hands of public authorities (i.e. the Public Mercantile Registrar, the Notary Office, the *Superintendencia Financiera* or the DIAN) the entity itself (in its articles of incorporation or shareholder register) or service providers (i.e. financial institutions and other entities supervised by the *Superintendencia Financiera*). These obligations are complemented by the (AML) legislation and rules concerning regulated activities.

45. Two arrangements with trust like features are provided for under Colombia's laws (*Fiducias Mercantiles* and *Fideicomisos*) and it is also possible for a Colombian resident to act as a trustee for a foreign law trust. Only

financial entities authorised by the *Superintendencia Financiera* are permitted to act as a fiduciary for a *fiducia mercantil* and are subject to the AML laws, which require a covered entity or person to know the identity of the settlor and beneficiaries. A *fideicomiso* can only be formed by public deed which is kept at the public notary office and will have identity information on the settlor and beneficiaries. In the case of a Colombian resident acting as the trustee of a foreign law trust or of a foreign trust investing in Colombia, a combination of information-keeping requirements in the Commercial Code, the Tax Statute and certain regulatory laws ensure that information on the settlor, trustee and beneficiaries of foreign trusts will be available in all cases. Foundations in Colombia can only be established for non-profit, charitable activities.

46. The issuance of bearer shares and nominee ownership are forbidden in Colombia. Enforcement provisions are in place in respect of the relevant obligations to maintain ownership and identity information for all relevant entities and arrangements. Element A.1 was therefore found to be in place.

47. Enforcement measures consisting of fines are set down in the Commercial Code, the tax law and regulatory laws to ensure compliance with the information keeping requirements. In practice, monitoring of entities ownership information obligations is carried out by the DIAN and by the surveillance entities (*Superintendencia de Sociedades & Superintendencia Financiera*) via desktop audits and on-site inspections.

48. All merchants (including all commercial entities) must keep reliable accounting records and underlying documentation for at least 10 years under the Commercial Code. Under tax law, all private legal entities (companies, partnerships, *fiducias mercantiles*, *fideicomiso*s and trustees of foreign trusts) are required to keep reliable accounting records for at least five years. Certain companies and partnerships (depending on their size or activities) are systematically required to file a substantial amount of tax and accounting records annually with the DIAN. Hence, element A.2 was found to be in place.

49. Compliance in respect of all entities to maintain accounting information is monitored by the DIAN and the companies and financial surveillance entities (*Superintendencia de Sociedades* and the *Superintendencia Financiera).* Monitoring is carried out via a combination of desktop examinations and onsite inspections. Sanctions are set at the appropriate level to ensure compliance with information keeping requirements and sanctions such as fines are regularly enforced in practice.

50. Banks and other financial institutions have to comply with detailed know-your-customer obligations and must keep all records pertaining to account holders, as well as related financial and transaction information, for at least five years. Element A.3 was therefore found to be in place. A

system of oversight of financial entities is in place by the *Superintendencia Financiera* whereby offsite and onsite inspections are regularly conducted. In the course of the inspections of financial entities, compliance with the customer due diligence requirements under the AML laws is also verified.

51. Over the three year review period (1 July 2011-30 June 2014), Colombia received a total of four requests; one of the requests concerned ownership information and all four of the requests concerned accounting information. Colombia was able to provide all of the requested information and no issues regarding its availability arose in practice. To date, no requests for banking information have been received by Colombia. However, in the event that banking information was requested, due to the legal and regulatory framework and the practice in monitoring of these requirements, this information should be available.

A.1. Ownership and identity information

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

52. The various types of entities in Colombia are not categorised as companies or partnerships, but rather the main type of entity is called a *sociedad*, which is defined in the Commercial Code as a legal entity separate from its owners (Art. 98 Commercial Code) and forms the basis of Colombia's commercial law. A distinction can be made between *Sociedades de Capital* (companies formed by capital) and *Sociedades de Personas* (companies formed by persons). Both types of *sociedad* are treated as separate entities liable to taxes.

53. To facilitate a comparison with other reports, S*ociedades anónimas* (joint-stock corporations or SA), *Sociedades por acciones simplificadas* (simplified stock companies or SAS) and *Sociedades en comandita por acciones* (limited liability companies or SCA) are most comparable to companies in common law countries and therefore dealt with in the Companies section of this report. *Sociedades colectivas* (SCs)*, sociedad de responsibilidad limitada* (SRLs) and *sociedad en comandita simple* (limited liability partnerships or LLPs*)* are best described as partnerships and therefore considered in the Partnership section of this report.

Companies *(ToR A.1.1)*

Types of companies

54. Under Colombian law, companies (*sociedades de capital*) are incorporated pursuant to the Commercial Code. There are three types of companies:

- *Sociedades anónimas* (SA, Joint Stock or Public Limited Company): The company's capital is divided into nominative shares represented by negotiable share certificates. Shareholders can be either entities or individuals, at least five shareholders are required for incorporation and no shareholder may own more than 94.9% of the issued and outstanding shares (articles 373 to 444 of the Commercial Code). As a general rule, shareholders' liability is limited to the amount of their capital contributions (except in case of fraud, and other specific exceptions provided for in the law). As of August 2015, there were 41 316 SAs in Colombia.
- *Sociedades por acciones simplificadas* (SAS, Simplified Stock Company): This entity was introduced in Colombia in 2008 via Law 1258 with simplified formation requirements in order to encourage investment in Colombia. The company has its capital divided into nominative shares represented by negotiable share certificates. Each shareholder is liable only up to the value of his/her capital contribution; however, the quota holders are not jointly liable for the entire social capital (except in case of fraud, and other specific exceptions provided for in the law). There are no minimum or maximum of shareholders required. This is the most common type of company in Colombia, amounting to 351 993 SAS registered as at August 2015.
- *Sociedades en comandita por acciones* (SCA, Limited Liability Company): The company's capital is divided into nominative shares represented in negotiable share certificates. SCAs have two different kind of members: *(i)* general partners (*socios gestores)* with unlimited liability who are responsible for the company's management and *(ii)* limited partners (*socios comanditarios)* whose liability is limited to the amount of their capital contributions. SCAs are governed by articles 323 to 335 of the Commercial Code. This form of company is rarely used and as of 2015, only 4 027 SCAs were registered in Colombia.

Company ownership and identity information required to be provided to government authorities

Registration of companies

55. In accordance with Article 22 of Law 1014 of 2006 and Decree 4463 of 2006, all types of company can be incorporated through a private document when the entity's gross assets do not exceed 500 monthly legal minimum wages or the entity does not have more than 10 employees.[3] All SAs and SCAs holding assets or with employees above this threshold must be incorporated through a notarial instrument referred to as a public deed, comprising the company's articles of association (Art. 110 Commercial Code).

56. In order to facilitate the incorporation of an SAS in Colombia, Law 1258 of 2009 sets out that an SAS may be incorporated by the parties via a private document that is then submitted to the Public Mercantile Registry. There is no requirement for a public deed, except in the case where there has been a transfer of real estate property to the company by a shareholder, in which case it must be incorporated through a public deed (Art. 5 Law 1258 of 2008).

57. When formed under public deed, this document must contain, amongst other things: the name and domicile of the contracting parties, the company's domicile, the amount of capital that is subscribed and the amount paid up by each associate at the time of constitution, the type of each kind of share issued, and the names and domicile of those persons who have legal authority to act for the company; (Art. 110 Commercial Code). Colombia has confirmed that the information specified under Article 110 extends to a requirement to maintain ownership information on the founding shareholders of the company.

58. Where formed via public deed, the notary retains a copy of the instrument in the notarial public archives (*protocolo*), which can be accessed by the public (Art. 107 of Decree 960 of 1970).

59. Once constituted by public deed (or by private deed in the case of an SAS or companies with assets or employees under the threshold amount), every type of company must then register the deed with the Public Mercantile Registry which is located at each of the 57 branches of the Chambers of Commerce throughout Colombia. The deed must be registered within a month following the date the public or private deed was issued.

3. For 2015, the legal monthly minimum wage in Colombia was COP 644 350 or approximately USD 239.

Registration in practice

Office of the Notary

60. It is a requisite for both SAs and SCAs in Colombia to be incorporated by a public deed as formalised by a notary and this usually takes between one to 10 days. Any statutory change, transformation, merger and dissolution of either an SA or SCA must be also done through the public deed. The content of the public deed is set out under the Commercial Code. When formulating the public deed, all shareholder information as well as the identification of the legal representative is required. Each public deed must specify a number, date and name of the notary where the act was issued and a copy of the deed must be maintained at the office of the notary. The deed must then be registered by the company at the Chamber of Commerce and a copy remains in each company's registration file. Officials from the Chamber of Commerce have reported that this information is maintained indefinitely.

61. The notaries are the entities authorised to issue a public deed in Colombia. The notary professionals are governed by the *Superintendencia de Notariado y Registro*. As of June 2015, there were 903 notary offices in Colombia.

62. Whilst, officials from the Chamber of Commerce have reported that approximately 90% of all registered companies in Colombia are SAS companies which are not obliged to be incorporated via public deed at the office of the notary, these companies will still have to present a copy of their original private deed with all ownership information to the Chamber of Commerce. Article 5 of Law 1258 requires shareholder information to be included in the deed at the time of incorporation and therefore this will be made available at the time of registration with the Chamber of Commerce.

Public Mercantile Registry

63. The Chambers of Commerce are the authorised entities in Colombia to perform the functions as a Public Mercantile Registry (Art 27 Commercial Code) and are supervised by the *Superintendecia de Industria y Commercio* which at the same time has the responsibility to draft procedures and instructions for the functioning of the Chambers of Commerce and the maintenance of the Public Mercantile Registry. Therefore, procedures, regulations and norms are standardised within all Chambers. The Chambers of Commerce in Colombia conduct their business as non-for-profit organisations. Each of the 57 Chambers of Commerce has a regional and territorial scope within which they carry out their role, the largest being the Chamber of Commerce of Bogota where 45% of all legal entities in Colombia are registered.

64. All company registrations are currently performed in person by the legal representative. When starting a registration process all companies must present the company deed (be it private or public) to the regional Chamber of Commerce office. The deed for incorporation, either public or private, must be submitted alongside a completed registration form (*Registro Único Empresarial y Social* – RUES) and receipt of payment of the registration fee. Upon registration the Chamber of Commerce will issue a licence which has to be renewed annually within the first quarter of the year, either online or in person at any of the offices of the Chambers of Commerce. Similar to initial registration, at the renewal of registration, companies are required to complete the RUES form and pay a renewal fee (calculated in relation to the assets or turnover of the entity).

65. The RUES is the sole registry for all individuals and legal entities at the Chamber of Commerce in Colombia. The RUES form captures the information regarding the directors (name and address), shareholder information, and certain basic financial information. Information from the RUES form and all other information submitted at the time of registration are kept by the Public Mercantile Registry in a unified database, most of which is accessible to the public through the Public Mercantile Registry webpage. The information publicly available includes, amongst others, the name of the entity, name of the shareholders, type of entity and the Chamber of Commerce with which the entity registered. Only sensitive information, such as the personal address of the shareholders is not publicised.

66. As mentioned above, SCA have two different types of members: *(i) socios gestores* which are jointly and severally liable for the company's obligations and *(ii) socios comanditarios* whose liability is limited to the amount of their capital contributions. All changes in regards to *socios gestores* must be registered with the Chamber of Commerce, within 30 days of occurrence. Only after the changes have been registered will the obligation of the company towards the shareholders be legally recognised. In the case of *socios comanditarios,* information must be submitted at the time of initial registration; however, changes regarding *socios comanditarios* do not have to be filed with the Chamber of Commerce and this obligation remains with the company, whereby such changes have to be recorded in the shareholder registry.

67. In the case of SAs and SAS, identity information on the shareholders must be submitted at the time of initial registration. However, the obligation to update the shareholder information remains with the company, in the shareholder registry. Each year, the shareholder registry must be taken to the Chamber of Commerce for authorisation when it is assigned a chronological stamp. Similarly, for books in electronic form, an electronic stamp and electronic signature is assigned on an annual basis by the Chambers of Commerce.

68. The Chambers of Commerce undertake public awareness campaigns to incentivise registration and companies' formalisation, such as distribution of brochures and media campaigns. Similarly, the Chambers of Commerce also sends reminder letters to the registered address of the company, and also transmits reminders via email and text message in order to further incentivise registration renewal.

69. In 2010, Colombia passed Law 1429/2010 (*Law for the formalisation and creation of jobs*) allowing all entities who had not already registered or have not updated their registration information (renewal of the registration) to do so without any negative consequences. As a result, the number of registered companies increased by 39% between the years 2010 and 2014. Officials from the Chamber of Commerce have reported that it was predominantly small companies that registered pursuant to this amnesty programme.

70. Finally, in 2014, Colombia introduced a new law (Law 1727/2014) requesting the Chambers of Commerce to verify that all registered companies had proceeded to renew and update the information in the public registry accordingly. For companies that failed to register such changes, the Chambers of Commerce must notify the *Superintendencia de Industria y Comercio* of the non-compliant companies, which will then proceed to administer the sanctions applicable (Art. 30). Further, a company that has not renewed its registration in the last five years will be declared to be in a state of dissolution and liquidation. Nevertheless, it is noted that as this law has been recently introduced (its provisions only came into force in 2015), the effectiveness of this measure could not be assessed by the assessment team.

71. The *Superintendencia de Industria y Comercio,* as the supervisory body of the Chambers of Commerce, is responsible for providing guidelines as to how to update the registry and carry out the registration.

Superintendencia de Sociedades

72. The *Superintendencia de Sociedades* is the body responsible for overseeing all entities compliance with their obligations, including ownership keeping requirements, under the Commercial Code. In order to monitor information keeping requirements, each year, 30 000 medium and large entities (which take the form of a company or partnership) are obliged to submit their financial statements together with an annex detailing the shareholder information to the *Superintendencia de Sociedades*. Officials from the *Superintendencia de Sociedades* have reported that they strictly monitor the submission of the annual returns, including the information submitted and in the event of non-compliance have imposed the corresponding sanctions (see also section A.1.6 *Enforcement provisions to ensure availability of information*).

Tax Law

73. The Tax Statute applies to all legal entities incorporated in Colombia as well as branches, agencies and other permanent establishments of non-residents in Colombia and anyone engaged in for-profit activities in Colombia (Art. 5 Tax Statute).

74. All SAs, SCAs and SASs are required to register in the Single Tax Registry (referred to as the "RUT") which is the mechanism used by the DIAN for identifying and classifying taxpayers (Art. 555-2 Tax Statute and Art. 5 of Decree 2460 of 2013). Registration includes the completion of a company tax registration form as well as the presentation of other documents such as identification documentation for the company's legal representative. The tax registration form requires the name of the company, the company address in Colombia, a description of the activity that will be carried out, the exact address where the activity will be carried out as well as the name, identity number, address and signature of the legal representative. Ownership information is not required to be submitted to the DIAN at the time of registration. On completion of the requisite forms, the company is issued a taxpayer identification number (TIN). The TIN is provided at the time of registration with the Chamber of Commerce, upon completion of the Tax Registration form ("RUT" form) which is annexed to the RUES form as used for company registration. Therefore, all entities registered with the Mercantile Registry in Colombia will also be automatically registered for tax purposes.

75. The Tax Statute requires that all companies and partnerships must file an income tax return with the DIAN annually. The tax return form will include the TIN and the name of the entity and an update on the information as provided at registration; i.e. a description of its activity, the address where it will be carried out, and the name, identity number, address and signature of the legal representative.

76. Each year the DIAN issues a regulation requesting the name, address and TIN of all legal and natural persons that are shareholders of companies with a gross income over a specific threshold, Art. 631 Tax Statute). For 2012 to 2015, all companies with an annual gross income of COP 100 000 000 (approximately USD 42 000) were obliged to send information of their shareholders (Art. 1(b) of DIAN's Resolution 117/2012,(2012's information), Art. 19(b) of DIAN's Resolution 273/2013 (2013's information), Art. 3(b) of DIAN's Resolution 228/2013 (2014's information) and article 4(b) of DIAN's Resolution 220/2014 (2015's information). For 2011, all companies with an annual gross income of COP 500 000 000 (approximately USD 250 000) were obliged to send information of their shareholders (Art. 1(b) of DIAN's Resolution 114297/2011), for 2010 all companies with an annual gross income of COP 1 100 000 000 (approximately USD 440 000) were obliged

to send information of their shareholders (Art. 1(b) of DIAN's Resolution 8660/2010) and for 2009 all companies with an annual gross income of COP 1 100 000 000 (approximately USD 440 000) were obliged to send information of their shareholders (Art. 1(a) of DIAN's resolution 7935/2009). The number of reporting entities for the four year period amounted to 31 844 in 2009, 32 400 in 2010, 61 987 in 2011, 97 380 in 2012, 109 301in 2013 and 110 513 in 2014. The DIAN has reported that the number of entities coming within the requirement to submit ownership information is increasing each year due to the decrease in the threshold level subjecting companies to provide ownership information. For those companies with income below the threshold level, as for all companies in Colombia, there is an obligation on the company to maintain an updated shareholder register.

Tax law obligations in practice

77. Registration with the DIAN in the RUT system (tax registration system) is a requisite for all companies in Colombia and is usually done at the same time as business registration with the Mercantile Registry when the entity is required to complete a RUT form together with the RUES form. The application may be performed online or at the offices of the Chamber of Commerce. The request is then automatically sent for processing from the Chamber of Commerce to the DIAN whereby officials from the DIAN generate a TIN. The TIN certificate is then issued by the Public Mercantile Registry of the Chambers of Commerce or at the DIAN offices.

78. As outlined above, the DIAN requires ownership information annually for companies with annual turnover over a certain threshold and issues a resolution every year in the last quarter specifying the information that must be submitted by each type of taxpayer. The information should be sent within the first half of the following year. Further, companies with gross income over COP 100 000 000 (approximately USD 42 000), should provide information on all shareholders with participation of more than COP 5 000 000 (approximately USD 1 755), including the nationality of the shareholder. The amount of capital contribution by all shareholders must also be reported. Accordingly, the information must be submitted to the DIAN electronically (in XML format via form 1010, version 8).

79. Pursuant to Article 624 of the Tax Code and Article 19 of DIAN's Resolution 220/2014 which regulates the transmission of information to the DIAN, all Chambers of Commerce are required to provide information on an annual basis regarding all companies that have been created and liquidated in that year. The information that must be submitted includes the TIN, the subscribed capital, date of incorporation and shareholder information.

80. The Institutional Management Unit (*Dirección de Gestión Organizacional*) within the DIAN, within which there were 363 officials, is responsible for overseeing compliance with the abovementioned obligations and the tax filing requirements. The *Dirección de Gestion Organizacional* matches the information collected from different tax sources on an annual basis. The DIAN has a very robust database and the information available includes ownership information, information collected by the DIAN directly from the taxpayers (e.g. accounting information that must be submitted with the tax return such as balance sheet); information collected from other governmental and non-governmental entities such as the Chambers of Commerce (companies incorporated, companies liquidated); information from notaries (information contained in the public deeds, inheritance, real estate transactions, etc.); from banking and financial institutions in respect to banking accounts; from *Fiducias Mercantiles* (the contract of *patrimonio autónomo*); from *mandatarios* and service providers in relation to the activities related to the administration that have been delegated and from the *Superintendencia de Sociedades* regarding the financial statements of their supervised entities.

81. As of August 2015, there are 1 107 auditors within the DIAN responsible for all aspects of tax return filing and enforcement of tax obligations. While no ownership information has to be filed at the time of completing the annual tax return, this information is available to the DIAN via the annual requirement for companies over a certain income threshold to supply this information. Further, the DIAN has a comprehensive audit programme in place whereby it performs regular onsite inspections of companies on an annual basis. More details on the audit programme and enforcement of sanctions are discussed further on (see section A.1.6, *Enforcement of penalties in practice*).

Company ownership and identity information required to be held by companies

82. Pursuant to Article 195 of the Commercial Code, all SAs are required to maintain "a book duly registered to account for the shares". This book must record the number of all certificates issued, the date issued, any transfers of shares and any legal claim over them. Colombia has confirmed that this requirement extends to a requirement to maintain the names of the shareholders and to record any changes in ownership information when a transfer occurs.

83. For an SAS, Article 45 of Law 1258 of 2008 establishes that in the absence of conflicting legal obligations set out under Law 1258 of 2008 for an SAS, the general provisions of the Commercial Code shall apply. As there are no specific legal obligations applying to an SAS to maintain a shareholder register set out under Law 1258 of 2008, the obligation outlined under article 195 of the Commercial Code for companies to maintain an updated shareholder register shall apply equally to an SAS.

84. For SCAs, Article 343 of the Commercial Code sets out that every SCA is obligated to include in the company deed, the name, domicile, and nationality of each of the subscribers of shares and the number of shares to which they have subscribed. Article 346 of the Commercial Code sets out that information concerning the owners of all subscribed shares must be maintained. These requirements will include the updating of all shareholder information in the event of a transfer in shares in the SCA.

85. The time period for updating the shareholder registry is 1-2 months.

Regulated Entities

86. Financial sector activity in Colombia is deemed to be of public interest and can therefore only be exercised with prior authorisation of the Government (Article 335 Constitution). The *Superintendencia Financiera* is delegated this function and is the body responsible for oversight of the financial sector.

87. Pursuant to Article 1 of the Finance Law (EOSF, *Estatuto Orgánico del Sistema Financiero*) the following activities and entities are subject to the provisions of the Finance Law and oversight by the *Superintendencia Financiera*:

- *Establecimientos de crédito*: comprising entities which collect resources from private savings such as banks, mortgage, housing, and savings corporations, financial corporations, and corporations which are specialised in the financing of business projects and the granting of loans for the acquisition of housing;
- *Sociedades de servicios financieros*: which is made up of different types of corporations which include: fiduciaries, general deposit warehouses, entities which administer funds and severance funds, currency exchange entities and entities which undertake special financial activities.
- *Sociedades de capitalización*: These are financial institutions whose purpose is to stimulate savings through the offering of financial products.
- *Entidades aseguradoras e intermediarias*: This category includes insurance entities, encompassing both insurance and reinsurance co-operatives and corporations, as well as insurance intermediaries (agents and agencies), reinsurance intermediaries and reinsurance brokers.
- *Sociedades Comisionistas de Bolsa*: These are corporations whose only purpose is to buy and sell securities listed in the Colombian Stock Exchange.

- *Sociedades administradoras de inversion*: These are special corporations which are authorised to collect resources from the general public and to invest them in different portfolio investment vehicles such as trust like schemes (*fondos de inversion colectiva*) or private equity funds.

88. Prior to the registration at the Public Mercantile Registry, financial entities must obtain a special authorisation from the *Superintendencia Financiera* to carry on business in the financial sector. In order for the *Superintendencia Financiera* to grant companies this authorisation, it must first ascertain the character, responsibility, suitability, and equity situation of all financial entities. Pursuant to Article 53(3) of the EOSF, this entails the submission of ownership information on all initial shareholders. External Circular 007 of 1996 as issued by the *Superintendencia Financiera* obliges all supervised entities to also fully identify future shareholders or associates where possible.

89. In order to fully comply with the requirements of the EOSF, the *Superintendencia Financiera* has developed an internal checklist which all financial entities must abide by in order to obtain authorisation from the *Superintendencia Financiera*. This checklist sets out the required information and documentation regarding the identity and characteristics of all the initial shareholders in the financial entity. Amongst other information, this requires full identity information in respect of all shareholders, directors, legal representatives and managers. In the case that those wishing to form the company are legal entities, there is a requirement for them to identify their legal representatives and any persons (legal or natural) who own more than 5% of the capital.

90. There is a requirement for the shareholder register to be submitted to the *Superintendencia Financiera* at the time of request for authorisation. In the event of any change in shareholding, updated ownership information must be submitted. Article 88 of the EOSF provides that any change in 10% or more shareholding in the entity must be authorised by the *Superintendencia Financiera* prior to the share transfer which requires full identification information of the new shareholder. The transfer of 10% or more of the shareholding in the entity without the authorisation of the SFC *Superintendencia Financiera* will not produce any legal effect.

91. All companies outside of those regulated by the *Superintendencia Financiera* will be subject to regulation by the *Superintendencia de Sociedades*, a body within the Ministry for Commerce, Industry and Tourism. Law 222 of 1995 sets out the levels of oversight that the *Superintendencia de Sociedades* may exert over each company, varying from the least intrusive, being "Inspection" to "Control" whereby the *Superintendencia de Sociedades* will monitor the entity very closely. All companies subject to supervision by

the *Superintendencia de Sociedades* must submit an annual return outlining the financial position of the company. At the time of submitting the annual return, identity of the shareholders should be also sent in a defined format to the *Superintendencia de Sociedades*. In the case of foreign investors, the entity will also be obliged to identify the country of origin of the investor.

Regulated Entities in practice

92. The *Superintendencia Financiera* was created by the Decree 4327 of 2005, merging two supervisory bodies, the *Superintendencia Bancaria* and the *Superintendencia de Valores* existing at that time, in order to provide for a more comprehensive supervisory system in Colombia. The *Superintendencia Financiera* is responsible for the inspection, surveillance and control of the persons conducting financial, stock exchange and insurance activities and any other financial activity related to the management, administration or investment of funds by the public. As of August 2015, 868 officials worked at the *Superintendencia Financiera*.

93. The entities under surveillance of the *Superintendencia Financiera* can only be incorporated as an SA or as a Co-operative (*Asociaciones Cooperativas*) (Art. 53 EOSF). Prior to registration in the Public_Mercantile Registry, the supervised entities are required to be authorised by the *Superintendencia Financiera*. The licencing process by the *Superintendencia Financiera* for companies aiming to perform financial activities require the requesting entity to comply with a number of obligations. Once the complete application is submitted, the *Superintendencia Financiera* first performs a background check (law enforcement, DIAN, *Superintendencia de Sociedades*), and will generally issue authorisation for constitution within three to six months after receipt of the application.

94. The authorisation for constitution of the company will be in the form of a resolution issued by the *Superintendencia Financiera* and is then presented to the notary for the entity to be incorporated through a public deed. The resolution will specify the timeframe within which the company should obtain the public deed. The company will get legal status at the time of its incorporation via public deed. Only after this process is complete does the *Superintendencia Financiera* issue a certificate of authorisation (licence) permitting the company to commence operations. As at June 2015, there were 418 entities under the supervision of the *Superintendencia Financiera* (banks, insurance companies, *sociedades fiduciarias*, security market operators, etc.). In addition there are also 114 public listed companies which fall under the surveillance of the *Superintendencia Financiera*.

95. In regards to monitoring of the supervised entities, the *Delegatura para Intermediarios Financieros* unit (of which there are 48 officials) of the

Superintendencia Financiera is responsible for the implementation and carrying out of their annual monitoring programmes, which is based on a risk approach. At the beginning of each year the *Delegatura para Intermediarios Financieros* prepares a supervision programme to be carried over a one year period. The selection of entities is done based on factors such as when the entity was most recently audited, the type of products they handle, and the size, market and the type of clients with whom they engage. The oversight programme includes a combination of onsite and desktop inspections.

96. In the course of the surveillance programme, should the *Superintendencia Financiera* discover that the entity has committed a violation of its obligations; the *Superintendencia Financiera* will commence an administrative sanctioning process which may be brought at a personal or institutional level, ranging from a warning to a fine or the removal of the entity's licence. The number and amount of sanctions imposed during by the *Superintendencia Financiera* over the review period are as follows:

Year	Number of sanctions	Total amount of the sanctions
2012	70	COP 4 957 988 500 (USD 1 701 828)
2013	56	COP 3 057 534 563 (USD 1 049 498)
2014	56	COP 4 853 431 036 (USD 1 664 969)

97. Prior to an onsite inspection, entities are given a notice period of 15 days. Nevertheless, in certain cases where a substantial risk has been identified, the *Superintendencia Financiera* may start the onsite audit without prior notification. Onsite inspections are carried out by officials within the *Delegatura para Intermediarios Financieros*. Generally the onsite inspection is performed by five officials. However, this can vary from one official up to a maximum of 15 officials, depending on the size of the entity. During the course of the onsite inspection, the auditor will look at a checklist of elements to be verified including verification of ownership information and an updated shareholder register. Officials from the *Superintendencia Financiera* have reported that 36 onsite inspections have been scheduled for 2015.

Anti-money laundering laws

98. The requirements of the Colombian AML regime or the *Sistema de Administración del Riesgo de Lavado de Activos y de la Financiación del Terrorismo* (SARLAFT) adds yet another layer of requirements to maintain ownership information on the clients of entities performing regulated activities. The scope of the AML regime extends to all financial entities carrying

out business in the financial sector as well as to designated non-financial businesses or professions (DNFBP). In Colombia, DNFBPs subject to the AML regime are notaries, car dealers, casino operators, gold retailers, professional sports clubs, and land freight carrier professionals (Art. 10 Law 526 of 1999). Company formation and related services may be provided by lawyers, accountants, or private company service providers, but those are not covered by the AML regime. Nevertheless, commercial and tax laws ensure that sufficient ownership information is available.

99. The *Superintendencia Financiera* is the body responsible for overseeing the AML regime and for ensuring that entities are complying with the obligations as set out under the law. Each year, the SFC*Superintendencia Financiera* issues regulations (*circulares*) outlining the procedures that must be followed by entities for the implementation of the AML regime. The requirements as set out under the Circular include comprehensive due diligence and know-your-customer (KYC) procedures enabling entities to cross-reference the financial activities as reported by the client with the flows of resources to and from its accounts. Pursuant to External Circular 007 of 2013, comprehensive KYC procedures require that entities must maintain client information on all shareholders with 5% or more shareholding in the company (Art. 4.2.2.1.1). Other non-financial businesses, subject to AML are supervised by the AML intelligence unit (*Unidad de Información y Análsis Financiera* – UIAF); with the exception of notaries that are under the supervision of the *Superintendencia de Notariadoy Registro.*

100. All procedures undertaken pursuant to SARLAFT must be strictly documented and all information obtained must be kept by the entity securely and for a minimum period of five years (Art. 96 EOSF). All entities which implement SARLAFT must have an auditing committee that oversees the proper implementation and adherence to the requirements of the SARLAFT. In addition, all entities are subject to independent over sight by the *Superintendencia Financiera* who monitors all entities under the AML regime through a system of continuous monitoring and a comprehensive audit programme.

Anti-money laundering laws in practice

101. The *Superintendencia Financiera* is also the supervisory body charged with monitoring entities compliance with the obligations of the AML regime in Colombia. The *Delegatura para Riesgo de Lavado de Activos* unit (of which there are 27 officials) of the *Superintendencia Financiera* is the unit in charge of the monitoring of supervised entities. Officials from the *Superintendencia Financiera* have reported that in the course of carrying out an onsite inspection, they will verify that the entity is in compliance with the requirements under the SARLAFT and that customer due diligence (CDD) has been

sufficiently carried out. For that purpose, the auditor will inspect the list of requirements to identify the clients, and a copy of the forms used by the entity for conducting CDD as well as the manuals that the entity has in place in order to comply with the requirements under the AML regime.

102. If, in the course of an onsite inspection, any deficiencies are found, the auditors will propose an adjustment plan in order to guide the company in complying with the requirements under the SARLAFT. When the entity has committed a material violation the *Superintendencia Financiera* will commence an administrative sanctioning process. The sanctions could be to the personal or institutional level, ranging from a warning to a fine or the removal of the licence (see also section A.1.6 (*Enforcement provisions to ensure availability of information).*

Superintendencia de Notariado y Registro

103. The Superintendencia de Notariado y Registro is in charge of the management, inspection, vigilance and control of services provided by both notaries and other recorders of public acts. The Superintendencia de Notariado y Registro is also the responsible entity for the surveillance of the compliance of Notaries' AML obligations. The Superintendencia de Notariado y Registro is divided in three areas: real estate property registration, notaries and land division. As of August 2015, there were 903 notary offices in Colombia, subject to the surveillance of the Superintendencia de Notariado y Registro.

104. Every deed that is granted at the office of the notary must be maintained by the notary from the moment at conception. The *Superintendencia de Notariado y Registro* carries out supervision and regularly inspects the notarial archives.

105. In the case that irregularities of notaries are reported, the *Superintendencia de Notariado y Registro* will carry out an inspection and inspectors from the *Superintendencia de Notariado y Registro* also regularly visit the notary offices. There are 20 persons within the *Superintendencia de Notariado y Registro* that perform inspections on notaries. Notaries are obliged to submit every deed he/she has formalised to the *Superintendencia de Notariado y Registro* on a monthly basis and must also at this time provide statistics regarding the numbers of public deeds that they have produced and any other legal acts they have performed. Officials from the office of the *Superintendencia de Notariado y Registro* have reported that it is not very common to see non-compliance in regards to the creation of public deeds for incorporation of a company.

106. There is also an obligation for notaries to regularly submit information to the DIAN, such as in cases where there has been a property transfer (Art. 629 Tax Statute). Sanctions may be imposed by the *DIAN* in case of

non-compliance with the requirements contained in the laws. Officials from the DIAN have reported that in 2012 one notary was sanctioned and in 2014 two notaries were sanctioned by the DIAN for non-compliance with the information requirements under the Tax Statute.

Foreign companies

107. Pursuant to Article 84 of Law 1607 of 2012, a company incorporated under foreign law but with its day to day management in Colombia is considered a domestic company and will be treated as a resident for tax purposes. Similar to domestic companies, all foreign companies that are considered tax resident for tax purposes must register in the Single Tax Registry before starting their economic activity (Article 555-2 of the Tax Statute and Article 5 of Decree 2788 of 2004). While registration at the Tax Registry does not require the furnishing of ownership information, as outlined above for domestic companies, the DIAN issues an annual regulation requesting the name and TIN of individuals and entities that are shareholders of companies with gross income above a certain threshold. This legal requirement will ensure the provision of ownership information to the DIAN for foreign companies in Colombia that have income above the threshold amount as set by the DIAN. For 2013, all foreign companies with an annual gross income of COP 100 000 000 (approximately USD 52 000) would be subject to this requirement to provide shareholder information (Art. 19 Law 273 of 2013). As of January 2014, there was 1 963 branches of foreign companies registered for tax purposes in Colombia.

108. If an overseas company is non-resident, and derives Colombia sourced income (other than dividends, interest and royalties not subject to withholding tax), it will also have to be registered for tax purposes in the Single Tax Registry (Art. 592 Tax Statute) and will fall within the general filing requirement in respect of that income. In some cases, this will also include providing ownership information to the DIAN where the company's assets and income is above a certain threshold.

109. There are also various provisions in the Tax Statute under which ownership information is relevant in ascertaining a taxpayer's tax liabilities, and therefore would require that the company maintain this information. In particular, shareholding information will have to be maintained in order to comply with the tax obligations set out under: Article 30 (the recognition of dividend payments by a company to its shareholders); Article 35 (the treatment of monetary loans from a company to its shareholders); Chapter 11 (which outlines the transfer pricing rules between companies and interrelated companies); Article 319 (which outlines the tax consequences for shareholders in the case of the acquisition of merger of companies). Accordingly, all companies,

whether local or foreign, are obliged to maintain ownership information in order to meet their tax obligations under the Tax Statute in Colombia.

110. In addition to the above, the DIAN is able to require the production of ownership information from foreign companies at any time in relation to the administration and enforcement of the company's tax obligations (see section B.1 *Access to Information*).

111. Pursuant to Article 471 of the Commercial Code, when a foreign company carries out a business in Colombia on a permanent basis, it must create a branch in Colombia. The branch must be incorporated before a notary by means of a notarial instrument that contains *(i)* a certificate of incorporation, incumbency and good standing of the foreign company, *(ii)* a copy of the company's articles of association and *(iii)* details of their representatives in Colombia (Art. 471(1)). The instrument must be registered in the Public Mercantile Registry. While registration does not require the furnishing of ownership information, depending on the company law of the foreign jurisdiction, such information may be included in the articles of association of the company. As of August 2015, there were 3 181 branches of foreign companies registered in Colombia.

112. Further, Article 476 of the Commercial Code sets out that all foreign companies carrying on business on a "permanent basis" in Colombia, shall "meet any requirements for their control and supervision". Colombia has reported that this will extend to compliance with all obligations as set out for domestic companies and should extend to an obligation for all foreign companies to maintain an updated shareholder register.

113. Therefore, the combination of requirements under the Tax Statute and Commercial Code will ensure that ownership information in respect of all foreign companies carrying on business in Colombia is being maintained.

Registration of foreign companies in practice

114. At the time of registration with the DIAN, as for domestic companies, ownership information is not required. However, due to the annual resolution as issued each year by the DIAN requesting ownership information from companies with a turnover over a certain threshold (for 2014 this was USD 42 000), in practice, ownership information for most foreign companies carrying on business in Colombia will also be provided to the DIAN. Whilst the DIAN was unable to quantify the number of foreign companies that did not have to comply with this requirement, as the threshold is low, it is foreseeable that most foreign companies in Colombia would have to comply with this requirement, therefore permitting ownership information to be available with the DIAN. Further, even in those cases where a foreign company is not subject to this requirement to file ownership obligation, as outlined above it

will still be subject to provisions of the Tax Statute to maintain this information and the DIAN has full powers to request this information from foreign companies in Colombia at any time.

115. Any investment in Colombia from foreign investors must be registered with the *Banco de la República* (Central Bank of Colombia). Should the foreign investor decide to withdraw their investment from Colombia, they must present their final income tax return to the DIAN (Art. 326 Tax Statute). While the information contained in the tax return only includes information on the tax obligations of the foreign company, it is another mechanism by which government entities can cross-check the information available on foreign companies in Colombia. Further, the Central Bank of Colombia maintains records of all foreign investors (both entity and individuals) in Colombia.

Nominees

116. The concept of nominee shareholding and the distinction between legal and beneficial owner that exists in other jurisdictions, in particular common law jurisdictions, does not exist in Colombia. Where a person purports to hold property for the benefit of a third person, that third person would have no rights under Colombian law to claim the property. Consequently, shares issued by companies registered in Colombia are in principle held by their beneficial owner, whose identity is known to (or accessible by) the company and the Colombian authorities.

117. In addition, the Commercial Code provides that shares must be nominal (Art. 195 Commercial Code) and there are no references to nominee ownership in any of Colombia's laws, including its AML regime.

118. While the concept of *mandatario* exists in Colombian law, it is quite different from the concept of nominee ownership and is provided for under Articles 2142 – 2199 of the Civil Code. Specifically, a *mandatario* is not the legal or beneficial owner of shares. A general *mandato* allows the *mandatario* to essentially conduct all business of the person for which he has been expressly permitted (Art. 1262 Commercial Code). For example, the *mandatario* can sell or mortgage assets, accept or decline wills, and undertake any juridical act that the person granting the power could do, except for those expressly forbidden by law (Art. 1253 Commercial Code).

119. In any event, the DIAN annually requests all persons acting as a *mandatario* to provide full ownership and identity of the person (which can be both legal and natural persons) for whom they act, including all shareholder names and TIN. This request is carried out via a notice as published each year by the DIAN. For the years 2010 – 2012, this request was published via Art. 1(e) and 13 of Resolution 117/2012, Art. 1(f) and 14 of Resolution 11429/2011 and Art. 1(e) and 15 of Resolution 8660/2010).

Conclusion

120. All companies incorporated in Colombia are required to keep an updated register of members. The DIAN also maintains a register on all companies chargeable to tax, and in the event that the company is above a certain income threshold it will be subject to annual filing requirements in respect of updated ownership information. Foreign companies that are resident for tax purposes must register with the DIAN, file an annual return, maintain ownership information in order to meet their tax obligations under the Tax Statute and in the event that they are above a certain income threshold, they will also be required to file updated shareholder information. All foreign companies carrying on business on a permanent basis in Colombia must also meet the requirements under the Commercial Code for their control and supervision, which Colombia has reported will include the requirement to maintain a shareholder register. The concept of nominee shareholding and the distinction between legal and beneficial owner that exists in other jurisdictions, does not exist in Colombia. In the event of a *mandatario* relationship, they will have to be registered with the DIAN for tax purposes and each year must file full ownership information on the persons for which they act. Therefore, these obligations ensure that full ownership information is available in respect of all companies in Colombia.

121. Several obligations are contained under the Colombian laws that oblige companies to keep updated information with the public authorities and in practice, there is monitoring of entities ownership information obligations carried out by the DIAN and the surveillance entities for licenced entities via desktop and onsite inspections. In the case of non-compliance with these requirements, over the three year review period, sanctions have been regularly imposed by both the DIAN and the surveillance entities.

122. In the three year review period, of the four requests received by Colombia, one of those related to the identity of the shareholders in a company which was available and provided to the treaty partner. Therefore, the above outlined legal requirements, in addition to the monitoring of these obligations demonstrate that ownership information is available in Colombia.

Bearer shares *(ToR A.1.2)*

123. At present, Article 377 of the Commercial Code provides for the existence of bearer shares. However, Article 45 of Decree 1900 of 1973 (which incorporates Decision 24 of 1973 from the Andean Community into Colombian Law) prohibits the issuance of bearer shares in member countries of the Andean Community. On the entry into force of Decree 1900 of 1973 on 10 October 1973, all members of the Andean Community, including Colombia, were granted a 1-year term during which to convert all bearer

shares into nominative shares. In the case of bearer shares that were issued prior to 1973, all holders of bearer shares were legally obliged to convert these shares to nominative shares.

124. As outlined above (see Introduction, *General overview of the legal system*), Decree 1900 of 1973 as an ordinary law, enacted later in time, overrides the provisions of the Commercial Code providing for bearer shares.

125. The abolition of bearer shares in Colombia is further confirmed by Article 30 of Decision 220/1991 of the Andean Community and Article 9 of Decision 291/1991 of the Andean Community which mandate that all shares must be nominal and both prevail over the provisions of the Commercial Code. Colombia has advised that in the event that a shareholder tried to convert a bearer share to nominal, the share would not be recognised due to the legal obligation to convert the shares during the one year period which commenced on 10 October 1973. Consequently, Colombian companies can no longer have outstanding bearer shares.

126. In practice, Colombian authorities have reported that since bearer shares were abolished in 1973, there have not encountered an incidence of existing bearer shares or company statutes permitting their issuance. No requests concerning companies that may have issued bearer shares in the past were received over the review period and peer input confirms that there were no bearer share related issues in Colombia over the review period.

Partnerships *(ToR A.1.3)*

Types of Partnerships

127. There are three types of partnership (*sociedades de personas*) that can be set up in Colombia:

- *Sociedad Colectiva* (SC) is a commercial entity with at least two members (either natural or legal persons), who are jointly, personally and severally liable for the partnership's obligations without any limitation. SCs are governed by articles 294 to 322 of the Commercial Code. As of August 2015, there were 784 SCs in Colombia.
- *Sociedad de responsabilidad limitada* (SRL) is a commercial entity whose capital is divided into quotas rather than shares. SRLs are governed by articles 353 to 372 of the Commercial Code. The quota holders can be either entities or individuals. At least two quota holders are required to form an SRL, and it may have a maximum of twenty-five members or quota holders. The quota holders' liability is limited to the amount of their capital contributions except for tax and labour

liabilities. As of, August 2015, there were 437 581 SRLs in Colombia representing the most popular type of commercial entity in Colombia.

- *Sociedad en comandita simple* (LLP, limited liability partnerships) is a commercial entity whose capital is divided into parts or quotas (rather than shares) that can be traded, despite the fact that they are not represented in certificates. LLPs are governed by articles 323 to 342 of the Commercial Code. The transfer of quotas requires an amendment to the partnership's by-laws. The partnership has two kind of members: *(i) socios gestores* which are jointly and severally liable for the partnership's obligations such as in the *Sociedad Colectiva*, and *(ii) socios comanditarios* who are the equivalent to quota holders in a *Sociedad de responsibilidad limitada*; hence their liability is limited to the amount of their capital contributions except for tax and labour liabilities. As of August 2015, there were 30 121 LLPs in Colombia.

Civil and Commercial Code

128. All partnerships are formed via public deed before a notary which must include the articles of association of the partnership (see section A.1.1 above). The public deed as retained by the notary includes ownership and identity information on the partners and in the event that there are changes to this information, the public deed must be amended accordingly for such change to have legal effect (Articles 158, 301, 329, 330, and 362 Commercial Code).

129. Once the public deed has been formalised, all partnerships must register with the Public Mercantile Registry located at one of the 57 branches of the Chamber of commerce in Colombia (Art. 28 Commercial Code). At the time of registration all partnerships must indicate the partnership name, the name of each partner and the amount of his contribution, the address of the partnership (which must be in Colombia), the names of the legal representatives and members of the Board of Directors (if any) (Art. 110 Commercial Code). Changes in the partnership ownership information require an amendment to the partnership's articles of association which must be registered in the Public Mercantile Registry. Any change in ownership does not have legal effect until such time as the changes are reflected in the public deed and the changes in ownership are filed with the Registry (Articles 158, 301, 329, 330, and 363 Commercial Code).

130. In addition, all partnerships must maintain a register of partners containing the name, nationality, address, and the amount of their capital contribution. The details and dates of all transfers in ownership must also be maintained. For SRLs this obligation is contained in Article 361 of the Commercial Code. For SCs and LLPs, Article 130 of Decree 2649 of 1993 establishes an obligation for all legal entities to maintain a "shareholder

ledger" in either hard copy or electronically in which the details and dates of all transfers in ownership must also be maintained. This requirement will equally apply to all SCs and LLPs ensuring that an updated record of all the partners is kept.

Tax law

131. Like companies, all partnerships must register in the Single Tax Registry which is maintained by the DIAN before engaging in any form of economic activity (Art. 555-2 Tax Statute and Art. 5 of Decree 2788 of 2004). Partnerships are taxed at the entity level. Where the partners receive a distribution they must include this in their individual tax return (Art. 13 Tax Statute). However, it will only be taxed in the event that the income has not already been taxed at the partnership level. Partnerships that do not generate taxable income in Colombia still must file a form with the tax administration, indicating that they do not have any tax liability (Art. 13 Tax Statute).

132. The same as for a company, registration for partnerships with taxable income includes the completion of the company registration form, as well as the presentation of a valid identity document for the legal representative. Each partnership will be issued a TIN. The registration form requires the name of the partnership, exact domicile, a description of the activity that will be carried out, the exact address where the activity will be carried out as well as the name, identity number, address and signature of the legal representative. As for all companies, the DIAN each year issues a regulation which requires that all partnerships whose income exceeds a threshold amount (as set annually by the DIAN) must file a return containing ownership and identity information of the partnership (see section A.1.1 *Tax Law*).

Foreign partnerships

133. Similar to foreign companies, a partnership incorporated under the laws of a foreign jurisdiction (foreign partnership) which carries on business in Colombia will be subject to the same information keeping requirements for companies as set out under the Commercial Code and Tax Statute (see section A.1.1 *foreign companies*).

Partnership information in practice

134. Partnerships may only be formed via a public deed which details all of the partners. Similar to that for companies, the public deed must be submitted to the Chamber of Commerce for registration (see section A.1.1 *Registration of companies in practice*). Similarly, partnerships are also obliged to complete a RUES form together with a RUT form at the time

of registration with the Public Mercantile Registry. After this procedure is complete the Chamber of Commerce will issue a registration certificate and a TIN number at which stage it is also automatically registered with the DIAN. All subsequent changes in the partners must be performed via updating the public deed at the office of the notary and registering this change with the Chamber of Commerce within one month from its occurrence. If the changes are not incorporated in the deed and registered with the Public Mercantile Registry the changes will not have legal effect. Additionally, the law requires all partnerships are to renew their registration in the Public Mercantile Registry, at which time, they shall pay a renewal payment fee and submit a new RUES form detailing updated ownership information.

135. In 2014, Colombia introduced Law 1727/2014 requesting the Chambers of Commerce to verify that all partnerships had proceeded to renew and update the information in the Public Mercantile Registry accordingly. For partnerships that failed to register such changes, the Chambers of Commerce is obliged to notify the *Superintendencia de Industria y Comercio,* which will be responsible for imposing the sanctions applicable.

136. In addition, the recent changes introduced by the law 1727/2014 provide that a partnership that has not renewed registration in the last five years will be declared as in a state of dissolution and liquidation. While officials from the Chamber of Commerce have reported that this law has encouraged many partnerships to renew registration, as the law has been recently introduced in Colombia, the effectiveness of the new provisions could not be assessed by the assessment team over the review period.

Each year, medium and large partnerships have the obligation to submit their financial statements together with an annex containing ownership information to the *Superintendencia de Sociedades* which closely monitors compliance with this annual filing requirement as well as the information provided and in the case of non-compliance, the *Superintendencia de Sociedades* will impose the corresponding sanctions.

137. Similar to that for companies, ownership information for partnerships with annual turnover which is over a certain threshold is requested annually by the DIAN. The *Dirección de Gestión Organizacional* of the DIAN is responsible for the monitoring of the obligations set out under the tax law and similar to_companies, partnerships are also monitored by the DIAN via desktop and onsite audits (see section A.1.1 *Tax Law obligations in practice*).

Conclusion and practice

138. Overall, very comprehensive obligations established under Colombian civil, commercial and tax laws ensure the availability of ownership information concerning partnerships, either in the hands of public authorities (i.e. the Notary Office, the Public Mercantile Registrar, the DIAN, etc.) or the partnership itself (partnership deed). All types of partnership are formed via public deed before a notary which includes ownership and identity information on all the partners. All transfers of ownership must be registered both at the office of the notary as well as at the Public Mercantile Registrar. Updated partnership ownership information is requested annually by the DIAN where income exceeds a certain threshold.

139. In practice, there are several obligations contained under the Colombian laws that oblige partnerships to keep update information with the public authorities and there is comprehensive monitoring of entities ownership information obligations carried out by the DIAN and by the *Superintendencia de Sociedades* ensuring that ownership information is being maintained in respect of all partnerships in Colombia.

140. In the three year review period, Colombia has not received any EOI requests for information relating to the identity of the partners in a partnership. However, as there are sufficient legal and regulatory requirements for this information to be maintained both by the partnership and government authorities and the maintenance of this information and any subsequent changes is monitored, in the event that partnership ownership information was requested, it should be available.

Trusts *(ToR A.1.4)*

141. The concept of "trust" does not exist under Colombian law, and Colombia has not signed the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. There is, however, no obstacle in Colombian domestic law that prevents a resident from acting as a trustee, or for a foreign trust to invest or acquire assets in Colombia.

142. Colombian law does provide for the establishment of two arrangements; the *fiducia mercantil* and the concept of *fideicomiso*, which share some common law trust like features. The *fiducia mercantil* is governed by the Commercial Code and the *Fideicomiso* is governed by provisions of both the Commercial and the Civil Code.

Fiducia Mercantil

143. The *fiducia mercantil* operates as a contract type arrangement by which a legal or natural person (settlor) transfers the ownership of an asset to a *patrimonio autónomo* which is a separate arrangement administered by a *sociedad fiducaria* (fiduciary) that holds the property for the benefit of a third party (who can be either the settlor or another person). Only financial entities are permitted to act as fiduciaries and must acquire prior authorisation from the *Superintendencia Financiera* before entering into such an arrangement (Art. 1226 Commercial Code). *Fiducias mercantiles* are entered into for the fulfilment of a specific purpose that must be stated clearly in the contract. The *patrimonio autónomo,* which holds the assets is not an entity but can exercise certain rights and is subject to certain obligations, both of which are exercised and fulfilled by the *sociedad fiducaria* who acts as administrator on behalf of the *patrimonio autónomo.* At such time as the purpose as stated in the *fiducia mercantil agreement* has been fulfilled, all assets held by the *patrimonio autónomo* are distributed either to the settlor or the beneficiary.

144. The most common types of *fiducia mercantil* are as follows*:*

- *Fiducia de administración;* This is the most common type of *fiducia mercantil* whereby the *sociedad fiduciaria* administers the assets transferred to the *patrimonio autónomo* following instructions by the settlor;
- *Fiducia de inversion:* The purpose of this type of arrangement is for the *sociedad fiducaria* to strictly undertake different investment activities specifically identified by the settlor;
- *Fiducia inmobiliaria:* This *fiducia mercantil* brings together different entities with different interests and assets in order to develop an investment project related to real estate. This arrangement offers various advantages in terms of the co-ordination of the different entities and the security if offers in terms of guarantees;
- *Fiducia en garantía:* The purpose of this contract is to secure the fulfilment of a particular objective. Assets are transferred by the settlor to the trustee of the *patrimonio autónomo* who ensures that even in the event of a breach of obligation by the settlor, the assets will be transferred to the beneficiary. This type of arrangement is quite commonplace when private entities enter into contracts with the government.

145. *Sociedades fiduciarias* are companies specially authorised by the *Superintendencia Financiera* to perform fiduciary activity in Colombia, through the creation, administration and surveillance of the *fiducias mercantiles* (Articles 1226 of the Commercial Code and 6 of the Law 45 of 1990). As

of June 2015 there were 27 *sociedades fiduciarias* in Colombia, administering 22 000 *fiducias mercantiles*.

Ownership information provided to the government authorities

146. A *fiducia mercantil* contract can take the form of a private document. However, in the case of all *fiducia mercantil* arrangements, where there has been a transfer of real property to the *patrimonio autónomo*, the contract will have to take the form of a public deed (Art. 1228 Commercial Code). The contract (whether private or public) must identify all the parties to the *fiducia mercantil*. When in public deed form, a copy is maintained at the office of the notary where it is publicly accessible.

147. Although generally formed via private deed, all *fiducias mercantiles* must register the deed with the Public Mercantile Registry at the Chamber of Commerce (Art. 123 Law 116/2006). The deed (whether private or public) must identify all the parties to the *fiducia mercantil*.

Tax law

148. Depending on its activity, the *patrimonio autónomo* may be subject to certain taxes in any given year such as income tax, value added tax, financial tax and withholding taxes and in these cases the fiduciary will be responsible for filing the tax return. The *sociedad fiduciaria*, just like any other type of commercial entity, must be registered for tax purposes and as the entity responsible for the tax obligations of the *patrimonio autónomo,* the *sociedad fiduciaria* is assigned a separate TIN for each of the *fiducias mercantiles* they administer. Further, dependent on the benefits distributed from the *fiducia mercantil*, the *fideicomitentes* (settlors) or the beneficiaries may also be subject to a requirement to file an income tax return with the DIAN with respect to that income.

Anti-Money Laundering Law

149. As only financial entities can act as the trustee in a *fiducia mercantil* arrangement, they will come under the provisions of the SARLAFT whereby all financial institutions are obliged to identify their clients and maintain updated information for a minimum period of 5 years from when the transaction was entered into (see section A.1.1 Anti-money laundering laws). In the event that the client, being the settlor, is a legal person full ownership of this legal entity must also be obtained (Chapter 11 of the *Circular Basica Jurídica*). In the event of failure to maintain such information, the AML regime provides for strict sanctions that can be enforced (see section A.1.6 *Enforcement* below). Therefore, the requirements of the AML regime ensure that full ownership

information on the settlors and trustees of all *fiducia mercantil* arrangements is available in Colombia. In practice, the monitoring of entities compliance with the requirements of the SARLAFT is supervised by the *Superintendencia Financiera* who has a comprehensive programme of monitoring of all licensed entities in place. This programme includes annual return filing requirements, desktop audits, onsite inspections and, in the event of non-compliance, the enforcement of sanctions (see section A.1.1 *Regulated entities in practice*).

Ownership information retained by the fiducia mercantil

150. A *fiducia mercantil* contract has to be in writing which can take the form of a private document or in the case that there has been a real property transfer of to the *patrimonio autónomo*, this must take the form of a public deed (Art. 1228 Commercial Code). The *fiducia mercantil* contract will identify all the parties to the arrangement, and a copy must also be retained by the *sociedad fiducaria*.

Fideicomiso

151. A *fideicomiso,* or fiduciary property*,* can be established in Colombia under the Civil Code and whilst this is a common feature in other civil law jurisdictions, Colombia has reported that the *fideicomiso* is rarely used in Colombia. In the *fideicomiso*, a *constituyente* (settlor) transfers the ownership of goods or rights to a *fiduciario* (trustee) subject to the obligation to pass that property to a determined beneficiary (*fideicomisario*) once a specific condition established by the *constituyente* is met (Art. 794 Civil Code). The *fiduciario* is the owner and has the right to benefit from the property as long as the condition is pending (for not more than 30 years, unless the condition is the death of the *fiducario*) (Art. 800 Civil Code). Once the condition has been met, the full property is then transferred to the *fideicomisario* without restriction.

Ownership information provided to the government authorities

Civil law

152. The *fideicomiso* arrangement must be in writing and is created by means of either a public deed (in front of a notary) or through a will which must identify the assets and persons involved (*constituyente, fiduciario and fideicomisario).*The *fideicomisario* has no property right or right to benefit from the property until the specific condition as established by the *constituyente* is met. Once the condition is met the full property is transferred to the *fideicomisario* (beneficiary) without restrictions. When the property includes shares of companies, the two transfers must be reported in the deed of the entity or its shareholders' ledger.

Tax law

153. In regards to taxation of *fideicomisos,* the general tax obligations to be registered with the DIAN and file an annual return bind successively on the *constituyente*, the *fiduciario* and ultimately the *fideicomisario* in parallel with each transfer (i.e. the declaration of the incomes derived from the property of the *fideicomiso*).

Ownership information retained by the fideicomiso

154. The *fideicomiso* arrangement must be in writing in either the form of a public deed or will which will have to be maintained by the *fiducario* identifying the assets and persons involved (*constituyente, fiduciario and fidecomisarios).* In addition, the *fiducario*, as a "*commerciante"* or merchant, will be subject to the record keeping obligations for documents set out under the Commercial Code (see section A.2. *Accounting Information*) including retaining a copy of the deed. Therefore, full ownership information for the *fideicomiso* is maintained by the *fiducario.*

155. Both the Civil Code and tax law obligations ensure the availability of ownership information at all stages within the *fideicomiso* when the property transfers from the owner of the assets at any given time; i.e. from the *constituyente,* the *fiduciario* or the *fideicomisario.* Further, as the *fiduciario* must agree to carry out the arrangement as requested by the *constituyente*, the *fiduciario* would necessarily have to know the identity and retain ownership information of the *constituyente* and the *fideicomisario*.

Fideicomisos in practice

156. Officials from Colombia have reported that the *fideicomiso* is not a commonly used arrangement in Colombia and were historically created for the maintenance of illegitimate children. Nevertheless, as all *fideicomiso* must be formed via public deed and in addition, a copy of the deed with full ownership information will also be maintained at the office of the notary ownership information in respect of all *fideicomisos* is available. Any changes to the *fideicomiso* arrangement must also be performed via a public deed and therefore updated ownership information in respect of the *fideicomiso* will be available at the office of the notary. Further, there is an obligation in the Tax Statute that requires all notaries to submit information contained in the public deed on an annual basis. Therefore, in practice, the DIAN will monitor the obligations for ownership information on all *fideicomisos* to be maintained in Colombia. Further, as all *fideicomiso*s must be formed via public deed at the office of a notary, the notary will come under the surveillance of the *Superintendencia de Notariado y Registro* which has an active monitoring and inspection programme in place (see also section A.1.1 Supervision of notaries).

Foreign trusts

157. Whilst the common law concept of "trust" does not exist under Colombian law, there is, however, no obstacle in Colombian domestic law that prevents a resident from acting as a trustee, or for a foreign trust to invest or acquire assets in Colombia. Therefore, foreign trusts may do business in Colombia directly or through a resident trustee or administrator.

158. The Colombian authorities have advised that the situation of a Colombian resident acting as trustee for a foreign trust has not yet arisen in Colombia. This is attributable mainly to the fact that as Colombia does not recognise the concept of trusts, this creates a legal risk for any persons involved in a foreign trust. In the event of a Colombian resident acting as the trustee of a foreign trust, any assets of the trust will be deemed to be owned by the resident trustee, and therefore considered part of his/her assets for such purposes as income tax or capital gains tax where applicable, in case of death (for inheritance purposes) or concerning potential actions of creditors. Therefore, it is unlikely that a Colombian resident would take on such a liability. However, the fiduciary relationship between the trustee, settlor and beneficiaries may be relevant in specific situations, in which case the resident trustee will be subject to information keeping requirements as further outlined below.

Exchange control and stock market regulations

159. Under Colombian law, a foreign trust may invest directly or acquire assets in Colombia. In such a case, the foreign trust will be deemed to be a foreign legal person. In Colombia, for foreign exchange control purposes, all investments by foreign persons must be registered prior with the *Banco de la República* (Central Bank) (Law 9 of 1991, Decree 2080 of 2000 and *Resolucion Externa* 8 of 2000 of the *Banco de la República*). Non-compliance with this requirement is punishable with a fine of up to 1 000 tax value units amounting to COP 26 841 000 (approximately US 13 408) imposed by the *Superintendencia de Sociedades*. Further, in the event of non-registration of a foreign investment, a fine of up to 200% of the amount of the non-registered operation may be imposed by the *Banco de la República* (Art. 3 Decree 1746 of 1991). For cross-checking purposes, the DIAN receives information on all foreign investors into Colombia on a regular basis from the *Banco de la República*.

Tax law

160. The Colombian tax law does not contain specific provisions on the taxation of assets or income derived thorough foreign trusts with a link to Colombia. Nevertheless, ownership information must be kept if a trustee (professional or not) is resident in Colombia, the trust is administered in Colombia or certain assets are located in Colombia.

161. For income tax purposes, the assets and income of a foreign trust will be deemed as being attributable to the resident trustee for income tax purposes. These assets and income are subject to tax as any other assets or income of the trustee, as well as any benefit attributed to the beneficiaries and must be declared by the trustee in their income tax return. In that case, the trustee would be liable to tax on income earned in Colombia and therefore also required to register with the DIAN and keep accounting records (see section A.2. *Accounting Information* below). In the event that a trustee claimed that a portion of his taxable income was generated from assets he held on trust, the resident trustee could only avoid such a tax liability by providing evidence of the existence of such a fiduciary relationship (most typically the trust deed) and disclosing the identity of the settlor and beneficiaries to the DIAN.

162. All income derived from sources in Colombia by a foreign trust or payments made to foreign beneficiaries are subject to withholding tax. All legal entities that withhold tax on payments to foreign beneficiaries are subject to a requirement to file a withholding tax declaration concerning the amounts withheld on payments made to the foreign beneficiary to the DIAN. Further, all legal entities with a gross income over a specific threshold each year must submit the name, address and TIN of all legal and natural persons that are shareholders of the company to the DIAN (Art. 631 Tax Statute) (see section A.1.1 Company ownership and identity information required to be provided to government authorities).

163. Finally, the tax administration can use all the powers at its disposal to seek and request information not already in its possession, as further described in Part B below. Therefore, the DIAN may ask the resident trustee, administrator or the beneficiaries for all information necessary to determine the amount of the taxable income or assets.

Commercial Code

164. The Commercial Code contains book keeping requirements for all "*comerciantes*" or "merchants". Merchants are defined under Article 10 as being anyone who engages in any commercial activity. Article 100 of the Commercial Code provides that in the event that a company is not formed for commercial purposes but performs certain commercial acts, they will also be subject to the provisions of the Commercial Code. Further, all civil entities that carry out commercial acts are also subject to the provisions of the Commercial Code, notwithstanding that they are not formed for commercial purposes (Art. 20, 21 and 22 Commercial Code). Therefore, Colombia advises that all professional trustees and administrators resident in Colombia will be deemed merchants for the purposes of the Commercial Code and would be subject to general record-keeping requirements applicable to all merchants in

Colombia, with respect to the income that is earned by the foreign trust (see A.2 *Accounting Information*). This typically would include the trust deed and also all correspondence with settlors and beneficiaries containing the names of the settlors and identification of the beneficiaries of the trust and the nature of the assets in the trust that have generated the income.

165. Further, in the event that a Colombian resident purported to act as the trustee of a foreign trust, in a professional capacity, an opinion from the *Unidad de Regulación Financiera* of the Ministry of Finance of Colombia has confirmed that would be deemed as conducting the activities of a *fiduciario* in a *fiducia mercantil* arrangement and therefore would only be permitted to the extent that the resident trustee was an approved financial institution (*establecimiento de credito)* (as set out under Art. 1226 of the Commercial Code). In which case, the foreign trust would be subject to the information keeping requirements as outlined above for the *fiducia mercantil*. In the event that the trustee was not a financial entity authorised to do so by the *Superintendencia Financiera*, the *fiducia mercantil* arrangement would not be recognised. In addition, the resident trustee would be subject to the penalties imposed by the *Superintendencia Financiera* under the EOSF for purporting to act as a *fiduciario* without having obtained authorisation to do so (see section A.1.6. *Enforcement provisions to ensure availability of information*).

Trust ownership information in practice

166. Although trusts are not recognised as legal arrangements in Colombia, in the event that a Colombian resident was to act as trustee for a foreign trust, the above outlined obligations should ensure the availability of information. Furthermore, in practice, these obligations in Colombia are monitored by the *Superintendencia de Sociedades* and the DIAN. In Colombia, for foreign exchange control purposes, all investments by foreign persons (individuals and entities) must be registered prior with the *Banco de la República* and non-compliance with this requirement is monitored by the *Superintendencia de Sociedades* who will impose sanctions in the case of non-compliance with this requirement. The *Superintendencia de Sociedades* has a comprehensive programme of monitoring and onsite inspections in place (see section A.1.1 *Regulated entities in practice*) and checks ownership information pursuant to all foreign investors in the course of conducting onsite inspections. Further, officials from the *Superintendencia de Sociedades* have reported that as they have a risk based approach for the administration and monitoring of investment funds, in the case that one of their regulated entities was found to be acting for a foreign trust, this would immediately trigger an onsite inspection. However to date, this has not occurred.

167. There are also ownership requirements under the Tax Statute that the DIAN is responsible for monitoring. As outlined above (see section A.1.

Tax law obligations in practice), the DIAN requires ownership information on all entities with revenue over a certain threshold and in the event that a Colombian trustee was acting in a professional capacity for a foreign trust or the foreign trust was generating taxable income in Colombia, they would be captured by this requirement. The DIAN has a comprehensive programme of monitoring and onsite inspections in place. Further, officials from the DIAN have reported that they conducted a search of their RUT system and did not encounter any incidence of a taxpayer claiming income due to the provision of trustee services to foreign trusts.

Conclusion

168. Colombia does not recognise the common law concept of trust. However, the Commercial Code provides for two arrangements with certain trust like features; *fiducias mercantiles* and *fideicomisos*. Only financial entities may act as the fiduciary in a *fiducia mercantil* and must obtain prior authorisation from the *Superintendencia Financiera* at which time full ownership information on the *fiducia mercantil* will have to be submitted. In addition, all trustees of a *fiducia mercantil*, as financial entities, will come under the AML regime and be subject to due diligence procedures in order to maintain full ownership information in respect of the *fiducia mercantil*. In regards to *fideicomisos*, the agreement must be in writing with a copy identifying all parties maintained by the *fiducario*. Therefore, the information keeping requirements in the Commercial and Civil Code, together with the AML requirements on *fiduciarios* under the AML laws ensure that ownership information on both *fiducias mercantiles* and *fideicomisos* is fully available.

169. Further, in the event that a resident trustee was acting in the capacity as trustee of a foreign trust, Colombia has reported that this activity would be deemed to be that of a *fiducia mercantil* and in the event that the trustee was not authorised to engage in fiduciary services, there are strict enforcement measures and penalties in place for failing to do so. Therefore, while resident trustees of foreign trusts are not subject to specific obligations to keep identity information, the combination of the stock market regulations, general tax obligations to maintain and submit information to the DIAN and obligations under the Commercial Code permit that information regarding the settlors, trustees and beneficiaries of all trusts will be available to the Colombian authorities. It can, therefore, be concluded that Colombia has reasonable measures in place to ensure that ownership information is available to its competent authorities in respect of foreign trusts administered in Colombia or in respect of which a trustee is resident in Colombia.

170. None of the EOI requests received over the review period requested trust identity information. However, in the case that a request for trust information was sent to Colombia, the above legal requirements in addition to the

outlined practice of these obligations should ensure that Colombia would be in a position to provide this information.

Foundations *(ToR A.1.5)*

171. The concept of private foundation does not exist under the laws of Colombia. The Civil Code provides for the creation of public foundations that operate on a non-profit basis to address socially significant interests identified by the founders (Art. 633 and 634 Civil Code and Art. 5 Decree 3130 of 1968). The goal of a foundation in Colombia must be accomplishing, or helping to accomplish, via the use of assets, activities of an educational, beneficial, scientific, artistic or literary nature and, in general, all activities that represent social well-being.

172. In Colombia, a foundation is recognised as a separate legal person (Art. 633 Civil Code) and must be registered with the chambers of commerce of the domicile of the registered foundation (Art. 40 Decree 2150 of 1995). The document creating the foundation must include the name and address of the foundation, the names and addresses of the founders, the names and identity numbers of the legal representatives and the board of directors, the object of the foundation and details on how it will be administered. During the lifetime of the foundation, the chamber of commerce maintains: *(i)* the articles of association and documents containing its reforms, *(ii)* documents containing the appointment of legal representatives and members of the foundation council, *(iii)* legal representatives' capacity for contracting and *(iv)* the foundation's purpose (Article 40 and 42 of Decree 2150 of 1995). Changes to the founders are not required to be furnished to the chamber of commerce (Art. 44 Decree 2150 of 1995). Colombian foundations are not considered to be relevant entities under the terms of reference.

Foundations in practice

173. Similar to all other business entities in Colombia, all foundations, must be registered with the Public Mercantile Registry and obtain a TIN for identification and tax purposes. Foundations are registered for tax purposes at the time of registration with the Public Mercantile Registry and receive a TIN upon incorporation. All foundations are under the requirement to file an annual tax return and this obligation is monitored by the DIAN.

174. As foundations are established for charitable purposes in Colombia, it appears that the risk of any potential abuse concerning the inappropriate use of foundation in Colombia is low. In this regard, it may be concluded that foundations established in Colombia are not relevant for the Global Forum's purposes. In the three year period under review, Colombia has not received any EOI requests for information relating to a foundation.

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

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

Companies and Partnerships

176. All companies and partnerships are required to keep an updated share register. The transfer of shares has no legal effect for the company and for third parties until the share register has been updated to reflect this transfer (art. 406 Commercial Code). Furthermore, companies and partnerships that fail to meet this obligation may be liable to a fine of a maximum of 200 monthly legal minimum wages COP 120 077 695 (approximately USD 62 000) (Art. 86(3) of Law 222 of 1995).

177. All companies and partnerships are required to register with the Public Mercantile Registry. Pursuant to Article 112 of the Commercial Code, until such time as the entity is registered, no rulings, agreements or company documents have any legal effect against third parties. The effect of not updating registration or notifying the Public Mercantile Registry of transfers of ownership is the same, meaning that a new partner/owner is not liable to third parties for actions of the entity if the change in ownership is not provided to the Public Mercantile Registry (see also section A.1.6 Enforcement in practice).

178. All companies and partnerships must be registered and file an annual income tax return with the DIAN. The tax return form does not include all ownership information on the entity, but does include the taxpayer identification number, the name of the entity, a description of its activity, the address where it will be carried out, and the name, identity number, address and signature of the legal representative. In the event of non-compliance with this tax filing obligation, the entity may be subject to a fine of the higher in value of either *(i)* 20% of the gross income for that period, or *(ii)* 20% of the amount of income of the most recently filed tax return (Art. 643 Tax Statute). Companies and partnerships whose income exceeds a certain threshold will also be subject to additional annual requirements to file a separate electronic form containing full ownership information. In the event of not providing this information, the entity may be subject to pay a penalty of up to 15 000 tax value units amounting to approximately COP 402 615 000 (US 207 801) (Art. 651 Tax Statute).

179. Any person who provides false information in a public document (such as the public deed of a company) may be liable to imprisonment of up to 108 months. The obligation to file a public deed with the notary applies to SAs, SCAs and all partnerships in Colombia. Further, pursuant to Article 289, any person who falsifies a private document may be also liable to imprisonment for up to 108 months.

Trusts

180. In Colombia, as a financial institution, the fiduciaries of all administering *fiducias mercantiles* have to be authorised by the *Superintendencia Financiera*. In the event that an individual or entity were to undertake activities which by law may only be carried out by institutions authorised by the *Superintendencia Financiera*, or when an entity under surveillance by the *Superintendencia Financiera* performs activities for which it is not authorised, such conduct will be deemed as "illegal exercise of the financial activity", and will incur both personal and institutional administrative sanctions. Article 316 of the Colombian Criminal code sets out penalties for "crimes against the financial system". In the event that an individual or entity were to engage in any form of financial activity such as the offering of fiduciary services without having prior authorisation from the relevant regulatory body, they may be penalised by imprisonment for up to 20 years and be subject to a fine of up to 50 000 legal monthly wages.

181. The trustees of *fiducias mercantiles* in Colombia, being financial entities, are also subject to the AML laws, which require them to take customer due diligence measures. In the event of breach of these due diligence procedures, the EOSF sets outs a range of penalties that may be applied for non-compliance. Pursuant to Article 326 of the EOSF, the *Superintendencia Financiera* has the power to perform regular inspection visits to ensure that entities are only performing the financial activities for which they are authorised. In the event that they are performing unauthorised activities, the *Superintendencia Financiera* may take the measures that they determine necessary in order to rectify these actions (Art. 325, section 4, EOSF). Further, in the case of individuals or entities performing unauthorised financial activities, article 108 of the EOSF sets out the following penalties: the immediate suspension of the activities and fines of up to COP 1 000 000 (approximately US 515 870), the dissolution of the legal entity, and the liquidation of those activities which were being performed illegally.

182. All *Fideicomisos* will have to be registered for tax purposes with the tax liability being imposed on the *fiducario* who will be subject to tax filing obligations in respect of the *Fideicomiso.* In the event of non-compliance with tax filing obligations, the *fiducario* will be subject to pay a penalty of 15 tax

value units amounting to approximately COP 402 615 (USD 210) (Art. 643 Tax Statute).

Enforcement in practice

Public Mercantile Registry

183. All companies (including foundations) and partnerships must be registered with the Public Mercantile Registry as maintained by the Chambers of Commerce; until such time, no rulings, agreements or company documents have any legal effect against third parties. Applicants are required to provide the Chambers of Commerce with information on the proposed business including ownership information. All subsequent changes made to the particulars of business are to be filed within 30 days. Further, in the case of partnerships, changes in ownership do not have legal effect until the changes are also reflected in the public deed as filed with the Registry. For failure to comply with registration requirements, there are penalties set out under the Commercial Code and Law 222 of 1995 which in practice are applied by the *Superintendencia de Sociedades*. Officials from the *Superintendencia de Sociedades* have reported that over the review period, fines have been imposed on both domestic and foreign companies and partnerships.

184. Over the review period, sanctions were imposed by the *Superintendencia de Sociedades* for not providing the information required by law as folllows:

Year	Number of companies and partnerships	Total amount of the fines
2012	1 270	COP 4 826 000 000 (USD 1 654 319)
2013	832	COP 3 494 400 000 (USD 1 197 856)
2014	673	COP 3 567 923 663 (USD 1 223 059)
Total	2 775	**COP** 11 888 323 663 **(USD** 4 075 234**)**

185. Every year companies and partnerships must renew the commercial registration within the Chamber of Commerce and at that time, the company must fill a new RUES form with up to date ownership information. To further strengthen compliance with this requirement, a new law (Law 1727 of 2014 on the functioning of the Chambers of Commerce) was recently introduced. Accordingly, the Chambers of Commerce shall submit, within one month after the deadline for the renewal of commercial registration, the list of Companies that failed to renew the registration to the *Superintendencia de*

Sociedades. There is also an obligation for the Chambers of Commerce to annually update the database of the RUES as follows:

- Commercial companies that have not renewed their registration in the last five years will be declared to be in a state of dissolution and liquidation; and
- The commercial registration of individuals, commercial establishments and branches that have not fulfilled the obligation to renew the commercial registration in the last five years will be cancelled. (Art. 31 Law 1727)

186. The transmission of the information to the *Superintendencia de Sociedades* mentioned above is performed online. Each regional Chamber of Commerce is responsible for updating the information for all entities under its territorial supervision. In the case of non-compliance by entities, the *Superintendencia de Sociedades* may then impose penalties of up to 17 minimum monthly legal wages on entities that failed to renew its registration.

187. Regarding to the monitoring of the obligation to register and update information, once a Chamber of Commerce has identified that an entity has failed to register or do not register the changes within the time provided by the law will notify the *Superintendencia de Sociedades* who has the power to impose sanctions in accordance with in the Commercial Code and other relevant laws. In order to enforce the obligations contained in the laws a legal reform introduced in 2014, provided for the Chambers of Commerce to impose fines to entities that failed to update the licence by 31 March each year. Nevertheless, it is noted that as this legal change has been recently introduced, the enforcement of the new provisions could not be assessed by the assessment team.

188. As mentioned above, the *Superintendencia de Sociedades* require 30 000 supervised entities to provide ownership information on an annual basis, together with their financial statements; these are mainly from large and medium size companies and partnerships. In case of failure to comply with these requirements, sanctions may be imposed upon entities that did not register or update the information with the Public Mercantile Registry. During the review period, a total of 2 775 companies and partnerships were sanctioned by the *Superintendencia de Sociedades* amounting to a total of COP 11 888 323 663 (USD 4 075 234) in fines being imposed for non-compliance with information-keeping requirements.

Tax law

189. As outlined above, the DIAN requires ownership information annually for companies with annual turnover over a certain threshold and issues a resolution every year, enforcement measures are generally in place. The number and amount of sanctions for non-compliance imposed during the review period are as follows:

Fiscal year of the requested information	Number of sanctions imposed	Total amount of the fines
2012	669	COP 65 605 848 290 (USD 22 489 226)
2013	22	COP 6 749 070 612 (USD 2 313 534)
2014	108	COP 2 898 361 800 (USD 993 538.14)
Total	**799**	**COP 75 253 280 702 (USD 25 796 298)**

190. The auditing division of the DIAN is responsible for the monitoring and enforcement of the ownership information requirements set out under the Tax Statute. The auditing division is subdivided into the customs, tax and international auditing divisions. The auditing department set guidelines and generate auditing programmes to be executed by each of the 32 regional tax auditing divisions distributed in the territory of Colombia and design the tax audit programme.

191. The *Subdirección de Gestión de Análisis Operacional* (Deputy Directorate of Operational Analysis) is the department within the DIAN which is responsible for the audit programme. The tax audit programme is developed with the information collected from the different sources (public, notary, banks etc.). The analysts from the Deputy Directorate of Operational Analysis will select the relevant information and will then proceed to cross-check this information with all the different sources and to later identify the taxpayers to be audited and to determine the particulars of the audit (i.e. the tax they are concerned with, the fiscal period). Once the Deputy Directorate of Operational Analysis derives the audit plan, it will then assign the investigation to one of each of the 32 regional audit offices. Once an auditor has been assigned to a task, they will perform background analysis and then open a file for the audit. Generally, one auditor is assigned per audit for which taxpayers is allocated eight days' notice.

192. The sanctions that may be imposed by the DIAN include the voluntary correction of the income tax return by the taxpayer. Sanctions then

commence at 10% of the taxable amount and can be as much as 160% of the taxable amount depending on the level of the breach with the taxpayers' requirements under the Tax Statute. The number and amounts of fines collected by the DIAN (including for breaches of requirements under the Tax Statute and the resolution to provide ownership information) over the review period are as follows:

Year	Number of actions to combat tax evasion	Tax collected (including sanctions) in millions
2012	41 204	COP 2 109 058.7 (USD 722.9)
2013	31 972	COP 4 335 695.5 (USD 1 486.2)
2014	30 868	COP 4 399 797.7 (USD 1 508.2)
Total	**104 044**	**COP 10 844 551.9 (USD 3 717.4)**

AML law

193. As set out above, the *Superintendencia Financera* is the body responsible for overseeing entities' compliance with the obligations set out under the AML regime. The sanctions applied over the review period included those applied on the company (institutional) and those applied directly on directors (personal). The number and sanctions for non-compliance with the AML regime imposed during the review period are as follows:

Type of Sanction	Year	Number of sanctions	Amount of sanctions
Institutional	2012	5	COP 838 837 000 (USD 287 547)
Personal	2013	1	COP 60 000 000 (USD 20 568)
	2014	2	COP 182 500 000 (USD 62 560)

Trusts

194. *Fiducias mercantiles*, *fideicomisos* and trusts will be monitored by the inspection programme in place by the DIAN and in the case of non-compliance with their tax registration or filing requirements, the DIAN in

the course of its audit inspection programme, regularly imposes penalties as outlined above.

Conclusion

195. Enforcement provisions are in place in respect of the relevant obligations to maintain ownership and identity information for all relevant entities and arrangements at the Public Mercantile Registry, with the tax authorities and with the surveillance entities. While with the passing of Law 1727 in 2014, the Chamber of Commerce has become more vigilant in ensuring that registered entities renew their registration annually (and hence submit updated ownership information), as this is a recent legislative provision, its effectiveness could not be fully assessed over the review period. However, in any case, both the DIAN and the surveillance entities have an active oversight system in place in the form of monitoring of entities compliance with the obligation to submit annual returns as well as a comprehensive onsite inspection programme which will cover all relevant entities and arrangements. In the event of non-compliance with the obligation of registration of changes in ownership, sanctions have been systematically imposed by the DIAN and the regulators over the review period. Therefore, it can be concluded that the legal requirements for all relevant entities and arrangements to maintain ownership information in Colombia are also closely monitored in practice and in the case of non-compliance, penalties have been systematically enforced.

Phase 1 determination
The element is in place.

Phase 2 Rating
Compliant

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)

196. The *Terms of Reference* sets out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. It provides that reliable accounting records should be kept for all relevant entities and arrangements. To be reliable, accounting records should; *(i)* correctly explain all transactions, *(ii)* enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time;

and *(iii)* allow financial statements to be prepared. Accounting records should further include underlying documentation, such as invoices, contracts, etc. and need to be kept for a minimum of five years.

Commercial Code

197. The Commercial Code contains accounting requirements for all "*comerciantes*" or "merchants". Merchants are defined under Article 10 as being anyone who engages in any commercial activity. Article 100 of the Commercial Code provides that in the event that an entity is not formed for commercial purposes but performs certain commercial acts, they will also be subject to the provisions of the Commercial Code. Further, all civil entities that carry out commercial acts are also subject to the provisions of the Commercial Code, notwithstanding that they are not formed for commercial purposes (Articles 20, 21 and 22 Commercial Code). As a result, all relevant entities including domestic companies, foreign companies, partnerships, *fiducias mercantiles*, *fideicomisos* and resident trustee of a foreign trust will be subject to the accounting obligations for merchants as set out under the Commercial Code and described below.

198. Article 19 of the Commercial Code sets out a general obligation for all merchants to "keep regular accounts of their businesses in accordance with the regulations". The regulations providing further guidance in this regard are to be found in Decree 2649 of 1993 which contains the general accounting principles and basic provisions and this also deals with underlying documents, and Decree 2650 which lists the various transactions for which accounting records must be kept for and where they should be recorded.

199. General accounting record keeping obligations are currently set out under Decree 2649 of 1993. Article 1 sets out the general obligation that the accounting as undertaken by entities must record "all economic activity in a clear complete and trustworthy manner". Article 56 of Decree 2649 of 1993 requires that all economic activity must be recorded in ledgers and the double-entry system of accounting must be adopted. Article 125 requires that all entities keep records that:

a. Record in chronological order all the operations, whether individually or in general summaries, up to one month;

b. Establish the monthly summary of all operations for each account, the debit and credit movements, combining the movement of different establishments;

c. Determine the holdings of the entity, the movement of capital contributions and restrictions on them; and

d. Allow a full understanding of the aforementioned.

200. Further, Article 125(4) of Decree 2649 of 1993 also contains more detailed obligations in respect of the maintenance of sub-ledgers which should be kept in order to:

Know individual transactions, when these are recorded in general summary books;

a. Establish assets and obligations derived from the activities of each establishment, when a separate accounting of its operations is kept;

b. Identify the codes or encoded series that identifies the accounts, as well as the codes or symbols used to describe the transactions, indicating additions, modifications, substitutions or cancelations done to them;

c. Control the movement of merchandise, whether by unit or similar groups; and

d. Conciliate basic financial statements with those prepared using other comprehensive accounting bases.

201. Article 46 of Law 962 of 2005 establishes that companies and partnerships must keep their accounting records at their domicile. In addition, Article 66 of the Commercial Code and Article 127 of Decree 2649 of 1993 establish that commercial books, which include accounting records, must be exhibited at the principal address.

202. In addition, in July of 2009, Colombia passed Law 1314 of 2009 outlining the new principles and standards of accounting and financial reporting as well as identifying the designated competent authorities and the bodies responsible for monitoring compliance with accounting record keeping requirements. This law provides for the convergence of current national accounting standards with those set out under International Financial Reporting Standards (IFRS).

203. In December 2012, Colombia passed Decrees 2784 and 2706 adopting the International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Bureau (IASB) for the keeping of accounting records. These standards will become binding on public companies and companies with more than 200 employees and with assets equivalent to 30 000 monthly minimum wages in Colombia as of January 2015. For all other entities, the standards will become binding as of 2016.

204. The obligations set out under the various decrees and laws will cover the requirement to maintain a balance sheet, inventory books, accounting journals and a general ledger. These obligations will apply to all relevant entities and arrangements other than those foreign trusts that do not carry on a commercial activity in Colombia

Tax Law

205. The Tax Statute also imposes accounting record keeping requirements. Pursuant to Article 632, all entities, whether they are subject to tax or not, are under an obligation to maintain comprehensive accounting books that clearly reflect assets, liabilities, equity, income, costs, deductions, exempt income, discounts, taxes, and withholding. In the event of non-compliance with the requirements, the Tax Statute provides for a fine of.5% of the higher value of the liquid equity of the entity or the net income for the previous tax year, of a value up to 20 000 tax value units amounting to COP 536 820 000 (approximately US 277 000) (Art. 655 Tax Statute).

Fiducias Mercantiles and Foreign Trusts

206. In addition to the above requirements, there are also specific accounting requirements applicable to *Fiducias Mercantiles*. Pursuant to the Commercial Code, the *fiducario* is bound by law to keep the assets which compose the *patrimonio autónomo* separate from his own assets and those which belong to other *patrimonios autónomos* (Articles 1233 and 1234(2) Commercial Code). Therefore, in order to meet this requirement the *fiducario* will have to maintain comprehensive accounting records in respect of each *patrimonio autónomo* for which the financial institution acts as a *fiducario* to ensure that the assets are kept strictly separate. In addition, the *fiducario* is obliged to render reports regarding the assets of the *patrimonio autónomo* to the settlor or beneficiary every six months (Article 1234(8) Commercial Code). Both of these requirements ensure the fiduciary will be under an obligation to keep accounting records of the activities it undertakes with each *patrimonio autónomo*.

207. In the case of a Colombian resident acting as a professional trustee for a foreign trust, they will be considered a "merchant" under Colombian Law. Therefore, the accounting obligations as set out under the Commercial Code would equally apply in these cases. In the event, that a Colombian resident was not acting as a professional trustee they will not be subject to the accounting obligations under the Commercial Code. However, given the uncertainty surrounding resident trustees acting for foreign trusts in Colombia (see section A.1.3) it can be concluded that a Colombian resident acting for a foreign trust will only occur in very rare circumstances. Officials from the DIAN have reported that a non-professional resident trustee holding foreign trust's assets and income as being his/her own would have to declare them in his/her annual tax return and keep accounting records concerning such assets and income as set out under the Tax Statute. While Colombian authorities have reported that they have never encountered any incidence of foreign trusts, nevertheless they have reported that the general tax obligations would apply equally to foreign trusts.

Underlying documentation (ToR A.2.2)

208. Article 123 of Decree 2649 of 1993 requires that "merchants", being all entities that are subject to the Commercial Code, including all relevant entities (i.e. domestic companies, foreign companies, partnerships, *fiducias mercantiles*, *fideicomisos* and professional trustees) must maintain supporting documents in respect of their accounting obligations. Furthermore, article 51 of the Commercial Code requires that "vouchers" must be maintained to support the entries recorded in the accounting books. Article 54 contains an obligation to maintain all commercial correspondence related to the business and Colombia reports that this obligation requires the conservation of such documentation as invoices, contracts and other business related documentation. Finally, article 55 also imposes an obligation on all merchants to maintain all vouchers of accounting entries. Colombia has advised that under Colombian law "vouchers" is understood as all documents exchanged in the course of carrying on a business such as invoices, receipts, debit and credit notes, and business contracts.

209. Pursuant to the provisions of the Tax Statute, there are requirements for entities to maintain accounting records in respect of "their internal and external vouchers that support the accounting records, in such way that they reflect clearly assets, liabilities, equity, income, costs, deductions, exempt income, discounts, taxes and withholdings" (art. 632 Tax Statute).

210. Therefore, the obligations set out under the Commercial Code and Tax Statute conform with the international standard to maintain all relevant underlying documentation. However, these requirements do not apply to non-professional Colombian residents administering foreign trusts in Colombia.

Document retention (ToR A.2.3)

211. The Commercial Code requires that merchants maintain all books and records including all the accounting records and underlying documentation for a period of ten years from their closing date or from the date of the last entry, document or voucher (Art. 60 Commercial Code). The same term equally applies to all non-merchants who are legally required to maintain this information (Law 962 of 2005). The records may be maintained in paper, technical or electronic means so long as an exact reproduction of the record is guaranteed (Art. 28 Law 962 of 2005).

212. For tax law purposes, all documents, including accounting records must be kept for a minimum period of five years (Art. 632 Tax Statute).

Availability of accounting information in practice

Commercial Code

213. The Commercial Code provides the legal obligations for all relevant entities to maintain reliable accounting records and underlying documentations. Consequently, several laws and decrees have been issued in order to establish an adequate legal framework regarding accounting and bookkeeping requirements for companies in Colombia. Sanctions are also defined in the Commercial Code for failing to comply with the requirements in the law. The Commercial Code designates the Chamber of Commerce, the *Superintendencia Financiera* and the *Superintendencia de Sociedades* as the entities responsible for monitoring compliance with the accounting record keeping requirements in Colombia. In the event of entities not maintaining accounting records in accordance with the obligations under the Commercial Code, the sanctions set out under the Commercial Code may be imposed on the entity by the Chamber of Commerce, the *Superintendencia Financiera* or the *Superintendencia de Sociedades*. Further, sanctions may also be imposed on the accountant or the tax reviewer responsible for preparing the accounting records (Art. 58 Commercial Code).

214. As of August 2015, there were approximately 869 000 companies and partnerships registered at the Mercantile Registry within the Chambers of Commerce of Colombia. The Chamber of Commerce is therefore the first layer in monitoring of the record and book keeping compliance in accordance with the laws. Every year at the time of annual renewal, all registered entities are obliged to provide certain accounting information to the Chamber of Commerce which is cross-checked and verified with the DIAN.

215. In regards to the imposition of sanctions, officials from the Chamber of Commerce have reported that in the event that an entity failed to provide the necessary accounting information as required at the time of renewal or if it is discovered that the entity does not maintain accounting information in accordance with the Commercial Code, the Registry would then contact the *Superintendencia de Sociedades* to impose the corresponding sanction.

Superintendencia de Sociedades

216. All companies and partnerships with income over a certain threshold that are not already supervised by the *Superintendencia Financiera*, come under the supervision of the *Superintendencia de Sociedades*. Colombian officials have reported this number to be approximately 30 000 medium and large companies and partnerships. The *Superintendencia de Sociedades* has 600 employees, of which the 39 officials within the Department of Economic

and Accounting Affairs Unit, are those involved in the monitoring and enforcement of the legal and regulatory requirements.

217. The functions and responsibilities of the *Superintendencia de Sociedades* as a surveillance entity are defined under Law 122 of 1995. Pursuant to article 83 of Law 122/95, the *Superintendencia de_Sociedades* is permitted the power of inspection in order to perform regular onsite inspections and spot checks of entities under its supervision to verify their compliance with their legal and regulatory obligations including their accounting record keeping requirements. The power of surveillance (Art. 84, Law 122/95) permits the *Superintendencia de Sociedades* to closely supervise selected entities including those that may be in default of some of their legal and regulatory obligations and in such cases they may undertake certain actions such as the appointing of liquidators or imposing penalties on the entities or directors of the entities for breach of legal obligations. Finally, those entities that come under the power of control are those that are in serious breach of their legal and regulatory obligations and are under full control of the *Superintendencia de Sociedades* (Art. 85, Law 122/95).

218. Over the review period, of the 30 000 companies supervised by the *Superintendencia de Sociedades*, officials reported that in 2014, 32 companies were under very high surveillance or the "control programme", mainly because had committed serious infringements. This number was 40 in 2012 and 41 in 2013. In regards to the surveillance function, in 2014 there were 8 064 legal entities which, upon a risk based analysis performed by the *Superintendencia de Sociedades,* had identified as having an annual total turnover and assets exceeding certain thresholds and are therefore subject to closer monitoring and oversight of their legal and regulatory requirements. The number of entities that same under the surveillance function in 2012 was 7 478 and in 2013, this was 7 722. Officials from the *Superintendencia de Sociedades* have reported that this number has been steadily increasing each year due to the increasing amount of assets of the companies under their surveillance.

219. The remaining legal entities that are neither under the surveillance or the control function but instead come under the inspection programme are composed of mainly medium size companies and other companies of relevance for institutions such as the DIAN, the *Banco de la República* (Central Bank) or the Institute of Statistics. This last group of companies are selected based on factors such as the economic sector, their socio-economic impact and the presence of foreign investors. Companies under the Control and Surveillance programme are subject to additional reporting requirements. It is noted that at all times, the *Superintendencia de Sociedades* is empowered to request information from any of the legal entities under its supervision.

220. Each year the companies under the supervision of the *Superintendencia de Sociedades*, are required to send their financial statements annexed to the annual return. For this purpose, every November the *Superintendencia de Sociedades* will issue a request to each company subject to the above mentioned obligations specifying the procedure for submitting the information. For ease of compliance with this requirement, the process of requesting and submission of financial statements is performed online and officials from the *Superintendencia de Sociedades* have reported that there is high compliance with this annual obligation. Further, from 2014 onwards, with the adoption of the International Financial Reporting Standards (IFRS), financial information from 8 000 entities under the supervision of the *Superintendencia de Sociedades* will be requested in order to verify compliance with the new accounting record keeping obligations imposed by the IFRS.

221. After the deadline for the submission of the annual return which includes accounting information, the supervisory unit of the *Superintendencia de Sociedades*, proceeds to identify the legal entities that have failed to file an annual return. The officials from the *Superintendencia de Sociedades* reported that between the years 2012 – 2014, the rate of non-compliance with the annual return filing obligation decreased from 10% to 8%. Officials from Colombia have reported that while there are no specific factors attributable to the rate of non-compliance, the main entities in default tend to be smaller entities that are no longer carrying on business in Colombia or are unaware of their filing obligations. In the event of non-compliance with this requirement, the *Superintenencia de Sociedades* will apply sanctions to companies that failed to submit the financial statements as provided for in the Commercial Code (amounting to 200 minimum monthly wages, or approximately USD 5 000). Officials from the *Superintendencia de Sociedades* have confirmed that during the review period sanctions were applied to 3 821 legal entities during the period 2012-2014 that did not submit information during the time stablished by the law. Details of the sanctions that were imposed over the review period are as follows:

Year	Number of companies and partnerships	Total amount of the fines
2012	1 724	COP 6 551 200 000 (USD 2 245 705)
2013	1 193	COP 4 938 400 000 (USD 1 692 848)
2014	904	COP 4 792 991 663 (USD 1 643 004)
Total	**3 821**	**COP 16 282 591 663 (USD 5 581 558)**

222. Upon receipt of the information from the legal entities via the annual return, officials within the Supervisory division of the *Superintendencia de Sociedades* perform regular desktop analysis of the financial information they receive via cross-referencing with other government databases and onsite audits of entities under their supervision.

Tax law

223. The obligations to maintain reliable accounting records and underlying documentations pursuant to tax law are prescribed over by the DIAN. All legal entities are subject to the same monitoring and supervision in place by the DIAN as has been set out for their monitoring of their ownership information requirements (See also session *Availability of information in practice*) which includes a number of monitoring related activities such as regular desktop review and a comprehensive onsite auditing programme during which officials from the DIAN have confirmed that entities compliance with their accounting record requirements will be verified. In the event that entities registered for tax are found to not be keeping the accounting records prescribed to be maintained, a fine of 0.5% of the higher value of the liquid equity of the entity or the net income for the previous tax year, of a value up to 20 000 tax value units amounting to COP 536 820 000 (approximately USD 277 000) (Art. 655 Tax Statute).

224. Further, the DIAN also requires all corporate groups to report their consolidated financial statements (Art. 631-1, Tax Statute), including individual financial statements for all branches and subsidiaries outside of Colombia. On receipt of this information, the *Dirección de Gestión Organizacional* within the DIAN compiles all the information and performs the above outlined cross-checking in order to verify compliance with the accounting record keeping requirements.

225. It is also noted that at the time of filing the annual tax return, the taxpayer is required to provide certain financial and accounting information regarding all income generated in Colombia and abroad (e.g. information on assets, sales, costs and expenses).

Conclusion

226. There are comprehensive requirements for accounting records and underlying documents to be maintained in line with the international standard under the Commercial Code and the Tax Statute in Colombia. Monitoring and enforcement of the legal requirements to maintain accounting information as prescribed by the Commercial Code are overseen by the Chamber of Commerce, the *Superintendencia Financiera* and the *Superintendencia de Sociedades*. In practice, the sanctions set out under the Commercial Code

have been regularly imposed by the *Superintendencia Financiera* or the *Superintendencia de Sociedades* over the review period. The legal requirements to maintain accounting records as prescribed under the Tax Statute are monitored by the DIAN which has a number of sanctions that it may impose under the Tax Statute in the event of non-compliance.

227. During the review period, accounting information was requested in the four EOI requests received by the DIAN by two different treaty partners. Officials from the DIAN have reported and peer input from these two treaty partners confirms that all of the requested accounting information was provided to its treaty partners and there was no issues regarding its availability in practice.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 Rating
Compliant

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

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

229. All financial entities in Colombia are subject to the regulatory requirements as set out by the *Superintendencia Financiera*, including the maintenance of records concerning all accounts and transactional information. In addition, Colombia's AML law requires that all financial institutions record the incoming and outgoing cash transactions.

230. The requirements for account ownership information to be maintained by all financial entities pursuant to the AML regime are set out in the *Circular Basica Jurídica* issued by the *Superintendencia Financiera* which provides the guidelines that all financial entities must comply with in order to comply with the Know-Your-Customer (KYC) obligations. This requires

that financial institutions must maintain all account holder and transaction information including:

- Full ownership and identity information;
- The economic activity carried out by the account holder;
- The city and bank branch from which all transactions are performed; and
- A description of all the transactions, including the date, the transaction type and the amount.

231. The IT system of all financial entities must also permit them to register all client operations and consult all client transactions individually or after they have been carried out.

232. In regards to transactional information, in accordance with section 3.3 of *Circular Externa*/2012 issued by the *Superintendencia Financiera*, financial institutions are required to maintain the following information:

- Date and hour of the transaction
- Code of the device (phone number or IP address) from which the transaction was performed.
- Identity of all accounts concerned with the transaction
- The number of transactions performed
- The cost of the transaction.

Conclusion

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

Availability of banking information in practice

234. The legal obligations in place to maintain banking information, both pursuant to the licensing requirements established under the *Superintendencia Financiera*'s regulations, as well as the AML obligations imposed under the SARLAFT, ensure that banking information is available. Furthermore, the details of all banking transactions must be submitted to the DIAN, twice a year, further ensure that banking information is available in practice.

235. The *Superintendencia Financiera* is responsible for the licencing and on-going supervision of all banks and non-banking financial institutions

carrying on business in Colombia. According to the EOSF the *Superintendencia Financiera* is mandated to ensure that all licenced banks and non-financial institutions adhere to the statutory and regulatory requirements and that these requirements are enforced in the course of a comprehensive system of oversight and supervision. As of June 2015, there were 418 entities licenced with the *Superintendencia Financiera* and of these, 25 were banks. Within the *Superintendencia Financiera*, the general supervisory function is performed by the *Delegatura para Intermediarios Financieros* in which there are 48 full-time officials.

236. All banks and non-banking financial institutions are required to be licenced by the *Superintendencia Financiera*. All applications for a licence must be made in person and include the submission of information such as financial information relating to the financing of the entity, details of the proposed operations, a list of directors, a list of shareholders, the identification of a designated legal representative and the relevant fee. On submission of this information, the application will be analysed by officials from the licencing unit of the *Superintendencia Financiera* who will revert back to the applicant where clarifications or further information is required. Full KYC procedures are undertaken during the application for a licence as required under the SARLAFT and Banking Law including the verification of ownership and identity information. Officials from the *Superintendencia Financiera* have reported that the process for obtaining a licence to operate in the financial industry in Colombia usually takes about three months.

237. Once a licence has been issued, while the general supervisory function is performed by the *Delegatura para Intermediarios Financieros,* the *Delegatura para Riesgo de Lavado de Activos (*AML Risk Department) of the *Superintendencia Financiera* will be then specifically responsible for the on-going monitoring to ensure entities compliance with the above outlined provisions of the EOSF and the AML regime. As of June 2015, there were 27 inspectors within the AML Risk Department of the *Superintendencia Financiera* who are responsible for the monitoring of banks and non-bank financial institutions' compliance with the requirements of the AML regime.

238. In practice, the *Superintendencia Financiera* undertakes ongoing surveillance and comprehensive monitoring of licensed financial institutions to ensure that they are complying with licensing regulations. The *Superintendencia Financiera* has a comprehensive supervision manual in place which assists in guiding and directing their supervisory role. The supervision manual clearly sets out the supervisory role in the detection of irregularities observed in the process of information rendering to the *Superintendencia Financiera*. This monitoring is performed via desktop audits and onsite inspections of entities (see also section A.1.1 *Regulated entities in practice).*

Sanctions for non-compliance

239. Non-compliance with AML obligations set forth under the *Circular Basica Jurídica* may be punished with a number of penalties depending on the seriousness of the offence, ranging from warnings and fines. Ultimately, a bank may even lose its licence and its officers and managers may also face penalties or disqualification. In very serious cases, the *Superintendencia Financiera* may also commence judicial proceedings against the entity or its officers. These fines are fixed at an appropriate level to be dissuasive enough to promote effective compliance. During the three year review period, the fines imposed by the *Superintendencia Financiera* on regulated entities amounted to COP 838 837 000 (USD 287 547.5) in 2012, COP 60 000 000 (USD 20 567.6) in 2013 and COP 182 500 000 (USD 62 559.7) in 2014. While these penalties relate to those imposed on both banking and non-banking institutions, officials from the *Superintendencia Financiera* have reported that the fines imposed over the review period related mainly to banking entities.

Monitoring by DIAN

240. In regards to the monitoring of the obligations set out under the Tax Statutes (Chapter 1, article 7 of Resolution 00219), each bank and non-bank financial institution must report annually to the DIAN all transactions (such as checking account information, saving and deposits and final and average balance) for all accounts holders with a monthly balance of over COP 1 000 000 (USD 383) and information regarding to certificate of deposit and investments in investment collective funds without distinction of the transaction's amount. Further, there are additional reporting requirements for all credit card purchases whereby the information must be reported to the DIAN as follows: the details of all individuals with a credit card consumption over COP 1 000 000 (USD 383) per year and for companies who credit or debit card sales amount to over COP 10 000 000 (USD 3 831) per year. Information related to all loans of over COP 10 000 000 (USD 3831) and voluntary pension contributions must also be reported to the DIAN.

Conclusion

241. The combination of the obligations as set out under the EOSF, the Tax Statute, the *Circular Basica Jurídica*, and the SARLAFT for financial institutions ensure that all records pertaining to accounts as well as related financial and transactional information are available. These obligations are closely monitored in practice by the *Superintendencia Financiera* and to a lesser extent by the DIAN. These obligations should result in Colombia being able to provide banking information to its exchange of information partners when

requested. Colombia actively undertakes monitoring of financial institutions and penalties are applied in practice in order to ensure that entities are complying with ownership information keeping obligations. Finally, Colombia is also a member of the *Grupo de Acción Financera de Latinoamérica* (GAFILAT). It's most recent Mutual Evaluation Report, which took place in 2009, also analyses the AML requirements for banks to maintain updated client information and has found these requirements to be sufficient. Therefore, it is clear that banking information is available for all account holders in Colombia.

242. Over the review period Colombia did not receive any request for banking information from treaty partners. However, in the event that they did receive a request, Colombia should be able to provide all the necessary banking information to its treaty partners.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 Rating
Compliant

B. Access to information

Overview

243. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Colombia's legal and regulatory framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective exchange of information.

244. Colombia's competent authority under its TIEAs (Barbados and the United States) and under the Multilateral Convention is the Commissioner of the DIAN. In the case of its DTCs and the Andean Community Directive, the competent authority is the Minister of Finance who delegates this role to the Commissioner of the National Tax and Customs Directorate (DIAN, *Dirección de Impuestos y Aduanas Nacionales*). The DIAN has significant information resources at its disposal, including ownership, identity, banking and accounting information. In addition, the DIAN has broad access powers to obtain information for international EOI purposes and measures to compel the production of such information.

These powers are consistent regardless from whom the information is sought (e.g. from a government authority, bank, company, trustee, or individual) and whether or not the information is required to be kept pursuant to a law. This information can be accessed by various means: in writing, visits to business premises, during tax examinations or by testimonies. Whilst there are statutory provisions in place protecting the disclosure of banking information in Colombia, these can be overridden for the purposes of accessing information for EOI purposes and do not restrict the tax authorities' access powers or prevent effective exchange of information. The scope of

attorney-client privilege is found to be in line with the international standard. Consequently, element B.1 was found to be in place.

245. Application of rights and safeguards in Colombia do not restrict the scope of information that the DIAN can obtain and there are no notification procedures in Colombia. Therefore, element B.2 was found to be in place.

246. Over the review period, as there was no formal EOI process in place yet in Colombia, the Commissioner as the delegated competent authority for EOI requests directed the EOI requests to the Auditing Directorate within the DIAN for processing due to auditors experience in processing requests for customs information. The Colombian competent authority for customs exchange of information (RILO Office) was also responsible for processing three of the requests. In practice, in order to obtain information requested pursuant to an EOI request, officials from the DIAN will firstly check its own tax databases as they have much ownership, accounting and banking information already at their disposal. In the event that further information is sought from either another government agency or a third-party or the taxpayer, a notice is issued to the relevant entity or person outlining the requested information or on occasion may also visit the holder of the information who is allocated timelines of 15 days to provide the information.

247. In total, four requests were received by Colombia over the review period. Colombia collected both ownership and accounting information from its own databases and third parties and exerted its access powers to sufficiently gather all the information requested. Three out of four of these requests were answered in less than 90 days and the other requests, which required substantially more information was responded to in a period of less than 180 days.

248. Officials responsible for the processing of requests over the review period have reported and peer feedback confirms that there has never been an issue with the ability of Colombia's competent authority to obtain and provide information over the review period. Therefore, it can be concluded that Colombia has both sufficient legal powers to access information and these powers were sufficiently exercised in practice over the review period to conclude a rating of Compliant for elements B1 and B2.

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).

249. Competent authorities should have the power to obtain and provide information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees, as well as information regarding the ownership of companies, partnerships, trusts, foundations, and other relevant entities including, to the extent that it is held by the jurisdiction's authorities or is within the possession or control of persons within the jurisdiction's territorial jurisdiction, ownership information on all such persons in an ownership chain.[4] Competent authorities should also have the power to obtain and provide accounting records for all relevant entities and arrangements.[5]

250. The competent authority under Colombia's two signed TIEAs (Barbados and the United States) is the Commissioner of the DIAN. In the case of its DTCs, including the Andean Directive, the competent authority is the Minister of Finance who delegates this role to the Commissioner of the DIAN.

Ownership, identity and bank information *(ToR B.1.1)*

251. The DIAN has broad access powers to obtain bank, ownership and identity information and accounting records from any person for both domestic tax purposes and in order to comply with their obligations under Colombia's treaties. The access powers are contained in the Tax Statute, namely Articles 684, 631 and 746.

252. Pursuant to Article 684, the DIAN has broad powers of inspection and investigation. For the purpose of ensuring compliance with the Tax Statute, the DIAN is authorised to:

a. Check the accuracy of statements or other reports where necessary;

b. Carry out investigations which may be necessary to establish the occurrence of unreported events for tax purposes;

c. Summon or require the taxpayer or third parties to submit reports or answer interrogations;

4. See OECD Model TIEA Article 5(4).
5. See JAHGA Report paragraphs 6 and 22.

d. Require the taxpayer or third parties to disclose documents which record their operations when one or the other is required to keep registered books;

e. Order the disclosure and partial examination of books, records and documents, both from the taxpayer and third parties, legally obliged to keep regular accounts; and

f. Generally perform all acts necessary for the proper and timely assessment of taxes, or for clarifying any doubt or omission in order to correctly determine the tax liability.

253. Pursuant to Article 746, where there is an EOI agreement in place between Colombia and another jurisdiction, the auditors of the DIAN authorised to gather information for domestic tax purposes, are also permitted to do so for EOI purposes. Therefore, the power under 684 for compliance with the provisions of the Tax Statute may equally be used to gather information for EOI purposes.

254. In addition, the DIAN periodically requests certain information from individuals and legal entities (see section A.1.1 Company ownership and identity information required to be provided to government authorities).

255. Pursuant to Article 623 of the Tax Statute, all financial entities regulated by the *Superintendencia Financiera* are obliged to annually remit to the DIAN the names and TIN of each of their clients in receipt of an amount above COP 25 000 000 (approximately USD 12 500), as well as on the amounts of all transactions they carried out during the fiscal year and the balance of their accounts. Further, Article 623-1 of the Tax Statute obliges all financial institutions to inform the DIAN of those cases in which the business profits on the financial statements submitted by clients, before taxes, exceeds by more than 40% the net income stated in the income tax return. Finally, Article 623(3) of the Tax Statute provides that all financial institutions surveyed must remit to the DIAN the identification of clients that opened, closed, and/or cancelled checking and savings accounts and the number of such accounts.

256. Article 624 of the Tax Statute requires all office of the Chamber of Commerce to annually inform the DIAN of the name of each company or partnership which was newly registered in that year, including the names of the partners and shareholders. In addition, all offices of the Chamber of Commerce must also advise the DIAN of all companies and partnerships that were liquidated during that fiscal year.

257. Article 628 of the Tax Statute requires that all stock brokers must report to the DIAN, on an annual basis, the identification of each person or entity that during the previous tax year, made investments or acquisitions

of shares and any other securities traded in the stock exchange, exceeding a specific threshold.

258. Article 629 of the Tax Statute requires all public notaries to identify all persons which performed acts all types of business transaction exceeding a specific threshold to the DIAN on an annual basis.

259. Pursuant to Article 631 of the Tax Statute, for the purposes of "carrying out tax related enquiries as well as fulfilling some other responsibilities, including those related to the compliance of the obligations and commitments provided for in the tax conventions and treaties subscribed by Colombia" the Commissioner of the DIAN may request either natural or legal persons to provide the following information:

1. Name and TIN of each person or entity who is partner, shareholder, co-operative associate, co-proprietor, or associated person of the respective entity, indicating their share value, capital contributions and common stock, as well as the dividends paid to them;
2. Name and TIN of each person or entity who was subject to tax withholdings at source, indicating the amount paid or credited subject to withholding tax, and the amount withheld;
3. Name and TIN of each person or entity who was subject to tax withholdings at source, concept and amount withheld, and city where the withholding was made;
4. Name and TIN of each of the beneficiaries of payments that are entitled to tax deductions, indicating the nature of the payment and the cumulative amount per beneficiary;
5. Name and TIN of each of the beneficiaries of payments or credits that constitute costs, deductions or entitle the beneficiary to a tax deduction;
6. Name and TIN of each of the persons or entities from which they received income;
7. Name and TIN of each of the persons or entities from which they received income for third parties and identification of those third parties in whose name the income was received, including the amounts;
8. Name and TIN of each of the creditors for liabilities of any kind, including the amount; and
9. Name and TIN of each of the debtors of active loans, indicating the value of the loan.

Accounting records (ToR B.1.2)

260. For the purposes of accessing information, the Tax Statute does not distinguish between ownership and identity information and accounting information. It is therefore clear that accounting information is accessible by the DIAN to the same extent as ownership and identity information.

Gathering information in practice

261. EOI activity commenced relatively recently in Colombia (2013). Colombia received four requests over the review period from two different treaty partners. At the time of receipt of the EOI requests, a formal EOI Unit or process had not yet been established in Colombia. For one of the requests received from one of the treaty partners, the Commissioner, as the delegated competent authority within Colombia, directed the requests to the Auditing Directorate within the DIAN to process them due to the fact that this department had already much experience in gathering information for treaty partners in the past for customs purposes. For the remaining three requests, all received from another treaty partner, these requests were sent directly from the treaty partner to the competent authority for exchange of customs information (referred to as RILO Office).

262. Generally, there is much information already in the hands of the DIAN for responding to an EOI request such as the information that must be submitted at the time of registration (see section A.1). In addition, the Chamber of Commerce, the National Civil Registry and all notaries are obliged to send information pertaining to newly formed entities and all persons that have been newly registered in Colombia each year (Art. 624, 627 and 629, Tax Statute). Further, in the case where an entity is obliged to be constituted via public deed (such as for all partnerships) all information submitted to the Public Mercantile registry is publicly available.

263. Colombia received its first EOI request in March 2013, requesting accounting information. This request was inadvertently sent directly to the Colombian Competent Authority for Customs Exchange of Information (referred to as *RILO Office)* within the Auditing Directorate of the DIAN which was charged with gathering the requested information and providing it to the requesting partner. Colombia has reported that the requested information was collected through a formal visit (*Inspección*) to third parties who were in possession of the information which were located in a city outside of Bogota; hence, the *RILO Office* requested to the department of the DIAN (*Seccional*) in each city to handle the formal visit and to collect the information from the taxpayer.The next two requests which were received in February 2014 and May 2014 were also received from the same treaty partner,

and also necessitated a visit to a third party and were processed in a similar manner.

264. The fourth request was received from a second treaty partner as the result of a co-operation assistance programme which originated as a customs case. Due to the special nature of this request, once successfully received in May 2014 the request was sent directly to the Auditing Directorate of the DIAN from the competent authority of the requesting jurisdiction due to the relationship that had been in place via the mutual assistance programme. The Auditing Directorate proceeded to forward the request to the Commissioner who authorised the processing of this request three days after it had been received. The request was then forwarded to the head of the Auditing Directorate who carried out a formal visit to a third party who was the holder of the information. The information was received a few days later was then compiled into a letter by the Auditing Directorate which was transmitted via encrypted email to the competent authority of the requesting jurisdiction in July 2014.

265. From the above analysis of the four requests received in Colombia, it is noted that over the review period, the Commissioner directed the Auditing Directorate (as the competent authority for processing Customs requests) to process one of the EOI requests due to the officials' experience in processing request for customs information. However, as to whether or not the Commissioner knew of the other three requests which were sent directly to the Competent authority for customs information is unknown. However, there are internal plans in place to streamline this process with the creation of an EOI Unit within the International Taxation Office of the DIAN which will be responsible for overseeing the processing of all future EOI requests (see section 5.2. *Organisational Process and Resources*).

266. During the review period, information in response to an EOI request was not required to be accessed from another government agency. However, in the case that information was requested from another government agency, as there are clear timeliness of 15 days allocated to provide this information to the DIAN and the fact that the DIAN has a solid working relationship in place with all government agencies, it is expected that the requested information would be provided expeditiously. To date, there has not been a need for formal inter-agency agreements regarding responses to EOI requests. However, this may be implemented in the future in the interests of standardising inter-agency co-operation in the area of exchange of information.

267. In cases where the requested information is held by the subject of the request or by a third party over the review period, the DIAN was able to access this information expeditiously by the issuing of a formal notice to produce the requested information in a timeframe of 15 days from receipt. It is noted that the DIAN also has the power to summon natural persons and

legal entities to provide any information within a shorter timeframe. In summary, the DIAN has wide-ranging and a comprehensive set of powers at their disposal under which they may access information from taxpayers and over the review period, timeframes of 15 days were respected and all information was provided to the DIAN expeditiously.

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

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

269. Colombia has no domestic tax interest with respect to its information gathering powers. Information gathering powers provided to the DIAN under the Tax Statute can be used to provide EOI assistance regardless of whether Colombia needs the information for its own domestic tax purposes.

270. Under Article 746 of the Tax Statute it is expressly stated that the powers granted to the auditors to access information for the purposes of the Tax Statute may also be used for the fulfilment of their obligations contained in the international agreements as entered into by Colombia. Further, under Article 631 of the Tax Statute, the Commissioner of the DIAN may request either natural or legal persons to provide certain information for the purposes of "carrying out tax related enquiries as well as fulfilling some other responsibilities, including those related to the compliance of the obligations and commitments provided for in the tax conventions and treaties subscribed by Colombia". Therefore, the access powers under the Tax Statute can be used for the fulfilment of an EOI request under an EOI agreement without the requested information being required for its own purposes in Colombia.

271. Over the review period, the Colombian authorities made full use of their domestic information gathering powers in response to an EOI request whether they have an interest in the information for their own tax purposes or not. Therefore, there is no domestic tax interest requirement for the DIAN to access and exchange information requested pursuant to an EOI request.

Compulsory powers (ToR B.1.4)

272. Jurisdictions should have in place effective enforcement provisions to compel the production of information. In Colombia, penalties exist for failure to provide information requested by the Tax Administration and the Tax Administration also has significant powers to compel information.

273. The Tax Statute empowers the DIAN to subpoena taxpayers and other third parties for them to appear at the Tax Administration offices to

answer questions or demands for information when it relates to their pertinent tax obligations (Art. 684 Tax Statute).

274. Persons failing to comply with a request to supply information or that fail to appear to provide information or evidence are liable to a penalty in the form of a fine of up to COP 420 615 000 (approximately USD 218 000) (Art. 651 Tax Statute). In addition, Articles 654 (c) and 655 of the Tax Statute establish that if a person does not provide accounting books and records when requested by the tax authorities, they are liable to a fine being the greater of 0.5% of the higher value of the liquid equity of the entity or the net income for the previous tax year, of a value up to 20 000 tax value units amounting to COP 536 820 000 (approximately US 277 000)

Use of compulsory powers in practice

275. The Colombian competent authority has stated that as requested taxpayers or third parties did not refuse to provide information in relation to an EOI request, and therefore no sanction has ever had to be applied to enforce these obligations. Similarly, the DIAN has never had to use search and seizure for EOI purposes.

276. Officials from the DIAN have reported that it has increasingly made use of enforcement measures and sanctions for domestic purposes. In 2012, the DIAN commenced 669 legal actions against taxpayers for not sending requested information (*Resolución Sanción),* in 2013, the DIAN commenced 22 such procedures and in 2014 108 legal procedures were commenced. Further, in 2012, COP 65 605 848 290 (USD 22 489 226) was collected in fines by the DIAN for failure to comply with obligations set out under the Tax Statute, including the failure to produce requested information. Similarly, in 2013, COP 6 749 070 612 (USD 2 313 534) was collected and in 2014, COP 2 898 361 800 (USD 993 538) was collected. As separate statistics were not maintained during the review period, not all fines relate directly to failure to comply with a request during an audit. However officials from the DIAN have reported that in cases of failure to comply fines were actively enforced and are contained within this amount (see also section A.1.6 *Enforcement provisions to ensure the availability of information*).

277. In addition, officials from the DIAN have reported that in the case of non-compliance with requests for information there are a variety of other sanctioning measures at their disposal. Over the review_period, other sanctions that were imposed include the commencement of court proceedings against legal entities and individuals.

Secrecy provisions *(ToR B.1.5)*

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

General secrecy provisions

279. Article 15 of the Constitution provides for the right to privacy ("*intimidad*"). However, this is lifted for tax purposes under Article 15 which states:

> For tax and judicial purposes, and in the case of inspection, oversight and intervention of the State, the presentation of accounting records and other private documents may be required, in the terms provided by Law.

280. Further, the constitutional right to privacy has been interpreted by the Colombian courts as not being absolute and is overridden for compliance with the provisions of the Tax Statute. In the Constitutional Court ruling of C-489 of 1995 it is stated that "State access to the economic data of individuals is permitted, provided the interference is proportionate, that is, provided it is carried out with the necessary and adequate means that cause the least damage to the fundamental right".

281. As outlined above, accessing information by the DIAN for compliance with its international agreements, including for EOI purposes, is expressly provided for under section 746 of the Tax Statute.

282. Article 583 of the Tax Statute provides that "tax information regarding taxable bases and the self-assessment of taxes contained in tax returns shall be maintained as confidential information and shall only be used by the DIAN for the control, calculation, determination and administration of taxes and for impersonal statistical information purposes". The "administration of taxes" will include tax information gathered for the purposes of EOI. Therefore, the confidentiality provisions set out under the Tax Statute are consistent with the international standard and will permit the DIAN to access information pursuant to their international agreements.

Bank Secrecy

283. Secrecy provisions for banks and other financial institutions are based on the right to privacy which is found in the Constitution, provisions of the Commercial Code and Law No. 1328 of 2009.

284. The Commercial Code provides that commercial books and documents are secret and may only be scrutinised by persons other than the owners and those persons the owners have authorised, for the purposes set out in the Constitution (Art. 61 Commercial Code). As outlined above, Article 15 of the Constitution expressly permits the accessing of information for tax purposes.

285. Law 1328 of 2009 establishes confidentiality measures for clients of all entities subject to supervision by the *Superintendencia Financiera*. Pursuant to Article 7 (i) "all information provided to financial institutions by their clients must be kept confidential". However, there is an exception provided to this obligation in that financial entities are still obliged to disclose any information to "the corresponding authorities". Colombia has reported that this wording imposes an obligation to disclose information to all government authorities as well as to the DIAN.

286. In sum, there are clearly defined exceptions to bank secrecy set out in the Constitution, Commercial Code and under Law No. 1328 of 2009 ensuring that bank information can be accessed for EOI purposes.

Attorney-client privilege

287. Article 74 of the Constitution provides that "professional secrets are inviolable" and therefore, cannot be breached. Law 1123 of 2007, which sets out details on the obligations of lawyers as set out in the Lawyers Code of Conduct, states that lawyers are required to "protect professional secrets even after the provision of their services has ceased" (Art. 28 Law 1123 of 2007). Further, Article 34 provides that it is a "fault against the duty as owed to their client to reveal or use secrets which the client has confided in him, even under governmental request, unless he has received written authorisation, or is in need of making disclosures to prevent the commission of a crime".

288. Law 1123 of 2007 does not provide details on the scope of professional secrecy and only provides that an attorney must maintain all secrets that the client has confided in him. However, the fact that Law 1123 of 2007 refers to secrets that the "client" has confided in him infer that the extent of attorney-client privilege only encompasses professional communications disclosed in the course of the attorney-client relationship. Therefore, disclosures made to an attorney by virtue of a private relationship with a client, counterparty or colleague will not be considered secret. However, an attorney cannot reveal such information or confidences, unless he has received a written authorisation from the client, even in the case of the information been requested by government unless it in connection with criminal proceedings.

289. The OECD Model TIEA provides that a jurisdiction can decline a request for information which "would reveal confidential communications

between a client and an attorney, solicitor or other admitted legal representative where such communications are: (a) produced for the purposes of seeking or providing legal advice or (b) produced for the purposes of use in existing or contemplated legal proceedings."

290. Law 1123 of 2007 refers generally to "secrets which the client has confided in him". Although the law is silent as to the extent of the secrets covered, the use of the wording "confided" in Law 1123 of 2007 lends to an interpretation of "secrets" as "confidential communications". Therefore, attorney-client privilege would only extend to those communications which the client could reasonably have expected to be kept confidential. Communications made in the presence of third parties or with the instruction to share them with third parties, such as the preparation of share registers or contracts, would not be covered.

291. The Constitutional Court has set out exactly what is meant by professional secrecy. Writ no. 6 and Ruling C538 of 1997 of the Constitutional Court set out that professional secrecy is the knowledge known by conducting a professional activity. Further, in 2012, Ruling C301 of the Constitutional Court decreed that attorney-client privilege was only to be afforded in the context of a professional context of a lawyer/client relationship.

292. The Colombia authorities have reported that they interpret this provision quite narrowly and a claim of attorney-client privilege would only be accepted in the case of an attorney acting in the role of lawyer as it relates to his profession. Therefore, this provision would not prevent the DIAN from accessing information where the attorney was acting in another capacity, such as a nominee shareholder, a trustee, a settlor, or as a company director. Further, the Colombian authorities maintain that the attorney-client privilege does not relieve any person, including the taxpayer or third parties, from the obligation to disclose information to the DIAN under Articles 631 and 684 of the Tax Statute as set out above.

Operation of secrecy provisions and attorney-client privilege in practice

293. As above outlined in the Constitutional Court cases, the scope of attorney-client privilege only covers a lawyer or client acting as a lawyer and not in another capacity such as that of a director etc. would not be covered. Further, officials from the *Ministerio de Justicia y del Derecho* (Ministry of Law and Justice) have affirmed that claims of attorney-client privilege do not arise often even for domestic purposes in Colombia.

294. Officials from the DIAN have reported that in the case that the DIAN requested information and the person claimed this information was subject to attorney-client privilege, sanctions may be imposed for non-compliance with

the request for the information. The sanction would be imposed via a resolution issued by the auditing area of the DIAN. In the case that the request was challenged by the lawyer, the DIAN would then state why they should provide the information and why the lawyer is not covered by the privilege. In the case of continued non-compliance by the lawyer to provide the information, the matter would then proceed to a tribunal which would decide whether the information was subject to privilege or not. The fact that the request was one received from a treaty partner and hence its provision is a matter of honouring Colombia's international treaty obligations, as well as the urgency of the matter would be factors taken into account by the tribunal in deciding this matter. Finally, officials from the DIAN have reported that they have never encountered a claim of attorney-client privilege when they have requested information, even for domestic purposes.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 Rating
Compliant

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)*

295. Rights and safeguards should not unduly prevent or delay effective exchange of information.[6] For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

296. Specific for tax matters, pursuant to article 779-1 of the Tax Code there is no requirement for prior notification of the taxpayer. Further, there are no notification rules in any of Colombia's other laws nor are there any requirements for prior authorisation or court order to obtain banking information The DIAN is not obliged to inform any persons that are the subject of an

6. See OECD Model TIEA Article 1.

EOI request of the existence of the request or to notify them prior to contacting third parties to obtain information. The procedure to obtain information is described under B.1.

297. In the course of an audit for domestic tax purposes, taxpayers have access to their files throughout the course of the audit and are also permitted to view information that has been supplied by third parties. However, in the case that a request has been sent by a treaty partner, this will never be disclosed to the taxpayer nor will the taxpayer have access to this request. In this case, a separate file of the request will be maintained by the DIAN. Further, officials from the DIAN have confirmed that there is no specific appeal procedure to challenge any of the actions of the Commissioner such as the exchange of information under an EOI request. Therefore, it is concluded that rights and safeguards should not unduly prevent or delay effective exchange of information in Colombia.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 Rating
Compliant

C. Exchanging information

Overview

298. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. A jurisdiction's practical capacity to effectively exchange information relies both on having adequate mechanisms in place as well as an adequate institutional framework. This section of the report examines whether Colombia has a network of information exchange that would allow it to achieve effective exchange of information in practice.

299. Colombia's network of 14 EOI mechanisms is comprised of two TIEAs, ten bilateral DTCs and one Directive containing EOI provisions which facilitates the exchange of information in tax matters between members of the Andean Community.[7] In addition, Colombia became a signatory to the (Multilateral Convention) in May 2012. Twelve of these agreements are in force and eleven meet the internationally agreed standard containing sufficient provisions to enable Colombia to exchange all relevant information. However, it is noted that the timeframe to bring the treaties signed into force can in some cases take several years and Colombia should ensure the ratification of its signed treaties expeditiously. Element C.1 was found to be in place. In practice, there are no issues with Colombia's network of agreements or their negotiation or ratification and therefore, element C.1 was rated as "compliant".

300. Colombia's network of exchange agreements covers 90 treaty partners. Comments were sought from Global Forum members in the course of the preparation of this report and in no cases has Colombia refused to enter

7. The Andean Community (*Comunidad Andina*) is a customs union operating as a free trade area between its members with a common external tariff. The union comprises the South American countries of Bolivia, Colombia, Ecuador and Peru. The union was called the Andean Pact until 1996 and came into existence with the signing of the Cartagena Agreement in 1969.

into an EOI agreement. Consequently, element C.2 was found to be in place. In practice, no issues were found in this regard and element C.2 is rated as "compliant".

301. All EOI articles in Colombia's DTCs and TIEAs contain confidentiality provisions that meet the international standard and its domestic legislation also contains appropriate confidentiality provisions and enforcement measures. While each of the articles might vary slightly in wording, these provisions generally contain all of the essential aspects of Article 26(2) of the OECD Model Tax Convention. Where domestic law provisions on general confidentiality rules are less restrictive than those provided under the EOI agreements concluded by Colombia, as treaties are attributed "*lex specialis*" status in Colombia, the provisions of the international agreements will prevail ensuring that the standard is met. Consequently, element C.3 was found to be in place. Although EOI operated on an ad-hoc basis over the review period, strict confidentiality measures were taken by officials of the Customs Audit Unit which was responsible for processing the requests and peer input does not indicate any issues in this regard. As a result, element C.3 is rated as "compliant".

302. Colombia's DTCs and TIEA protect rights and safeguards in accordance with the standard, by ensuring that the parties are not obliged to provide information that would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy. Most of these rights and safeguards are also explicitly provided under domestic law. The scope of attorney-client privilege was found to be in line with the international standard. Element C.4 was found to be in place. In practice no issues were found in regards to rights and safeguards and therefore element C.4 is rated "compliant".

303. There appear to be no legal restrictions on the ability of Colombia to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

304. In practice, Colombia's named competent authority under its TIEAs (Barbados and the United States) and under the Multilateral Convention is the Commissioner of the DIAN. In the case of its DTCs and the Andean Community Directive, the named competent authority is the Minister of Finance who delegates this role to the Commissioner of the National Tax and Customs Directorate (DIAN, *Dirección de Impuestos y Aduanas Nacionales*). Therefore, in all cases, it is the Commissioner of the DIAN who oversees the processing of EOI requests in Colombia and directs their processing to officials within the tax administration.

305. Over the review period, four requests were received from two treaty partners in Colombia. At the time of receiving these requests a formal EOI unit was not in place in Colombia. Rather, the Commissioner directed the

requests to the Customs Audit Unit of the DIAN due to their experience in gathering and exchanging information for customs cases. In three of the cases it is noted that the requests were received directly by the competent authority for the exchange of customs information who proceeded to process these requests. In the case that the information requested was directly accessible from the taxpayer database, this information was accessed by an official from the Customs Audit Unit and forwarded to the requesting jurisdiction. In other cases, where information was required from a third party, an official from the local office of the DIAN, where that third party was registered for tax, gathered the information and transmitted this back to the Customs Audit Unit in Bogotá to exchange the information with the treaty partner.

306. It is noted that as EOI was administered on an ad-hoc basis over the review period, communication with treaty partners was not consistent and a status updates was not provided where information was not able to be provided in less than 90 days. While generally no peer raised an issue concerning the processing of EOI requests by Colombia, it is noted that as EOI was administered on an ad-hoc basis over the review period, three out of the four requests received over the review period were inadvertently actioned by the competent authority for exchange of customs information and the Commissioner (being the competent authority for the exchange of taxation information) was neither aware of the existence of these requests nor of this information being shared with the treaty partner. Further, Colombia only became aware of these requests on receipt of peer input during the review process and therefore it can be concluded that a clear system of oversight and monitoring of all EOI activity was not in place over the review period. This combined with the fact that Colombia processed only four requests over the review period means that the organisational processes for EOI have not been sufficiently tested in practice. Two recommendations have been issues in this regard and element C.5 is rated as "largely compliant".

307. To date, Colombia has sent three requests. The rate of incoming requests has increased by over 100% annually over the review period and given the number of new bilateral relationships and the entry into force of the of the Multilateral Convention in July 2014, Colombian authorities anticipate incoming requests will continue to increase in coming years.

308. Details of all of Colombia's EOI agreements are set out in Annex 2 to this report, including their dates of signature and entry into force. The terms of Colombia's laws and agreements governing the exchange of information are set out below.

C.1. Exchange-of-information mechanisms

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

309. To date, Colombia has concluded ten bilateral DTCs and two TIEAs as well as being a signatory since 2004 to the Andean Community Directive with three other members of the Andean Community. Colombia also signed the Multilateral Convention in May 2012 (which entered into force in Colombia in July 2014) and its network of EOI agreements now covers 90 jurisdictions (see Annex 2). Twelve of these EOI agreements are in force. The majority of the signed agreements were signed after the update to the OECD Model Tax Convention in 2005 and generally follow this model.

310. As regards to the Multilateral Convention, Colombia has reported that when two or more arrangements for the exchange of information for tax purposes exist between them and a treaty partner, the parties may choose the most appropriate agreement under which to exchange the information.

311. All international treaties must be approved by Congress at which time they become part of the laws of Colombia (Art. 224 Constitution). In regards to the hierarchy of laws, DTCs and TIEAs are granted "*lex specialis"* status. Therefore, in the event of a conflict between the provisions of an ordinary law and the terms of an international agreement, the provisions of the international agreement will prevail. The Constitution, as the supreme body of law in Colombia, will prevail over international treaties.

312. As regards requests and provision of information, the competent authority under Colombia's TIEAs and the Multilateral Convention is the Commissioner of the National Directorate for Taxes and Customs (the DIAN, *Dirección de Impuestos y Aduanas Nacionales*). In the case of its DTCs and the Andean Community Directive the competent authority is the Minister of Finance who delegates this role to the Commissioner of the DIAN.

313. Whilst this report is focused on the terms of its EOI agreements and practices concerning EOI on request, it is noted that the Multilateral Convention signed by Colombia, explicitly provides for spontaneous and automatic exchange of information. The TIEAs with Barbados and the United States also provides for automatic and spontaneous exchange of information. Further, in October 2014, Colombia joined the Multilateral Competent Authority Agreement as an early adopter for the automatic exchange of information with the first exchanges due to take place in 2017.

314. Over the review period, there was no formal EOI office in place and EOI was conducted on an ad-hoc basis whereby the Commissioner of the DIAN as the competent authority in Colombia, directed the requests to the Auditing Directorate of the DIAN to process the requests. In the case that

the information requested is directly accessible from the taxpayer database, this information is accessed immediately by the DIAN and forwarded to the requesting jurisdiction. However, for all four cases over the review period, the information requested was of a more complex nature and the requests had to be forwarded to the local unit (*Seccional*) of the DIAN where the holder of the information was registered for tax purposes and the information was accessed by issuing a formal notice in person on this third party.

315. Of the four requests received from two EOI partners by Colombia over the review period, three of these were responded to in less than 90 days and the other request was responded to in less than 180 days. Feedback from peers has indicated, that despite the lack of a co-ordinated response in processing EOI requests, the responses provided by Colombia over the review period were comprehensive and of good quality.

Foreseeably relevant standard *(ToR C.1.1)*

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

> "The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters."

317. Nine of Colombia's EOI agreements (with Canada, Chile, Czech Republic, France, India, Korea, Mexico, Portugal and Spain) and its TIEA with Barbados contain an Article 1 which is identical to the OECD Model TIEA. These agreements therefore provide for exchange of all information that is foreseeably relevant.

318. Colombia's TIEA with the United States provides that the competent authorities will exchange information "which may be relevant to the determination, assessment and collection of taxes, the recovery and enforcement of tax claims, and the enforcement of laws relating to tax crimes or crimes involving the contravention of tax administration". This formulation is at least as broad as "foreseeably relevant".

319. The Andean Community Directive provides that the contracting parties shall exchange such information "as is required to resolve by mutual agreement any difficulty or doubt that may arise from the application of this Decision, and in order to determine the administrative controls required to avoid fraud and tax evasion to carrying out the provisions of the convention". Colombian authorities interpret this provision as providing for EOI for the purposes of the Directive as well as for the administration of the domestic laws concerning tax avoidance and tax fraud. However, it is recommended that Colombia redraft the provisions of the EOI article of the Andean Community Directive to ensure that it requires EOI that is consistent with Article 26 of the OECD Model DTC.

320. The DTC with Switzerland restricts exchange of information to information "necessary for carrying out the provisions of the Convention and the provisions of the respective domestic laws on fiscal fraud concerning the taxes covered by this Convention". The limitation of domestic laws to cases of fiscal fraud does not cover all information that may be foreseeably relevant to the implementation of the administration or enforcement of the domestic laws of the parties (such as information on natural and legal persons absent tax fraud). Colombia and Switzerland have initialled a protocol to bring this DTC in line with the international standard. Subsequently, Colombia and Switzerland both signed the Multilateral Convention which, once it enters into force in Switzerland, will enable them to exchange information to the standard.

321. In the course of preparing the Phase 2 review, the Colombian authorities have reported that no EOI request has ever been declined for reasons of foreseeable relevance and this is consistent with the feedback received from peers.

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

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

323. Paragraph 1 of the Model Tax Convention indicates that "The exchange of information is not restricted by Article 1" which defines the personal scope of application of the Convention.[8] Most of Colombia's DTCs contain an exchange of information article which includes this sentence (Canada, Chile,

8. DTCs apply to persons who are residents of one or both of the Contracting States.

Czech Republic, France, India, Korea, Mexico, Portugal and Spain) and therefore provide for the exchange of information in respect of all persons.

324. The DTC between Colombia and Switzerland contains an EOI provision that does not provide for exchange of information in respect of all persons. As noted above, Colombia and Switzerland have initialled a protocol to this DTC and are both signatories to the Multilateral Convention which, once it enters into force in Switzerland, will enable them to exchange information to the standard.

325. The Colombia-United States TIEA and the Colombia-Barbados TIEA (which is not yet in force) is are not restricted to certain persons such as those considered resident in or nationals of either contracting party, nor do they preclude the application of EOI provisions in respect to certain types of entities. Therefore, Colombia's TIEAs contain a similar jurisdictional scope provision and allows for exchange of information in respect of all persons.

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

326. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD Model Tax Convention and the Model TIEA, which are the authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information relates to an ownership interest.

327. Article 5(4)(a) and (b) from the Model TIEA provides that parties "shall ensure that its competent authorities…have the authority to obtain and provide upon request: a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity…". Colombia's TIEA with the United States (Art. 4(6)(f)) and its TIEA with Barbados (Art. 5(4)(a)) both contains language similar to this as it is stated that "the requested state shall have the authority to obtain and provide, through its competent authority, information held by financial institutions" and therefore both of its TIEAs permit for the exchange of bank information.

328. Article 26(5) of the Model DTC provides that the contracting parties should not refuse to supply information because it is held by "a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity…". The DTCs with Spain, Canada, Mexico, Korea, Portugal, India, France and the Czech Republic contain an EOI article with this wording and therefore permit the exchange of bank information.

329. Whilst the DTC with Chile[9] does not include a similar provision equivalent to Article 26(5) of the Model Tax Convention, the absence of this provision does not automatically create restrictions on exchange of bank information in Colombia. Colombia has access to bank information for tax purposes in its domestic law (see section B.1.1 *ownership, identity and bank information*), and pursuant to its treaties is able to exchange this type of information when requested.

330. The Andean Community Directive does not include a similar provision equivalent to Article 26(5) of the Model Tax Convention. The agreement is worded such that the member countries "shall consult between themselves and exchange any information required to resolve by mutual agreement any difficulty or doubt that may arise from the application of this Decision, and in order to determine the administrative controls required to avoid fraud and tax evasion". It appears that this wording will require Colombia to exchange banking information in all situations where it may be requested by a member country under the Directive. However, as the other members of the Andean Community (Bolivia, Ecuador and Peru) have not been assessed for compliance with the international standard, it is unclear as to whether some of these countries have restrictions to the access of bank information in their domestic law.

331. Similarly, the DTC with Switzerland, already analysed as not meeting the standard, fails to meet the standard on exchange of bank information. The agreement does not contain a provision similar to article 26(5) of the Model DTC and is silent as to the exchange of bank information. As noted above, Colombia and Switzerland have initialled a protocol to this DTC and are both signatories to the Multilateral Convention which, once it enters into force in Switzerland, will enable them to exchange information to the standard.

Absence of domestic tax interest (ToR C.1.4)

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

333. Article 5(2) of the model TIEAs states that a party "shall use all relevant information gathering measures to provide the requesting party with

9. In December 2009, Chile enacted Law 20.406, which establishes a procedure that allows the Tax Authority to access all bank information, including information subject to bank confidentiality and secrecy for EOI purposes in all tax matters.

the information requested notwithstanding that the requested Party may not need such information for its own tax purposes". The TIEA with the United States does not expressly provide that information should be exchanged without regard to a domestic tax interest. However, it specifically refers to the enforcement of the domestic laws of both the parties concerning taxes covered by the agreement. Therefore, this agreement permits Colombia to gather and exchange allow for information notwithstanding that it is not required for its own domestic tax purposes. Similarly, Colombia's TIEA with Barbados explicitly permits information to be exchanged, notwithstanding that it may not be required for a domestic tax purpose (article 5(2)).

334. Article 26(4) of the Model DTC states that the requested party "shall use its information gathering measures to obtain the requested information, even though it may not need such information for its own purposes". Nine of Colombia's DTCs (Canada, Chile, the Czech Republic, France, India, Korea, Portugal, Mexico, Spain) contain a provision similar to article 26(4) of the Model DTC and therefore allow for information to be obtained and exchanged notwithstanding that it is not required for a domestic tax purpose.

335. Whilst the Andean Community Directive does not include a similar provision equivalent to Article 26(4) of the Model Tax Convention, the absence of this provision does not, in principle, create restrictions on EOI provided there is no domestic tax interest impediment to exchange information in the case of either contracting party. However, as the other members of the Andean Community (Bolivia, Ecuador and Peru) have not been assessed for compliance with the international standard, it is unclear as to whether some of these countries may have a domestic tax interest restricting the exchange of all information for tax purposes.

336. The DTC with Switzerland also does not include a similar provision equivalent to Article 26(4) of the Model Tax Convention. As this agreement was signed after March 2009,[10] the information gathering powers are not subject to Switzerland requiring such information for its own tax purposes and therefore the exchange of information under this agreement is not restricted by a domestic tax interest. As noted above, Colombia and Switzerland have initialled a protocol to this DTC and are both signatories to the Multilateral Convention which, once it enters into force in Switzerland, will enable them to exchange information to the standard.

337. In practice, Colombian authorities have indicated and feedback from peers confirms that in all cases Colombia has provided information to its contracting party regardless of whether or not it has an interest in the requested information for its own tax purposes.

10. On 13 March 2009, Switzerland withdrew its reservations to Article 26 of the OECD Model Tax Convention.

Absence of dual criminality principles (ToR C.1.5)

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

339. None of the DTCs concluded by Colombia apply the dual criminality principle to restrict exchange of information. Neither of Colombia's TIEAs apply the dual criminality principle to restrict exchange of information. Colombian authorities have reported and peer input confirms that no request has been turned down on this basis during the period under review.

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

340. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters").

341. Most of Colombia's DTCs contain a similar wording to the one used in Article 26(1) of the OECD Model Tax Convention, which refers to information foreseeably relevant "for carrying out the provisions of this Convention or to the administration and enforcement of the domestic [tax] laws", without excluding either civil nor criminal matters.

342. As noted above, the DTC with Switzerland is limited to cases of tax fraud and therefore covers criminal matters only. As noted above, Colombia and Switzerland have initialled a protocol to this DTC and are both signatories to the Multilateral Convention which, once it enters into force in Switzerland, will enable them to exchange information to the standard.

343. Out of the four requests sent to Colombia during the three-year review period, while Colombia provided all requested information, they are unaware as to whether the requested information was related to criminal and civil tax matters. The process of exchanging information related to criminal matters is the same as that for civil matters.

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

344. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies

of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

345. Colombia's TIEA with the United States provides that the party will provide information in the same form as if the tax of the applicant state were the same as the requesting state. It specifies that books, papers, records and personal property shall be provided. It also provides for witness depositions and certified copies of documents. Similarly, its TIEA with Barbados provides that if specifically requested, Colombia shall provide information, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

346. Although there is nothing in any of Colombia's DTCs that expressly provide for the form of information, there is also nothing contained in any of the DTCs that would limit it. In addition, there are no impediments in Colombian law which would prevent information being obtained in the form requested, to the extent that it is consistent with its own domestic laws.

347. To date, Colombia has not yet been requested to provide requests in a specific form to a treaty partner. However, in the event that information is requested in a specific form, officials from Colombia's competent authority have reported that they will provide information in the specific form requested to the extent permitted under Colombian law and administrative practice.

In force *(ToR C.1.8)*

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

349. Colombia has a network of 14 signed agreements of which 12 are in force. Eleven of the agreements in force are to the standard. DTCs are in force with Canada (2012), Chile (2009), Spain (2008), Switzerland (2011), Mexico (2013), India (2014), Republic of Korea (2014), Portugal (2015), Czech Republic (2015) as well as its directive with the Andean Community (2005) extending to EOI with Bolivia, Ecuador and Peru. Colombia also ratified the Multilateral Convention in March 2014, which entered into force in July 2014, and it's TIEA with the United States in April 2014. Therefore, Colombia's EOI network of in force agreements covers 90 treaty partners.

350. In Colombia, the process for ratification of DTCs and TIEAs is the same. The international agreement must first be signed by the President, the Minister for foreign affairs or someone authorised as the President's representative. The agreement is then submitted by the President to the Congress for approval in the same manner as all ordinary laws in Colombia. Approval in Congress must be obtained from the Foreign Affairs Commission of the Senate, the plenary of the Senate,the Foreign Affairs Commission of the Chamber of Representatives and the plenary of the Chamber of Representatives. After the act is approved by Congress, the President then signs the act in order for it to become a law. Once signed, the act then goes to the Constitutional Court who analyses the procedures followed in its signing and approval to be assured of its constitutionality. During this time, an opinion concerning the constitutionality of the agreement must also be sought from the Attorney-General. However, this opinion is not binding. Once the ruling of the Constitutional Court has been issued, the treaty is then ratified.

Signature and ratification in practice

351. At the time of the Phase 1 review undertaken in 2013, it was noted that the time taken between the signature of an EOI arrangement and its ratification by Colombia was quite long and in almost all cases the time between signing the agreement and its entry into force took more than three years. For example, the US TIEA was signed in 2001 and entered into force in April 2014.

352. In the course of preparing the Phase 2 review, feedback from one peer indicated that in practice there was a delay in signing a TIEA which had been negotiated with Colombia. This peer had been placed on the blacklist of the DIAN and was keen to have an EOI agreement in place in order to be removed from this list.

353. In Colombia, a blacklist is published each year by the DIAN. Pursuant to article 260-7 of the Tax Code, there four criteria for determining if a jurisdiction should be placed on the list:

i. non-existence of taxes or existence of very low nominal taxes;

ii. lack of effective exchange of information or legal or laws or administrative practices that limits it

iii. lack of transparency at the legal regulatory or administrative level; and

iv. the non-existence of a requirement of a local substantive presence in the jurisdiction.

354. Officials from the DIAN have reported that internationally accepted criteria (such as the peer review reports of the Global Forum) are used to interpret the above. Consequences of a jurisdiction being placed on the blacklist include: higher withholding tax, more reporting requirements regarding transfer pricing, and the limitation of deductions from transactions with entities operating in these jurisdictions.

355. However, as Colombia and this peer are both signatories to the Multilateral Convention and as this agreement is in force in both jurisdictions, Colombia decided that an additional EOI agreement was not required with this peer. The peer indicates that this was a satisfactory solution as they have since been removed from the blacklist in Colombia. To date, no EOI requests have been exchanged between Colombia and this treaty partner.

356. It is noted that Colombia became a signatory to the Multilateral Convention in May 2012 and subsequently ratified this agreement in March 2014. Colombia has also ratified all of its other agreements with the exception of its recently signed DTC with France (June 2015) and its TIEA with Barbados (2014). However, it should be noted that France is a signatory of the Multilateral Convention, which has been ratified by both parties.

In effect *(ToR C.1.9)*

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

358. Once an international agreement has been ratified, it is granted "*lex specialis*" status in Colombia. As mentioned above, in the event of a conflict with the provisions of ordinary law, the provisions of the international agreement will take precedence. All of Colombia's DTCs that are in force have been given effect in this manner.

359. As discussed in section B.1, there is nothing in Colombia's domestic laws that prevent it from complying with the terms of its international agreements.

360. Once an EOI agreement has been signed, which is usually done by the President, the Ministry of Foreign Affairs or someone authorised to act as the President's representative, the EOI agreement then has to be adopted by the National Congress, in the same manner as all ordinary laws in Colombia. Approval in Congress must be obtained from the Foreign Affairs Commission of the Senate, the plenary of the Senate, the Foreign Affairs Commission of the Chamber of Representatives and the plenary of the Chamber of Representatives. No changes can be made to the text at this stage. After the act is approved by Congress, the President then signs the

act in order for it to become a law. Once signed, the law then goes to the Constitutional Court who analyses the procedures followed in its signing and approval to be assured of its constitutionality. Once the ruling of the Constitutional Court has been issued, the treaty is then ratified. In the three year period under review there have been no cases where information could not be made available due to any inconsistency or lack of domestic legislation being in force in Colombia.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 Rating
Compliant

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

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

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

362. Colombia has agreements providing for exchange of information with 80 90 jurisdictions. This includes agreements with OECD member countries, Global Forum member countries and regional partners such as Costa Rica, Chile, Guatemala, Argentina and Mexico.

363. Colombia has twelve agreements in force covering 90 jurisdictions, including most of its main trading partners (Spain, the United States). Eleven of the agreements that are in force allow for exchange of information according to the international standard (Andean Community, Canada, Chile, Czech Republic, India, Korea, Mexico, the Multilateral Convention, Portugal, Spain, the United States).

364. In terms of recent developments, prior to joining the Multilateral Convention, Colombia had completed negotiations with two treaty partners.

However, signature of these agreements was not advanced as they are all parties to the Multilateral Convention and hence EOI is facilitated via this agreement for both parties. Colombia has also initialled an EOI agreement with another peer. DTC negotiations are currently underway with Panama, the Netherlands, the United Kingdom and the United States.

365. Comments were sought from Global Forum members in the course of the preparation of this report, and in no cases has Colombia refused to negotiate an EOI agreement. Element C.2 was therefore found to be in place.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	Colombia 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); all other information exchanged (ToR C.3.2)

366. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments countries with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

Exchange of information agreements

367. Colombia's TIEA with the United States contains a confidentiality provision similar to the standard as contained in Article 8 of the Model TIEA. In addition, almost all of Colombia's DTCs (Canada, Chile, Czech Republic, France, India, Korea, Portugal, Mexico, Spain and Switzerland) contain the equivalent of Article 26(2) of the OECD Model Convention and are therefore in line with the standard.

368. The Andean Community Directive contains language to the effect that the information exchanged "will be considered confidential and may not be disclosed to any person other than the authorities responsible for the administration of taxes subject to this Decision". Although the agreement does not expressly state that information exchanged can be shared in court proceedings, the exchange of information relates to all information for the purposes of carrying out the agreement as well as domestic laws concerning fraud and tax evasion. This wording implies that exchanged information will therefore be able to be shared in tax related court proceedings and is found to be in line with the international standard.

369. There is no provision in Colombian legislation specifically addressing the issue of confidentiality of information exchanged for tax purposes under DTCs, TIEAs, Directives or multilateral instruments on mutual administrative assistance. Nevertheless, the exchange of information for tax purposes under DTCs, TIEAs, Directives or multilateral instruments on mutual administrative assistance is also subject to domestic privacy and disclosure laws.

Domestic law

370. The Tax Statute establishes the general rules pertaining to the disclosure of tax information in Colombia. Article 583 establishes that all taxpayer information is to be kept confidential and officials may only use taxpayer information "for the control, collection, assessment, discussion and administration of taxes and for impersonal statistical information purposes".

371. In particular, in respect of exchanged information, Article 693 sets out that any information exchanged with another government must be used only for the purposes covered by the request for the information. The same level of protection must also be applied to this information as that set out under Article 583.

372. Furthermore, Article 729 of the Tax Statute stipulates that taxpayer records as held by the DIAN may only be examined by the taxpayer or his lawfully appointed legal representative as authorised by way of a written statement filed personally by the taxpayer.

373. Finally, in the event that domestic law provisions on general confidentiality rules were found to be less (or more) restrictive than those provided under the EOI agreements concluded by Colombia, as treaties are attributed "*lex specialis*" status in Colombia, the provisions of the international agreements will prevail ensuring that the international standard in regards to confidentiality is met.

Other laws

374. More generally in Colombia, Law 1581 of 2012 establishes the rules for the protection of personal data. Article 5 defines sensitive data as information affecting the right to privacy (*intimidad*) of its owner and will therefore, include taxpayer information. Article 6 provides that sensitive data, cannot be used in any manner that may jeopardise the confidentiality of this information except in the case of a number of limited exceptions such as when consent has been given by the owner or their authorised legal representative.

Penalties for breach of confidentiality

375. Colombian legislation establishes both criminal and disciplinary penalties for breach of confidentiality provisions. The Criminal Code currently contains several articles addressing criminal penalties for breach of confidentiality provisions. Article 258 of the Criminal Code addresses the misuse of privileged information which sets out that an employee, advisor, member or director of any legal entity who misuses information known to him in connection to his position, in order to obtain an advantage for himself or for another person, shall incur in a penalty of one to three years imprisonment and a fine of five to fifty legal monthly minimum wages.[11]

376. Article 269A sets out that in the case of abusive access and use of information on a computer system, a person shall incur a penalty of 48 to 96 months imprisonment and a fine of 100 to 1000 legal monthly minimum wages. Further, pursuant to Article 269F, persons in violation of personal data shall incur in a penalty of 48 to 96 months imprisonment and a fine of 100 to 1000 legal monthly minimum wages. Articles 418-420 provide that public servants guilty of disclosure of secret information or documents shall incur a fine and loss of employment or public office.

377. The Single Disciplinary Code of Colombia, to which all DIAN officials are subject, establishes the disciplinary penalties for the violation to any of the duties and/or prohibitions established for public servants, including for

11. For year 2015, the legal monthly minimum wage in Colombia was COP 644 350 (approximately USD 239).

breach to confidentiality provisions. According to Article 44, public servants may be subject to penalties such as:

1. Removal [from office] and general inability, in the case of serious willful misconduct or gross negligence;
2. Suspension of tenure in office and special inability in the case of willful misconduct or gross negligence;
3. Suspension, in the case of negligent misconduct;
4. Fines, in the case of minor willful misconduct; and
5. Written warning, in the case of minor negligent misconduct.

378. The penalties to be applied are set out under Article 56 and provide for fines of 10 to 100 legal monthly minimum wages, and, depending on the severity of the misconduct, the future inability to exercise public office, public service, provide state services, or contract with the State from one to twenty years.

379. In sum, the general domestic rules on confidentiality read in conjunction with the confidentiality provisions contained in Colombia's EOI agreements would lead to the conclusion that information exchanged with foreign authorities may only be disclosed to persons or authorities, including courts and administrative bodies, concerned with the assessment, collection, prosecution or enforcement of the tax law in question or in criminal proceedings related to such taxes.

Ensuring confidentiality in practice

Human resources

380. In regards to the confidentiality obligations of persons who may be involved with the exchange of information in Colombia, prior to any formal appointment with the DIAN, all candidates are required to undergo comprehensive background and security checks to ensure that they will not pose any risk to security. Once appointed, all employees are subject to confidentiality obligations as set out in the terms of their employment. In addition, on appointment to the position of advisor, director or deputy director, all employees have to undergo a polygraph test. All confidentiality obligations, processes and procedures are clearly outlined and explained during the induction training that all employees must undertake at the commencement of their employment with the DIAN. Internal training is also systematically provided to remind and update employees on their confidentiality obligations and procedures.

381. Further, in 2011, a new agency, independent from the DIAN, *Agencia del Inspector General de Tributos, Rentas y Contribuciones Parafiscales* (referred to as the ITRC) was specifically tasked to deal with issues of confidentiality within the DIAN. This is part of an ongoing broader "Culture of Care" campaign that is being undertaken within the DIAN. A culture of disclosing wrongdoing is also fostered and employees are also encouraged to report any actual or suspected breaches of confidentiality to the Inspector General Agency who is empowered to inspect any reported breaches of confidentiality and to impose the necessary sanctions as outlined above. Officials from the DIAN have reported that this_initiative has strengthened further the culture of confidentiality amongst officials and as a result, reported and suspected breaches of confidentiality within the DIAN are rare.

382. As outlined above, domestic legislation in Colombia provides for confidentiality obligations and strict sanctions in the case of breach. All persons who are concerned with tax matters in Colombia are required under the Tax Statute to maintain all information relating to the financial or tax affairs of taxpayers as strictly confidential and breaches of this obligation are subject to sanctions ranging from fines to imprisonment for a term of six years. The obligation to maintain tax secrecy continues after the end of the employment relationship with the DIAN and former employees who breach confidentiality shall also be subject to strict sanctions.

Facilities

383. Over the review period, the processing of EOI requests were undertaken by the Auditing Directorate of the DIAN and more specifically by the competent Authority for Exchange of Customs Information (referred to as the RILO Office), which is a sub-unit of the Auditing Directorate, both of which are located within one of the main buildings of the DIAN where physical security for the confidentiality of all information/documents and computer equipment is strictly maintained. In order to access this building a temporary pass is required and there are security turnstiles preventing entry without permission from the security desk. All bags and laptops must be scanned through the X-ray machine. Generally, the public are not authorised to enter the building except for limited areas, accompanied at all times by DIAN officials.

384. There are other measures that have been implemented in the DIAN applying to all officials including those involved in the exchange of information. For example, officials of the DIAN can no longer use any form of memory stick in computers or laptops of the DIAN. All information at the hands of the DIAN is also subject to varying security levels depending on the level of the official within the DIAN and a record in kept of all files and information accessed at all times by all officials.

Handling and storage of EOI requests and related information

385. Generally, all EOI requests are made or received through the office of the Commissioner of the DIAN, being the competent authority in Colombia. As there was no formal EOI Unit or process in place over the review period, EOI was actioned on an ad-hoc basis and requests were processed by both the Customs Audit Unit of the DIAN (referred to as RILO Office within the DIAN) and the Auditing Directorate of the DIAN. As of June 2015, there is an initiative within the DIAN for the creation of an EOI Unit in the Office of International Taxation which will sit directly within the directorate of the Commissioner.

386. Over the review period, four EOI requests were processed by the RILO Office and the Auditing Directorate of the DIAN in Colombia. The below outlined confidentiality measures were taken in respect of all requests as processed by the RILO Office and the Auditing Directorate.

387. Officials have reported that on receipt of all EOI requests, a hard file was opened and kept in a secure cabinet within the offices which is locked with a key at all times. As there is a "clean desk" policy which operates throughout the DIAN, hard files or information pertaining to an EOI request will never be left exposed on the desk of an official. Further, in the case that local office of the DIAN is required to access information for a request, this information is subject to the same confidentiality measures as are in place within the Auditing Directorate of the DIAN. Further, once information is received at a local branch from a third party, this is then transmitted immediately via secure internal mail to the Auditing Directorate in Bogota to transmit to the requesting jurisdiction.

388. As Colombia is a relatively new jurisdiction to EOI, there was no software system in place for recording details of requests over the review period. However, with the establishment of the new EOI unit which will sit within the directorate of the Commissioner in the International Taxation Office, officials have reported that there will be a secure EOI database in place. Secure firewalled servers are in place and only authorised persons (i.e. officials within the EOI Unit in the International Taxation Office of the DIAN) will have access to the information concerning all EOI requests.

Provision of requested information to EOI partners

389. Once the requested information was received by the Auditing Directorate or RILO Office either from a third party or from another local branch of the DIAN, this information was copied and placed in the hard file belonging to that request. The auditor responsible for overseeing the processing of the request maintained copies of the information produced as well as an inventory of all information produced and copies of the requests which are

stored in the hard files in the auditor's office which is securely locked with limited access. When the information was provided to EOI partners by the Auditing Directorate, all information produced and an accompanying cover letter signed by the Commissioner were sent via encrypted mail to the named contact in the requesting competent authority. In the case of the three requests that were processed by the RILO Office, as the request was addressed to the competent authority for exchange of customs information, on sending the information back to the treaty partner, the letter was signed by this official (see also section C5.2 *Organisational process and resources*).

Conclusion

390. Feedback from peers indicates that there have been no issues with confidentiality as it relates to EOI requests to date. Further, the Colombian authorities have confirmed that, there have been no cases in which information received by the competent authority from an EOI partner has been made public or disclosed to a third party other than in accordance with the terms under which it was provided and the international standard. Therefore, it can be concluded that all EOI requests and information pursuant to the requests are subject to strict confidentiality measures in Colombia.

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)*

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

or other legal representative acts in his or her capacity as an attorney or other legal representative.

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

Exchange of information agreements

393. The limits with which information can be exchanged, as provided for in Article 26(3) of the OECD Model Tax Convention and Article 7 of the OECD Model TIEA, are included in each of the DTCs and Andean Community Directive concluded by Colombia and in its TIEA with Barbados and with the United States. That is, information which is subject to legal privilege; which would disclose any trade, business, industrial, commercial or professional secret or trade process; or which would be contrary to public policy, is not required to be exchanged. However, the term "professional secret" is not defined in the EOI agreements and therefore this term would derive its meaning from the Colombia's domestic laws.

Domestic law

394. As described in section B.1.5 above, the scope of attorney-client privilege is provided under under Articles 28 and 34 of Law 1123 of 2007. Further a number of decisions of the Constitutional Court set out the limits of attorney-client privilege in Colombia in that it will only be invoked by a lawyer acting is his capacity as such in the provision of legal advice or of use in existing or contemplated legal proceedings. Therefore, the scope of attorney-client privilege is in line with the international standard.

Attorney-client privilege in practice

395. Officials from the office of the *Ministerio de Justicia y del Derecho* (Ministry of Law and Justice) have confirmed that attorney-client privilege has never been claimed over information pursuant to an EOI request. Even in relation to domestic tax issues, Colombian officials have indicated that claims of attorney-client privilege rarely arise in practice and claims of privilege did not arise in any case over the review period.

396. Furthermore, it is noted that the attorney-client privilege is not absolute and an exception is available where the attorney and/or the client are under a

criminal investigation. Further, officials from the DIAN have reported that as an EOI request is made under an international EOI agreement which has "*lex specialis*" status in Colombia and would therefore override the provisions of the ordinary laws under which attorney-client privilege is set out, a claim of attorney-client privilege would never be accepted as a basis for not providing information to the competent authority for the purposes of an EOI request.

397. There are no explicit provisions under domestic legislation concerning commercial and industrial secrets and notification requirements do not exist in Colombia's domestic laws.

398. In conclusion, no issues in relation to the rights and safeguards of taxpayers and third parties have been encountered in practice in Colombia and from the EOI partners that provided peer input, no issues have been raised in this regard.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 Rating
Compliant

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

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

400. Colombia's TIEA with the United States, which predates the OECD Model TIEA, does not provide for a timeline to respond to an information request. Nonetheless, Colombia has reported that when EOI requests are received under any of their agreements, it is internal policy to provide a response to all treaty partners within 90 days.

Responses in practice

401. In the three year period under review, four EOI requests were sent to Colombia: one request from one treaty partner and the three other requests from another treaty partner. In Colombia, a request is regarded as a single request irrespective of the number of entities involved for which information is requested. The response time for replying to a request starts running from the date that the EOI request is received by Colombia and only stops once a final reply with all the outstanding information has been sent. Colombia has not had cause to revert back to the requesting jurisdiction for further clarifications over the review period. However, in the event that Colombia had to make further clarifications regarding future requests, the competent authority has confirmed that Colombia will not include the time taken by the requesting jurisdiction to revert back to the Colombian competent authority in the course of processing the request. In cases where a supplementary request was made which sought new information arising out of information previously provided on a fully satisfied matter, the supplementary request is counted as a separate request and the timelines for this request would start on the date of its receipt. During the period under review, Colombia has not received any supplementary requests for information based on information it had already exchanged.

402. The one request from the one treaty partner was sent to Colombia in March 2014 (although it was only successfully transmitted in May 2014 due to the treaty partner using an invalid email address) and the information was sent to, and successfully received by, the treaty partner in July 2014, i.e. in a timeframe of less than 90 days from the successful receipt of the request by Colombia.

403. The three requests from the other treaty partner in February 2013, February 2014 and May 2014 were inadvertently sent directly to the competent authority for exchange of customs information (RILO Office) (see section C.5.2 *Organisational process and resources*). From the request sent in February 2013, an acknowledgement of receipt was provided in March 2013 and all of the requested information was sent to and successfully received by the treaty partner in June 2013, i.e. in a timeframe of less than 90 days. In regards to the request sent in February 2014, some of the information was sent to the treaty partner in August 2014 with the remainder sent to and successfully received by the treaty partner in September 2014, i.e. in a timeframe of less than 180 days. The final request received over the review period was successfully received by Colombia in June 2014, with all of the requested information sent to and successfully received by the treaty partner in August 2014, i.e. in a timeframe of less than 90 days from the successful receipt of the request by Colombia.

404. Out of the four requests received by Colombia over the review period, a receipt of request acknowledgment was provided in two of the four cases.

As EOI operated on an ad-hoc basis over the review period, with no formal EOI unit, process or manual in place, in the one case where the exchange of information took more than 90 days, a status update was not provided which officials from the DIAN have attributed to an administrative oversight due to unfamiliarity with EOI processes. Further, of the three requests that were sent directly to the RILO Office, the Commissioner, being the competent authority for the exchange of information on request, was neither aware of these requests or of the information being sent to the treaty partner. Further, as knowledge of these three requests only emerged from peer input during the peer review process, it can be concluded that there was no clear overarching system of oversight of EOI activity in Colombia over the review period. Therefore, Colombia is recommended to implement an organisational and formal process for the exchange of information and to closely monitor its EOI processes to ensure all requests are processed in a clear, communicative and efficient manner.

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

405. It is important that a jurisdiction has appropriate organisational processes and resources in place to ensure a timely response. An overview of the organisational processes in place for the handling of EOI requests in Colombia is outlined below.

Organisational process

406. Colombia has signed ten DTCs and the Andean Directive, under all of which the Minister of Finance is the named competent authority who has delegated this power via official letter to the Commissioner of the DIAN. Under its two TIEAs and the Multilateral Convention, the named competent authority is the Commissioner of the DIAN. Therefore, in all cases the Commissioner of the DIAN should oversee the processing of EOI requests in Colombia.

407. Due to EOI activity commencing relatively recently in Colombia, over the review period, there was no formal EOI unit or process in place and EOI was carried out on an ad-hoc basis. Officials from the DIAN have reported that previously there was an international unit within the DIAN which was responsible for all international taxation matters including EOI. However, after an internal restructuring in 2008, the international tax function was dispersed from one previous standalone office to the functions being spread across many departments. Over the review period, due to its history and experience of processing requests for customs information, EOI requests were processed by the Auditing Directorate and in three cases, more specifically by the competent authority for the exchange of customs information

(RILO Office) within the DIAN. The manner in which the requests received over the review period were processed is set out below.

408. One of the requests over the review period was received via a co-operation assistance programme which had originated as a customs case. Due to the unique set of circumstances surrounding this case, the request was sent directly to the Auditing Directorate from the competent authority of the treaty partner in March 2014 due to the relationship that had been in place via the mutual assistance programme. However, on successful receipt of this request by the Auditing Directorate (on first attempt an invalid email address was used by the treaty partner and it had to be resent two months later once this was discovered) the request was then forwarded to the Commissioner who authorised the processing of this information request. For the other three requests from the other treaty partner, the requests were inadvertently sent directly to the RILO Office within the Auditing Directorate as the competent authority for exchanging customs information. The Commissioner of the DIAN, as the competent authority in Colombia was neither aware of the receipt of the requests nor the provision of the requested information. Further, the competent authority only became aware of these requests from peer input received in the course of the peer review process.

409. In two out of the four cases, an acknowledgement receipt was sent to the treaty partner within one week of receipt. However, it is noted that over the review period, there was no overarching tracking system (either in paper form or softcopy format) in place in Colombia to monitor the processing of all EOI requests and rather they were processed in an ad-hoc and uncoordinated manner.

410. Once a request was received within the Auditing Directorate, an official analysed the requests to see that they were in line with the treaty under which they had been requested. Once the request has been found to be in line with the international standard, the official then determined how and where to proceed to access the requested information. As for all four cases, the requested information was determined as not already in the hands of the DIAN, officers from the Auditing Directorate either personally carried out a formal visit to the holder of the information in order to specifically gather the requested information or forwarded the requests to the local unit of the DIAN in order for a local auditor to visit the holder of the information and request that it be delivered to the DIAN within 15 days. The requested information was then compiled into a letter which was transmitted from the Auditing Directorate to the requesting treaty partner via encrypted email.

411. Officials from the Auditing Directorate have reported that as a result of the information that they exchanged with one treaty partner, that partner was enabled to commence criminal proceedings against the taxpayer in relation to which they had sought information from Colombia.

Resources

412. Officials from the DIAN have further reported that an Office of International Taxation which will be responsible for all aspects of exchange of information (EOI Unit) is to be established shortly in Colombia which will be responsible for the future processing of all exchange of information requests. The Office of International Taxation will sit within the directorate of the Commissioner and will have two legal advisors (EOI officers) who will oversee the processing of all requests. An administrative directive is necessary in Colombia in order to establish such an office within the DIAN. However, officials from the DIAN estimate that this office should be established by the end of 2015. However, in the interim, a special email address (dir-gen-autoridadcompetente@dian.gov.co), has been set up which can only be accessed by the Commissioner and by one of the legal advisors currently in charge of overseeing the processing of the requests. This email has already been used for sending updates regarding incoming and sent requests. Depending on the nature of the requests received and the information requested, the legal officer may work in conjunction with the Auditing Directorate in order to process future EOI requests.

Conclusion

413. Due to Colombia being a relatively new player in the field of exchange of information, as yet there is no formal unit in place to deal with exchange of information requests and to date EOI had been carried out on an ad-hoc basis. Over the review period, the four requests received by Colombia were dealt with by the Auditing Directorate of the DIAN and three of these were more specifically dealt with by the RILO office being the competent authority for the exchange of customs information. While information was generally provided within 90 days, it is noted that acknowledgement receipts were only provided in 50% of the cases and status updates were not provided where the information sought took over 90 days. Further, for the three requests received from one treaty partner, these requests were actioned directly by the competent authority for the exchange of customs information without being monitored or clear records maintained. The Commissioner of the DIAN, as the competent authority in Colombia was neither aware of the receipt of the requests nor the provision of the requested information and only became aware of these requests from peer input received in the course of the peer review process.

414. During the review period, EOI operated on an ad-hoc basis and was conducted by auditors from the Auditing Directorate and more specifically within the office of the competent authority for exchange of customs information. Further, as an overarching system of monitoring of all EOI activity was not in place and knowledge of three of the four requests received over

the review period was only discovered from input received during the peer review process, the organisational processes for exchange of information in Colombia could not be fully evaluated by the assessment team. While Colombian officials have reported that a formal EOI Unit is to be implemented shortly within the directorate of the Commissioner, as of September 2015, a formal EOI Unit has not been appointed in Colombia nor have any EOI processes such as an EOI manual or tracking system being implemented. Therefore it is recommended that Colombia closely monitors the implementation of its exchange of information processes and maintains a record of all exchange of information requests as well as the timelines to ensure that information is exchanged in a clear, communicative and efficient manner in all cases.

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

415. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. As noted in Part B of this Report, there are no aspects of Colombia's domestic laws or practices that appear to impose additional restrictive conditions on effective EOI that would be incompatible with the international standard.

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	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
Over the review period, Colombia did not always provide an update or status report to its EOI partners within 90 days in the event that it was unable to provide a substantive response within that time.	Colombia should ensure that a new internal procedure is put in place to provide status updates to EOI partners within 90 days in those cases where it is not possible to provide a complete response within that timeframe.

Phase 2 Rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
Over the review period, as there was no formal EOI Unit in place in Colombia, EOI operated on an ad-hoc basis and there was no clear system of monitoring of EOI activity. Of the four requests received over the review period, three of these were inadvertently processed directly by the competent authority for customs information without authorisation from the Commissioner, being the competent authority for the exchange of information, or any other officials being aware of the existence of these requests or the provision of this information to the requesting jurisdiction. Finally, while responses were generally provided in a timely manner and peer input confirms that responses were of good quality, Colombia only processed four EOI requests over the review period. Consequently, the organisational processes for EOI have not been sufficiently tested in practice.	Colombia is recommended to implement an appropriate organisational process for the exchange of information and to closely monitor its EOI processes to ensure all requests are processed in a clear, communicative and efficient manner.

Summary of determinations and factors underlying recommendations

Overall Rating
COMPLIANT

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The element is in place.		
Phase 2 Rating: Compliant		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The element is in place.		
Phase 2 Rating: Compliant		
Banking information should be available for all account-holders *(ToR A.3)*		
The element is in place.		
Phase 2 Rating: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information *(ToR B.1)*		
The element is in place.		
Phase 2 Rating: Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		

Determination	Factors underlying recommendations	Recommendations
The element is in place.		
Phase 2 Rating: Compliant		
Exchange of information mechanisms should allow for effective exchange of information *(ToR C.1)*		
The element is in place.		
Phase 2 Rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The element is in place.		Colombia should continue to develop its EOI network with all relevant partners.
Phase 2 Rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The element is in place.		
Phase 2 Rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The element is in place.		
Phase 2 Rating: Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner *(ToR C.5)*		
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.		

Determination	Factors underlying recommendations	Recommendations
Phase 2 Rating: Largely Compliant	Colombia does not always provide an update or status report to its EOI partners within 90 days in the event that it was unable to provide a substantive response within that time.	Colombia should ensure that a new internal procedure is put in place to provide status updates to EOI partners within 90 days in those cases where it is not possible to provide a complete response within that timeframe.
	Over the review period, as there was no formal EOI Unit in place in Colombia EOI operated on an ad-hoc basis and there was no clear system of monitoring of EOI activity. Of the four requests received over the review period, three of these were inadvertently processed directly by the competent authority for customs information without authorisation from the Commissioner, being the competent authority for the exchange of tax information, or any other officials being aware of the existence of these requests or the provision of this information to the requesting jurisdiction. While responses were generally provided in a timely manner and peer input confirms that responses were of good quality, Colombia only processed four EOI requests over the review period. Consequently, the organisational processes for EOI have not been sufficiently tested in practice.	Colombia is recommended to implement an appropriate organisational process for the exchange of information and to closely monitor its EOI processes to ensure all requests are processed in a clear, communicative and efficient manner.

Annex 1: Jurisdiction's response to the review report[12]

Colombia would like to thank the assessment team and the Secretariat of the Global Forum for the excellent work they have done in evaluating Colombia for its Peer Review. Colombia would also like to express its appreciation to the Peer Review Group for their valuable input.

Colombia is satisfied that the report reflects Colombia's legislative regime and the practical implementation of this legal framework. In addition Colombia is very pleased to have all elements in place and to have a Compliant overall rating.

Finally, Colombia will like to reiterate its commitment to the work done by the Global Forum and with the international standard on tax transparency. We will continue working with the Global Forum on improving the international standard.

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

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

List of EOI agreements signed by Colombia as at September 2013, including ten bilateral Double Tax Conventions (DTCs) two TIEAs and the Convention on Mutual Administrative Assistance in Tax Matters, as amended (Multilateral Convention). The Multilateral Convention entered into force for Colombia on 1 July 2014. Colombia is also a party to the Andean Community Directive signed on 4 May 2004, which provides for the necessary legal basis to enhance co-operation and EOI among the four member revenue authorities (Bolivia, Colombia, Ecuador and Peru) under Article 19. The EOI agreements listed below do not limit, nor are they limited by, provisions contained other EOI arrangements between the same parties concerned or other instruments which relate to co-operation in tax matters.

No.	Jurisdiction	Type of EOI agreement	Date signed	Date In force
1	Albania	Multilateral Convention	signed	01-July-2014
2	Andorra	Multilateral Convention	signed	Not in force in Andorra
3	Anguilla [a]	Multilateral Convention	extended	01-July-2014
4	Argentina	Multilateral Convention	signed	01-July-2014
5	Aruba [b]	Multilateral Convention	extended	01-July-2014
6	Australia	Multilateral Convention	signed	01-July-2014
7	Austria	Multilateral Convention	signed	01-Dec-2014
8	Azerbaijan	Multilateral Convention	signed	Not in force in Azerbaijan [c]
9	Barbados	TIEA	25-Nov-2014	Not in force
10	Belgium	Multilateral Convention	signed	01-July-2014
11	Belize	Multilateral Convention	signed	01-July-2014
12	Bermuda [a]	Multilateral Convention	signed	01-July-2014
13	Bolivia	Andean Community Directive	4-May-2004	1-Jan-2005

No.	Jurisdiction	Type of EOI agreement	Date signed	Date In force
14	Brazil	Multilateral Convention	signed	Not in force in Brazil
15	Cameroon	Multilateral Convention	signed	Not in force in Cameroon [d]
16	Canada	DTC	21-Nov-2008	12-Jun-2012
		Multilateral Convention	signed	01-July-2014
17	Cayman Islands [a]	Multilateral Convention	extended	01-July-2014
18	Chile	DTC	19-Apr-2007	22-Dec-2009
		Multilateral Convention	signed	Not in force in Chile
19	China	Multilateral Convention	signed	Not in force in China
20	Costa Rica	Multilateral Convention	signed	01-July-2014
21	Croatia	Multilateral Convention	signed	01-July-2014
22	Curaçao [b]	Multilateral Convention	extended	01-July-2014
23	Cyprus [e]	Multilateral Convention	signed	01-July-2014
24	Czech Republic	DTC	22-Mar-2012	06-May-2015
		Multilateral Convention	signed	01-July-2014
25	Denmark	Multilateral Convention	signed	01-July-2014
26	Ecuador	Andean Community Directive	4-May-2004	1-Jan-2005
27	El Salvador	Multilateral Convention	signed	Not in force in El Salvador
28	Estonia	Multilateral Convention	signed	01-July-2014
29	Faroe Islands [f]	Multilateral Convention	extended	01-July-2014
30	Finland	Multilateral Convention	signed	01-July-2014
31	France	DTC	25-Jun-2015	Not in force
		Multilateral Convention	signed	01-July-2014
32	Gabon	Multilateral Convention	signed	Not in force in Gabon
33	Georgia	Multilateral Convention	signed	01-July-2014
34	Germany	Multilateral Convention	signed	Not in force in Germany
35	Ghana	Multilateral Convention	signed	01-July-2014
36	Gibraltar	Multilateral Convention	signed	01-July-2014
37	Greece	Multilateral Convention	signed	01-July-2014
38	Greenland [f]	Multilateral Convention	extended	01-July-2014
39	Guatemala	Multilateral Convention	signed	Not in force in Guatemala

No.	Jurisdiction	Type of EOI agreement	Date signed	Date In force
40	Guernsey[a]	Multilateral Convention	extended	01-Aug-2014
41	Hungary	Multilateral Convention	signed	01-Mar-2015
42	Iceland	Multilateral Convention	signed	01-July-2014
43	India	DTC	13-May-2011	7-Jun-2014
		Multilateral Convention	signed	01-July-2014
44	Indonesia	Multilateral Convention	signed	01-May-2015
45	Ireland	Multilateral Convention	signed	01-July-2014
46	Isle of Man	Multilateral Convention	signed	01-July-2014
47	Italy	Multilateral Convention	signed	01-July-2014
48	Japan	Multilateral Convention	signed	01-July-2014
49	Jersey[a]	Multilateral Convention	signed	01-July-2014
50	Kazakhstan	Multilateral Convention	signed	01-Aug-2015
51	Korea, Republic of	DTC	27-Jul-2010	3-Jul-2014
		Multilateral Convention	signed	01-July-2014
52	Latvia	Multilateral Convention	signed	01-Nov-2014
53	Liechtenstein	Multilateral Convention	signed	Not in force in Liechtenstein
54	Lithuania	Multilateral Convention	signed	01-July-2014
55	Luxembourg	Multilateral Convention	signed	01-Nov-2014
56	Malta	Multilateral Convention	signed	01-July-2014
57	Mauritius	Multilateral Convention	signed	Not in force in Mauritius
58	Mexico	DTC	13-Aug-2009	11-Jul-2013
		Multilateral Convention	signed	01-July-2014
59	Moldova	Multilateral Convention	signed	01-July-2014
60	Monaco	Multilateral Convention	signed	Not in force in Monaco
61	Montserrat[a]	Multilateral Convention	extended	01-July-2014
62	Morocco	Multilateral Convention	signed	Not in force in Morocco
63	Netherlands	Multilateral Convention	signed	01-July-2014
64	New Zealand	Multilateral Convention	signed	01-July-2014
65	Nigeria	Multilateral Convention	signed	Not in force in Nigeria[g]
66	Norway	Multilateral Convention	signed	01-July-2014
67	Peru	Andean Community Directive	4-May-2004	1-January 2005

No.	Jurisdiction	Type of EOI agreement	Date signed	Date In force
68	Philippines	Multilateral Convention	signed	Not in force in the Philippines
69	Poland	Multilateral Convention	signed	01-July-2014
70	Portugal	DTC	30-Aug-2010	30-Jan-2015
		Multilateral Convention	signed	01-Mar-2015
71	Romania	Multilateral Convention	signed	01-Nov-2014
72	Russian Federation	Multilateral Convention	signed	01-Jul-2015
73	San Marino	Multilateral Convention	signed	Not in force in San Marino
74	Saudi Arabia	Multilateral Convention	signed	Not in force in Saudi Arabia
75	Seychelles	Multilateral Convention	signed	Not in force in Seychelles[h]
76	Singapore	Multilateral Convention	signed	Not in force in Singapore
77	Sint Maarten[b]	Multilateral Convention	extended	01-July-2014
78	Slovak Republic	Multilateral Convention	signed	01-July-2014
79	Slovenia	Multilateral Convention	signed	01-July-2014
80	South Africa	Multilateral Convention	signed	01-July-2014
81	Spain	DTC	31-Mar-2005	23-Oct-2008
		Multilateral Convention	signed	01-July-2014
82	Sweden	Multilateral Convention	signed	01-July-2014
83	Switzerland	DTC	26-Oct-2007	11-Sep-2011
		Multilateral Convention	signed	Not in force in Switzerland
84	Tunisia	Multilateral Convention	signed	01-July-2014
85	Turkey	Multilateral Convention	signed	Not in force in Turkey
86	Turks and Caicos Islands[a]	Multilateral Convention	extended	01-July-2014
87	Ukraine	Multilateral Convention	signed	01-July-2014
88	United Kingdom	Multilateral Convention	signed	01-July-2014
89	United States	TIEA	30-Mar-2001	03-Apr-2014
		Multilateral Convention	signed	Not in force in United States
90	Virgin Islands, British[a]	Multilateral Convention	signed	01-July-2014

Notes: a. The Government of the United Kingdom declared that the United Kingdom's ratification of the Convention as amended by its Protocol shall be extended to the territory of Montserrat (June 2013), the Turks and Caicos Islands (August 2013), the Cayman Islands (September 2013), Anguilla (November 2013), Bermuda (November 2013), Gibraltar (November 2013), Isle of Man (November 2013), the Virgin Islands, British (November 2013), Jersey (February 2014) and Guernsey (August 2015).

b. Extension by the Netherlands. The amended Convention enters into force in the Kingdom on 1 September 2013.

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

d. Cameroon deposited its instrument of ratification on 30 June 2015, and the Multilateral Convention will enter into force on 1 October 2015.

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

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

f. Extension by Denmark: "For the purpose of this Convention the term also includes the autonomous regions within the Kingdom of Denmark of Greenland and the Faroe Islands" (Declaration amended as from 1 January 2007).

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

h. The Seychelles deposited its instrument of ratification on 25 June 2015, and the Multilateral Convention will enter into force on 1 October 2015.

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

Constitution

1991 Constitution of Colombia

Civil and Commercial laws

Acuerdo 16 of 2002 (C*onservation of documents – chamber of commerce*)

Civil Code (*Codigo Civil*)

Commercial Code (*Codigo Comercio*)

Commercial Code (*Fiducia*)

Commercial Code (S*ociedades*)

Decree 1529 of 1990 (*Foundations*)

Decree 2150 of 1995 (*Foundations*)

Decree 2555 of 2010 (*Definition of real beneficiary*)

Law 222 of 1995 (*Companies*)

Law 1014 of 2006 (*Constitution of new companies*)

Law 1116 of 2006 (*Foreign branches*)

Law 1258 (*SAS – Sociedades*)

Law 1727 of 2014 (*Functioning of the Chambers of Commerce*)

Financial sector laws

Decree 663 of 1993 (O*rganic structure of the financial system*)

Decree 1900 of 1972 (*Prohibiting bearer shares*)

Decree 2784 and 2706 of 2012 (*Accountancy principles and standards and financial reporting*)

External Circular 42 of 2012

Law 599 of 2000 (*Bank secrecy*)

Law 1328 of 2009 (B*ank secrecy*)

Tax laws

Decree 2788 of 2004 (*Tax registration*)

Law 273 of 2013 (*2013 threshold amount for submission of shareholder information to DIAN*)

Law 962 of 2005 (*Accountancy records – time period*)

Law 1607 of 2012 (*treatment of certain foreign companies as resident for tax purposes*)

Law 1668 of 2013 (*approval of US TIEA by Congress*)

Tax Statute (*Estatuto Tributario*)

Miscellaneous

Article 7 of Law 80 of 1993 (*Consortium and union temporal*)

Criminal Code of Colombia

Decree 960 of 1970 (*Concerning certificates*)

Decree 2649 of 1993 (*Accountancy records*)

Decree 3130 of 1968 (*Foundations*)

External Circular 52 of 2007

Law 594 of 2000 (*Notarial archives*)

Law 1429 of 2010 (*for the formalisation and creation of jobs*)

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: COLOMBIA

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

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

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

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

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