

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

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

**GABON**





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

PHASE 1: LEGAL AND REGULATORY FRAMEWORK

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

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## About the Global Forum

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

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

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

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

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

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





## Executive summary

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

2. Gabon is a central African country with a surface area of 266 667 square kilometres and a little over 1.8 million inhabitants in 2013. The country’s economy is dominated by the exploitation of natural resources, the most important industries being forestry, mining (manganese) and, above all, oil and gas. Gabon taxes the income of private individuals and businesses. It committed to implementing the international standard on transparency by joining the Global Forum on Transparency and Exchange of Information for Tax Purposes in 2012.

3. Generally speaking, Gabon’s legal and regulatory framework ensures the availability of information about the ownership of companies and other entities. Companies and other legal persons are required to register with the public authorities, including the tax authorities. However, certain shortcomings were identified in the legislation in force. There is no penalty for failing to keep a register of registered shares which, until all corporate securities have been dematerialised, is the only way of knowing the identity of all the owners of registered shares in public limited companies, simplified joint-stock companies and foreign companies treated in the same way as Gabonese companies with share capital.

4. Company law permits the creation of bearer shares in public limited companies and simplified joint-stock companies, and now requires all corporate securities to be dematerialised. However, there is not sufficient information about the practicalities of the process to guarantee dematerialisation of all bearer shares, including those created before the new legislation came into force. In addition, although companies with share capital and

foreign companies carrying on an activity in Gabon and treated in the same way as Gabonese companies, are required to keep a register of registered shares at their registered office, there is no penalty for failing to do so.

5. Under accounting and tax law, accounting records and the underlying documentation must be kept for a minimum of ten years. Banking and anti-money laundering regulations in Gabon guarantee the availability of banking information.

6. The Gabonese Tax Code gives the tax authorities, which are the competent authority, extensive powers to gather information, including banking information, which may be used for information exchange purposes without any restriction related to domestic tax interest. There is no right of notification in Gabon, and tax disputes may neither prevent nor delay the response to an information request made under an information exchange agreement in force in Gabon.

7. Since signing the Convention on Mutual Administrative Assistance in Tax Matters as amended (the Multilateral Convention) in July 2014, Gabon has had an extensive network of exchange of information agreements in the form of bilateral or multilateral conventions. As a result of the Multilateral Convention, Gabon now has standard-compliant agreements with 82 jurisdictions with which it did not previously have an information exchange mechanism. In all, Gabon has one or more information exchange agreements with 92 jurisdictions. Several tax treaties are also being negotiated or in the process of ratification.

8. Gabon's response to the conclusions and recommendations of this review, as well as the application of the legal framework to the practices of its competent authority, will be assessed during the Phase 2 peer review scheduled for the second half of 2015. In the meantime, a follow-up report on the measures taken by Gabon in response to the recommendations made in this report must be submitted to the Peer Review Group within six months following its adoption.

## Introduction

### Information and methodology used for the Peer Review of Gabon

9. The assessment of Gabon’s legal and regulatory framework 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. The assessment was based on the laws, regulations and exchange of information mechanisms in force at 14 August 2015, other material provided by Gabon and information supplied by partner jurisdictions.

10. 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 Gabon’s legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element the review concludes whether *(i)* the element is in place, *(ii)* the element is in place but certain aspects of its legal implementation need improvement, or *(iii)* the element is not in place. These conclusions are accompanied by recommendations for how certain aspects of the system in Gabon could be improved.

11. The assessment was conducted by a team consisting of two expert assessors and a representative of the Global Forum Secretariat: Nisrine Roudies, Head of the Office to Monitor Implementation of International Tax Conventions, General Directorate of Taxes, Morocco; Pascal Feurtet, Inspector, Tax Services Directorate, Monaco; and Séverine Baranger for the Global Forum Secretariat. The team evaluated the legal and regulatory framework for transparency and exchange of information and Gabon’s relevant information exchange mechanisms.

## Overview of Gabon

12. Gabon, officially called the Gabonese Republic, is a country situated on the equator in central Africa. Its neighbours are the Republic of Congo to the east, south-east and south, Equatorial Guinea to the north-west and Cameroon to the north. A former French colony, Gabon has been independent since 1960. Extensively covered in rainforest, its fauna and flora are preserved and protected by 13 national parks, including Lopé National Park, a UNESCO World Heritage site. Gabon had 1 800 000 inhabitants in 2013.

13. According to the United Nations, Gabon has the highest human development index in sub-Saharan Africa and the second highest income per capita, behind Equatorial Guinea and ahead of Botswana.

14. Gabon's official language is French. The currency is the African Financial Community franc, called the CFA franc (currency code: XAF). One euro is worth XAF 655.957. Gabon's economy is based on the extraction of oil and the exploitation of natural resources, especially forestry and mining (manganese). Oil and gas account for nearly 50% of GDP, 60% of tax revenues and 80% of exports. Gabon had GDP of USD 19.34 billion in 2013.<sup>1</sup> GDP rose by more than 6% per year over the period 2010-2012.

15. The separation of powers (executive, legislative, judicial) is a constitutional principle. Gabon has a presidential system with a President of the Republic, who is the head of the executive and Head of State, and a government headed by a prime minister. Gabon is a member of the Central African Economic and Monetary Community (known by its French acronym CEMAC). A subregional international organisation, CEMAC emerged from the community construction process in Central Africa instituted by the N'djamena Treaty of 16 March 1994, which entered into force in 1999. With six Member States (Cameroon, the Republic of Congo, Gabon, Equatorial Guinea, the Central African Republic and Chad), it is the outcome of a historical process begun in June 1959. Its activities are now based on the Regional Economic Programme, which aims to make CEMAC an emerging integrated economic area where security, solidarity and good governance prevail for the benefit of human development.

16. Unlike CEMAC's founding treaty, which needed to be ratified by the Member States before it could enter into force, secondary CEMAC legislation, including all anti-money laundering (AML) regulations, is incorporated into the law of contracting States as soon as it takes effect, without any prior formality. Article 21 of the CEMAC Treaty states that all laws and regulations adopted by the Community should be directly applied by all Member States.

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1. World Bank.

17. Gabon is also a member of the Organisation for the Harmonisation of Business Law in Africa (known by its French acronym OHADA), created by the Treaty on the Harmonisation of Business Law in Africa, adopted on 17 October 1993 and revised on 17 October 2008.

## General information on the legal and tax system

### *Legal system*

18. As Gabon is not a federal state, its legal system is based on a single corpus of law which applies in all provinces and local authorities with the same binding force.

19. The Gabonese legal system is based on a hierarchy of norms. The Constitution, established by the Constitutional Act of 18 January 1996 as amended, is at the top of the hierarchy, followed by international conventions and treaties duly ratified by Gabon. Under Articles 113 and 114 of the Constitution, international conventions do not apply until it has been verified that they are consistent with it. If there is a conflict between the Constitution and an international treaty, the Constitution has to be amended when the international treaty is ratified. It is the role of the Constitutional Court to verify the conformity of the international treaty with the Gabonese Constitution within a 30-day period, reduced to eight days in case of urgency. National laws and equivalent statutory instruments, i.e. ordinances ratified by Parliament, rank below international conventions and treaties.<sup>2</sup> In the hierarchy of norms, regulations are one tier below national laws. This category covers decrees, which the President of the Republic and the Prime Minister are empowered to enact, ministerial orders, prefectoral orders, which apply to a department, and municipal orders, which apply to a commune.

### *Business law*

20. Gabon's ratification of the treaty instituting the Organisation for the Harmonisation of Business Law in Africa strengthened the predominance of a system based on the civil law tradition. The OHADA Uniform Acts which replaced the Commercial Code inherited from France draw strongly on French law.

21. The purpose of the OHADA Treaty is to harmonise business law in contracting states through the preparation and adoption of simple, modern

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2. This hierarchy stems from the reading of articles 113 and following of the Constitution. The Constitutional Court has confirmed this interpretation in an opinion No027/GCC of 13 August 2013.

common rules suited to their economic situation, the introduction of appropriate legal procedures and the encouragement of arbitration to settle contractual disputes. The Treaty allows for the issuance of legislation in the business sphere, known as Uniform Acts. Thus, OHADA contracting states share the same rules in business, company and accounting law.

22. However, the criminal penalties for infringing Uniform Acts are determined by the criminal law of each contracting state. Article 5 of the OHADA Treaty states that “Uniform Acts may include provisions to give rise to criminal liabilities. Contracting states commit themselves to enforce sentences of offences.” Thus, each contracting state must pass domestic legislation to sanction infringements of Uniform Acts.

23. Under Article 10 of the OHADA Treaty, “Uniform Acts are directly applicable and obligatory in the contracting states notwithstanding any prior or subsequent provision to the contrary in domestic law”. There is thus no need to transpose them into domestic law. In addition, OHADA law prevails over domestic law in case of conflict.

24. The Uniform Act relating to commercial companies and economic interest groupings (Uniform Companies Act) and the Uniform Act on the organisation and harmonisation of the accounting systems of undertakings (Uniform Accounting Act) govern legal persons and other arrangements in Gabon. The Uniform Companies Act defines the corporate forms available in OHADA contracting states, how they are instituted and how they operate, procedures for the appointment and dismissal of senior managers and for winding up companies. The Uniform Accounting Act institutes standards for keeping accounts and defines book-keeping procedures, accounting principles and rules for evaluating and determining business profits and losses.

### ***Tax system***

25. The Gabonese tax system is based on the provisions of the Gabonese Tax Code, which lays down rules for the taxation of income, assets and transactions in Gabon.

26. Corporate tax is levied on the income generated in Gabon by Gabonese and foreign companies and other legal persons. In accordance with the territoriality principle, income generated by Gabonese companies in other countries through foreign branches is exempt from taxation in Gabon. However, resident companies are taxable on passive income (dividends, interest, royalties, etc.) of both Gabonese and foreign origin. Subject to the provisions of international treaties, the earnings of legal persons whose activity or operations are located in Gabon are taxable at their registered office or principal place of business.

27. Corporate tax is levied on the earnings generated over a twelve-month period corresponding to the calendar year which runs from 1 January to 31 December. The standard rate is 30% and 35% for mining companies. The assessment base is determined in accordance with the relevant accounting requirements under OHADA law.

28. Partnerships are not liable to corporate tax unless their partners decide to opt for it. The option is irrevocable; it must be agreed by all the partners and notified to the relevant tax centre within three months of the start of the tax year.

29. Personal income tax is levied on the taxpayer's total net income. The annual total net income on which income tax is levied is the sum of net income per category minus deductible expenses, without prejudice to specific provisions applicable to certain categories of income.

30. Gabon introduced VAT in 1994.

31. Gabon joined the Global Forum in 2012 and is committed to implementing international transparency standards. Its network of tax treaties includes six double tax treaties, two of which are regional treaties, and covers 10 jurisdictions. Further, Gabon signed the Convention on Mutual Administrative Assistance in Tax Matters as amended (the Multilateral Convention) on 3 July 2014, considerably expanding its treaty network from 10 to 92 jurisdictions. The Multilateral Convention has not yet been ratified by Gabon.

32. The competent authority in Gabon is the Minister of Economy, who has delegated this power to the Director General of Tax.

## Overview of the financial sector and the relevant professions

33. Through its membership of CEMAC, Gabon is part of the CFA zone of countries whose common currency is the CFA franc. They have a common central bank, the Bank of Central African States (known by its French acronym BEAC). Commercial banks are regulated by the Central African Banking Commission (known by its French acronym COBAC) and insurance companies by the Inter-African Conference on Insurance Markets (known by its French acronym CIMA). There is also a stock exchange which is managed and co-ordinated by the Central Africa Stock Exchange (known by its French acronym BVMAC).

34. Six commercial banks, a development bank and a housing bank currently have an establishment in Gabon. There are also six main insurance companies with branches throughout the country. In 2013, the total net asset value of the banks in Gabon amounted to XAF 253 billion (EUR 384 560 000).

35. The stock market is organised, operated and supervised as follows:
- the supervisory authority is the Central African Financial Market Supervisory Commission (known by its French acronym COSUMAF), which regulates the operation and activity of the stock market (Article 11 of CEMAC-CAMU Regulation no. 06-03 relating to the organisation, operation and supervision of the Central African Financial Market);
  - BVMAC manages and co-ordinates the stock market (Articles 3 and 27 of CEMAC-CAMU Regulation no. 06-03). There is also another stock market in Cameroon, the Douala Stock Exchange (DSX). Steps are being taken to merge the two stock exchanges;
  - the Regional Securities Depository (CRDV) acts as both central depository and clearing house. Under Articles 3 and 46 of CEMAC-CAMU Regulation no. 06-03, it is the custodian of transferable securities listed for trading. It also acts as the settlement and delivery agent;
  - BEAC is the bank of settlement (Article 3 of CEMAC-CAMU Regulation no. 06-03);
  - stock market intermediaries are mostly subsidiaries of CEMAC zone credit institutions. They have a monopoly on securities trading on the market for own account and for their customers (Article 38 et seq. of CEMAC-CAMU Regulation no. 06-03).

36. Measures to combat money laundering and the financing of terrorism (AML/CFT) in CEMAC countries are based on the adoption in 2002 of the statute of the Task Force on Money Laundering in Central Africa (known by its French acronym GABAC), set up to lead and co-ordinate the introduction of AML measures. Considerable progress has been made recently, especially in 2012 with the start of the first cycle of peer reviews (beginning with reviews of the systems in Gabon, Cameroon and the Central African Republic, which had been reviewed by the World Bank in 2008 and 2010 respectively) and adoption by the CAMU Council of Ministers of the manual of procedures for peer reviews, published in the CEMAC Official Journal on 2 October 2012. As a result, GABAC was able to gain observer status with the FATF in February 2012.

37. The financial intelligence unit is the National Financial Investigation Agency (ANIF), which is empowered to investigate financial transactions of any kind. The agency carries out supplementary assignments to those of the Community task force, GABAC. In addition, the National Commission for the Fight against Illicit Enrichment (known by its French acronym CNLCEI) has powers relating to financial investigations and unlawful enrichment.



Gabon's FIU is operational and has been accepted as a member of the Egmont group.

### **Recent developments**

38. Gabon signed the Multilateral Convention on 3 July 2014. Steps are being taken to incorporate its provisions on administrative co-operation in tax matters into domestic law.



## Compliance with the Standards

### A. Availability of information

#### Overview

39. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders in an entity or arrangement as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not retained 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 Gabon's legal and regulatory framework on availability of information.

40. Gabon has a sound legal and regulatory framework as regards the obligation to ensure that information concerning the identity of shareholders in partnerships and registered shareholders in companies is available.

41. All Gabonese companies are required to register in the Trade and Personal Property Credit Register (*registre du commerce et du crédit mobilier*, RCCM) within one month of their creation by filing a copy of their articles of association at the registry of the locally competent court. Information about the owners of partnerships and limited liability companies is available from the register and kept up to date. Information about the identity of the shareholders of public limited companies, simplified joint-stock companies and foreign companies having a branch in Gabon

and which are assimilated by the RCCM to a public limited company or a simplified joint-stock company, is available from the RCCM only when the company is created, since there is no requirement to notify changes of shareholders. However, information about the owners of registered shares in such companies is available from the registers they are required to keep at their registered office. As things stand at present, however, there are no penalties in Gabonese law for failing to keep registers of shareholders. Gabon should introduce appropriate penalties for failing to keep the register of registered shares in public limited companies and simplified joint-stock companies and foreign companies with a branch in Gabon, which are treated for registration purposes as Gabonese public limited companies or simplified joint-stock companies.

42. Gabonese law permits the creation of bearer shares in public limited companies. Following an amendment to company law in January 2014, all corporate securities, including bearer shares, must be dematerialised, meaning that it is now possible to obtain information about bearer shares, and generally speaking about all registered shares. However, the law as it stands is unclear on the practicalities of dematerialisation, especially the status of bearer shares that have not been dematerialised on expiry of the permitted two-year transition period.

43. Concerning information about trusts, Gabonese law does not permit the creation of trusts and the country is not a signatory of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. However, there is nothing to prevent a trust from being administered from Gabon, or to prevent a foreign trust from owning assets located in Gabon. Under AML/CTF legislation, persons acting as trustees in a professional capacity are required to retain all information about their customer, including information about the settlors and beneficiaries of foreign trusts.

44. Information about the ownership of other relevant entities, such as economic interest groupings, co-operatives, non-trading companies and foundations, is available in Gabon.

45. All natural and legal persons liable to corporate tax, tax on industrial, commercial and agricultural profits and tax on non-commercial profits are required to keep accounts and retain accounting data and the related supporting documentation for at least ten years. Under tax law and AML/CTF legislation, associations, foundations and other entities not liable to taxes and duties are also required to keep accounts and retain the related documentation, thus ensuring that the information is available.

46. Banks and financial institutions are required to know their customers and to keep information about transactions carried out by them for the same length of time as any other accounting documentation.

## 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.

47. The OHADA Uniform Companies Act provides for seven types of company:

- three types of company with share capital, described in Section A.1.1: public limited companies (*sociétés anonymes*, SA), limited liability companies (*sociétés à responsabilité limitée*, SARL) and simplified joint-stock companies (*sociétés par actions simplifiées*, SAS);
- three types of partnership, described in Section A.1.3: limited partnerships (*sociétés en commandite simple*, SCS), general partnerships (*sociétés en nom collectif*, SNC) and joint ventures (*sociétés en participation*, SP); and
- economic interest groupings (EIG).

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

48. Companies with share capital must fulfil publication and registration formalities on their formation, comply with requirements to keep information and file tax returns, ensuring the availability of information about ownership and identity.

### *Types of company*

49. Company law in Gabon mostly derives from OHADA law, especially the Uniform Companies Act, which was adopted in 1997 and amended in 2014 to include a new form of company, the simplified joint-stock company, and to provide for the dematerialisation of all transferable securities.

50. Three different types of company with share capital may be created under OHADA law.

- **Public limited companies** (*sociétés anonymes*, SA) are companies whose shareholders are liable for corporate debts only up to the amount of their contribution; their rights are represented by shares (Article 385 of the Uniform Companies Act). Under Article 386, a public limited company may have only one shareholder.
- **Limited liability companies** (*sociétés à responsabilité limitée*, SARL) are companies whose members are liable for corporate debts only up to the amount of their contribution; their rights are represented by shares. Some of the organisation rules of SARLs are of

public order to protect the strong *intuitu personae*, which is prevalent for this type of company. They may be instituted by a natural or legal person or between two or more natural or legal persons (Article 309 of the Uniform Companies Act).

- **Simplified joint-stock companies** (*sociétés par actions simplifiées*, SAS) are a new form of company introduced by the revision of the Uniform Companies Act, which came into force on 5 May 2014. They may be created by one or more members, who are liable for corporate debts only up to the amount of their contribution. The organisation and operation of the company are defined in the articles of association, subject to the mandatory provisions of the Uniform Companies Act. Members' rights are represented by shares (Article 863-1 of the Uniform Companies Act).

### *Publication and registration formalities*

51. As well as registering in the RCCM and with the tax authorities (see below), companies are also required to register with the Business Development Centre (*Centre de Développement des Entreprises*, CDE).

### Registration in the RCCM

52. The creation of companies with share capital is governed by the Uniform Act on general commercial law (the Uniform Commercial Law Act). Under Article 27, incorporation is conditional on the company's registration in the RCCM one month at the latest after its formation. The RCCM receives applications from legal persons for registration, amendments and removal from the register.

53. Under Article 317 of the Uniform Companies Act, the identity of the founding members of companies with share capital is available in the company's articles of association at the time of its registration in the RCCM. However, only SARLs are required to inform the RCCM of subsequent changes to their membership. Under Article 52 of the Uniform Commercial Law Act, an application for an amendment or addition to the register must be made within 30 days of any such change.

54. The information contained in each RCCM is centralised in a national database. Under Article 36 of the Uniform Commercial Law Act, the information contained in each national database is centralised in a regional database kept by the OHADA Common Court of Justice and Arbitration. The RCCM in Gabon and the information used to establish it are transmitted to OHADA for publication in its official journal or in a journal carrying legal notices (national daily newspapers).

## Registration with the tax authorities

55. Under Article P-817 of the Gabonese Tax Code, any legal or natural person liable as a taxpayer for the payment of a tax must register with the tax authorities within two months of starting their activities. This requirement also applies to foreign taxpayers who carry on economic activities in Gabon without having a registered office there. Consequently, those concerned must appoint a solvent representative accredited to the tax authorities.

56. Any material change affecting operations, such as a change of senior manager or of the place of business or disposal or cessation of the business, must also be notified to the tax administration within 15 days of the event. However, this obligation does not apply to changes of shareholders in SAs, SASs and SARLs, which are recorded in the shareholder registers (for SAs and SCAs) or in the RCCM (for SARLs).

## Procedure for creating businesses in Gabon

57. The Business Development Centre (CDE), established by Decree no. 730/PR/MECIT of 21 June 2011, is a public body whose role is to help companies with the administrative procedures and formalities of incorporation.

58. The procedure for creating a company in Gabon involves the following stages:

1. certification of the articles of association at the CDE (this applies only to those drawn up by private deed, in accordance with the Uniform Companies Act);
2. registration of the articles of association with the tax authorities. The articles of association certified by the CDE, notarised copies and the minutes of the constitutive shareholders' meeting are registered with the relevant department of the General Tax Directorate against a fee;
3. filing of the applications at the CDE single point of contact and issuance of a file number;
4. registration in the RCCM;
5. allocation of a tax identification number;
6. certification by the Director General of the CDE;
7. registration with Gabon Centre for Industrial Property (CEPIG) and the national social security fund (CNSS);
8. publication in accordance with OHADA law in the journal of official notices of the Gabonese Republic.

### *Information available from the company*

#### Commercial law requirement

59. Under Article 317 of the Uniform Companies Act, the articles of association of SARLs, kept at the registered office, must state the identity of members. Share transfers *inter vivos* must be recorded in writing and registered in the RCCM. SAs and SASs, unlike SARLs, are not required to publish the identity of their shareholders in the RCCM. However, that information must be recorded in the register of shareholders which such companies are required to keep, though the requirement applies only to the holders of registered shares (Article 746-1 of the Uniform Companies Act). Registers of registered shares issued by a company are drawn up by the company or by a person authorised by the company for that purpose. The register contains information about transfers, conversions, pledges and escrow arrangements, *inter alia*; the date of the transaction; the name, first names and domicile of the old and new holder of the shares, in the event of transfer; and, where bearer shares are converted into registered form, the name, first names and domicile of the holder of the shares.

60. In the event of transfer, the name of the previous owner of the shares may be replaced by an order number whereby the name can be located in the registers. All entries in the registers must be signed by the company's legal representative or his delegate. Under Article 746-2 of the Uniform Companies Act as amended, companies are required to keep their share registers up to date. The auditor's report presented to the annual shareholders' meeting must ascertain the existence of the registers and give an opinion on their compliance with record-keeping requirements. A statement from the company's managers certifying that the registers are kept in compliance with the requirements is attached to the auditor's report.

61. Article 744-1 of the Uniform Companies Act, introduced in January 2014, provides for the dematerialisation of all transferable securities, whatever their form. Consequently, information about the identity of all shareholders, including the holders of bearer shares, will be available from 1 January 2016. The rules relating to dematerialisation are described and analysed in Section A.1.2 *Bearer shares*.

#### Tax law

62. There is no direct requirement in tax law to keep a register of shareholders. However, under Article P-822 of the Tax Code, the company concerned is required to provide the tax authorities on request with registers of transfers of shares and bonds, attendance sheets and minutes of shareholders' and board of directors' meetings, and auditors' reports. The penalties for



non-compliance with this obligation are those applicable in relation to the right to information (see section B.1.4 *Enforcement powers*).

## Conclusion

63. Company law ensures that information on the identity of the holders of registered shares in companies with share capital is available. For SARLs, the information is available from the RCCM both on incorporation of the company and on transfers of shares. For SAs and SASs, the RCCM provides information only about the founder members. Information about shareholders is available from the register of shareholders which those companies are required to keep.

## *Foreign companies*

64. The terms of reference require foreign companies to hold information about their shareholders where they have a sufficient link with a jurisdiction. That is the case in particular where the company is resident for tax purposes in that jurisdiction/in Gabon, for example because it has its centre of effective management in Gabon.

65. Information on the ownership of foreign companies carrying out business activities in Gabon is available as a result of business or tax reporting requirements.

## Commercial law requirements

66. Under Articles 119 and 120-4 of the Uniform Companies Act, foreign companies with an office or branch in Gabon must register their establishments in the RCCM. Under Articles 116 to 120, branches of foreign companies must incorporate as Gabonese companies after four years. Consequently, some information about the shareholders of foreign companies established in Gabon (see below) is available from the RCCM on registration.

67. The rules for registering branches of foreign companies in the RCCM are the same as for Gabonese companies. The registration application filed with the Business Development Centre includes a form which states, inter alia:

- the name of the foreign company which owns the branch or establishment; its trade name; its acronym or brand name; the activity or activities carried on; the form of the company or legal entity; its nationality;

- the address of its registered office; where applicable, the name, first names and personal domicile of shareholders or members indefinitely and personally liable for corporate debts;
- the name, first names, date and place of birth of the natural person domiciled in Gabon empowered to represent and manage the branch.

68. As the foreign company is thus treated in the same way as a Gabonese company, the registration of branches of foreign companies means that information about their ownership is available from the RCCM if they are limited liability companies or partnerships, because these types of entities must mandatorily provide updated information to the RCCM. If they are companies with share capital (SA and SAS), information about their ownership will not be available from the RCCM. However, this information will be available in the share register which the branch is required to keep in the same way as any company with share capital under Gabonese law (Article 746-1 of the Uniform Companies Act).

69. As mentioned in Section A.1.6, there are no penalties in Gabonese law for failing to comply with the obligation to keep a register of shareholders.

### Tax requirements

70. The Gabonese Tax Code does not give any definition of residence for tax purposes in relation to corporate tax, in contrast to personal income tax. Under Article 7, Gabon levies corporate tax on a territorial basis, such that earnings liable to corporate tax are determined taking into account only the profits generated by enterprises operated or transactions carried out in Gabon, subject to the provisions of international conventions.

71. Under Article P-87(4), foreign companies liable to corporate tax on a territorial basis must appoint a solvent representative accredited with the tax authorities. The General Tax Directorate issues a definitive single identity number after the taxpayer's effective location has been certified. The penalties set forth at Article P-1002 apply in the event of non-compliance with these obligations (see Section A.1.6).

72. Gabon has confirmed that the legal representative is required to provide the tax authorities with all the information they may request in order to assess a tax, including information held by the foreign company, especially in connection with the control of transfer prices (Article 14-2). However, there is no direct obligation on foreign companies to keep information about their shareholders in Gabon.

73. In conclusion, information about the ownership of foreign companies carrying out business activities should be available either from the RCCM or

from the foreign company, subject to the application of appropriate penalties (see Section A.1.6).

### *Information held by nominees*

74. There are no specific provisions in Gabonese or OHADA law relating to the common law concept of nominee. On the contrary, OHADA law uses the term “*mandataire*” (authorised person), which is a civil law concept. Under OHADA law, in certain specific cases a company’s shareholders may be represented for various purposes by authorised persons. However, even if commercial law does not recognise the concept of nominee, persons acting as such in a professional capacity are covered by AML/CTF legislation and must identify their customers.

### Commercial law

75. Under Article 315 of the Uniform Companies Act, any shareholder may be represented by a person of their choice on formation of the company or at a shareholders’ meeting. In such a case, the authorised person acts expressly and publicly on a shareholder’s behalf and does not have shareholder status with regard to third parties.

76. The authorised person must obtain a power of attorney from the principal, containing information about the principal’s identity. Under Article 538 of the Uniform Companies Act, the power of attorney must state the principal’s name, first name and domicile, the number of shares and voting rights held and the shareholders’ meeting for which it is given. It must be signed by the principal, preceded by the words “*bon pour pouvoirs*” [good for power of attorney], and state the date. Consequently, although an authorised person acts for the principal, the beneficial owner’s identity is known.

### Anti-money laundering legislation

77. Although the common law concept of nominee does not exist in Gabonese law, AML/CTF customer identification requirements may be helpful in order to determine the identity of shareholders using a nominee to conceal their identity. These identification requirements apply only to a nominee acting as such in a professional capacity (a lawyer or notary, for example). They are set out in CEMAC-CAMU Regulation 01-03 on the prevention and suppression of money laundering and the financing of terrorism. Professionals of this type are subject to a know-your-customer (KYC) requirement. Nominees acting in a professional capacity are covered by the requirement, which covers “notaries and other members of the independent legal professions”. The customer identification form and the suspicious

activity report linked with the KYC requirement have boxes for the name and first names, address and residence of the persons to whom the report relates. In practical terms, the professionals concerned must know the identity of the natural or legal persons to whom they provide services.

78. Under Article 10 of CEMAC-CAMU Regulation 01-03, professionals covered by a KYC requirement must satisfy themselves of the “true identity of persons on whose behalf an account is opened or a transaction performed when they consider that the persons asking for the account to be opened or the transaction to be performed may not be acting on their own behalf”. In addition, a customer who is a lawyer, an accountant or a nominee acting as a financial intermediary may not invoke professional secrecy as grounds for refusing to disclose the beneficial owner’s identity.

79. As these requirements apply only to professionals, there is no means of obtaining the identity of a shareholder using a nominee who does not act in a professional capacity. However, as the concept of nominee does not exist in Gabonese law, this situation is unlikely to arise in practice.

## Conclusion

80. As Gabonese law is based on the civil law tradition, the common law concept of nominee does not exist in Gabonese law, which uses the civil law concept of authorised person. In these specific cases, the shareholder’s identity is known and the authorised person acts publicly on their behalf. Nonetheless, under AML/CFT legislation all notaries and other members of independent legal professions are required to identify their clients. This requirement thus applies in cases where a professional acts as a nominee, even if Gabonese law does not recognise the concept.

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

81. Article 745 of the Uniform Companies Act states that transferable securities may be in bearer or registered form and issued in return for contributions in cash or kind. It also states that provisions of the Uniform Act or the company’s articles of association may require them to be issued in registered form only. Thus, only SAs and SASs may issue bearer shares; SARLs may only issue registered shares.

82. Before January 2014, Gabon had no arrangements in place for identifying shares or bearer shares. The rules applicable to transferable securities in the OHADA area depended on whether the instruments representing them were in registered or bearer form (former Article 764-1).

- for registered shares, the holder’s rights derived solely from their registration in the company’s registers, since the certificate delivered by the issuer did not in itself confer title;
- for bearer shares, the bearer of the share was deemed to be its owner and shares could be transferred by hand.

83. However, companies making public offerings had the option of dematerialising their shares, i.e. registering their shares (whether in registered or bearer form) in an account opened in the owner’s name and kept either by the issuer or by a financial intermediary approved by the Minister for the Economy, transmission then being effected by transfer from account to account (former Article 764-2).

84. Since January 2014, under Article 744-1 of the Uniform Companies Act as amended, “transferable securities, whatever their form, must be registered in an account in the name of their owner. They are transmitted by transfer from account to account. Transfer of title to transferable securities results from the registration of the transferable securities in the acquirer’s securities account”. Thus, bearer shares, like registered shares, must now be dematerialised (paper shares should no longer exist) and their owners should be identifiable.

85. Under Article 919 of the Uniform Companies Act as amended, as a transitional measure companies were given two years as of its entry into force to bring their articles of association into line with the new rules, including those on the dematerialisation of securities. All bearer shares issued before 5 May 2014 (the effective date of the new Uniform Companies Act) may remain in paper form until 5 May 2016 at the latest.

86. However, the new Uniform Act makes no provision for specific penalties against issuers or holders of bearer shares created before its entry into effect which are not registered in an account on expiry of the transitional period. According to the Gabonese authorities, bearer shares that have not been dematerialised on expiry of the transitional period will no longer be legally valid. The holders of such bearer shares would not be able to exercise their rights, especially the right to vote at shareholders’ meetings and the right to dividends. However, that penalty is not expressly stated in any legal text.

## Tax legislation

87. Under Article 191 of the Tax Code, persons liable to corporate tax must provide a statement explaining the conditions under which their earnings are distributed or shared between partners, limited partners, managing partners, co-participants or board members in consideration of their functions

or contributions. Article 192 allows the Gabonese tax authorities to know the identity of the beneficiaries and details of the amounts allocated to them.

88. In addition, under Article 189-1, natural or legal persons who, in the exercise of a commercial, industrial, craft, agricultural or non-commercial profession, pay third parties commission, brokerage fees, trade or other discounts, session fees, professional fees, occasional or not, author's or inventor's copyright, gratuities or other types of remuneration must declare such sums to the tax centre on which they depend. Where such sums are paid to third parties not resident in Gabon, they must be declared separately. Under Article 189-5, taxpayers who fail to comply with this requirement forfeit the right to deduct them.

89. In conclusion, the statement of sums paid in respect of dividends provided to the tax centre gives the tax authorities information about the beneficiaries' identity and hence of all the shareholders, except where the claimant is acting for another person. However, the tax authorities consider that in practice authorised persons would have to disclose the beneficial owner's identity in order not to be bound by the resulting tax obligation. The authorities would thus have information about the holders of bearer shares, provided that dividends are paid.

90. In light of the foregoing, information about the owners of bearer shares in SAs should be available in Gabon, from the tax authorities if dividends are paid and, in all events, from the company or a central depository (for listed companies). However, that is possible only if all companies actually dematerialise their securities as required under the Uniform Companies Act as amended, including those which had issued bearer shares before the new legislation came into force. Gabon is recommended to take steps to guarantee dematerialisation of all bearer shares in existence before 5 May 2014, the date at which the new version of the Uniform Companies Act came into force.

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

91. The Uniform Companies Act distinguishes the following types of partnership.

- **Limited partnerships** (*sociétés en commandite simple*, SCS), which have one or more partners who are indefinitely and jointly liable for the partnership's debts (managing partners) and one or more partners who are liable for the partnership's debts only up to the amount of their contribution (limited partners). The capital of an SCS is divided into shares (Article 293 of the Uniform Companies Act).

- **General partnerships** (*sociétés en nom collectif*, SNC), of which all the partners are traders and indefinitely and jointly liable for corporate debts (Article 270 of the Uniform Companies Act).
- **Joint ventures** (*sociétés en participation*, SP), where the partners agree that the company will not be registered in the RCCM and will not have legal personality. Joint ventures are not subject to a publication formality.

92. Information about the owners of partnerships and foreign partnerships having a branch in Gabon (see A.1.1 regarding foreign companies) is available from the RCCM and the tax authorities.

### Commercial law requirements

93. Partnerships, with the exception of joint ventures, are required to register in the RCCM in the same way as companies with share capital. Under Articles 46 and 52 of the Uniform Commercial Law Act, the following information is kept in the RCCM:

- the name, first names and personal domicile of partners who are indefinitely and personally liable for corporate debts, together with their date and place of birth and nationality;
- the name, first names, date and place of birth and domicile of managers, executives, directors or partners with a general power to commit the legal person or grouping;
- shareholdings;
- the address of the registered office and, where applicable, the principal place of business and each other establishment;
- amending, supplementing and secondary information.

94. Changes of partners must be notified to the RCCM. Thus, information on the identity of partners of partnerships is kept and regularly updated in the RCCM. That information is also available from the partnership under the specific rules applicable to each form.

95. Because joint ventures do not have to be registered, they do not appear in the RCCM. However, their managers are required to register in the RCCM if they carry on a commercial activity. Under Article 856 of the Uniform Companies Act relations between the partners of joint ventures are governed by the rules applicable to general partnerships.

### Tax requirements

96. Under Article P-817 of the Tax Code, partnerships, like companies with share capital, must register with the tax authorities and report material changes affecting their operation (change of senior manager, disposal, cessation, change of the capital or shareholder structure).

97. SCSs, SNCs and joint ventures may be liable to corporate tax, but only if all the partners agree to choose that option. Once exercised, the option is irrevocable. Under Article 5 of the Tax Code, where a partnership has not opted for corporate tax liability, limited partners in SCSs and partners in SNCs and joint ventures who are not indefinitely liable or whose names and addresses have not been provided to the tax authorities are subject to tax on a personal basis. The share of earnings of general partners in SCS is subject to corporate tax, even in the absence of option to be subject to corporate tax.

### Conclusion

98. In conclusion, information about the owners of partnerships is available through commercial and tax reporting requirements.

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

99. There is no law on trusts in Gabon and the country is not a signatory of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. Consequently, it is impossible to create a trust or similar structure in Gabon. However, there is nothing in Gabonese law to prevent a trust created in a foreign country from being administered in Gabon or to prevent assets located in Gabon from forming part of a foreign trust. In such cases, there is no provision in commercial or tax law which requires the managers of foreign trusts or *fiducies* domiciled in Gabon to disclose the identity of the settlors or beneficiaries of the trust. However, record keeping requirements apply under AML/CTF legislation, but these requirements only apply to professionals subject to that AML/CTF legislation.

### *Commercial law requirements*

100. Where a trust governed by the laws of a foreign country is administered in Gabon, there is no specific requirement to register with the public authorities. Under the prevailing legislation, however, all natural and legal persons, whether Gabonese or foreign, who carry on a commercial activity in Gabon are subject to a reporting requirement, which also applies to foreign trusts. Accordingly, persons or entities acting as trustees in Gabon must register with the RCCM if they engage in business activities. In such cases, the



same information that is required of any persons (being individuals carrying on a business or an entity) on registration must be submitted to the Register.

### *Anti-money laundering legislation*

101. Article 5 of CEMAC-CAMU Regulation 01-03 covers “notaries and members of other independent legal professions” where they constitute, manage or direct “*fiducies* or similar structures”. In such cases, those persons, acting as trustees, must comply with KYC rules.

102. Regulation no. 0004/CIMA/PCMA/PCE/SG/08 applicable to insurance and reinsurance companies and brokers operating in the CIMA area contains the same requirements as AML/CFT legislation to guarantee the availability of information about the identity of members of a trust if, through a trustee, it is involved in insurance business. Non-compliance may incur the disciplinary and pecuniary sanctions set forth at Articles 534-2 and 545 of the Insurance Code.

### *Conclusion*

103. Although Gabonese law does not permit the creation of trusts in Gabon, it does not prevent a trust created under the laws of a foreign country from being administered in Gabon. In such a case, commercial, tax and AML legislation ensures the availability of information about the members of the trust (settlers, trustees or beneficiaries) where the trustee acts in a professional capacity. If the trustee is not a member of a legal profession and does not carry on a commercial activity in Gabon, there is no legal obligation for him to identify the members of the trust. However, this situation is unlikely to occur in a country with a civil law tradition and is unlikely to prevent effective exchange of information. The practical implications of this situation will be evaluated in Phase 2 of the review.

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

104. Gabonese law permits the creation of foundations with a general-interest and non-profit purpose. Foundations are governed by Ordinance 2/99 of 30 July 1999, ratified by Act 2/2000 of 18 August 2000.

105. Under Article 9 of the Ordinance, there are two classes of foundation: those that have a public-interest purpose and those that do not. Foundations are required to operate in accordance with their purpose. Under Articles 17 and 22, they must therefore not seek to make a profit, failing which they are liable to penalties. The State may oppose the activity of a foundation under the conditions set forth at Article 22.

106. Foundations differ from associations insofar as their existence is based on the irrevocable allocation of assets. However, they are subject to the same tax rules. The 2011 Budget Act provides for an exceptional tax regime applicable to sponsorship or patronage. This applies to associations, foundations and all other similar structures governed by Act 35/62 on associations.

### *Legal requirements*

107. In order to be approved, foundations must register with the Minister of the Interior and the minister responsible for the planned activity. They approve their articles of association and rules of procedure, which are submitted together with a list of the foundation's members giving their civil status and functions. Foundations have a board of directors and a management body.

108. Foreign foundations wishing to carry on an activity in Gabon must create a Gabonese foundation in accordance with the provisions of Ordinance 2/99.

### *Tax requirements*

109. Foundations must register with the tax authorities if they are liable for any tax or duty. Consequently, they are subject to the same reporting requirements as companies. Generally speaking, foundations register with the tax authorities because they are legally liable for wage, social and employer's contributions.

110. The information required to register with the tax authorities is limited to identification of the president and of the manager, plus the articles of association and rules of procedure.

### *Conclusion*

111. In light of their characteristics, Gabonese foundations are not relevant with regard to the exchange of information for tax purposes. However, information about their ownership is available in Gabonese law from both the administrative and the tax authorities.

### *Other entities*

112. Other relevant entities and arrangements are non-trading companies, non-governmental organisations and co-operative societies. The issues regarding the availability of ownership, identity and accounting information are similar to those discussed in relation to companies with share capital and partnerships.

*Non-trading companies (sociétés civiles)*

113. Non-trading companies (sociétés civiles) are generally defined in opposition to commercial companies and generally carry on a non-commercial activity such as an intellectual, professional or real-estate activity. A distinction is drawn between real-estate companies and professional companies.

- Real-estate companies have a real-estate purpose and are intended to hold property assets acquired or contributed by the members in order to facilitate the management and/or transmission of the assets or optimise their yield.
- Professional companies have a professional purpose and are intended to allow natural or legal persons to carry on a regulated profession in common.

114. In all events, under Article 45 of the Uniform Commercial Law Act non-trading companies, whatever their nature, are governed by the same rules on creation as other types of company and must register in the RCCM (see Section A.1.1).

115. From a tax standpoint, non-trading companies are generally regarded as transparent, though there are some broad exceptions. Under Article 5 of the Tax Code, non-trading companies are liable to corporate tax where:

- they carry out an activity or operations of a commercial, industrial, craft or agricultural nature;
- their members include one or more companies with share capital; and/or
- they have opted for corporate tax liability.

116. They are subject to reporting and payment requirements similar to those of companies with share capital and partnerships. The same penalties also apply.

*Co-operative societies*

117. Co-operative societies are governed by the OHADA Uniform Act on the law of co-operative societies adopted on 15 December 2010.

118. Article 4 of the Act defines a co-operative society as an autonomous grouping of persons, voluntarily united to fulfil their common economic, social and cultural aspirations and needs through a jointly-owned and managed enterprise where power is exercised democratically and according to co-operative principles. Under Article 9, it must keep a register of members, stating for each one the membership number, name, first name, identity

document references, address, profession, number of shares subscribed and number of shares paid up.

119. A co-operative society is formed by drawing up articles of association in a private deed, which have the same function as those of a company. The society must apply for registration in the register of co-operative societies kept at the prefecture of the place where it has its registered office (Article 70 et seq.). Co-operative societies are liable in principle for corporate tax, though some of them (those involved in the production, processing, conservation and sale of crop and livestock farming products) are exempt for certain specific activities.

120. Reporting requirements and tax penalties are similar to those for companies with share capital.

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

121. Various penalties are available under Gabonese commercial, tax or AML/CFT law to ensure the availability of information on the identity of the owners of entities in existence in Gabon. However, penalties for failing to dematerialise transferable securities remain to be defined.

*Penalties for failure to register*

122. Under Articles 114 and 115 of the Uniform Companies Act, a company that fails to register in the RCCM is considered to be either a joint venture or a de facto company without legal personality and hence governed by the provisions of Articles 864 et seq. of the Act. There are no specific penalties in Gabonese law at present for failing to register in the RCCM.

123. In contrast, under Article P-1002 of the Tax Code, a flat-rate fine of XAF 250 000 (EUR 380) is imposed for failing to register with the tax authorities as required at Article P-817.

*Requirements to keep information about ownership*

124. The Uniform Commercial Law Act does not set a specific time for which information contained in the RCCM must be kept. Article 20 merely provides for the creation of a national RCCM database. The Gabonese authorities have confirmed that information about registered natural and legal persons is kept without any limitation.

125. The identity of the members of an SARL must be stated in the company's articles of association, which are kept at the registered office. Under Article 317 of the Uniform Companies Act, share transfers inter vivos must

be recorded in writing and registered in the RCCM. There are at present no penalties in Gabonese law for failure to register transfers of shares in an SARL in the RCCM. Under Article P-1002 of the Tax Code, however, the penalty for failing to file changes to information used for an initial registration is a flat-rate fine of XAF 250 000 (EUR 380). The Gabonese authorities have confirmed that they interpret this article to mean that members of an SARL who fail to inform the tax authorities of a change of membership would be liable to a penalty. The question of whether the interpretation of this tax requirement is sufficient to remedy the lack of penalties in OHADA business law will be assessed in the Phase 2 review.

126. Under the Uniform Companies Act, SAs and SASs are required to keep a register of registered shares at their registered office. Until the dematerialisation of corporate securities becomes fully effective in Gabon (see Section A.1.2), this register is the only source of comprehensive information on the ownership of registered shares. The requirement to keep a register of shareholders also applies to foreign public limited companies or simplified joint-stock companies which have a branch in Gabon. However, there is no penalty for failing to keep such a register. Consequently, Gabon is recommended to introduce appropriate penalties for failing to keep a register of registered shares in SAs, SASs and foreign companies with a branch in Gabon that are treated in the same way as Gabonese SAs or SASs.

127. The tax authorities require all documents in respect of which they may exercise their right of audit to be kept for at least ten years as of the date of the last transaction or the date at which the documents were drawn up (Article P-821 of the Tax Code). These documents include share transfer registers and attendance sheets and minutes of shareholders' meetings. However, as there are no penalties in Gabonese law for failing to keep the register of shareholders, it is not certain that these documents are kept in all cases.

### *Penalties for failing to comply with AML/CFT requirements*

128. Even though the concept of nominee does not exist in Gabonese law, KYC requirements for AML/CFT purposes may be helpful in order to identify beneficial owners using a nominee to conceal their identity. The KYC requirements apply only to a nominee acting in a professional capacity, such as a notary or lawyer. Under Article 18 of CEMAC-CAMU Regulation 01-03, persons who fail to comply with KYC requirements are liable to prosecution or to disciplinary procedures under the rules governing the profession in question (lawyers, notaries and accountants) on the initiative of the relevant disciplinary authority.

*Penalties for failing to dematerialise bearer shares*

129. The revised version of the Uniform Companies Act does not stipulate any specific penalties for issuers or holders of bearer shares created before it came into force who fail to register them by the time the transition period expires. Likewise, the practicalities of dematerialisation are not defined, this being a matter for individual contracting states.

130. Gabon has not yet introduced penalties for failing to comply with dematerialisation requirements, or defined practical arrangements for dematerialisation. Gabon is recommended to take steps to implement the revised version of the OHADA Uniform Act in order to ensure the dematerialisation of all bearer shares on expiry of the two-year transition period allowed to companies for that purpose.

**Conclusion**

131. In conclusion, Gabon does not have sufficient coercive means at its disposal to enforce the requirement for SAs, SASs and foreign companies that are considered similar to SAs and SASs with respect to their legal form to keep a register of shareholders, or the requirement to dematerialise bearer shares, for which implementing measures, especially penalties for non-compliance with the dematerialisation requirement, remain to be defined.

**Determination and factors underlying the recommendations**

<b>Phase 1 determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
The new version of the OHADA Uniform Act on commercial companies and economic interest groupings provides for the dematerialisation of securities and allows companies a two-year period in which to comply. However, it does not precisely define the status of bearer shares which are not dematerialised on expiry of the transition period. There is no other provision in Gabonese law clarifying the terms and conditions of dematerialisation.	Gabon should take appropriate steps to implement the new version of the OHADA Uniform Act in order to ensure the dematerialisation of all bearer shares on expiry of the two-year transition period allowed to companies for that purpose.

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
The OHADA Uniform Act on commercial companies and economic interest groupings requires public limited companies, simplified joint-stock companies and foreign companies with a branch in Gabon which may be treated in the same way to keep a registered share register at their registered office. While waiting for the dematerialisation of securities to become effective in Gabon, that register is the only means of having comprehensive information on the identity of the owners of registered shares. However, there is no penalty for failing to keep such a register.	Gabon is recommended to introduce appropriate penalties for failing to keep a register of registered shares in SAs, SASs and foreign companies with a branch in Gabon that are treated in the same way as Gabonese SAs or SASs.

## A.2. Accounting records

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

132. The Terms of Reference define standards for keeping reliable accounting records and for how long such documents should be retained. They recommend that reliable accounting records should be kept for all relevant entities and arrangements. In order to be reliable, accounting records must (i) correctly record all transactions, (ii) be such that the financial situation of the entity or arrangement may be determined with reasonable precision at any time, and (iii) enable the preparation of financial statements. Accounting records must also be supported by underlying documentation, such as invoices, contracts, etc., and be retained for at least five years.

133. With regard to the keeping of accounting records, Gabonese law requires legal entities and other entities to respect transparency requirements that comply with international standards as regards formal requirements for account-keeping, the documents which must be kept and the length of time for which they must be retained.

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

134. Companies having their registered office in Gabon are required to keep accounts. The obligation is instituted by company law (Article 137 et seq. of the Uniform Companies Act), tax law (Article 17-1 of the Tax Code) and accounting law (Article 1 of the Uniform Accounting Act). These rules also apply to foreign companies and partnerships having a branch in Gabon.

### *Accounting requirements and penalties under OHADA law*

135. OHADA law contains accounting requirements which apply to all Gabonese entities, with penalties for non-compliance.

### *Accounting requirements under OHADA law*

136. Under Article 13 of the OHADA Uniform Commercial Law Act, all traders, whether natural or legal persons, must keep a register in which their commercial transactions are recorded day by day. They must also keep a general ledger, with a trial balance, and an inventory register. These registers must be kept in compliance with the Uniform Act's provisions on the organisation and harmonisation of business accounts.

137. Article 1 of the Uniform Act on the organisation and harmonisation of business accounting systems (Uniform Accounting Act) states that undertakings must establish an accounting system to provide information for both internal and external use, to which end it must:

- classify, record and enter in its accounts all transactions that entail value movements which are carried out with third parties or are recorded or executed as part of its internal administration;
- after suitable processing of such transactions, render the accounts which it is required to draw up by law or pursuant to its articles of association, along with other information required to meet the needs of the various users.

138. Under Article 2, the following entities are required to establish a general accounting system:

- undertakings governed by the provisions of commercial law;
- state-owned corporations, parastatal organisations and semi-public undertakings;
- co-operatives and more generally entities that produce marketable or non-marketable goods and services, if they are habitually engaged in a principal or ancillary economic activity irrespective of whether or not financial gain is derived from that activity.



139. Companies and professionals acting as trustees of foreign trusts are required, as traders, to comply with the above-mentioned requirements of OHADA accounting law.

140. Under Article 15, the accounting system must ensure timely and complete recording of basic information on a day-to-day basis, processing of the recorded data at the appropriate time and delivery of mandatory reports to users within specified legal time limits. Article 3 is clear on the role of the accounting system, which must be accurate, reliable and transparent.

141. The accounting documents to be kept must comply with these requirements, even if they are not identical under the different accounting systems.

- Under the minimal cash-basis system, companies must keep a record of income and expenditure.
- Under the simplified system, companies must prepare a balance sheet, income statement and notes to the financial statements.
- Under the normal system, companies must prepare a balance sheet (showing assets and liabilities separately and in detail), an income statement (showing revenue and expenses, clearly distinguished), a table of source and application of funds (showing financing flows and capital expenditure) and notes to the accounts (describing material items not shown in the other financial statements and containing a statistical report where relevant).

142. Banks, credit institutions and insurance companies are subject to additional accounting requirements arising from COBAC regulations for banks and credit institutions and CIMA regulations for insurance companies.

### Penalties for non-compliance

143. Article 111 of the Uniform Accounting Act institutes penalties for company managers who:

- for each accounting period, fail to draw up annual financial statements and, where applicable, a management report and social audit; or
- knowingly draw up and disclose financial statements which do not give a true and fair view of the assets and liabilities, financial situation and profit or loss for the period.

144. Under Article 890 of the Uniform Companies Act, managers who, on expiry of each accounting period and in order to conceal the company's true situation, knowingly publish or present to shareholders or members summary financial statements which do not give a true and fair view of the company's

transactions, financial situation, assets and liabilities for the period are liable to imprisonment for one to five years and a fine of XAF 1 000 000 to 10 000 000 3 (EUR 1 524 to 15 244).

145. Apart from these criminal penalties, OHADA law does not specify any penalties for non-compliance with accounting obligations, leaving it up to contracting states to determine them. There are not at present any penalties in Gabonese commercial law for failing to comply with accounting obligations, though there are penalties under tax law (see below) and criminal law.

### *Tax requirements and penalties*

146. Under Article 17 of the Tax Code, taxpayers must keep their accounts in accordance with the OHADA accounting system. Under Article 18, if they fail to do so their accounts will be deemed irregular and non-probative.

147. Article P-819 requires taxpayers liable to tax to declare their income, supported by the necessary accounting documents to determine the basis of assessment. Foreign trusts are taxed under the territorial principle, so that only activities carried out by the foreign trusts in Gabon are taxable in Gabon. Foreign trusts are subject to withholding taxes at source levied by the trustee. The trustee is taxed on income derived from his professional trustee activities in Gabon.

148. A taxpayer who fails to file a return is served official notice to do so and has seven days in which to rectify the situation, failing which the tax authorities may make a discretionary assessment. Discretionary assessments are made *inter alia* where accounts are not kept or taxpayers fail to present all or some of their accounts or supporting documents, as ascertained in an official report. The burden of proof in such a procedure is reversed, since the taxpayer must prove that the tax authorities' assessment is unjustified, whereas in a normal procedure the burden of proof lies with the tax authorities.

149. In addition, under Article P-996, where the tax authorities have had to make a reassessment on account of deficiencies, omissions or inaccuracies which affect the assessment basis or elements of taxation, penalty interest is charged at 1.5% per month, up to a maximum of 50%, calculated on the basis of the tax charge to the taxpayer. Under Article P-997, the amount of tax payable is increased:

- by 100% in the case of bad faith; and
- by 150% in the case of fraud, without prejudice to the criminal penalties set forth in the Book of Tax Procedures.

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3. Article 8 of Act 2003-008 of 8 July 2003 on the suppression of offences contained in certain OHADA Uniform Acts.

150. The penalties for failure to file a return are harsher, since under Article P-999 the tax payable is increased by 100% (and 150% for a repeat offence). Various fines of up to XAF 250 000 (EUR 380) may also be imposed.

151. A fine equal to 100% of the value of the transaction, with a minimum of XAF 500 000 (EUR 760), is imposed on any sale of goods or provision of a service for which an invoice has not been issued. The fine is reduced to XAF 50 000 (EUR 76) for an erroneous or incomplete invoice issued or used by a professional.

152. As far as criminal penalties are concerned, under Article P-1025 any person who fails to make or to cause others to make accounting entries or causes inaccurate or fictitious entries to be made in the day books or stock books provided for by OHADA Uniform Acts or in the documents that replace them, and any person convicted of preparing or helping to prepare false balance sheets is liable to imprisonment for 15 days to one year and a fine of XAF 500 000 to 5 000 000 (EUR 760 to 7 600) or one only of those penalties.

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

153. Under Article 19 of the Uniform Accounting Act, the mandatory books of account and supporting documents are day books, the ledger, the general trial balance and the annual accounts book. The underlying documentation must also be kept, including invoices, quotes, consignment notes and delivery slips. Article 17 lays down the general principles for a proper accounting system. Inter alia, it states that accounting entries must be supported by dated receipts which are classified and filed in an order stipulated in the document describing the accounting system and procedures; they must bear references to corresponding supporting documents and are deemed to have probative value.

154. These requirements ensure that mandatory accounting records in Gabon (see Section A.2.1 for commercial and tax accounting obligations and the related penalties) are sufficiently supported by the necessary documents to evidence the transactions performed.

### ***Document retention (ToR A.2.3)***

155. The system in place ensures that entities situated in Gabon keep accounting information.

156. Under Article P-821 of the Tax Code, accounting documents must be kept for ten years from the date of the last recorded transaction or the date on which the documents were drawn up.

157. Under Article 24 of the Uniform Accounting Act, accounting records and documents and the supporting documentation for accounting entries must be retained for the same period of at least ten years from the end of the period concerned.

### *Conclusion*

158. Gabonese commercial and tax law contains requirements for keeping accounting documents (including underlying documentation). Appropriate legal arrangements are in place in Gabon, including penalties to enforce accounting requirements. The effectiveness and application of such penalties will be assessed in the Phase 2 review.

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

Phase 1 determination
The element is in place.

### **A.3. Banking information**

Banking information should be available for all account-holders.
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159. Access to banking information is of interest to the tax authorities only if the bank has useful and reliable information on its customers' identity and the nature and amount of financial transactions.

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

160. The financial sector in Gabon mainly comprises credit institutions, financial institutions, microfinance institutions (MFI), insurance companies and foreign exchange and money transfer operators. The savings and credit activities of banks and MFIs are supervised at Community level by the Central African Banking Commission (COBAC), which is responsible for supervising credit activity in the CEMAC subregion. CEMAC Regulations, and notably all AML/CFT regulations, have direct effect into the domestic law of the CEMAC Member States as soon as these regulations enter into force, without any other formal requirements (article 21 of the CEMAC Treaty). COBAC issues licences to carry on these professions and ensures that their operations are lawful. The Ministry of Economy also has a supervisory role with regard to banks, as the monetary authority, and foreign exchange dealers. Banking activity is governed by the Convention Harmonising Banking Regulation in Central African States (Banking

Regulation Convention). Money transfer activities are mainly governed by postal legislation (Act of 29 December 2008 governing postal activity in Gabon).

161. Banks and financial institutions are subject to the same accounting requirements as other companies. These requirements are strengthened by Community banking regulations. Thus, Article 32 of the Annex to the Banking Regulation Convention states that banks and financial institutions must comply with rules relating to the consolidation of accounts and the disclosure of accounting documents and other information intended both for the competent authorities and for the public. Article 36 goes further, stating that they must provide all information, clarifications and justifications helpful for the exercise of regulatory or technical oversight.

### *Anti-money laundering legislation*

162. CEMAC AML regulations applies to financial institutions, defined as credit institutions (banks and financial institutions) including branches, intermediaries in banking operations, the financial services of the Post Office, microfinance institutions, insurance and reinsurance companies and brokers, stock markets, organisations acting as central depository or settlement bank, asset management companies, undertakings offering investment services and undertakings for collective investment in transferable securities (UCITS) and their management companies.<sup>4</sup>

163. CEMAC-CAMU Regulation 01-03 on the prevention and suppression of money laundering and the financing of terrorism stipulates a double requirement to identify customers (Article 9) and beneficial owners (Article 10). Non-compliance is punished by the penalties set forth at Article 46 of the Regulation. Thus, attempting, aiding or abetting or inciting such offences is punished by imprisonment for five to ten years and a fine of up to five times the amount of the laundered sums and not less than XAF 10 000 000 (EUR 10 254).

164. Article 13 of CEMAC-CAMU Regulation 01-03 states that documents relating to the identity of regular or occasional customers or to transactions performed by them must be kept for at least five years as of the closure of accounts, cessation of relations with the customer or performance of the transaction. Non-compliance is punished by the penalties set forth at Article 46 of the Regulation. Thus, attempting, aiding or abetting or inciting such offences is punished by imprisonment for five to ten years and a

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4. Article 6 of CEMAC-CAMU Regulation 01-03 on the prevention and suppression of money laundering and the financing of terrorism.

fine of up to five times the amount of the laundered sums and not less than XAF 10 000 000 (EUR 10 254).

### Tax requirements

165. Under Article 17 of the Tax Code, banks and financial institutions must present their accounts for tax purposes in accordance with the sectorial chart of accounts approved by UDEAC Act 4/79 as supplemented by UDEAC Act 2/80.

### *Conclusions*

166. The prevailing laws ensure the availability of information on bank accounts (account holder's identity and transactions performed) in Gabon.

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

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

## B. Access to information

### Overview

167. 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 Gabon's legal and regulatory framework gives the authorities powers that cover all relevant persons and information and whether taxpayers' rights and safeguards are compatible with the effective exchange of information.

168. Gabon's tax authorities have extensive powers under the Tax Code to access information relating to the assessment, audit and collection of tax. In particular, those powers allow the authorities to request information from any taxpayer or third party likely to be in possession of information required to assess income or collect tax.

169. Under the same provisions, banks, financial institutions, insurance companies and any natural or legal person taking on deposit or holding funds or assets for third parties are also required to provide the tax authorities on request with all information necessary for the assessment, audit and collection of tax.

170. There is no legislation in Gabon which grants the tax authorities specific powers to collect information solely for international exchange purposes. However, the Tax Code allows the tax authorities to use tax officials' domestic information-gathering powers for administrative co-operation purposes. The Gabonese authorities use the same powers for the international exchange of information.

171. There is no restriction in the various information exchange agreements concluded by Gabon relating to the exchange of banking information. Likewise, professional secrecy is not an obstacle to information exchange in Gabon.

172. The rights and safeguards applicable to individuals in Gabon are compatible with effective information exchange. There is no requirement in Gabonese law for the tax authorities to inform the taxpayers concerned of requests for information received from foreign authorities.

173. The penalties for failing to provide information or documents appear sufficiently dissuasive to ensure that the Gabonese tax authorities can obtain the relevant information. Thus, the Gabonese authorities can have access to all types of information that must be retained by persons located in Gabon.

### **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).

174. Under the tax treaties concluded by Gabon, the competent authority for the exchange of information is the Minister of Economy or his duly appointed representative. By virtue of Ministerial Order No 23 of 15 July 2015, the Director General of Tax, who is the head of Gabon’s tax administration, has been empowered by the Minister of Economy for information exchange purposes. The tax administration is under the aegis of the Minister of Economy.

175. The Gabonese tax authorities’ information-gathering powers stem mainly from Articles P-881 to P-885 of the Tax Code, which institute a right to information in favour of the tax authorities which may be used to answer requests for information from foreign jurisdictions. Thus, taxpayers, banks, financial institutions, insurance companies and in general any natural or legal person who has custody of or holds funds or assets for a third party are required to provide the tax authorities upon request with the books that must be kept under OHADA business law and all accounting documents and receipt and expense vouchers which must be drawn up or issued under the prevailing regulations.

176. The Gabonese tax authorities may also obtain information by using their power of audit set forth at Article P-833 et seq. of the Tax Code.

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

177. The Gabonese authorities have four different rights giving them access to ownership and identity information, accounting information and tax information, except where it relates to medical records or national security.



They are (i) the right to information, which is the most important; (ii) the right of discovery, introduced by the 2015 Budget Act, (iii) the right of audit and (iv) the right of investigation.

### *Powers of investigation and access to information*

178. The two main means whereby the tax authorities can answer information requests are the right to information and the newly introduced right of discovery, which essentially enable the authorities upon request to obtain the documents and information they require for tax purposes. The Gabonese authorities have two other legal means which may, according to the circumstances, help them to obtain information for exchange purposes, namely the right of audit and the right of investigation. However, these two rights are not often used for information exchange purposes. Except for the right of investigation which only applies to indirect taxes, all access powers can be used concurrently for domestic or EOI purposes. For example, in order to gather information regarding a taxpayer, it could be considered to carry out a tax audit in the premises of the taxpayer and to exercise the right to information to obtain information held by third parties regarding the taxpayer.

179. Under Article P-881 of the Tax Code, taxpayers are required to provide the tax authorities upon request with all mandatory documents and accounting records, together where relevant with accounting items specific to the nature of the activity carried on, to enable the authorities to determine the accuracy of the information contained in their tax returns. This requirement applies to all taxpayers, to the accredited representatives of foreign companies having an economic activity in Gabon and to the managers of trusts, *fiducies* and other similar structures domiciled in Gabon.

### *Right to information*

180. The right to information is a legal means of gaining access to tax information for enquiry, cross-checking, programming and information-gathering purposes. It consists in the collection of information or copies of documents without an audit. No particular guarantee is extended to the person from whom the information is obtained since the right to information is neutral for them and cannot per se give rise to a reassessment. A notified person may not be the subject of an audit following a request made under the right to information. For that reason, the right to information generally applies to third parties.

181. Tax officials having at least the rank of inspector may exercise the right to information, which indicates a certain degree of flexibility.

182. Under Article P-881 of the Tax Code, the tax authorities' right to information is very extensive and applies to natural or legal persons, public agencies, persons performing insurance transactions, banks, custodians of public documents and companies required to keep a register of shareholders. It may be exercised by correspondence or on-site. In all events, the authorities may make copies of hardcopy or computerised documents at its own expense.

183. The only restriction on exercise of the right to information is professional secrecy. Under Article P-888, however, only information relating exclusively to medical records or top secret files pertaining to national security is covered by professional secrecy. The books, registers, documents and other information in respect of which the authorities may exercise their right to information must be kept for ten years as of the date of the last transaction recorded in them or the date at which they were drawn up. This is the same as the period set by the Uniform Accounting Act.

184. The right to information is compulsory, as described in Section B.1.4 below.

#### *Right of discovery*

185. Article P-907 *bis* as amended of the Tax Code, introduced by the 2015 Budget Act and in force since 1 January 2015, institutes a right of discovery in favour of the tax authorities. This enables them to request information and documents about a taxpayer who is the subject of a request for information from a partner jurisdiction. It is exercised under the same conditions, in the same forms and within the same time limits as the right to information, though independently of any audit procedure and without any requirement to notify the taxpayer concerned beforehand.

186. Under Article P-907 *bis*, tax officials having at least the rank of inspector are empowered to obtain information and documents held by the persons and organisations listed at Articles P-881 and P-882 in order to update their tax files independently of any tax audit procedure. Such information and documents may be communicated under Gabon's treaty obligations relating to the exchange of information for tax purposes, with no requirement to notify the taxpayer concerned beforehand. The law also states that professional secrecy may not be invoked against tax officials availing themselves of the right of discovery except where medical secrecy is concerned.

187. The right of discovery is exercised in the same forms, under the same conditions and with the same penalties as the right to information.

*Right of audit*

188. Under Article P-833, the tax authorities have all powers to assess and audit taxes payable by a taxpayer. They audit tax returns and the various deeds or documents used to establish taxes, duties, contributions and fees of whatever kind. The purpose of an audit is to verify the accuracy and reliability of tax returns submitted by taxpayers and, where relevant, to make adjustments. The right of audit is used if the taxpayer concerned by an information request is undergoing an audit procedure or if the authorities consider that the content of the information requested requires the means of discovery available in a tax audit. The right of audit may be exercised on a documentary basis, including requests for clarifications and justifications, or on-site.

189. A documentary audit enables the tax authorities to audit tax returns submitted by taxpayers in their own offices, without notifying the taxpayer beforehand. In this case, the tax authorities may request in writing all information, explanations and clarifications deemed necessary. They may hear the persons concerned when they consider a hearing to be helpful or when the persons concerned ask to provide oral explanations. However, a documentary audit is of limited use since under Article P-844 it is restricted to an examination of the consistency of tax returns, the documents used to assess taxes and duties and the documents filed in order to obtain deductions, rebates or reimbursements.

190. Under Article P-845, the tax authorities may ask taxpayers in writing for all information, justifications or clarifications relating to their tax returns and other documents filed, including for categories of income for which they are not required to keep accounts. Taxpayers must respond within 20 days of receiving the request. If they fail to do so, or if the tax authorities consider their response to be insufficient, a discretionary assessment is made in order to determine the taxes to which the request relates.

191. Under Article P-834, an on-site audit enables tax officials having at least the rank of inspector to verify the accounts and/or documents held by the taxpayer on his premises. When using the on-site audit procedure, the tax authorities must inform the taxpayer at least 15 days in advance by means of an audit notice. Under Article P-838, however, the authorities may conduct audits unannounced, in which case the audit notice is provided to the taxpayer at the start of the audit. An audit conducted on the day the notice is given to the taxpayer may only make findings of fact. Under Article P-842, where the accounting system is computerised, the tax authorities may be assisted by an expert appointed by them; professional secrecy may not be invoked against them.

*Right of investigation*

192. Under Article P-892, the right of investigation is reserved for the discovery of non-compliance with the rules on invoicing, account-keeping

and the filing of tax returns which apply to taxpayers liable to indirect duties and taxes. It allows the tax authorities to access customs documents and to make findings of fact concerning physical elements of the operation (Article P-982-2). On the first visit, the tax officials provide the taxpayer with an investigation notice bearing the stamp of their higher authority. The tax authorities may access all business premises, land and warehouses, transport vehicles and their loads during the taxpayer's normal business hours and thereafter with the authorisation of the competent public prosecutor. This particular means of search may be used only to audit indirect taxes. Thus, the Gabonese tax authorities may use it for information exchange purposes only where the requested information concerns indirect taxes, in accordance with the relevant information exchange agreement or convention.

***Use of information-gathering measures in the absence of domestic tax interest (ToR B.1.3)***

193. The concept of “domestic tax interest” describes situations in which a contracting party can only provide information to another contracting party if it has an interest in gathering such information for its own needs.

194. Under Article P-880 of the Tax Code, one of the purposes of the right to information is “to audit tax returns submitted by taxpayers”. The right of audit may be exercised in order to “audit the assessment basis for all taxes and duties payable by taxpayers” whose returns are verified by the tax authorities. This covers all the taxes and duties contained in the Tax Code, including income and sales taxes. However, although the information requested by Gabon's partners is not intended for the assessment of tax in Gabon, the tax authorities is able to use the right to information and the right of audit solely for information exchange purposes.

195. There is no provision in Gabonese law preventing the tax authorities from using their domestic information-gathering powers for information exchange purposes. In addition, treaties and conventions duly ratified by parliament take precedence over domestic law, though not the Constitution. For that reason, the provisions of Gabon's tax treaties relating to information exchange prevail over the provisions of the Tax Code relating to the right to information and the right of audit. Once a tax treaty has entered into force, the tax authorities are required to implement its information-exchange provisions. They must use all their powers under the Tax Code in order to do so, including the right to information and the right of audit, since there is no provision in Gabonese law preventing the tax authorities from using their domestic information-gathering powers for information exchange purposes.

196. According to the Gabonese authorities, the provisions allowing information-gathering for tax assessment and audit purposes may be used in

order to answer a request for information from a foreign tax authority if there is an international treaty between that country and Gabon. Thus, a tax audit may be performed in Gabon where the Gabonese tax authorities have received an information request from a partner country relating to taxes payable by a taxpayer from that country. The tax authorities decide according to their own criteria whether a tax audit is necessary or whether a request for documents under the right to information will suffice and can justify such requests on the grounds of the need to answer a request for information from a treaty partner.

197. Gabon does not have a great deal of experience of information exchange, but the Gabonese authorities state that they have consistently used their right to information in order to respond to the few requests received to date. How the tax authorities use their information-gathering powers for information exchange purposes will be assessed in Phase 2 of the review.

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

198. The tax authorities have powers to impose penalties for non-response or an insufficient response to a request for information. Without prejudice to other penalties, under Article P-1003 of the Tax Code a flat-rate fine of XAF 5 000 000 (EUR 7 600) is imposed on any person who attempts to avoid or oppose the right to information or the right of discovery. A daily fine of XAF 500 000 (EUR 760) per day of delay is imposed for any attempt to defer execution of the right to information.

199. The fines described above apply only after service of official notice to comply with the request within 15 days. If the authorities have not received an answer on expiry of the notice period, the fines may be imposed.

200. Under Article P-851 et seq., failure to provide the information requested in order to perform an audit results in discretionary assessment. Under Article P-892 et seq., any person who avoids or opposes the right of investigation is served with official notice to comply.

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

201. Jurisdictions should not refuse to respond to an information request made under an information exchange mechanism on the grounds of secrecy rules (e.g. banking or business secrecy). There are several rules on secrecy and confidentiality in Gabonese law.

#### ***Banking secrecy***

202. Banking secrecy is governed by the 1992 Convention Harmonising Banking Regulation in Central African States. Article 42 of the Annex to the

Convention states that “any member of the board of directors or supervisory board of a credit institution, any person who participates in the direction or management of a credit institution or is employed by a credit institution is bound by a professional secrecy obligation under the conditions and subject to the penalties set forth in the Penal Code in that regard”.

203. Article 11 of the Annex stipulates a confidentiality or professional secrecy obligation, which merely means that banks may not disclose information about their customers to third parties. This confidentiality obligation is very restricted and may not be invoked against certain government agencies, including the tax authorities (Articles P-881 and P-886 of the Tax Code).

204. Tax officials are bound by a professional secrecy obligation and may not communicate information gathered in the performance of their duties. Although tax officials are required not to disclose information gathered in the performance of their duties, this obligation may not be invoked against certain public bodies (Article P-889-1) and may not prevent “the exchange of information with tax authorities linked to Gabon by a reciprocal assistance agreement in tax matters” (Article P-889-4).

205. Various means are available to the tax authorities in order to access information held by banks.

206. The first is the right to information set forth at Article P-880 et seq. of the Tax Code. The right to information is not conditional on any administrative or judicial authorisation. Under Article P-888, it may be exercised in order to obtain any type of information with the exception of information covered by medical or defence secrecy.

207. Articles P-892 and P-897 also provide for a right of investigation and search. Under Article P-901, prior authorisation from the public prosecutor is required in order to conduct a search.

208. Under Article P-1003, a person who fails to respond or is late in responding to an information request is liable to:

- a fine of XAF 5 000 000 (EUR 7 600);
- a daily fine of XAF 500 000 (EUR 760) per day of delay.

209. In conclusion, there is no restriction in Gabonese tax law as it stands on the tax authorities’ capacity to gather and communicate tax information held by a bank or financial institution.

### *Other professional secrecy requirements*

210. A professional secrecy obligation exists in Gabonese law for lawyers and, more generally, professionals who act as legal representatives (especially

those holding a public office).<sup>5</sup> However, the tax authorities have an extensive right to information against which professional secrecy may not be invoked (Article P-888), with the sole exception of “information relating exclusively to patients’ medical files or to national security with a top secret classification”.

211. Under Article P-881, the right to information and the right of discovery apply to “any natural or legal person carrying on a profession, persons performing insurance transactions, banks, professional stock exchange intermediaries, custodians of public documents and companies required to keep registers of share or bond transfers, attendance sheets for shareholders’ meetings, minutes of board of directors’ meetings and auditors’ reports”.

### *Conclusion*

212. The Gabonese tax authorities have extensive powers to gather and access information which are not hindered by banking secrecy or other forms of professional secrecy.

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

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

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

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

### ***Rights and safeguards should not unduly prevent or delay exchange of information (ToR B.2.1)***

213. Gabonese law guarantees taxpayers respect of their rights in their relations with the tax authorities, especially in tax audit and tax collection procedures. However, such rights are not guaranteed to the detriment of effective information exchange; in particular, Gabon does not have procedures for prior notification of taxpayers.

214. The right to information does not apply to information contained in medical files or in security files with a top secret classification. The tax authorities cannot therefore access such information.

5. Law no. 8/73 of 20 December 1973 (Notaries) and Law no. 013/2014 of 7 January 2015 establishing the framework of the lawyer’s profession in Gabon.

215. The right of audit is strictly regulated by the Tax Code, especially where the verification of accounts is concerned. The tax authorities must serve a notice of visit on the taxpayer at least eight days beforehand, stating the taxes to be audited and the period concerned. Under Article P-685, audited taxes may not be the subject of another audit for the same period. The audit may not last longer than three months, though this period may be extended to 12 months where the scope of the enquiry or the circumstances require (Article P-869). These taxpayer safeguards do not in any way hinder the exchange of information.

216. Even the three-month deadline (or 12 months in some cases) within which the tax authorities are required by law to complete an audit is favourable to information exchange, insofar as the standard requires the requested information to be provided within a reasonable time, or at least that a progress report is provided within 90 days. A tax audit initiated solely for information exchange purposes can easily be performed and the information transmitted in under three months. The fact that an audit may be out of time or that a new audit is impossible does not prevent the exchange of information because the tax authorities may always conduct a documentary audit which enables them to ask the taxpayer for information, or use the other powers at their disposal, such as the right to information, in order to obtain information, including from third parties.

217. Taxpayer safeguards with regard to the right of investigation (which relates only to indirect taxes and may not be used to access premises used solely for residential purposes) do not hinder or unduly delay effective information exchange. How these safeguards apply in practice will be examined in Phase 2 of the peer review.

218. Lastly, Gabonese law does not require the tax authorities to inform the person concerned in Gabon of a request for information received from a foreign authority under an international treaty. There is thus no provision in Gabonese law for notification before or after the event.

### *Conclusion*

219. Gabonese law guarantees taxpayers respect of their rights in their relations with the tax authorities, especially in tax audit and tax collection procedures, without them hindering or unduly delaying the exchange of information.

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

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



## C. Exchanging information

### Overview

220. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanisms for doing so. In Gabon, the legal authority to exchange information is derived from bilateral mechanisms (double tax conventions), multilateral mechanisms (the CEMAC Convention on Mutual Administrative Assistance in Tax Matters, or CEMAC Convention,<sup>6</sup> the General Convention on Tax Co-operation between the Member States of the Common Organisation of African States, Madagascar and Mauritius, or OCAM Convention, and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, or Multilateral Convention) and domestic law. This section of the review considers whether Gabon has a network of information exchange agreements which enables it in practice to ensure effective information exchange.

221. Until July 2014, Gabon had a small network of three bilateral tax treaties<sup>7</sup> and the CEMAC and OCAM regional multilateral conventions containing provisions relating to the exchange of information for tax purposes. Under these conventions, Gabon was able to exchange information with a total of ten jurisdictions. Gabon signed the Multilateral Convention on 3 July 2014, adding standard-compliant information exchange relations with 82 jurisdictions. Gabon has not yet ratified the Multilateral Convention.

222. Gabon has not to date formally been asked to conclude a Tax Information Exchange Agreement (TIEA). All information exchange mechanisms contain provisions relating to confidentiality and Gabonese domestic law also contains rules on the subject. These provisions apply equally to the information and documents concerned by the request received by the Gabonese competent authority and to the answers provided to the treaty partner.

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6. Convention on Mutual Administrative Assistance in Tax Matters, Act 17/65-UDEAC-38 of 14 December 1965.

7. With Belgium, Canada and France.

223. All of the treaties entered into by Gabon provide that the parties involved will not be obliged to reveal information regarding an industrial, business or professional secret, or information subject to attorney-client privilege, or to disclose information that would be contrary to public policy.

224. Lastly, and although this element will be examined during the Phase 2 review, there is no restriction in Gabon's domestic law that would limit the country's capacity to exchange information within the 90-day period set by international standards or that would prevent the country's competent authority from informing its partners of the state of progress of their requests.

### C.1. Exchange of information mechanisms

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

225. Under Article 43 of Gabon's Constitution, the President of the Republic is empowered to sign and ratify treaties. This power may be delegated to the prime minister or other ministers.

226. Gabon has a network of three bilateral tax conventions containing provisions relating to the exchange of information. It is also party to two regional instruments containing provisions relating to the exchange of information:

- the CEMAC convention, concluded on 14 December 1965 by Cameroon, the Republic of Congo, Gabon, Equatorial Guinea, the Central African Republic and Chad. As the Convention contains provisions relating to the exchange of information for tax purposes, Gabon could therefore exchange information with seven jurisdictions. The Convention does not contain the most recent version of Article 26 of the OECD Model Convention.
- the General Convention on Tax Co-operation between the Member States of the Common Organisation of African States, Madagascar and Mauritius (OCAM) of 29 July 1971, in force in four jurisdictions. Although OCAM has been dissolved, Congo, Côte d'Ivoire, Gabon and Senegal continue to apply the tax convention which arose from it.

227. Until July 2014, Gabon had a small network of three bilateral tax treaties and two regional multilateral conventions covering ten jurisdictions in all. However, Gabon gained an extensive network of information exchange partners when it became a party to the Multilateral Convention on 3 July 2014, giving it a standard-compliant agreement with 82 jurisdictions with which it had not previously had information exchange relations. Several tax treaties are being negotiated or in the process of ratification. No jurisdiction to date has said that it has contacted Gabon with a view to negotiating an EOI mechanism.

*Standard of foreseeable relevance (ToR C.1.1)*

228. The international standard in information exchange assumes that information should be exchanged upon request to the widest possible extent. However, it does not allow “fishing expeditions”, meaning speculative requests for information which appear to have no clear link with an ongoing audit or investigation. The balance between these two competing aspects is expressed in the concept of “foreseeable relevance” contained in Article 26(1) of the OECD Model Tax Convention, which states:

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

229. The three bilateral conventions in force in Gabon (with Belgium, Canada and France) contain the terms “necessary” or “useful”. The CEMAC Convention also provides for the exchange of tax information held by contracting states “that is useful in order to assess and collect taxes of all kinds and to prevent tax fraud”. The OCAM Convention refers to tax information which the tax authorities “have at their disposal and which is useful” in order to assess and collect the taxes covered by the convention and the enforcement, with regard to those taxes, of legal rules for the prevention of tax fraud. According to Gabon, “information at the disposal of the tax authorities” is interpreted broadly, covering both information in their possession and information to which they may have access by exercising the powers conferred on them by law. Gabon adds that the term “useful” is interpreted in the same way as “foreseeably relevant”. Concerning the treaty with France, France confirmed in its peer review<sup>8</sup> that it supported this interpretation.

230. Thus, the treaties concluded by Gabon which are in force may be deemed to comply with the standard of foreseeable relevance. In addition, Belgium, Canada, France and Cameroon are covered by the Multilateral Convention, which complies with the international standard. Consequently, all Gabon’s information exchange mechanisms comply with the standard of foreseeable relevance and the scope of the taxes covered by information exchange arrangements.

8. Paragraph 214, Peer Review Report – Combined Phase 1 and Phase 2 Report – France © OECD 2011.

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

231. Effective information exchange presupposes that the obligation of a jurisdiction to provide information should not be limited by the residence or nationality of either the person to whom the requested information relates or the person who possesses or holds the information requested. For this reason, the international standard in information exchange states that the mechanisms for exchange must permit an exchange of information concerning all persons.

232. Neither the bilateral tax conventions in force in Gabon nor the CEMAC or OCAM Conventions contain any express provision extending the scope of information exchange to persons who are not residents of the contracting states. However, all these treaties allow for the exchange of information necessary or useful to enforce their provisions or those of contracting states' domestic law.

233. As the domestic tax law of each contracting state applies equally to residents and non-residents, Gabon confirms that the information covered by the conventions also concerns non-residents. Thus, none of the information exchange mechanisms concluded by Gabon limits the scope of information exchange to one category of persons to the exclusion of others, such as those who are not deemed to be residents of one of the states.

234. In addition, Belgium, Canada, France and Cameroon are covered by the Multilateral Convention.

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

235. Jurisdictions cannot undertake effective information exchange if they are unable to exchange information which is held by financial institutions, nominees or persons acting in an agency or fiduciary capacity. According to the OECD Model Convention and Model Tax Information Exchange Agreement (TIEA), which are the main sources of authority where the standard is concerned, banking secrecy may not be invoked as a ground for refusing to provide information, nor may a request for information be declined solely because the information is held by a nominee or a person acting in an agency or fiduciary capacity or because the information relates to ownership interests in a person.

236. Article 26(5) of the OECD Model Convention provides that a contracting state may not decline to supply information solely because it is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person. Apart from the Multilateral Convention, no convention concluded by Gabon contains any such provision.

237. The conventions to which Gabon is a party were concluded before Article 26 of the OECD Model Convention was amended. However, the absence of a clause in the conventions does not systematically create a restriction on information exchange. The Commentary on the Model Tax Convention states that whilst paragraph 5 represents a change in the structure of Article 26, it should not be interpreted as suggesting that the previous version of the Article did not authorise exchanges of banking information or information held by financial institutions, nominees or persons acting in an agency or fiduciary capacity.

238. There is no restriction on information exchange in Gabonese domestic law, and the powers attributed to the tax authorities by law – in this case the Tax Code – enable them to access and exchange all kinds of information, including information held by banks and by nominees, agents and fiduciaries.

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

239. The concept of domestic tax interest describes situations in which a contracting party can only provide information to another contracting party if it has an interest in obtaining the desired information for its own tax purposes. Inability to provide information which is based on any such domestic tax interest does not comply with the international standard. The contracting parties should use domestic information-gathering powers, even if they are used solely for the purpose of obtaining information to be provided to the other contracting party.

240. Except for the Multilateral Convention signed on 3 July 2014 and the treaty with Canada concluded in 2002, none of the tax conventions concluded by Gabon contains Article 26(4) of the OECD Model Tax Convention, which requires contracting states to use their information-gathering measures to obtain the requested information even though they may not need it for their own tax purposes. However, the absence of such a provision does not mean that the conventions allow the assertion of domestic tax interest. Reference should therefore be made to the domestic law of the contracting states in order to see whether it prevents the competent authority from using its information gathering powers solely for information exchange purposes.

241. There is no provision in Gabonese domestic law creating a domestic tax interest (see Section B.1.3 above). Under the Tax Code, the Gabonese tax authorities use the same tax assessment and audit powers attributed to them by law in order to gather and exchange information with foreign partners. Gabon can therefore exchange information with its partners even if there is no interest for domestic tax collection and without any explicit allusion to domestic tax interest in its information exchange mechanisms.

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

242. The dual criminality principle states that assistance can only be provided if the matter under investigation (and prompting the request for information) would constitute a criminal matter in the requested country if it had arisen in that country. If it is to be meaningful, information exchange must not be restricted by the enforcement of a dual criminality principle.

243. None of the information exchange mechanisms established by Gabon provide for the application of the dual criminality principle.

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

244. Communicating information may be necessary for both tax and criminal purposes. The international standard is not limited to exchanges of information for criminal purposes and may also include exchanges for tax purposes.

245. All information exchange mechanisms concluded by Gabon provide for the exchange of information in both criminal and civil matters.

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

246. In certain cases, a contracting party may need to receive information in a specific form in order to meet its evidentiary standards or other legal requirements. These forms may include witness statements and certified copies of original documents. Contracting parties should do their best to respond to such requests. The requested party may decline to provide information in the specific form requested if, for example, it is unknown or not authorised in its administrative practice. Declining to provide information in the requested form does not affect the requirement to provide the information.

247. The tax treaties concluded by Gabon do not contain any stipulations concerning the provision of information in a form specifically requested by a contracting party to satisfy its evidentiary or other legal requirements to the extent allowable under the laws of the requested party. However, there is nothing to prevent the Gabonese authorities from providing information in the form requested, provided that it is consistent with their administrative practice.

***Be in force (ToR C.1.8)***

248. The exchange of information cannot occur unless a jurisdiction has information exchange mechanisms in force. Where such mechanisms have been signed, the international standard requires a jurisdiction to complete the measures needed for them to take effect promptly.

249. Under Article 114 et seq. of the Gabonese Constitution, treaties may be ratified only by statute. In order for international conventions concluded by Gabon to be ratified, the signed instrument must first be approved by the government and then presented to Parliament, a bicameral institution comprising the National Assembly and the Senate. If the Constitutional Council, consulted by the President of the Republic or the President of the National Assembly or the President of the Senate or one-third of deputies or senators, finds that an international agreement includes a clause contrary to the Constitution, authorisation to ratify or approve it may be forthcoming only after the Constitution has been revised.

250. Once parliamentary authorisation has been obtained by a simple majority, the act of ratification is promulgated by the President of the Republic. Then a date of entry into force is decided jointly with the signatory country by exchange of ratification instruments, a procedure overseen by the two countries' Ministries of Foreign Affairs. The convention finally enters into force at the agreed date. According to the Gabonese authorities, it is difficult to predict an average length of time for the ratification of conventions insofar as the procedure varies from one country to another and also depends on how determined the other party is and the state of its relations with Gabon (strong, medium or weak co-operation).

251. All the conventions concluded by Gabon are in force except for the Multilateral Convention and the DTC with Mauritius, signed on 3 July 2014 and 18 July 2013, respectively. There is no draft legislation to ratify the Multilateral Convention and the DTC with Mauritius in preparation. Gabon is recommended to rapidly ratify the Multilateral Convention and the DTC with Mauritius.

### ***Be effective (ToR C.1.9)***

252. In order for information exchange to be effective, the contracting parties must take the necessary measures to comply with their commitments.

253. Article 114 of the Gabonese Constitution states that treaties cannot take effect until they have been ratified. Before ratification, tax conventions are submitted to parliament for approval by statute. Once ratified, international treaties and conventions take precedence over domestic laws. Thus, a convention in force does not need any further measure in order to be effective. Thus, the Gabonese tax authorities use the same domestic tax assessment and audit powers for information exchange purposes. These powers allow the tax authorities to obtain information of all kinds, including banking information, except in certain specific cases (medical secrecy and national security).

### Determination and factors underlying the recommendations

Phase 1 determination
The element is in place.

## C.2. Mechanisms for exchanging information with all relevant partners

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

254. According to the international standard, jurisdictions should be able to exchange information with all relevant partners, meaning partners interested in concluding an EOI agreement. Agreements cannot be concluded solely with partners of no economic importance. If a jurisdiction refuses to conclude or negotiate agreements with partners, especially those which have reasonable grounds for seeking information from that jurisdiction in order to properly administer and enforce their tax laws, that fact may indicate a lack of commitment to implementing the standards.

255. Gabon has three bilateral tax conventions in force, all containing information exchange measures, and two regional conventions (the CEMAC and OCAM Conventions). These conventions cover a total of ten jurisdictions (Belgium, Cameroon, Canada, Central African Republic, Chad, Congo, Côte d'Ivoire, Equatorial Guinea, France and Senegal). However, on 3 July 2014 Gabon signed the Multilateral Convention, adding a further 82 jurisdictions to its network.

256. Gabon's main trading partners remain France, Morocco, People's Republic of China, the United States and South Africa. Trade flows with countries in the CEMAC zone account for only a small proportion of Gabon's trade: 3.6% on average since the CEMAC free-trade zone was established in 1999.

257. Gabon has not concluded any tax information exchange agreement to date but is a signatory to the Multilateral Convention, meaning that Gabon now has an information exchange mechanism with almost all its major economic partners.

258. *Procedures for ratifying the Multilateral Convention have begun with the national competent authorities.* Gabon is currently negotiating double taxation treaties incorporating information exchange provisions in accordance with the current OECD and UN models with the People's Republic of China, Ethiopia, the Czech Republic, and Qatar.

259. Gabon has not declined to conclude an information exchange mechanism with any country to date.



**Determination and factors underlying the recommendations**

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

**C.3. Confidentiality**

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

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

260. Governments could not become involved in exchanging information without being certain that the details communicated will be used solely for the purposes specified in the relevant information exchange agreement and that they will be kept confidential. Information exchange mechanisms should thus contain provisions indicating exactly the persons to whom the information may be circulated. Furthermore, the domestic legislation in force in the countries concerned usually contains strict regulations on protecting the confidentiality of information gathered for tax purposes.

***International mechanisms***

261. All the treaties concluded by Gabon contain provisions relating to confidentiality even though not all of them use the wording of Article 26(2) of the OECD Model Convention.

262. Generally speaking, there are two wordings of the confidentiality provisions in the conventions to which Gabon is a party. The CEMAC and OCAM Conventions state that “information exchanged in this way, which remains secret, may not be disclosed to persons other than those responsible for the assessment and collection of the taxes covered by the present convention”. According to Gabon, these persons include not only tax officials but also the judicial authorities (prosecution service and court registries), since the two conventions state that information exchange also applies to the “enforcement of legal rules for the prevention of tax fraud”.

263. The conventions with Belgium, Canada and France state that exchanged information “shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of or the determination of appeals in relation to the taxes to which the Convention relates. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.” This wording is even more precise and effectively guarantees the confidentiality of information within the meaning of the standard.

### *Gabonese law*

264. Information obtained under administrative assistance agreements must be kept secret in the same way as information obtained under domestic law. In this regard, Article P-887 of the Tax Code clearly states that tax officials are bound by professional secrecy and may not communicate information gathered in the performance of their duties. This requirement also applies to information obtained from a foreign tax authority under procedures for mutual administrative assistance in tax matters in accordance with international conventions.

265. Under Article P-889, however, such information may be disclosed to persons with regard to whom tax officials are released from their professional secrecy obligation but who are themselves bound by professional secrecy, such as officials of the Government Audit Office, the Treasury, Customs and the Fraud Squad acting in the course of duty and foreign tax authorities acting in the framework of mutual administrative assistance in tax matters under the terms of an international convention.

266. Communications between the competent authorities of partner jurisdictions in the context of information exchange (other than the requested information *per se*) are also covered by professional secrecy.

267. The penalties for failing to comply with the professional secrecy obligation are applicable to the civil servants and provided for by the Public Service General Statutes. These penalties include warnings, reprovings and dismissals. In addition, offenders may be subject to criminal charges, on the basis of article 289 of the Penal Code, as amended by Law no. 19/2013. The criminal penalties may range from 6 months to one year imprisonment, and a fine ranging between XAF 5 million à XAF 20 million.

***Other information exchanged (ToR C.3.2)***

268. The provisions concerning confidentiality which are included both in the relevant agreements and in Gabon's domestic legislation do not distinguish between information received in reply to a request or information that forms part of the request. These provisions apply in the same manner to requests, attached documents, and all communications between the jurisdictions concerned by the exchange.

**Determination and factors underlying the recommendations**

Phase 1 determination
The element is in place.

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

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.
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269. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise.

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

270. Most information exchange mechanisms concluded by Gabon ensure that the parties concerned are not required to supply information that would reveal an industrial, business or professional secret or the disclosure of which would be contrary to public policy.

271. Under Article P-887 of the Tax Code, information relating to medical records or national security may not be disclosed either in a domestic context or for information exchange purposes. Likewise, under tax information exchange agreements, information that would reveal an industrial, business or professional secret or the disclosure of which would be contrary to public policy are excluded from the scope of administrative assistance and may not therefore be communicated in response to an information request.

272. Although the provisions of Article P-886 et seq. clearly do not state that attorney-client privilege may be invoked against the tax authorities acting in accordance with their right to information, they should not be interpreted as authorising the tax authorities to obtain information covered by attorney-client privilege or relating to legal proceedings for information exchange purposes.

### Determination and factors underlying the recommendations

Phase 1 determination
The element is in place.

## C.5. Speed of response to requests for information

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

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

273. There is no provision in Gabonese law or in its EOI mechanisms concerning responses or time limits within which replies must be provided. There is no restriction as such concerning the ability of the Gabonese competent authorities to respond to requests within 90 days of receiving them, either by supplying the information requested or by indicating what stage the processing of the request has reached.

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

274. Under the terms of Gabon's information exchange mechanisms, the competent authority is the Minister of Economy or his authorised representative. However, the General Tax Directorate, which is part of the Ministry of Economy, acts as competent authority for the processing of information requests received from other jurisdictions. The organisation of the operational arm of the General Tax Directorate will be examined as part of the Phase 2 review.

### *Restrictions on the exchange of information (ToR C.5.3)*

275. There is no provision in Gabonese law or in its exchange of information agreements which contains restrictions on the exchange of information, other than those included in Article 26 of the OECD Model Convention or the OECD Model TIEA.

### Determination and factors underlying the recommendations

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

## Summary of determinations and factors underlying recommendations

Conclusion	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. ( <i>ToR A.1</i> )		
<b>The element is in place but certain aspects the legal implementation of the element need improvements.</b>	The new version of the OHADA Uniform Act on commercial companies and economic interest groupings provides for the dematerialisation of securities and allows companies a two-year period in which to comply. However, it does not precisely define the status of bearer shares which are not dematerialised on expiry of the transition period. There is no other provision in Gabonese law clarifying the terms and conditions of dematerialisation.	Gabon should take appropriate steps to implement the new version of the OHADA Uniform Act to ensure the dematerialisation of all bearer shares on expiry of the two-year transition period allowed to companies for that purpose.

Conclusion	Factors underlying recommendations	Recommendations
	<p>The OHADA Uniform Act on commercial companies and economic interest groupings requires public limited companies, simplified joint-stock companies and foreign companies with a branch in Gabon which may be treated in the same way to keep a registered share register at their registered office. While waiting for the dematerialisation of securities to become effective in Gabon, that register is the only means of having comprehensive information on the identity of the owners of registered shares. However, there is no penalty for failing to keep such a register.</p>	<p>Gabon should introduce appropriate penalties for failure by public limited companies, simplified joint-stock companies and foreign companies with a branch in Gabon which may be treated in the same way to keep the registered share register.</p>
<p>Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i></p>		
<p><b>The element is in place.</b></p>		
<p>Banking information should be available for all account-holders. <i>(ToR A.3)</i></p>		
<p><b>The element is in place.</b></p>		
<p>Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1)</i></p>		
<p><b>The element is in place.</b></p>		
<p>The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2)</i></p>		
<p><b>The element is in place.</b></p>		
<p>Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1)</i></p>		
<p><b>The element is in place.</b></p>		

Conclusion	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2)</i>		
<b>The element is in place.</b>		Gabon should continue to develop its exchange of information network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3)</i>		
<b>The element is in place.</b>		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4)</i>		
<b>The element is in place.</b>		
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i>		
<b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</b>		





## Annex 1: Jurisdiction's response to the review report

Le Gabon exprime ses remerciements et sa gratitude à l'équipe d'évaluation dans son ensemble, aux membres du Groupe d'Évaluation des Pairs (PRG) ainsi qu'à toutes les juridictions partenaires en matière d'échange de renseignements pour leurs nombreuses, utiles et enrichissantes contributions à sa revue dont la phase 1 vient de s'achever.

Le Gabon relève, pour s'en féliciter, que les conclusions de son Rapport d'évaluation de phase 1 ont été jugées positives par l'équipe en charge de sa revue et le PRG. Cela démontre que les efforts investis par les pouvoirs publics pour arrimer le cadre juridique national aux normes de transparence et d'échange de renseignements à des fins fiscales ont porté leurs fruits. Ces changements législatifs et réglementaires fournissent désormais au Gabon des moyens supplémentaires pour accentuer la lutte contre la fraude et l'évasion fiscales. Dans cette lutte contre les pratiques fiscales dommageables qui portent atteinte à l'intégrité de ses finances publiques et à celles d'autres juridictions de par le monde, le Gabon peut, en outre, s'appuyer sur un nombre de partenaires plus large et des outils de coopération fiscale plus efficaces.

En dépit de ces progrès et du légitime satisfecit qui en découle, le Gabon est parfaitement conscient que ceux qui conçoivent les mécanismes de fraude et d'évasion fiscales cherchent toujours à avoir une longueur d'avance pour mettre en échec l'action des administrations fiscales. A l'aune de ce constat, il est fondamental que la vigilance ne soit jamais relâchée et que les outils juridiques mis en oeuvre soient régulièrement réévalués quant à leur efficacité. C'est pourquoi le Gabon accueille favorablement les recommandations qui lui ont été faites, notamment sur la clarification de certains aspects relatifs à la dématérialisation des valeurs mobilières. A ce propos, il est opportun d'indiquer d'ores et déjà que les sanctions liées à l'inobservation de l'obligation d'inscrire en compte les valeurs mobilières ont été clarifiées et alourdies afin d'être suffisamment dissuasives. Cela permet de s'assurer que le coût de la conformité aux prescriptions juridiques en la matière est moins élevé que celui de la transgression. Par ailleurs, les modalités de la vente forcée des valeurs mobilières ont été précisées de façon à ce que les opérations

y relatives se déroulent selon des procédures claires et en accord avec les normes d'un Etat de droit.

L'aboutissement de la phase 1 de la revue du Gabon marque aussi sa projection vers la phase 2. Le Gabon entend entrer dans cette nouvelle étape de la modernisation de son cadre juridique et fiscal avec les mêmes volonté et détermination que celles qu'il a mises à préparer la précédente.

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

The following is a list, in alphabetical order, of exchange of information agreements signed by Gabon at 14 August 2015. Gabon signed the Convention on Mutual Administrative Assistance on Tax Matters as amended (the Multilateral Convention) on 3 July 2014 but has not yet ratified it.

	Jurisdiction	Type of agreement	Signature <sup>a/</sup> Territorial extension	Date of entry into effect/Status
1	Albania	Multilateral Convention	Signed	In force in Albania
2	Andorra	Multilateral Convention	Signed	Not in force
3	Anguilla <sup>b</sup>	Multilateral Convention	Extended	In force in Anguilla
4	Argentina	Multilateral Convention	Signed	In force in Argentina
5	Aruba <sup>c</sup>	Multilateral Convention	Extended	In force in Aruba
6	Australia	Multilateral Convention	Signed	In force in Australia
7	Austria	Multilateral Convention	Signed	In force in Austria
8	Azerbaijan	Multilateral Convention	Signed	Not in force <sup>d</sup>
9	Belgium	Multilateral Convention	Signed	In force in Belgium
		Double tax treaty	14 January 1993	13 May 2005
10	Belize	Multilateral Convention	Signed	In force in Belize
11	Bermuda <sup>b</sup>	Multilateral Convention	Extended	In force in Bermuda
12	Brazil	Multilateral Convention	Signed	Not in force
13	British Virgin Islands <sup>b</sup>	Multilateral Convention	Extended	In force in the British Virgin Islands
14	Cameroon	CEMAC Tax Convention (Act 17/65-UDEAC-38)	14 December 1965	14 December 1965
		Multilateral Convention	Signed	Not in force <sup>e</sup>
15	Canada	Double tax treaty	18 November 2002	1 December 2008
		Multilateral Convention	Signed	In force in Canada

	<b>Jurisdiction</b>	<b>Type of agreement</b>	<b>Signature<sup>a/</sup> Territorial extension</b>	<b>Date of entry into effect/Status</b>
16	Cayman Islands <sup>b</sup>	Multilateral Convention	Extended	In force in the Cayman Islands
17	Central African Republic	CEMAC Tax Convention (Act 17/65-UDEAC-38)	14 December 1965	14 December 1965
18	Chad	CEMAC Tax Convention (Act 17/65-UDEAC-38)	14 December 1965	14 December 1965
19	Chile	Multilateral Convention	Signed	Not in force
20	China (People's Republic of)	Multilateral Convention	Signed	Not in force
21	Colombia	Multilateral Convention	Signed	In force in Colombia
22	Congo	CEMAC Tax Convention (Act 17/65-UDEAC-38)	14 December 1965	14 December 1965
		OCAM Regional Convention	29 July 1971	1 January 1972
23	Costa Rica	Multilateral Convention	Signed	In force in Costa Rica
24	Côte d'Ivoire	OCAM Regional Convention	29 July 1971	1 January 1972
25	Croatia	Multilateral Convention	Signed	1 June 2014
26	Curaçao <sup>c</sup>	Multilateral Convention	Extended	In force in Curaçao
27	Cyprus <sup>h</sup>	Multilateral Convention	Signed	In force in Cyprus
28	Czech Republic	Multilateral Convention	Signed	In force in the Czech Republic
29	Denmark	Multilateral Convention	Signed	In force in Denmark
30	El Salvador	Multilateral Convention	Signed	Not in force
31	Estonia	Multilateral Convention	Signed	In force in Estonia
32	Faroe Islands <sup>i</sup>	Multilateral Convention	Extended	In force in the Faroe Islands
33	Finland	Multilateral Convention	Signed	In force in Finland
34	France	Double tax treaty	20 September 1995	1 March 2008
		Multilateral Convention	Signed	In force in France
35	Georgia	Multilateral Convention	Signed	In force in Georgia
36	Germany	Multilateral Convention	Signed	Not in force
37	Ghana	Multilateral Convention	Signed	In force in Ghana

	<b>Jurisdiction</b>	<b>Type of agreement</b>	<b>Signature<sup>a/</sup> Territorial extension</b>	<b>Date of entry into effect/Status</b>
38	Gibraltar <sup>b</sup>	Multilateral Convention	Extended	In force in Gibraltar
39	Greece	Multilateral Convention	Signed	In force in Greece
40	Greenland <sup>i</sup>	Multilateral Convention	Extended	In force in Greenland
41	Guatemala	Multilateral Convention	Signed	Not in force
42	Guernsey <sup>b</sup>	Multilateral Convention	Extended	
43	Equatorial Guinea	CEMAC Tax Convention (Act 17/65-UDEAC-38)	14 December 1965	14 December 1965
44	Hungary	Multilateral Convention	Signed	In force in Hungary
45	Iceland	Multilateral Convention	Signed	In force in Iceland
46	India	Multilateral Convention	Signed	In force in India
47	Indonesia	Multilateral Convention	Signed	In force in Indonesia
48	Ireland	Multilateral Convention	Signed	In force in Ireland
49	Isle of Man <sup>i c</sup>	Multilateral Convention	Extended	In force in the Isle of Man
50	Italy	Multilateral Convention	Signed	In force in Italy
51	Japan	Multilateral Convention	Signed	In force in Japan
52	Jersey <sup>b</sup>	Multilateral Convention	Extended	In force in Jersey
53	Kazakhstan	Multilateral Convention	Signed	Not in force
54	Latvia	Multilateral Convention	Signed	In force in Latvia
55	Liechtenstein	Multilateral Convention	Signed	Not in force
56	Lithuania	Multilateral Convention	Signed	In force in Lithuania
57	Luxembourg	Multilateral Convention	Signed	In force in Luxembourg
58	Malta	Multilateral Convention	Signed	In force in Malta
59	Mauritius	Double tax treaty	18 July 2013	
		Multilateral Convention	Signed	Not in force
60	Mexico	Multilateral Convention	Signed	In force in Mexico
61	Moldova	Multilateral Convention	Signed	In force in Moldova
62	Monaco	Multilateral Convention	Signed	Not in force
63	Montserrat <sup>c</sup>	Multilateral Convention	Extended	In force in Montserrat
64	Morocco	Multilateral Convention	Signed	Not in force
65	Nigeria	Multilateral Convention	Signed	Not in force <sup>f</sup>

	<b>Jurisdiction</b>	<b>Type of agreement</b>	<b>Signature<sup>a/</sup> Territorial extension</b>	<b>Date of entry into effect/Status</b>
66	Netherlands <sup>b</sup>	Multilateral Convention	Signed	In force in the Netherlands
67	New Zealand	Multilateral Convention	Signed	In force in New Zealand
68	Norway	Multilateral Convention	Signed	In force in Norway
69	Philippines	Multilateral Convention	Signed	Not in force
70	Poland	Multilateral Convention	Signed	In force in Poland
71	Portugal	Multilateral Convention	Signed	In force in Portugal
72	Romania	Multilateral Convention	Signed	In force in Romania
73	Russian Federation	Multilateral Convention	Signed	In force in Russia
74	San Marino	Multilateral Convention	Signed	Not in force
75	Saudi Arabia	Multilateral Convention	Signed	Not in force
76	Senegal	OCAM Regional Convention	29 July 1971	1 January 1972
77	Seychelles	Multilateral Convention	Signed	Not in force <sup>9</sup>
78	Singapore	Multilateral Convention	Signed	Not in force
79	Sint-Maarten <sup>c</sup>	Multilateral Convention	Extended	In force in Sint-Maarten
80	Slovak Republic	Multilateral Convention	Signed	In force in the Slovak Republic
81	Slovenia	Multilateral Convention	Signed	In force in Slovenia
82	South Africa	Multilateral Convention	Signed	In force in South Africa
83	South Korea	Multilateral Convention	Signed	In force in South Korea
84	Spain	Multilateral Convention	Signed	In force in Spain
85	Sweden	Multilateral Convention	Signed	In force in Sweden
86	Switzerland	Multilateral Convention	Signed	Not in force
87	Tunisia	Multilateral Convention	Signed	In force in Tunisia
88	Turkey	Multilateral Convention	Signed	Not in force
89	Turks and Caicos Islands <sup>c</sup>	Multilateral Convention	Extended	In force in the Turks and Caicos Islands
90	Ukraine	Multilateral Convention	Signed	In force in Ukraine

	<b>Jurisdiction</b>	<b>Type of agreement</b>	<b>Signature<sup>a/</sup> Territorial extension</b>	<b>Date of entry into effect/Status</b>
91	United Kingdom	Multilateral Convention	Signed	In force in the United Kingdom
92	United States	Multilateral Convention	Signed	Not in force

*Notes:* a. For signature dates of the Multilateral Convention, see: [www.oecd.org/ctp/exchange-of-tax-information/Status\\_of\\_convention.pdf](http://www.oecd.org/ctp/exchange-of-tax-information/Status_of_convention.pdf).

b. Territorial extension by the United Kingdom.

c. Territorial extension by the Kingdom of the Netherlands.

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

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

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

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

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

Note 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.

i. Territorial extension by the Kingdom of Denmark.

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

Constitution of the Gabonese Republic

### **Tax treaties signed by Gabon**

Treaty of 14 January 1993 with Belgium to avoid double taxation and prevent the evasion of income tax and wealth tax

Treaty of 18 November 2002 with Canada to avoid double taxation and prevent the evasion of income tax and wealth tax

Treaty of 20 September 1995 with France to avoid double taxation and prevent tax evasion and fraud

Multilateral Convention on Mutual Administrative Assistance in Tax Matters signed by Gabon on 2 July 2014

CEMAC Tax Convention to avoid double taxation

General Convention on Tax Cooperation between the Member States of OCAM of 29 July 1971

CEMAC Convention on Mutual Administrative Assistance in Tax Matters

### **Domestic and Community commercial legislation**

Ordinance 2/99 of 30 July 1999 defining the legal basis for foundations

Act 2/2000 of 18 August 2000 ratifying Ordinance 2/99 of 30 July 1999 defining the legal basis for foundations

Decree creating ANIF Gabon (National Financial Investigation Agency)

Rules of procedure of ANIF Gabon



- Order 006 MECIT/CABM setting the regulation time limit for automatic reports
- Order 007 MECIT/CABM extending the professional categories governed by CEMAC-UMAC Regulation 01-03
- Order 011 MECIT/CABM setting the threshold for the automatic reporting of transactions in cash or by bearer shares to ANIF
- Order 016 MECIT/CABM setting disciplinary penalties and fines
- Order 017 MECIT/CABM delegating supervision and control
- Order 0145 MEED amending Articles 16 and 23 of Order 017 MECIT/CABM of 6 June 2011 delegating supervision and oversight
- Decree 730/PR/MECIT of 21 June 2011 creating and organising the Business Development Centre
- OHADA Uniform Act on the law of commercial companies and economic interest groupings
- OHADA Uniform Act on the organisation and harmonisation of the accounting systems of undertakings
- OHADA Uniform Act on general commercial law

## **Tax legislation**

- Gabonese Tax Code 2015
- Gabonese Tax Code 2013
- 2011 Budget Act (tax measures to encourage sponsorship and patronage)

## **AML/CTF legislation**

- Decree 0739/PR/MEFBP of 22 September 2005 defining the organisation, operation and funding of the National Financial Investigation Agency
- Additional Act 09/00/CEMAC-086/CCE 02 creating the Task Force on Money Laundering in Central Africa (GABAC)
- COBAC Regulation R-98/01 of 15 February 1998 on the chart of accounts of credit institutions
- COBAC Regulation R-2003/01 of 27 February 2003 on the organisation of the accounting systems of credit institutions

COBAC Regulation R-2005/01 of 01 April 2005 on due diligence procedures for institutions governed by rules to prevent money laundering and the financing of terrorism in Central Africa

CEMAC-CAMU Regulation 01-03 to prevent and suppress money laundering and the financing of terrorism in Central Africa

CEMAC-CAMU Regulation 02-10 of 2 October 2010 revising CEMAC-CAMU Regulation 01-03 to prevent and suppress money laundering and the financing of terrorism in Central Africa

Regulation 08/05-UEAC-057-CM-13 adopting the Convention on the fight against terrorism in Central Africa

### **Banking, commercial and financial regulations**

CEMAC-CAMU Regulation 06-03 on the organisation, operation and supervision of the Central African financial market

Rules governing professions

Act 25/08 of 17 December 2008 defining the conditions for exercise of the legal profession

Decree 37/PR/MFPRAME of 26 May 2000 defining the membership, organisation and operation of disciplinary boards

General Civil Service Regulations

### **Other legislation**

Gabonese Penal Code

Gabonese Civil Code

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

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

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

## PEER REVIEWS, PHASE 1: GABON

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

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

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

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

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

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

Consult this publication on line at <http://dx.doi.org/10.1787/9789264244481-en>.

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