GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

LIECHTENSTEIN

OECD

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PHASE 2: IMPLEMENTATION OF THE STANDARD IN PRACTICE

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About the Global Forum

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

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

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

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

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

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

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information for tax purposes in Liechtenstein as well as the practical implementation of that framework.

2. Liechtenstein committed to the international standards of transparency and exchange of information for tax purposes on 12 March 2009 and since then it has been actively engaged in developing a network of international agreements which allow for exchange of information for tax purposes. This has led to signing of 41 agreements which provide for international exchange of information in tax matters. In general, these recent agreements provide for exchange of information to the international standards and 22 are currently in force. In addition to Liechtenstein's existing agreements, Liechtenstein has advised that it is actively expanding its treaty network, in conformity with the international standard, by initiating treaty negotiations and having responded to requests for negotiations of both DTAs and TIEAs.

3. Information on the ownership of companies, partnerships, foundations and establishments (*Anstalt*) is available. However, the availability of information on all of the beneficiaries of trusts or trust enterprises (*Treuunternehmen*) is not ensured. Anti-money laundering legislation does ensure availability of information on beneficiaries of trusts and trust enterprises, if they hold more than a 25% interest in such entities. For foreign companies resident for tax purposes in Liechtenstein, information is only available under the tax law on those owners who are taxable in Liechtenstein. Liechtenstein recently introduced measures to immobilise bearer shares to ensure that information on holders of these shares is available. As the transitional period to do that lapsed in March 2014 it is not sufficiently tested whether all holders of bearer shares are identified in practice. Information on shareholders of joint stock companies and limited liability companies should be available in the register of shareholders kept at the place of business of the company. New provisions strengthening oversight and enforcement of these obligations came into effect only on 1 January 2014. Liechtenstein is therefore recommended to monitor implementation of the two newly introduced rules, i.e. on immobilisation of bearer shares and provisions on oversight and enforcement of obligations to maintain registers of shareholders.

4. All relevant entities and arrangements are obliged to keep accounting records and underlying documentation in line with the standard. Accounting records are required to be retained for a period of more than 5 years. New obligations ensuring availability of accounting information in respect of all relevant entities and arrangements including trusts, foundations and Anstalts are applicable in respect of financial years beginning after 31 December 2013 and therefore are not sufficiently tested in practice. Liechtenstein is therefore recommended to monitor their implementation.

5. Liechtenstein's laws ensure the availability of banking information in line with the standard. The relevant obligations are properly supervised to ensure their proper implementation.

6. In practice, effective enforcement measures and monitoring activities taken by the supervisory bodies have ensured practical availability of the relevant ownership, accounting and banking information. Over the period under review, Liechtenstein received 79 requests for ownership information, 58 requests for accounting information and 30 requests for banking information. Most requests requested more than one type of information. There was no case where the requested information was not available. Accordingly no peer expressed concern about availability of ownership, accounting or banking information in Liechtenstein.

7. In respect of access to information, Liechtenstein's domestic framework gives the Fiscal Authority strong powers to access and exchange information with its foreign counterparts. However, the affected party is in all cases to be notified of the international request for information, and this may unduly prevent or delay the effective exchange of information in urgent cases. Liechtenstein amended its laws as of 1 August 2015 and it now provides for an exception to the prior notification in appropriate cases. Considering that the exceptions that have been introduced are in line with the standard, the Phase 1 recommendation made under element B.2 is removed and is now upgraded to "in place". However, considering the short period between the introduction of the exceptions, after the period under review and just before the cut-off date, the application of the exceptions could not be assessed and therefore Liechtenstein should monitor application of the exceptions to the prior notification procedure in practice.

8. Liechtenstein applies a restrictive interpretation of the foreseeable relevant standard when asked for ownership and identity information of foundations and other entities. Furthermore, while assessing the relevance of the information obtained from information holders, Liechtenstein has applied a restrictive interpretation of its relevance to requests. This has restricted the exchange of information in a number of cases during the review period. It is therefore recommended that Liechtenstein should correct its interpretation of

the foreseeably relevant standard to ensure that it does not impede the effective exchange of information.

9. The disclosure during the period under review to third parties or taxpayers of details that were not necessary for gathering the requested information, including the request letter itself, is not in accordance with the principle that information contained in an EOI request should be kept confidential. Liechtenstein amended its Act on Administrative Assistance in Tax Matters, which amongst other changes now introduces the right of entitled parties to examine extracts from the request letter that are relevant to the decision. Although Liechtenstein states that this access may be limited and has been their practice since 2013, this practice is very recent and there are doubts whether these new provisions can operate in practice in conformity with the confidentiality requirements of the international standard.

10. The commentary to Article 26 clarifies that a violation of "ordre public" should only be considered in "extreme cases", e.g. where a tax investigation is motivated by political, racial or religious prosecution, or in cases where information requested constitutes a state secret (e.g. sensitive information held by secret services). Therefore, where a jurisdiction relies on ordre public to refuse a request this should be in very rare cases.

11. However, the Liechtenstein Fiscal Authority refuses EOI based on the concept of ordre public in all in cases where it considers that the requests are solely based on stolen data. In such cases, its policy takes no account of the circumstances in which the requesting jurisdiction came into possession of the information. This is based on a strict interpretation and application of Art. 8(2) of the Law on International Administrative Assistance in Tax Matters (LIAATM) which provides that a request based on information obtained by means of an act that is judicially punishable in Liechtenstein shall be refused. In practice, it will ask the requesting jurisdiction to clarify that the information in its request is based on "independent investigations". It is not clear, however, in what circumstances an investigation that involves stolen data would be considered to be "independent".

12. In all cases where the issue of stolen data has been raised, whether by the Fiscal Authority or by information holders, no exchange of information has yet occurred and around 40% of all EOI requests received by Liechtenstein are currently pending.

13. Liechtenstein's approach regarding the application of the concept of ordre public has had a significant impact on EOI in practice. It is therefore recommended that Liechtenstein should modify its law and/or practice as appropriate to ensure that it can give effect to the obligations under its EOI mechanisms.

14. Although Liechtenstein's processes and resources are generally in place to ensure effective exchange of information, certain areas – mainly related to establishment and monitoring of deadlines and the workload of the EOI Unit – should be improved Liechtenstein should endeavour to improve its resources and streamline its processes for handling EOI requests to ensure that all EOI requests are responded to in a timely manner.

15. Liechtenstein has been assigned a rating for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Liechtenstein's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Liechtenstein has been assigned the following ratings: Compliant for elements A.3, B.1 and C.2, Largely Compliant for elements A.1, A2, B.2, C.3 and C.5; and Partially Compliant for elements C.1 and C.4. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Liechtenstein is Largely Compliant.

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

Introduction

Information and methodology used for the peer review of Liechtenstein

17. The assessment of the legal and regulatory framework of the Principality of Liechtenstein (hereinafter "Liechtenstein") as well as its practical implementation was based on the international standard for transparency and exchange of information on request 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 original Phase 1 report was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at May 2011, Liechtenstein's responses to the Phase 1 questionnaire and supplementary questions, information supplied by partner jurisdictions and other relevant sources. The original Phase 1 peer review report was adopted and published by the Global forum in August 2011.

18. The supplementary Phase 1 peer review report, which followed the original Phase 1 report, was prepared pursuant to paragraph 58 of the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*, and was adopted by the Global Forum in October 2012. The assessment has been conducted in two stages: the Phase 1 review read with the supplementary Phase 1 review provides an assessment of Liechtenstein's legal and regulatory framework for the exchange of information as at October 2012, while the Phase 2 review assessed the practical implementation of this framework during a three year period (1 January 2011 to 31 December 2013) as well as amendments made to this framework since the Phase 1 review up to 17 August 2015. The following analysis reflects the integrated Phase 1 and Phase 2 assessments. The assessment was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at 17 August 2015, and information supplied by Liechtenstein and partner jurisdictions and other relevant sources as well as explanations provided by Liechtenstein during the on-site visit that took place from 23-26 February 2015 in Vaduz, Liechtenstein. During the on-site visit, the assessment team met a wide range of officials and representatives of

the Office for International Financial Affairs, the Fiscal Authority, Office of Justice (Commercial Register), Financial Intelligence Unit, Financial Market Authority as well as representatives of the Liechtenstein Bar Association, among others.

19. The *Terms of Reference* breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses Liechtenstein's legal and regulatory framework and its application in practice against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that: *(i)* the element is in place; *(ii)* the element is in place but certain aspects of the legal implementation of the element need improvement; or *(iii)* the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning Liechtenstein's practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. As outlined in the Note on Assessment Criteria, an overall "rating" is applied to reflect the jurisdiction's level of compliance with the standards (see the Summary of Determinations and Factors Underlying Recommendations at the end of this report).

20. The Phase 1, the supplementary Phase 1 and Phase 2 assessments were conducted by assessment teams comprising expert assessors and representatives of the Global Forum Secretariat. The original Phase 1 assessment was conducted by a team which consisted of two expert assessors and one representative of the Global Forum Secretariat: Ms. Sarita de Geus, Senior Policy Advisor, International Tax Law at the Directorate-General for the Tax and Customs Administration of the Netherlands Ministry of Finance and Mr. Mustupha Mosafeer, Director, Mauritius Revenue Authority, Mauritius; with Mr. Sanjeev Sharma from the Secretariat to the Global Forum. The supplementary Phase 1 review was conducted by an assessment team which consisted of two expert assessors and two representatives of the Global Forum Secretariat: Ms. Sarita de Geus, Senior Policy Advisor, International Tax Law at the Directorate-General for the Tax and Customs Administration of the Netherlands Ministry of Finance and Mr. Mustupha Mosafeer, Director, Mauritius Revenue Authority, Mauritius; with Mr. Sanjeev Sharma and Mr. Radovan Zidek from the Secretariat to the Global Forum. For the Phase 2 assessment Mr. Sanjeev Sharma was replaced by Mr. Boudewijn van Looij, also from the Global Forum Secretariat, while Ms. Sarita de Geus was replaced by Ms. Jolanda Roelofs, Senior Officer, Central Liaison Office, Netherlands Tax and Customs Administration.

Overview of Liechtenstein

21. Liechtenstein is situated between Austria and Switzerland. It is the fourth smallest State in Europe with an area of 160 km^2. The capital is Vaduz. Liechtenstein's 11 municipalities have a total population of just over 36 000, making it one of the world's least populous countries.[1] Liechtenstein's official language is German.

22. Since the conclusion of a Customs treaty in 1923, Liechtenstein has formed a common economic area with Switzerland. Liechtenstein does not have its own Central Bank and the Swiss franc (CHF) is the official currency of Liechtenstein (CHF 1 = EUR 0.96 as at 25 May 2015). Liechtenstein has been a member of the European Economic Area (EEA) since 1995.

23. Liechtenstein is a highly industrialised country with a well-diversified economy consisting of a large number of small businesses. Services constitute about 54% of gross domestic product (GDP), which was USD 4.6 billion in 2013. Liechtenstein has the third highest gross domestic product per person in the world, at USD 89 400 in 2009.[2] In 2012, about 60% of its employees worked in the commercial and services sector. Industry and manufacturing contributes a 39% share of GDP,[3] with the financial services sector contributing about 24% to Liechtenstein's GDP.[4] These services are mainly offered in the areas of private asset management, international asset structuring, investment funds and insurance. Non-resident business constitutes majority of the private banking activities conducted in Liechtenstein.[5] Liechtenstein's key trading partners (in order) are Switzerland, Austria, Germany, the United States, France, Italy and the United Kingdom.

24. The successful national economy of Liechtenstein has resulted in creation of approximately 36 200 jobs by the end of 2013 not all of which can be filled with employees from Liechtenstein. The proportion of foreign employees is over 68%, primarily in the form of cross-border commuters from Austria and Switzerland.

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1. World Bank data catalog, http://data.worldbank.org/country/liechtenstein, accessed 26 May 2015.
2. CIA, The World Fact book, https://www.cia.gov/library/publications/the-world-factbook/geos/ls.html, accessed 26 May 2015.
3. https://www.cia.gov/library/publications/the-world-factbook/geos/ls.html, accessed 26 May 2015.
4. Portal of the Principality of Liechtenstein: www.liechtenstein-business.li/fileadmin/Dateiliste/wirtschaft-li/Dokumente/Downloads/Presentation_Facts_and_Figures_2015_4_3.pdf.
5. Moneyval Mutual Evaluation Report (2014)2.

General information on the legal system and the taxation system

Legal system

25. Liechtenstein is a constitutional hereditary monarchy with a democratic parliamentary system. The Government consists of a five-member cabinet nominated by Parliament and appointed by the reigning Prince for four years. To be valid, each new law enacted by Parliament requires the consent of the Prince.

26. The political and institutional system of Liechtenstein is governed by the Constitution of 5 October 1921, as amended by the Constitutional Act of 16 March 2003. The Constitution is the fundamental law and sets forth the nature of the government, the organisation of public powers and the relationship between them. The Liechtenstein legal system is based on civil law.

27. The Prince is the head of state and represents Liechtenstein in its international relations. The Prince may veto laws adopted by Parliament and can call referendums, propose new legislation and dissolve Parliament, though dissolution of Parliament may be subject to a referendum. Executive authority is vested in a collegiate government comprising the head of government (Prime Minister) and four government councilors (Ministers). The head of government and the other Ministers are appointed by the Prince upon the proposal and concurrence of Parliament

28. Legislative authority is vested in the unicameral Parliament, the Landtag, made up of 25 members elected for maximum four-year terms according to a proportional representation formula. Fifteen members are elected from the Oberland and ten members are elected from the Unterland.

29. Jurisdiction in civil and criminal matters is exercised in the first instance by the Court of Justice, in the second instance by the Court of Appeal, and in the third and last instance by the Supreme Court. The Administrative Court and the Constitutional Court are courts of public law. All courts sit in Vaduz. The National Tax Commission[6] is the first appellate body for tax matters. Appeals against the decisions of the National Tax Commission are heard by the Administrative Court.

Taxation system

30. Liechtenstein introduced major tax reforms through the Law of 23 September 2010 on National and Municipal Taxes (Tax Act), effective

6. Created by the Tax Law of 23 September 2010.

from 1 January 2011.[7] Corporate income tax is now charged at a flat rate of 12.5%, with a minimum of CHF 1 200 (EUR 1 160). Minimum tax is not levied on taxpayers operating commercially with an average balance sheet total over the last three years, under CHF 500 000 (EUR 483 240). As of 31 December 2014 the Tax Act has abolished domiciliary status, which exempted certain entities without business ties to the domestic market from corporate income tax. The law provides for a "Private Asset Structure" (PAS) regime[8] which can be applied for by legal persons which are allowed to acquire, hold, administer or sell any kind of asset[9] but are not engaged in economic activities. Once PAS tax status is granted by the tax administration, they will pay minimum corporate tax of CHF 1200 (EUR 1 160) and do not file an annual tax returns. On an application of the legal person, the tax authority can transfer the inspection of compliance with the preconditions for granting the PAS status to a neutral auditor. As of 31 December 2014, the PAS status was granted to 14 863 taxpayers comprising 62 corporations, 1 929 establishments, 12 567 foundations and 305 trust enterprises. A regime of "special assets dedications without legal personality" applicable to trusts providing for a minimum tax of CHF 1 200 (EUR 1 160) and no assessment is also introduced in the Tax Act. For individuals, wealth tax is integrated into income tax, with personal tax rates from 3% to 21%. Dividends and capital gains from investments in movable property are tax exempt. Income from private wealth is taxed assuming a return on net assets of 4%.

31. Natural persons having their residence or habitual abode in Liechtenstein are subject to tax on their world-wide wealth and income, whereas non-residents pay tax on domestic wealth and domestic income. Taxpayers subject to wealth tax, personal income tax and corporate income tax are required to submit annual tax returns unless they are covered by the PAS or special assets dedication regime (Art. 94(1) Tax Act).

32. Legal persons having their domicile or effective place of management in Liechtenstein are subject to unrestricted tax liability. Legal persons who

7. The law previously in force was Law of 30 January 1961 on National and Municipal Taxes. The new Tax Act is divided into chapters on taxes on natural persons (wealth tax, personal income tax and tax based on expenditure; Arts.6-34); legal persons (Arts.44-65); capital gains on the sale of real estate (Arts.35-43) and the establishment of legal persons and insurance premiums (Arts.66-72).

8. Articles 64 of the Tax Act and Articles 37 and 38 of the Tax Ordinance of 21 December 2010. The special tax regime is applicable to qualified legal persons. Once a legal person has been granted PAS status it enjoys a special tax status provided it does not engage in economic activities.

9. Assets may include financial instruments (e.g. futures, swaps, negotiable securities), liquid monies, bank account balances and shares in legal persons.

have neither domicile nor effective place of management in Liechtenstein are subjected to defined restricted tax liability. In 2004, Liechtenstein introduced the EU's *Savings Directive*[10] on the basis of a bilateral agreement with the European Union (EU) and imposes withholding tax on interest and other savings.

33. Liechtenstein's laws do not specify the rank of international treaties as compared with domestic law. According to the jurisprudence of the Constitutional Court, international treaties ratified by Parliament always enjoy at least the rank of a law within the domestic legal order. Liechtenstein's authorities have indicated that the Courts interpret domestic laws in conformity with international treaties.

Overview of commercial laws and other relevant factors for exchange of information

Overview of financial sector and relevant professions

34. The business model of Liechtenstein's financial center focuses on private banking and wealth management. The financial sector in Liechtenstein comprises banks and finance companies, insurance, asset management companies, investment companies, trustees, lawyers and accountants. At the end of 2014, 17 banks were licensed in Liechtenstein; of these, seven are affiliates of Swiss, Austrian or Luxembourg institutions. At the end of 2014, these banks had a balance sheet total of CHF 64 billion (EUR 61.4 billion) and assets under management at Liechtenstein banks (without group companies) stood at CHF 133.9 billion (EUR 128.5). At the end of 2014 Liechtenstein also had 121 asset management companies 42 insurance companies (of which 22 life insurance companies), 18 fund management companies managing 532 funds and 750 AML obliged persons as Designated Non-Financial Businesses and Professions (DNFBPs). Liechtenstein does not have a stock exchange of its own but some of its companies are listed on the Swiss exchange.

35. Lawyers, legal agents, patent attorneys and patent companies are particularly prominent in the area of professional legal advice and representation of parties. There are several associations representing the different sectors of financial institutions and intermediaries. At the end of 2014 Liechtenstein had 380 registered professional trustees (including licensed trust companies),

10. Council Directive 2003/48/EC of 3rd June 2003 on Taxation of Savings Income in the Form of Interest Payments: http://info.portaldasfinancas.gov.pt/NR/rdonlyres/7EA63C6F-0908-4CFE-85E8-0D964A469013/0/Council_Directive_200348EC.pdf.

59 lawyers and law firms, 63 auditors and audit firms as well as 232 persons performing resident directorship services ("Art. 180a directors").[11]

36. The Financial Market Authority (FMA) is an integrated financial supervisory authority for institutions in all financial markets as well as financial intermediaries such as lawyers, professional trustees and auditors. The FMA is the supervisory authority for all persons subject to the Banking Act, Investment Undertakings Act, Asset Management Act, Insurance Supervision Act, Insurance Mediation Act, Occupational Pensions Act, Pension Funds Act, Professional Trustee Act, Auditors and Auditing Companies Act, Lawyers Act, Patent Attorney Act and is responsible for the enforcement of the Due Diligence Act. The Financial Intelligence Unit is responsible for obtaining and analysing information necessary for the recognition of money laundering and terrorist financing activities.

37. The Office of Justice maintains a public register of commercial as well as non-commercial active entities. Entities which do not have registration obligations are obliged to submit some information or deposit deeds with the registry. The Commercial Register is accessible to any member of the public.

38. The core of the anti-money laundering counter-financing of terrorism (AML/CFT) framework consists of the 2008 Due Diligence Act and the 2009 Due Diligence Ordinance which implemented the EU *Third Money Laundering Directive*.[12] The 2014 Mutual Evaluation Report conducted by the Council of Europe's Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL)[13] concluded that Liechtenstein has taken significant steps and achieved considerable progress since the last evaluation, particularly in bringing its legal framework more closely in line with the Financial Action Task Force (FATF) recommendations. However, effective implementation is uneven and not always optimal. There are some intrinsic vulnerabilities, of which authorities are aware, that continue to expose the country to risk of money laundering especially in respect of the trust and corporate service providers sector which has the central role as the depository of beneficial ownership information.

11. https://www.fma-li.li/files/fma/fma-financial-market-liechtenstein-2015.pdf.
12. Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:309:0015:0036:EN:PDF, accessed 4 December 2010.
13. Moneyval Mutual Evaluation Report (2014)2.

Recent developments

39. The Office of Justice was established in February 2013. The Office of Justice includes the Office of Land and Public Registration (Grundbuch-und Offentlichkeitsregisteramt; GBOERA) which was the competent authority charged with monitoring compliance with the Law on Persons and Companies (PGR), particularly with respect to registration requirements. The Public Register previously kept by the GBOERA was renamed as the Commercial Register and is kept by the Office of Justice. The change in the administrative set up of public registration has however no impact on the relevant legal obligations concerning information to be provided to the register and the respective rules remain unchanged.

Compliance with the Standards

A. Availability of information

Overview

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

41. Liechtenstein's laws provide for different types of corporate and non-corporate entities. The commonly used entities are companies limited by shares, trusts, foundations, establishments and trust enterprises. Establishments (Anstalten) which are a feature of Liechtenstein are generally used along with foundations and trusts to manage private assets.

42. There are obligations imposed on domestic companies, partnerships, establishments and foundations to keep ownership and identity information. Liechtenstein recently introduced measures to immobilise bearer shares to ensure that information on holders of these shares is available. As the transitional period to do that ended only in March 2014 it is not sufficiently tested whether all holders of bearer shares are identified. Liechtenstein should

therefore monitor implementation of this mechanism so that information on holders of all bearer shares is available. Full ownership information on foreign companies resident for tax purposes in Liechtenstein is however not required to be maintained and therefore may not be available in Liechtenstein in all cases.

43. While Liechtenstein's company law does not ensure the availability of information on all beneficiaries of trusts and trust enterprises, financial intermediaries must keep some identity information on beneficiaries of trusts and receipts are required to be maintained of any payments made to beneficiaries resident in Liechtenstein.

44. In practice, the source of ownership information is in the majority of cases with Liechtenstein's service provider, i.e. professional trustee or 180a Directors. Information on shareholders of joint stock companies and limited liability companies should be also available in the register of shareholders (including register of bearer shares) kept at the place of business of the company. New provisions on oversight and enforcement of these obligations came into effect on 1 January 2014. As they are not sufficiently tested in practice Liechtenstein is recommended to monitor their application.

45. All relevant entities and arrangements are obliged to keep accounting records and underlying documentation in line with the standard. Accounting records are required to be retained for a period of more than 5 years. The provisions of the new law apply to financial years beginning after 31 December 2013. The obligation to maintain accounting records and underlying documentation is supervised by the Fiscal Authority and Office of Justice. In practice, accounting information was in most cases obtained from representatives of the accounting entity or arrangement. Newly introduced obligations ensuring that all relevant entities and arrangements including trusts, foundations and Anstalts covered by PAS regime are required to maintain accounting records in line with the standard are not sufficiently tested in practice and therefore Liechtenstein is recommended to monitor their implementation.

46. Liechtenstein's laws ensure the availability of banking information in respect of all account holders. Practical availability of banking information in Liechtenstein is supervised by the FMA. Supervisory measures taken ensure that banking information in line with the standard is available in Liechtenstein.

47. Over the period under review, Liechtenstein received 79 requests for ownership information, 58 requests for accounting information and 30 requests for banking information. Most requests requested more than one type of information. There was no case where the requested information was not available. Accordingly no peer expressed concern about availability of ownership, accounting or banking information in Liechtenstein.

48. Overall, ownership, accounting and bank information is in practice available in Liechtenstein as confirmed in exchange of information practice and by peer input. Effective enforcement measures and monitoring activities are taken by the supervisory bodies to ensure availability of information.

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.

49. The Law on Persons and Companies of 20 January 1926 (PGR) provides the legal framework for legal persons and arrangements. The PGR provides two types of legal persons: Koerperschaften and korporationen (corporations), and, anstalten and stiftungen (establishments and foundations). A trust is a legal arrangement. A trust enterprise, however, can be established with or without legal personality (Art. 932a(1) PGR). The Office of Justice is the competent authority charged with monitoring compliance with the PGR, particularly with respect to registration requirements.

50. Corporate forms can be either companies for carrying out commercial activities, holding companies or domiciliary companies (not having trading activities inside Liechtenstein). For tax purposes, and, in accordance with the new Tax Act the only differentiation is between legal persons carrying out economic activities[14] and legal persons not carrying out economic activities.

51. Legal entities (corporations, establishments and foundations) can be formed by a natural or legal person. Companies limited by shares and limited partnerships with share capital must have a minimum of two founders, whereas, other entities can be founded by one person. Founders need not be resident or domiciled in Liechtenstein.

52. Corporations (associations, companies limited by shares, limited partnerships with a share capital, co-operative associations with limited liability, limited liability companies, co-operatives, mutual insurance and assistance associations, Societas Europea, Societas Cooperativa Europea, registered trust enterprises), establishments and foundations devoted to a specific object or purpose acquire legal personality through registration in the Commercial Register (Art. 106 PGR). Registration is not required for:

- corporate bodies and establishments under public law;

14. According to Art. 64 of the Tax Act, non-economic activities are specially the acquisition, possession, administration and selling of financial instruments, liquid moneys, bank accounts and, in certain circumstances, participation in legal persons.

- associations (Art. 246 PGR) that do not pursue commercial activities and that are not obliged to have statutory auditors[15]; and
- where law provides an exception (for example, for certain foundations (Art. 552(20) PGR).

Companies (ToR[16] A.1.1)

53. The PGR provides for nine primary types of companies:

- **Aktiengesellschaft (AG) –** joint stock company (Arts.261-367 PGR): Joint stock companies have capital divided into smaller amounts (shares). Only the company's assets are liable for the debts of the company. Founders can be shareholders also. Shareholders are not personally liable for the company's liabilities. Shares can have variable voting rights. There were 5 809 such companies in Liechtenstein on 9 September 2014 ;
- **Gesellschaft mit beschränkter Haftung (GmbH) –** limited liability company (Arts.389-427 PGR): One or more persons, natural or legal, can form a company with limited liability for any purpose with a predetermined capital. The liability of each participant is limited to a certain amount and they are not personally liable for the company's debts. Liechtenstein had 165 such companies on 9 September 2014 ;
- **Verein –** commercial or non-commercial association (Arts.246-260 PGR): Associations created for political, religious, scientific, artistic, charitable, social or other non-economic purposes gain legal personality when the intention to exist as a corporation is evident from the articles of association. Liechtenstein had 268 registered associations on 9 September 2014 ;
- **Kommanditaktiengesellschaft (K-AG) –** A limited partnership with share capital (Arts.368-374 PGR) is similar to a joint stock company (AG) in most respects, however, at least one partner has unlimited liability towards the company's creditors while others have limited liability. There were no such partnerships in existence in Liechtenstein on 9 September 2014 ;
- **Genossenschaft** – co-operative (Arts.428-495 PGR): A company in this form is organised with an unlimited number of natural or legal

15. According to Art. 251 of the PGR, the accounts of the association must be audited if two of three parameters are satisfied (balance sheet total is above CHF 6 million, revenues are above CHF 12 million or 50 full time employees).
16. *Terms of Reference to Monitor and Review Progress towards Transparency and Exchange of Information*.

persons as members for the purpose of promotion or protection of certain economic interests of members in mutual self-help. The amount of share capital cannot be determined in advance. Liechtenstein had 21 co-operatives on 9 September 2014 ;

- **Europaische aktiengesellschaft (Societas Europaea) –** European company (Law of 25 November 2005 on the Statute for a European Company as provided in the Council Regulation (EC) No.2157/2001 of 8 October 2001): This is a new legal form for companies operating in different EU member States or which want to work in the EU. Liechtenstein had six European companies on 9 September 2014 ;
- **Europaische genossenschaft (Societas cooperativa europaea, SCE)** – European co-operative (Law of 22 June 2007 on the Statute for a European Co-operative as provided in Council Regulation (EC) No 1435/2003 of 22 July 2003): These are co-operatives of natural or legal persons engaged in cross-border business. Liechtenstein had three European co-operative on 9 September 2014 ;
- **Anteilsgesellschaft** – co-operative association with limited liability (Arts.375-388 PGR): This is a special form of co-operative with no requirement to have paid capital. Liechtenstein did not have any of these co-operatives registered on 9 September 2014 ; and
- **Versicherungsverein auf gegenseitigkeit and hilfskassen –** Mutual insurance associations and similar associations (Arts.496-533 PGR): These associations organise the insurance of their members according to the principles of mutuality and attain their legal personality with the authorisation from the surveillance authority for insurance and incorporation in the Public Register. Liechtenstein did not have any such associations on 9 September 2014.

Joint stock companies (Aktiengesellschaft – AG)

54. Joint stock companies (companies limited by shares) are one of the most commonly used forms of legal person in Liechtenstein. AG has a minimum share capital of CHF 50 000 or EUR 50 000 or USD 50 000, which must be paid in full at the time of registration.

55. A minimum of two natural or legal persons are required for forming an AG. The founders must draw up the articles of association in a public document (Arts. 279, 281 and 288 PGR). The members of the board of directors must submit an application for registration in the Commercial Register (Art. 290) accompanied by the original or a certified copy of the articles of association and the minutes of the general meeting or a certificate or declaration containing such information. After the formation of AG, all shares can

be transferred to one shareholder, making it a single shareholder company (Implementation of the Twelfth Council Company Law Directive 89/667/EEC of 21 December 1989 on single-member private limited-liability companies).

56. Information on a joint stock company to be registered in the Commercial Register includes (Art. 291 PGR):

- the name, legal form and domicile of the company;
- the number, the nominal value or quota and the legal form of the shares;
- the members of the board of directors and the supervisory board and the representatives (names, place of residence and nationality or the name of the company and domicile);
- the form in which the board of directors makes known its declarations of intent and the manner in which representation is exercised.

57. Information on the founders and their shares are part of the act of formation which must be notarised. The act of formation is kept in the Commercial Register, but it does not contain information on the founders. An extract of the information in the Commercial Register is published in the official gazette. The decisions of the General Assembly (supreme body) or administration resulting in amendment of the articles of association have legal effect only after entry in the Commercial Register (Art. 305 PGR).

58. Pursuant to Article 4 of the Securities Prospectus Act, the public can be invited to subscribe to the share capital of an AG after publication of an approved prospectus. At any time further new shares can also be issued (Art. 295 PGR) and this must be detailed in amended articles of association. The Board must, within three months after the end of the fiscal year, inform the Office of Justice of such amendments to the articles of association and must submit the public document (Art. 305).

59. Joint stock companies are obliged to record the owners of registered shares in a share register (Art. 328 PGR). Any changes to the details in the register must be based on provision of identification documents. Identification of holders of bearer shares is performed by a custodian who is required to keep register of bearer shares. The register of bearer shares has to be available at the company's place of business at all times (Art. 326(c)) (see further section A.1.2). Information on shareholders is not required to be filed with the Office of Justice or any government authority.

Limited liability companies (GmbH)

60. A company with limited liability can be formed by one or more natural persons or legal persons. The minimum stock capital for GmbH is CHF 30 000 or EUR 30 000 or USD 30 000 paid in full at the time of registration. A maximum of 30 participants are allowed in these companies.

61. A company with limited liability is formed through notarised articles containing the signatures of all participants or their representatives and with incorporation in the Commercial Register (Art. 394 PGR). A certified copy of the articles of association (founding statute) and a list of all members and managing directors with names and residence, or business names and seat, as well as the capital contributions and amount paid, including the contributions in kind, must be submitted. The information is also required to be published (Art. 958). Any amendments made to the articles of association are similarly required to be registered and published.

62. Limited liability companies must maintain share registers containing the names and addresses, or business names and seats, of each member and the initial contributions and subsequent payments made by them. Assignment of shares is effective only if it has been communicated to other shareholders and registered in the share register (Art. 403 PGR). The Office of Justice maintains the filed registration documents and updates the register as required. The filed documents are available for public inspection (Art. 402).

Limited partnerships with share capital (Kommanditaktiengesellschaft – K-AG)

63. A limited partnership with share capital is like a joint stock company in all respects except that one or more of the shareholders have unlimited liability towards creditors of the company and a supervisory board must be appointed. Therefore, while they are termed "partnerships" they are a form of company. In order to form a K-AG, there must be at least two members, natural or legal persons, who may or may not be citizens of or domiciled in Liechtenstein.

64. The provisions of the PGR applicable to joint stock companies, including the obligation to maintain a share register, apply to limited partnerships with share capital unless otherwise provided. The articles of a limited partnership with share capital must contain the identification information on members having unlimited liability (Art. 369 PGR). This information is registered in the Commercial Register and published. The Commercial Register has up-to-date information on all the members with unlimited liability. No information on the shareholders/members with limited liability is required in the articles or provided to the Commercial Register, however, the owners of registered shares need to be recorded in a share register.

Co-operatives (Genossenschaft)

65. For the creation of a co-operative, articles of association must be drawn up in writing, signed by all founding members and these must be entered in the Commercial Register (Arts. 432-433 PGR).

66. Membership in a co-operative can be linked with share certificates. The membership can be transferred by transferring share certificates. Pursuant to the law amendment no.67/2013 certificates of participation can be issued only to name. Issued bearer certificates shall be destroyed or converted to registered securities by 1 March 2014 (see further section A.1.2). The persons responsible for administration of a co-operative must submit a directory of members to the Office of Justice for registration and must provide updates to this information within three months of any change (Art. 468).

Associations (Verein)

67. Associations can only be created for political, religious, scientific, social, artistic, charitable and other non-economic purposes only (Art. 246 Abs.1 PGR). Pursuing economic or commercial objectives is only possible to achieve the stated purposes (Art. 246(1)).

68. The articles of association must note the name, purpose, financial resources and organisation of the association. Associations attain legal personality on the basis of intention as indicated in the articles of association and through an act of formation (Art. 246(1) PGR). The board of the association must keep an accurate list of members (Art. 253).

69. Associations are not required to register unless their object is to engage in commercial activities or is subject to revision. Any application for registration must include the statutes and list of all members of the board (Art. 247 PGR).

European companies (Europaische aktiengesellschaft (societas europaea))

70. Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (SE) is directly applicable in Liechtenstein. In addition, Law of 25 November 2005 on the Statute for a European Company (Societas Europaea, SE) (SE-Gesetz; SEG) is applicable. Further, the provisions for joint stock companies (Arts. 261-366 PGR) apply on a subsidiary basis to European companies domiciled in Liechtenstein (Art. 15 Council Regulation No. 2157/2001 and Art. 2 SEG). As a result, European companies domiciled in Liechtenstein are obliged to record the owners of registered shares in a share register containing the names, addresses or company name and domicile of the shareholders (Art. 328 PGR). Identification of

holders of bearer shares is performed by a custodian in the same way as in respect of joint stock companies (see further section A.1.2).

71. A European company domiciled in Liechtenstein is required to be entered in the Commercial Register in accordance with the provisions applicable for joint stock companies (Art. 10ff Council Regulation No. 2157/2001 and Art. 6 SEG).

European co-operatives (Europäische genossenschaft (societas cooperativa europaea))

72. Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Co-operative Society (SCE) is directly applicable in Liechtenstein. In addition, the Law of 22 June 2007 on the Statute for a European Co-operative Society (Societas Co-operativa Europaea; SCE) (SCE-Gesetz; SCEG) is applicable. Further, the provisions for co-operatives (Art. 428-495 PGR) apply to such entities domiciled in Liechtenstein (Art. 17 Council Regulation No. 1435/2003 and Art. 2 SCEG). A European Co-operative Society domiciled in Liechtenstein is required to be entered in the Commercial Register in accordance with the provisions applicable to AG (Art. 11 Council Regulation No. 1435/2003 and Art. 6 SCEG).

Co-operative associations with limited liability (Anteilsgesellschaft)

73. Articles 375 to 388 of the PGR deal with co-operative associations with limited liability, which are formed by an unlimited number of persons as members, for promoting their common interests. All co-founders must sign the founding statute which must be adopted by their constituent assembly. It is then entered in the Commercial Register. An accurate list of members is also kept by these associations.

Mutual insurance and assistance associations (Versicherungsverein auf gegenseitigkeit and hilfskassen)

74. Articles 496 to 533 of the PGR provide the relevant rules, including those pertaining to registration. Mutual insurance and assistance associations are created to provide insurance for their members and any other persons on the principle of mutuality. The articles of association of these associations are required to be officially authenticated (notarised) and must contain, amongst other things, information concerning the start and termination of membership of all members.

In practice

75. Obligations of filing information with the Commercial Register are supervised by the Office of Justice. The Office of Justice is also responsible for maintaining the Register in line with legal requirements and up to date. One division within the Office of Justice staffed with 14 persons is devoted to these tasks.

76. Legal entities (including companies), which are required to register, obtain legal personality only upon their registration with the Commercial Register. Without registration such entities are legally not existing and cannot operate (e.g. conclude contracts, open a bank account or obtain ownership rights). It is the primary responsibility of the authorised persons of the applicant to ensure that it is duly registered – nevertheless the Office of Justice has a duty to identify companies which are under the obligation to register and, if necessary, to compel their registration. Anyone who fails to register with the Commercial Register is requested by the Office of Justice to do so within 14 days. If the breach is not remedied in time a fine of up to CHF 5'000 can be applied by the Office of Justice. The fine may be imposed repeatedly until either the registration has been carried out or it has been proven that there is no obligation to register. In rare cases where it was found that the obligated person failed to register in time the remedy was carried out within 14 days as requested in the notice from the Office of Justice and therefore no sanction was applied during the reviewed period (see further section A.1.6).

77. The Office of Justice examines whether the legal requirements are fulfilled (Art. 986 Abs. 1 PGR). This includes in particular an examination of whether all requested information is provided. If not, the Office of Justice orders a rectification of the application for registration within 14 days. This was the case in about 2% of the registration applications during the reviewed period and rectifications were always provided.

78. Any changes in the information provided to the Commercial Register must be reported to the Commercial Register. The Office of Justice can fine the company if the Office notices an unreasonable delay. In practice a delay of 30 days is considered as unreasonable. The reported changes are then entered into the Register within two days. The Register receives about 25 000 reports per year. Most of the reports relate to changes in the address of the entity, members of its board or decision of its liquidation. The Office of Justice performs ongoing monitoring to identify entries which are no longer in accordance with the facts based on the information already contained in the Commercial Register and third party reporting. The Office of Justice receives about four third party reports of inaccurate information contained in the Register per year. All judicial, administrative and police authorities have a duty to assist the Office of Justice in this task. Most of the third party reports come from the entity's business partners, tax authority and the Trade Office.

If an entry in the Commercial Register is no longer in accordance with the facts, the Office of Justice issues a letter calling upon the party to remedy the deficiency within 14 days. If the breach is not remedied in time, the same sanctions as in case of failure to register apply.

79. Liechtenstein authorities are of the view that it is rare that anyone who is obliged to register and update the information does not comply with this obligation because legal entities have a vested interest that entries are up to date, in particular because registration in the Commercial Register has legally constitutive effect. Further, failures to keep the information accurate are reported by third parties. A third party may rely on the information contained in the Register and can claim any potential damages from the entity if the information provided to the Register was inaccurate. This is especially the case in respect of persons authorised to act on behalf of the entity or the entity's address.

Tax laws

80. Legal persons having domicile[17] or effective place of management in Liechtenstein are subject to unrestricted tax liability. Other legal entities have restricted tax liability in respect of income from agricultural operations, income from real estate and net corporate income of permanent establishment. These must file tax returns, but if they qualify and are approved for private asset structure (PAS) status, they neither file tax returns nor are assessed for taxation, but instead pay the minimum corporate tax of CHF 1 200 (EUR 1 160). In the case of taxpayers whose exclusive purpose is to operate commercially conducted business and whose average balance sheet total over last three business years did not exceed CHF 500 000 (EUR 483 240), minimum corporate tax is not levied and such entities are charged at the rate of 12.5%. Information on ownership (other than residents of Liechtenstein) of legal persons is not required to be filed in tax returns.

In practice

81. Compliance with tax obligations is supervised by the Fiscal Authority. The tax register of the Fiscal Authority is linked to the Commercial Register. All new registrations, liquidations and changes in information entered in the Commercial Register are transferred electronically on a daily basis to the tax register of the Fiscal Authority. Based on information contained in the Commercial Register, the Fiscal Authority makes sure that all obligated entities are duly registered for tax purposes. As of 31 December 2014 there are

17. In case of legal persons, the place determined by law, company contract, articles or like (Art. 2(e) Tax Act).

about 21 000 corporate taxpayers registered with the Fiscal Authority and 14 863 taxpayers (including companies) which have been granted the PAS regime. All tax returns of the corporate taxpayers are audited by the Fiscal Authority and additional documents and information are requested, if needed.

82. All taxpayers, which do not comply with the reporting requirements are reminded, fined and assessed by the Fiscal Authority according to its due discretion. If an entity fails to register or submit tax return in time it is subject to sanctions under Article 135 of Tax Act (see further section A.1.6). The compliance rate with tax return filing obligations was 99% over the reviewed period.

Foreign companies

83. The registration and disclosure requirements for companies formed under the laws of other jurisdictions (foreign companies) which set up branches in Liechtenstein are prescribed in Articles 291a, 291b and 394a of the PGR.[18] The obligations relating to filing information with the Office of Justice differ depending upon whether the location of the seat of the foreign company is in the European Economic Area (EEA) or outside of it. As of 31 December 2014, only 15 foreign companies having their head office in the EEA were registered in Liechtenstein. Additionally, 99 foreign companies having their head office outside the EEA were registered there.

84. Where the seat of the company (regardless of its original country of incorporation) is located in the EEA, information to be registered in the Commercial Register, and published as an extract in the official gazette (Art. 291a PGR), includes the names of the board members of the foreign company and names of the representative of the branch but information on the shareholders need not be provided. A company which has its headquarters outside the EEA must also submit a copy of the articles of incorporation of the head office to the Commercial Register (Art. 958(2)). The same measures as in case of domestic companies are applied to ensure foreign companies compliance with their filing obligations with the Commercial Register.

85. Legal persons having their effective place of management[19] in Liechtenstein are subject to unrestricted corporate income tax liability in Liechtenstein, meaning they are considered to be tax resident (Art. 44 Tax Act). Foreign companies, other than those having applied for benefits under

18. Iimplementation of the Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another state.

19. According to s. 2(d) of the Tax Act, the "effective place of management" means the place where the centre of the undertaking's supreme management is located.

the PAS, are obliged to complete and submit annual tax returns along with specified accompanying documents,[20] which contain information on beneficial owners taxable in Liechtenstein (Art. 94(2)). Therefore, foreign companies having their place of effective management, though treated as tax resident, are not legally required to provide information on their non-resident owners to the Liechtenstein tax administration.

86. The compliance with the foreign companies' obligation to register and file tax returns is supervised by the Fiscal Authority through companies' obligation to issue a salary confirmation for each employee. Each employee has to file his/her own tax return which must include identification of his/her employer. During the assessment of the employee it is checked whether or not the employer is registered in the tax register. If the foreign company would like to employ an employee not domiciled in Liechtenstein, the company needs a permit from the Migration and Passport Office. There are no permits granted to companies which are not registered in the Commercial Register and in the tax register, respectively.

87. Liechtenstein received eight requests over the reviewed period related to ownership information in respect of companies. All these requests related to ownership information of foreign companies. There was no case where the requested information was not available. In all these cases the requested information was obtained from the company's local representative.

Ownership information held by service providers

88. Legal entities[21] other than those which pursuant to the commercial code or other special law are required to have a qualified manager (on these entities, see further below), are obliged to have at least one member of the administration to manage and represent them. This person must be an EEA citizen and a permanent resident of an EEA Contracting Party[22] and must have a professional license issued in Liechtenstein pursuant to the Professional Trustee Act[23] or must be an employee of a professional trustee with a specific qualification certificate (Art. 180a PGR).

20. Article 41 if the Ordinance of 21 December 2010 on the National and Municipal Taxes requires companies to submit the profit and loss statement, balance sheet and information on the beneficial owners taxable in Liechtenstein.
21. Companies, establishments, foundations and trust enterprises with legal personality.
22. If from non-EEA countries, these persons are required to hold an office and keep records in Liechtenstein.
23. A license from the Financial Market Authority is required in order to work as a professional trustee (Art. 1 Trustee Act). Such a license allows the holder to perform on a professional basis, amongst other activities, the board mandates in

89. Anyone who intends to perform this role of "180a Director" under Article 180a of the PGR is required to be licensed by the FMA either pursuant to the Act Regarding Supervision Concerning Persons According to Article 180a PGR ("180a-Act") or pursuant to the Professional Trustees Act. Such a person is recognised as a member of the management of the legal entity after registration with the FMA. Changes to this information must also be notified to the FMA. As of December 2014 the FMA has authorised 232 persons to perform activities under Article 180a of the PGR in addition to those licensed under the Professional Trustees Act).

90. Liechtenstein has advised that 19 of these authorised persons are not resident in Liechtenstein. However, authorised persons that are not resident in Liechtenstein have to be resident in an EEA Member State, have to be in an employment relationship with an employer resident in Liechtenstein and have to have Liechtenstein as their place of duty. In addition, the due diligence files they are obliged to maintain, containing *inter alia* customer due diligence (CDD) and transaction records, must be stored in a location in Liechtenstein that is accessible at any time (Art. 28(5) DDO) (as described below).

91. All Article 180a Directors are covered under the provisions of the Due Diligence Act (DDA) (Art. 3(1)(o)).[24] Professional trustees and trust companies licensed under the Professional Trustees Act are subject to the DDA (Art. 3(1)(k)). And professional trustees, natural or legal persons who, on a professional basis and on account of a third party, act as partners of a partnership or a governing body or general managers of a legal entity or carry out a comparable function on account of a third party are also subject to the DDA obligations (Art. 3(1)(t)).

92. Under the DDA, obliged entities, which includes financial institutions as well as 180a Directors,[25] must identify the ownership and control structure

accordance with Article 180a of the PGR (Art. 7). An activity is deemed to be professional if it is undertaken independently, regularly, and for compensation or if profit-seeking intent can be deduced from the frequency of the activity or on other grounds (Art. 7(3)).

24. As per Article 3(1)(o) of the DDA, the AML provisions apply to the holders of a certification under Article 180a of the PGR, to the extent that they act as a partner of a partnership or a governing body or general manager of a legal entity on the account of a third party or carry out a comparable function on the account of a third party.

25. The broad range of obliged entities includes: financial institutions; electronic money institutions; management companies; insurance companies; the Liechtenstein Post; exchange offices; insurance brokers; payment service providers; asset management companies; trustees and trust companies; casinos;

of their customers and must take measures to verify this information (Art. 7). The definition of beneficial owner for different entities is given in Art. 3 of the Due Diligence Ordinance (DDO). In the case of companies, the obliged entity must identify natural persons who directly or indirectly: hold or control shares or voting power of 25% or more in the legal entity; receive 25% or more of the profits of the legal entity; or exercise control over the management of the legal entity in another way.

93. The obliged entities must keep the information and documents for at least ten years (Art. 20 DDA). The due diligence files, containing, amongst other documents, the records used to establish and verify the identity of the customer and its beneficial owners as well as transaction records, must be stored at a location within Liechtenstein that is accessible at any time (Art. 28(5) DDO).

94. Legal persons who, pursuant to the commercial code or other special law, are required to have a qualified manager, are exempt from the obligation to have an 180a Director. All such commercially active entities as well as all companies limited by shares, limited liability companies, limited partnerships with share capital, European companies and most limited and unlimited partnerships, even if they are not engaged in commercial activities are subject to compulsory annual audits (Art. 195 PGR). Audits must be conducted by licensed auditors or audit firms or licensed trustees or trust companies. Any person carrying out audits on a professional basis is an obliged entity under Art. 3(1)(u) of the DDA. As a result, the auditors of these entities must also maintain ownership information on their customers in accordance with the DDO.

In practice

95. Due to the obligation set out in Art. 180a PGR 92.5% of all legal entities are required to have at least one director who is a licensed trustee or a person specifically authorised under the Act on the Supervision of persons under Article 180a PGR. These persons are licensed and supervised by the FMA and are subject to the CDD requirements under the AML/CFT

lawyers and law firms insofar as they perform for their clients tax advice, or are involved in financial or real estate transactions; licensed auditors and special statutory auditors; 180a Directors (if they carry on an agency basis functions as a partner of a partnership or an institution or manager of a legal entity on behalf of others or carrying out a similar function on behalf of others); natural and legal persons who act professionally on behalf of others as a partner of a partnership or an institution or manager of a legal entity; natural and legal persons who on a professional basis accept or store or invest or transfer assets; and professional external accountants.

Law. Thus, these obliged persons have to identify and verify the ownership structure of the legal entity and maintain records of the beneficial ownership information. The information has to be stored at a location within Liechtenstein that is accessible at any time (Art. 28 (5) DDO). The remaining legal entities which do not have a licensed director (i.e. mostly financial institutions licensed by the FMA) are required to have their accounts audited by external auditors, which are subject to the CDD requirements under the DDA including the obligation to identify and verify ownership structure of these enterprises and to maintain records of the beneficial ownership information.

96. All obliged persons under the DDA are supervised by the FMA for compliance with the DDA requirements, including customer due diligence measures and record-keeping requirements. The supervision is organised in a two-tier system. The first tier represents supervisory measures taken by the FMA. The FMA conducts on-site inspections at financial institutions and DNFBPs (Designated Non-Financial Businesses and Professions) in order to examine their compliance with AML/CFT requirements. These inspections are conducted following a risk-based approach. The sample testing of CDD files including verification of ownership information kept by the service provider constitutes a central element of these on-site inspections. There are 14 persons in the FMA division responsible for supervision of DNFBPs. The FMA inspected 8% of 180a Directors in 2012, 12% in 2013 and 14% in 2014. Nine percent of auditors were inspected by the FMA in 2012, 33% in 2013 and 24% in 2014.

97. The second tier consists of supervisory measures taken by licensed audit companies on behalf of the FMA in addition to supervisory measures taken directly by the FMA. The audit companies are professional audit and accountancy firms with good local and international reputation. Only audit companies licensed by the FMA can be contracted for AML/CFT inspections. Although the audit company has to be licensed and contracted by the FMA it is nominated by its client and it is paid by the audited client. It is also possible in practice that the same company provides advisory and AML audit services simultaneously to its client. The FMA is the contracting party of the assigned audit firms and the FMA has already denied nominations of auditors if there was a poor performance of previous inspection work or if the auditor's independence was not considered to be warranted. As of February 2015, the FMA licensed 67 of such auditor companies. The licenses are issued for an indefinite term and can be revoked by the FMA if it does not comply with the FMA's requirements. There has been so far no case where a license has been revoked as according to the FMA the level of supervision by the audit companies is appropriate as evidenced in submitted audit reports.

98. As a result of the two tier system every financial institution is inspected every year on a full scope basis. Every DNFBP is inspected every

three years. Audit companies' inspections are carried out on the basis of an inspection plan issued by the FMA. The detailed modalities of the on-site inspections are set out in the FMA Guideline ("Due diligence inspections by mandated due diligence auditors"). The sample testing of CDD files is an essential element of these inspections. All inspection reports drafted by the contracted auditors are analysed by the FMA and follow-up measures are applied by the FMA where necessary. The high frequency and scope of these inspections provides for close monitoring of financial institutions and DNFBPs with respect to their compliance with customer due diligence measures and record-keeping requirements (see further section A.1.6). Nevertheless business relation between the audited company and the auditor may pose risks to objectivity of the auditor's assessment especially considering remedial actions and possible application of sanctions by the FMA linked to conclusions of the audit report.

99. In addition to the on-site inspection programme, the FMA provides regular training for all obliged entities and provides guidance and assistance to the private sector. The FMA further conducts workshops with all contracted audit firms in order to provide guidance and targets for the inspection programme.

Nominees

100. Nominee ownership is subject to the provisions of the DDA. All natural and legal persons, to the extent that they act as nominee shareholders for persons other than companies listed on a regulated market that is subject to disclosure requirements in conformity with EEA law or subject to equivalent international standards, or to the extent that they provide the possibility for other persons to carry out that function, are obliged entities (Art. 3(1)(s) DDA). However, nominees in Liechtenstein are generally fiduciary companies.

101. Nominees must establish and verify the identity of the customer (person for whom they hold shares) and the beneficial owners (Arts.6 and 7 DDA). Further, professional trustees and trust companies are subject to obligations under the DDA (Art. 3(1)(k)). Therefore, if a legal owner acts on behalf of any other person as a nominee, he must identify the person for whom he is acting. However, the PGR does not require such a nominee to disclose the fact that he acts on behalf of the beneficial owner and the register of shareholders does not identify nominee shareholders. Nevertheless in practice it is in most cases clear from the circumstances of the case that a professional fiduciary company or a trustee acts as a nominee shareholder on behalf of somebody else.

102. The FMA applies the same supervisory measures as in respect of other service providers to ensure that nominees keep CDD documentation in line with their AML obligations. During the period under review there was no case encountered where shares of a company were held by a nominee.

Conclusion

103. All forms of domestic companies are required to maintain information on their owners, and/or submit this information to government authorities. Joint stock companies, limited liability companies, limited partnerships with share capital, associations and European companies domiciled in Liechtenstein are obliged to keep registers of shareholders/members. Co-operatives and European co-operative societies must submit directories of their members to the Office of Justice for registration. Co-operative associations with limited liability must have a founding statute signed by all co-founders. The notarised articles of association of mutual insurance and assistance associations must contain, amongst other things, information concerning the members

104. Regarding ownership of foreign companies considered tax resident in Liechtenstein, only information on the owners taxable in Liechtenstein needs to be provided in the tax return, which requires to be filed by non PAS companies. There are no obligations on such companies to maintain further information. However, where foreign companies use licensed service providers these are obliged to identify the beneficial owners being natural persons who directly or indirectly hold or controls shares or voting rights amounting to 25% or more of such legal entities.

105. Moreover, under anti-money laundering legislation, nominees and professional trustees are required to identify their customers and the beneficial owners of their customers i.e. those natural persons who directly or indirectly hold/control at least 25% of the shares/voting rights in the entity. This requirement applies irrespective of whether the customers are domestic or foreign companies.

106. In practice the main source of ownership information on companies are the entities themselves and their directors covered under Art. 180a of PGR. Information on members of limited liability companies is also publicly available in the Commercial Register. Liechtenstein received eight requests over the reviewed period related to ownership information in respect of companies. All these requests related to ownership information of foreign companies. There was no case where the requested information was not available. Accordingly no peer expressed concern about availability of ownership information in respect of companies in Liechtenstein.

Bearer shares *(ToR A.1.2)*

107. On 1 March 2013 law amendment no.67/2013 came into force which regulates registration and immobilisation of bearer shares under the Liechtenstein company law (PGR). The amendments to the PGR provide that:

- Bearer shares can only be issued by joint stock companies, limited partnerships with share capital and SEs.
- Bearer securities of other associations, co-operatives, trust enterprises and trusteeships which are connected to a membership or purchase right shall be destroyed or converted to registered securities by 1 March 2014. After the expiry of said period, no more rights may be claimed on the basis of such shares.

108. As regards joint stock companies, limited partnerships with share capital and SEs, under the new law, all bearer shares issued before or after 1 March 2013, renewal coupons and dividend warrants must be deposited with a custodian. This obligation does not apply to bearer shares of companies listed on stock exchange and bearer shares of undertakings for collective investments in securities as well as investment funds and investment companies (Art. 326a). However, the international standard does not require availability of ownership information in respect of certain publicly-traded entities if it gives rise to disproportionate difficulties.

109. A company must appoint a custodian and if the supervisory board does not have a quorum, the appointment will be made by the Regional Court (Art. 326b). This custodian must fulfil at least one of the three following requirements:

- be subject to a Due Diligence Act or any foreign rule or supervision which is equivalent to Directive 2005/60/EC;
- fulfil the prerequisites under Art. 180.a;
- have its residence or place of business in Liechtenstein and have an account in Liechtenstein or other EEA member state in the name of the shareholder.

110. The custodian must be identified in the Commercial Register (Art. 326b) and must maintain a register in which the following information for each bearer share is entered: the shareholder's name, birth date, nationality and residence or legal business name and domicile; the date of deposit. The register is required to be kept at the company's place of business (Art. 326c). There is only one register. As the register can be kept by electronic means, the custodian can maintain it remotely. The shareholder is entitled to view the data concerning himself which has been entered in the register. National courts and public authorities, within their area of

competence, may view the register and produce copies of register entries (Art. 326d).

111. The only circumstances under which a custodian can handover the bearer shares are first; to their successor after their function as a custodian ends or, second; to the company when either the bearer shares are converted to registered shares or they are redeemed, withdrawn or amortised (Art. 326e).

112. The shareholder's rights arising from a bearer share may only be claimed if the share has been deposited with the custodian and all information on the bearer shareholder has been registered (Art. 326f).

113. The transfer of a bearer share becomes effective only after the transferee is registered in the register maintained by the custodian. Identification information on the transferee must be provided by the shareholder who intends to transfer bearer shares (Art. 326h).

114. Compliance with the duties as a custodian should be examined as part of the mandatory annual audit or review and confirmed by the person who performed the audit or review. Deficiencies must be notified to the Office of Justice and if deficiencies are not remedied by the custodian, the Office of Justice must report to the Court of Justice (Art. 326i).

115. The Court of Justice, following a report by the Office of Justice may impose a fine up to CHF 10 000 (EUR 9 700); *(i)* on a custodian which breaches obligations to properly maintain the register; *(ii)* a custodian which issues an incorrect confirmation of a deposit of bearer shares; *(iii)* a custodian who hands over bearer shares in breach of the law, and *(iv)* a person who has performed an audit or review and issues an incorrect confirmation or fails to submit a report of deficiencies. This fine may be imposed repeatedly until the condition required by law has been restored. A maximum fine of CHF 5 000 (EUR 4 830) can be imposed for negligence (§§66c SchlT PGR). In the period till 1 March 2015 the Office of Justice received ten audit reports indicating deficiencies in custodian's duties. In all these cases the deficiencies were remedied upon letter from the Office of Justice and therefore no further action was required.

116. Bearer shares of joint stock companies, limited joint stock-partnerships and European public companies (SEs) which were issued prior to entry into force of the proposed Act must be deposited with a custodian for registration by 1 March 2014. After the expiry of that period, voting rights may no longer be claimed on the basis of unregistered bearer shares and the person holding an unregistered bearer share ceases to be considered a shareholder of the company. Holder of such bearer share may claim its ownership in these entities after that period but before 1 March 2024 and only by presenting a decision of the Court of Justice confirming his ownership rights. In order to prove ownership of the shares simple holding of the bearer certificate does

not suffice and the holder is required to present other evidence that he/she was shareholder of the entity at 1 March 2014. According to Liechtenstein authorities this might be done by presenting a transfer contract or other similar documents. Consequently, any change in holder of the bearer share after 1 March 2014 is void and cannot be taken into account by the Court of Justice. As of March 2015 there have been about 20 cases where a holder of bearer share turned upon the Court to confirm his/her shareholder rights. According to Liechtenstein authorities the Court in most cases confirmed the shareholder rights as the holder was able to present sufficient documentation (other than the bearer certificate) to confirm his rights. If the shareholder's rights are confirmed by the Court the shareholder is entitled to dividends for the respective period. These dividends will be however taxed at 35% rate (instead of standard rate of 4%). Dividends paid out between 1 March 2014 and 1 March 2024 in respect of shares whose owner has not been identified must be transferred on account of the custodian. The 35% final withholding tax is applied in all cases. If the shareholder is not identified by 1 March 2024 the remaining 65% of dividends forfeits to the state and has to be transferred by the custodian to the Fiscal Authority. Capital represented by shares not claimed by 2024 must be contributed in a reserve which may be used only to offset losses or to increase the share capital of the company (Art. 1(7) and Art. 358(1)(4) PGR).

117. Bearer securities of other associations, trust enterprises and trusteeship which are connected to a membership or purchase rights must be destroyed or converted to registered securities by 1 March 2014 and after expiry of this period, no more rights may be claimed on the basis of such shares.

118. The provisions concerning deposit of bearer shares with a custodian and keeping of information of the owners of such shares by the custodian do not apply to bearer shares of companies listed on the stock exchange and bearer shares of undertakings for collective investments in securities as well as investment funds and investment companies (Art. 326a). Liechtenstein reports that there are other mechanisms to identify owners of bearer shares issued by these entities. These mechanisms include identification requirements under the Disclosure Act which is based on the European Transparency Directive 2004/109/EC, under the Law on Undertakings for Collective Investments in Transferable Securities, the Law on Investment Undertakings and Ordinances to these laws as well as AML requirements under the Due Diligence Act. Considering these mechanisms and provision of Art. 5(4)(b) the above rules appear consistent with the international standard on availability of ownership information.

119. In practice, out of 5 809 joint stock companies which could have issued bearer shares 3 590 have appointed a custodian. Each company can have only one custodian. There are no limited joint stock-partnerships and

six European public companies (SEs). The number of SEs which appointed a custodian is not known. As of March 2015 there are 3 464 custodians registered in the Commercial Register. Custodians are frequently company service providers who offer the service on a professional basis. There are no cases reported by auditors that a company failed to maintain register of bearer shares. It is also noted that 180a Directors, banks and other persons obliged under AML rules are required to identify beneficial ownership of the company. If this is not possible due to missing identification of holders or bearer shares representing more than 25% of shares of the company the obliged persons are required to terminate their business relation with the company. If the company fails to appoint a new 180a director the Office of Justice opens the dissolution and liquidation proceeding in respect of the company ex officio.

120. Liechtenstein's regulation of bearer shares ensures that information on holders of bearer shares should be available in Liechtenstein. However, implementation of the transitional period, i.e. deposit of bearer shares and long period where shareholders rights in respect of bearer shares can be claimed, and large number of custodians who do not need to be in all cases residents in Liechtenstein (although the register of bearer shares has to be deposited at the company's place of business in all cases) pose a risk to availability of such information in all cases. The regulation came into force on 1 March 2013 and the period for deposit of bearer shares ended only in March 2014, there is therefore not enough experience with implementation of the regulation and scope in which its risks have impact on practical availability of the information. It is therefore recommended that Liechtenstein monitors implementation of the rules on identification of holders of bearer shares and takes measures to address any identified deficiencies.

Partnerships *(ToR A.1.3)*

121. PGR recognises six types of partnerships: Einfache Gesellschaft (basic/default/general partnership); Kollektivgesellschaft (unlimited partnership); Kommanditgesellschaft (limited partnership); Gelegenheitsgesellschaft (particular purpose partnership); Stille Gesellschaft (silent partnership); and Gemeinderschaft (special family partnership) (Arts. 779-793 PGR).

122. Partnerships, except limited and unlimited partnerships, have no legal personality (Art. 649 PGR) and are not obliged to register. Limited and unlimited partnerships are subject to registration requirements (Arts. 733 and 689), whether or not they carry on commercial activities. Liechtenstein has few registered partnerships. On 9 September 2014, only 18 unlimited partnerships, and 22 limited partnerships were registered.

123. An unlimited partnership consists of two or more partners, all of whom have unlimited liability for debts of the business. The identity of all

partners must be submitted during registration of partnership (Art. 690 PGR). The partners can be one or more natural or legal persons or companies, and they may or may not be resident or domiciled in Liechtenstein.

124. A limited partnership must be registered in the Commercial Register and the registration must include information identifying each partner with unlimited liability and each limited partner. Any change of facts must also be registered (Arts. 734 and 735 PGR).

125. A partnership set up for a particular purpose is created when at least two or more natural and/or legal persons join according to a contract for particular purpose. It has no legal personality and cannot conduct business, hold real estate or own assets. A silent partnership (Arts. 768-778 PGR) is created when a person makes an equity contribution into another person's business. This arrangement can be characterised as a contract, and like a contract, its existence is typically not disclosed to the public. Silent partnerships do not have any legal status and cannot hold real estate or own assets. They have no income or credits for tax purposes, do not carry on business and cannot be compared to a limited partnership. Therefore, these arrangements are not under the scope of the Global Forum's *Terms of Reference*.

126. A special family partnership may be established by family members for the joint management of assets (Art. 779 PGR). It must be registered in the Commercial Register and the registration application must *inter alia* detail all members of the partnership (Art. 792). When any registered details change, the Office of Justice must be notified (Art. 792(4)).

127. In practice, partnerships compliance with the obligation to register with the Commercial Register is supervised by the Office of Justice by the same measures as in case of other entities required to register and file information with the Register. Limited and unlimited partnerships are required to register with the Commercial Register and they come into existence only upon being entered there (Art. 689(1) and Art. 733(1) PGR). Any changes in the information provided to the Commercial Register must be reported to the Register without unreasonable delay. A delay of 30 days is considered as unreasonable. The Office of Justice performs ongoing monitoring to identify entries which are no longer in accordance with the facts based on the information already contained in the Commercial Register and third party reporting. As in case of other entities required to register Liechtenstein authorities are of the view that it is rare that the information required to be entered in the register is not updated as legal entities have a vested interest that register entries are up to date, in particular because registration in the Commercial Register has legally constitutive effect and can be relied upon by third parties. Failures to keep the information accurate are reported by third parties and the Office of Justice applies remedial measures as described in section A.1.1 and A.1.6.

Tax laws

128. Under the Tax Act, all partnerships are treated as transparent for tax purposes and are taxed at the level of partners. No tax returns are required to be filed by Liechtenstein partnerships. Pursuant to Article 94(1) of the Tax Act, all persons resident in Liechtenstein must file their tax returns. Accordingly, partners resident in Liechtenstein must submit annual tax returns detailing the source of their income, which would include income earned from a partnership. These returns do not need to indicate the names of the other partners in the partnership, which means that the tax authority has information on all partners resident in Liechtenstein who have earned income during the year but not on the partners who have not earned income during the year or are non-resident partners.

129. In practice, partners' compliance with tax obligations is supervised by the Fiscal Authority in the same way as in case of other taxpayers. All tax returns are audited by the Fiscal Authority and additional documents and information are requested, if needed. If a partner fails to register or submit tax return in time the partners is subject to sanctions under Article 135 of Tax Act (see further section A.1.6).

Ownership information held by service providers

130. Under the DDA, whenever financial institutions or other obliged entities have a business relationship with a partner or partnership, they are required to identify the partnership and also any partners holding a 25% or greater interest in the partnership.

131. In practice, all obliged persons under the DDA are supervised by the FMA and licensed auditors for compliance with the DDA requirements, including customer due diligence measures and record-keeping requirements. The high frequency of these inspections should ensure their compliance with customer due diligence measures and record-keeping requirements (see further section A.1.6).

Conclusion

132. To summarise, information on the partners of limited, unlimited and special family partnerships carrying on business in Liechtenstein is available to the competent authority, as these are obliged to register. Silent partnerships and partnerships set up for a particular purpose have no legal personality and cannot conduct business. Explicit obligations are not prescribed in the law requiring the maintenance of identity information on general partnerships. Partners resident in Liechtenstein will include income from such partnerships in their tax return. A foreign partner is taxable in Liechtenstein only

on his Liechtenstein sourced income, accordingly if a partnership only earns income outside of Liechtenstein, information on that partner would not be available. The gap is considered small, given the number of partnerships, but Liechtenstein should ensure that its competent authority has information identifying the partners of all the partnerships allowed under its law.

133. AML obligations also support the availability of information on partners as a wide range of entities are obliged to identify partnerships which are their customers and to identify partners holding at least a 25% interest in the partnership. Documents relating to due diligence must be kept within Liechtenstein.

134. In practice the source of information on partners in a partnership is the partnership or its representatives. Liechtenstein did not receive any request related to ownership information of domestic or foreign partnership over the reviewed period. Accordingly, no issue in respect of availability of ownership information regarding partnerships was reported by peers.

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

135. Provisions relevant to trusts are contained in the PGR and the Act on Trustees. Trusts may be established for charitable, social, cultural or similar purposes and also as family trusts. Liechtenstein is also a signatory to *The Hague Convention on the Recognition of Trusts*.[26] As on 31 December 2014, there were 2 265 trusts in Liechtenstein and only one of these had property from domestic (Liechtenstein) origin.

136. A Liechtenstein trust comes into existence with the signing of the trust deed by settlor and trustee[27] or by means of a written declaration by the settlor and accepted by the trustee in writing (Art. 899 PGR). The trust deed provides information on the settlor, the trustees, name, date and domicile of the trust, amount of the trust assets, as well as rights and obligations reserved by the settlor. There is no legal requirement for the trust deed to detail the beneficiaries. The class of beneficiaries must be noted in the trust deed or in a schedule to the trust deed.

137. Trusts are irrevocable on the part of the settlor unless the settlor reserves such rights in the trust agreement or the unilateral trust instrument

26. www.hcch.net/index_en.php?act=conventions.text&cid=59, accessed 10 December 2010.
27. A trustee is any natural person, company or legal entity to whom a trust settlor transfers movable or immovable assets or a right (as trust property), of whatever kind with the obligation to administer or use such property in his own name as an independent legal owner for the benefit of one or more third persons, the beneficiaries (Art. 897 PGR).

(trust note/escrow letter) (Art. 907 PGR). The settlor continues to have certain rights and liabilities after the trust is set up (unless the trust instrument provides otherwise). The settlor or trustee may be one of the beneficiaries of the trust; however the trustee cannot be the sole beneficiary (Art. 927).

Information required to be provided to government authorities

138. Trusts are supervised by the Princely Liechtenstein Court of Justice. All trusts formed under Liechtenstein's law must be in the records of the registering authority, i.e. Office of Justice, if (Art. 900 PGR): *(i)* the trustee, or at least one of the co-trustees, is resident or domiciled in Liechtenstein;[28] and *(ii)* the trust is set up for duration of more than 12 months.

139. A trust must be registered or its deed deposited within 12 months of its creation. Registration requires a trustee to provide information on the name of the trust, the date of formation of the trust, the duration of the trust as well as the name and place of residence or business name and seat of the trustee (Art. 900 PGR). A copy of the trust deed is not required to be submitted and neither is information on the amendments to the formation deed, but changes in the person of the trustees are required to be provided. A trust opting for non-registration must deposit[29] the original or a certified copy of the trust deed with the Commercial Register (Art. 902). An original or certified copy of every document amending the formation deed must also be deposited with the Commercial Register (Art. 902). The deposited deed is not publicly available and only the name and address of the representative depositing the documents can be provided to the FIU, FMA and supervisory authorities. On 9 September 2014, the Commercial Register had 124 deposited formation deeds and 2 301 trusts were registered.

140. Liechtenstein's laws require that, where persons residing abroad are appointed as trustees of a Liechtenstein trust, then at least one person resident in Liechtenstein or a domestic legal entity is to be appointed as a co-trustee (Art. 905 PGR).

141. In practice, trusts' compliance with registration and filing requirements with the Commercial Register is supervised by the Office of Justice. The application for registration of a trust in the Commercial Register must contain the information required by law. The Office of Justice examines whether the legal requirements are fulfilled. This includes in particular an

28. The residence of settlor and the beneficiaries and the origin of trust property is not a material factor for the applicability of Liechtenstein law.
29. Where there is a legal obligation to report for corporations or the like to the GBOERA, it is possible to deposit the documents containing the facts and relationships to be reported instead (Art. 990 PGR).

examination of whether all required information is provided. If not, the Office of Justice denies the registration. Every amendment of a registered fact must also be reported. In case of depositing the formation deed, an original or certified copy of the document amending the formation deed must be deposited with the Office of Justice. As in case of other registered entities the Office of Justice performs ongoing monitoring to identify entries which are no longer in accordance with the facts based on the information already contained in the Commercial Register and third party reporting. Further, failures to keep the information accurate are reported by third parties and the Office of Justice applies remedial measures as described in sections A.1.1 and A.1.6.

Tax laws

142. Special asset dedications without legal personality (i.e. trusts), whose domicile or effective place of management is in Liechtenstein, pay a minimum corporate income tax of CHF 1 200 (EUR 1 160) (Art. 65(1) Tax Act). These dedications must register with the Fiscal Authority but neither file tax returns nor are they assessed. These entities are required to issue certificates showing payments to beneficiaries resident in Liechtenstein regarding their payments (Art. 99). Therefore, the trustees must have information on payments to the beneficiaries resident in Liechtenstein. There is no requirement to proactively provide this information to tax authorities but in practice the Fiscal Authority will make risk based requests and use the so received certificates of payments to crosscheck information provided in tax returns of resident taxpayers. Compliance with this obligation is considered high by Liechtenstein's authorities, however it is difficult to verify this statement as it remains unknown in which cases the certificate was not issued and it is not required to be compulsorily filed with the Fiscal Authority.

143. In practice, trusts' compliance with tax obligations is supervised by the Fiscal Authority in the same way as in case of other taxpayers. If a trust fails to register with the tax administration in time it is subject to sanctions under Article 135 of Tax Act (see further section A.1.6).

Foreign trusts

144. Liechtenstein has no restrictions with regard to its residents acting as trustees or administrators of trusts formed under foreign law. Liechtenstein law applies to a foreign trust if the trustees or more than half of the trustees are resident in Liechtenstein. It also applies to a foreign trust if the trust property is in Liechtenstein or the trust deed provides for this. These trusts are subject to the same obligations to register or deposit their trust deeds as Liechtenstein trusts. Some trusts administered in Liechtenstein (but with less than half of trustees resident in Liechtenstein) may fall outside these

parameters and therefore not be obliged to register or submit their trust deed to the authorities. However, to the extent that any of the trustees are professional trustees they are subject to AML obligations (see below, service providers).

145. Trusts may be created in Liechtenstein pursuant to foreign law if the trust deed so provides or if a majority of the trustees are resident outside of Liechtenstein. In these cases, the relationship between the settlor, trustee and beneficiaries is subject to the foreign law governing the trust and if this choice is not apparent in the deed then the applicable law is that of the state in which the trustee or the majority of trustees have their residence or domicile. However, the relationships between any third parties and the trust are subject to Liechtenstein law (Art. 931 PGR).

Service providers

146. Professional trustees and trust companies must conduct CDD (Art. 3(1)(k) DDA).[30] Liechtenstein authorities have indicated that the question of whether services are provided on a professional basis is assessed on a case-by-case basis and there are no quantitative thresholds. It is possible that a non-professional trustee can be in place and this type of trustee (e.g. a private individual managing a family trust) is not an obliged party under the DDA. The scope of the term "on professional basis" is however interpreted by Liechtenstein's courts in a wide sense and includes all situations in which a person acts for or intends to make a profit or gain any other economic benefit and carries out activities on a regular and independent basis.[31] In practice, the trustee is normally a professional service provider under AML obligations. Cases where a trust is managed on a non-professional basis are according to Liechtenstein authorities rare as the settlor prefers legal certainty and quality of services provided by a professional trustee. It is also noted that in case of a family trust the group of beneficiaries should be easily identifiable based on documentation required to be kept under PGR (e.g. the trust deed).

147. Where the trust conducts financial activity in Liechtenstein, the relevant financial institution with which it transacts business is also an obliged entity under the DDA and must therefore identify those natural persons who ultimately exercise direct or indirect control over the assets of the arrangement as well as the beneficiaries who have at least a 25% interest in the trust.

148. In practice, all professional trustees and trust companies are supervised by the FMA and licensed auditors for compliance with the DDA

30. They are covered under the AML laws, if they perform the activities referred in paragraph 1(a), (b), (e), (f) or paragraph 2 of Article 7 of the Trustee Act.
31. Supreme Court Decision GE 2011, 64; Supreme Court Decision ES.2010.15.

requirements, including customer due diligence measures and record-keeping requirements. The FMA inspected 12% of professional trustees and trust companies in 2012, 13% in 2013 and 19% in 2014. The high frequency of inspections carried out by the FMA and licensed auditors should ensure their compliance with customer due diligence measures and record-keeping requirements (see further section A.1.6). Nevertheless business relation between the audited company and the auditor may pose risks to objectivity of the auditor's assessment especially considering remedial actions and possible application of sanctions by the FMA linked to conclusions of the audit report. Considering strong reliance on service providers' compliance with their record keeping obligations it is therefore recommended that Liechtenstein monitors supervision of service providers' compliance with their record keeping requirements.

Conclusion

149. For domestic trusts, the requirement that a trust deed be in place, specifying the settlor and trustee, coupled with registration requirements, ensures the availability of this information. Under tax laws, the trust, a special asset dedication, must keep information on the payments made to beneficiaries resident in Liechtenstein. Under tax laws no information on the non-resident beneficiaries needs to be kept and information on resident beneficiaries may also not be available if the trust accumulates the benefits and no distributions are made. Service providers are obliged to identify beneficiaries holding at least a 25% interest in the trust (AML law).

150. Liechtenstein recognises trusts and has an active regulated trust sector. As a result, trusts with both local and international beneficiaries are commonly managed by professional licensed fiduciaries situated in Liechtenstein. However, trustees can be unregulated persons if they are not doing so "by way of business". In those circumstances, the trust will still be subject to Liechtenstein's AML/CFT framework when trustee: *(i)* opens an account or establish a relationship related to the trust with a Liechtenstein bank or other licensed fiduciaries subject to the AML/CFT framework; or *(ii)* purchases or sells any real property for the trust via a lawyer or other professional who would also be subject to the AML/CFT framework. A potential narrow gap remains of those trusts which have a non-professional trustee and no financial activities in Liechtenstein. Liechtenstein should monitor this gap to ensure it does not in any way hamper the effective exchange of information in tax matters. The availability of information on the trustees, settlor and beneficiaries of foreign trusts administered in Liechtenstein will depend on the application of AML obligations by service providers.

151. In practice the source of information on trusts is the trustee resident in Liechtenstein. Liechtenstein did not receive any request related to

ownership information of trusts over the reviewed period. Accordingly, no issue in respect of availability of such information was reported by peers.

Foundations (ToR A.1.5)

152. A foundation is a legally and economically independent special-purpose fund, formed through a unilateral declaration of will of the founders to serve a specified purpose. This type of entity is commonly used for private wealth management of individuals and families. The minimum capital of a foundation is CHF 30 000 or EUR 30 000 or USD 30 000. Liechtenstein had 20 843 private-benefit foundations and 1 239 common-benefit foundations on 31 December 2014.

153. A private-benefit foundation, mainly in the form of family foundation, is intended to predominantly serve private or personal purposes (Art. 552(2) PGR). A common-benefit foundation is intended to predominantly serve non-profit purposes. Commercial activities are generally not permitted to be conducted by foundations, except in pursuit of non-commercial purposes.

154. A foundation can be established by one or more natural or legal persons. It can be formed *inter vivos* or *mortis causa*. Foundations in the former category are formed through a written declaration of establishment and authentication of the signatures of the founders. The latter category foundations are formed by way of last will and testament or contract of inheritance in accordance with the rules. Pursuant to Article 552(16) of the PGR, the founding deed must *inter alia* provide:

- the purpose of the foundation, including the designation of tangible beneficiaries, or beneficiaries identifiable on the basis of objective criteria, or of the category of beneficiaries, unless the foundation is a common-benefit foundation or the beneficiaries are evident from the purpose of the foundation, or unless there is instead express reference to a supplementary foundation deed regulating this;
- information on the founder, foundation council and indication about the supplementary foundation deed;
- in case of indirect representation of founder, such person is obliged to notify the foundation council of the identity of the founder; and
- the reservation of the right of revocation of the foundation or amendment of the foundation documents by the founder; and the reservation of a right to amend the foundation deed or supplementary foundation deed by the foundation council or by another executive body.

155. The founder, if a natural person, may in the foundation deed reserve for himself the right to revoke the foundation or to amend the declaration of foundation (Art. 550(30)). These rights cannot be assigned or bequeathed. The exercise of these rights by a direct representative requires a special power of attorney referring to this transaction.

156. The founder may draw up a supplementary foundation deed if such a right is reserved. The founder or the foundation council or executive body of the foundation can issue internal directives for the execution of the foundation deed or the supplementary foundation deed. The founder loses all rights in relation to a foundation, unless the founding deed specifically reserves such rights. The foundation needs to have a foundation council (foundation board) to manage the foundation assets. The founder may belong to the foundation board and/or be a beneficiary himself/herself.

Information held by government agencies

157. Common-benefit foundations and private-benefit foundations carrying on business along commercial lines on the basis of special law, must be entered in the Commercial Register and thereby acquire legal personality. There is no obligation for other private-benefit foundations to register in the Commercial Register (Art. 552(14)).

158. For registration, each member of the foundation council is under an obligation to make an application for the foundation to be entered in the Commercial Register (Art. 552(19) PGR). The application must be submitted in writing together with the original or certified copy of the foundation deed.

159. Private-benefit foundations not carrying on commercial business are not required to register, but, if they chose to register, the foundation council must confirm that the tangible beneficiaries, or beneficiaries identifiable on the basis of objective criteria, or category of beneficiaries, have been designated by the founder, unless it is evident from the notified purpose of the foundation. As of 31 December 2014, 12 567 foundations, out of a total of 22 000 in Liechtenstein, are not engaged in economic activities and taxed under the special tax regime of PAS. This figure includes common benefit foundations, which are obliged to register, and private benefit foundations, which are not obliged to register and may opt to deposit the notification of foundation. As of 31 December 2014, Liechtenstein had 1 765 registered foundations, whereas, non-registered foundations were 20 317.

160. For foundations, the entries in the Commercial Register must *inter alia* include:

- organisation and representation, stating the last name, first name, date of birth, nationality and place of residence or registered office,

or the corporate name and domicile of the members of the foundation council as well as the form of the signatory's power;

- the name, date of birth, nationality and place of residence or registered office of the legal attorney, or the corporate name and domicile of the audit authority and legal attorney.

161. If the foundation is not subject to an obligation to register,[32] and chooses not to register, it must deposit, within 30 days following formation, notification of formation at the Commercial Register. The accuracy of the information must be certified in writing by attorney at law admitted in Liechtenstein, trustee or holder of an entitlement in accordance with Article 180a of the PGR (Art. 552(20) PGR). The notification must *inter alia* contain:

- name, domicile, date of formation and purpose of the foundation;
- the name, date of birth, nationality and place of residence or registered office of the legal attorney or the corporate name of the members of the foundation council as well as the form of the signatory's power;
- the name, date of birth, nationality and place of residence or registered office of the legal attorney, or the corporate name and domicile of the legal representative; and
- confirmation that the tangible beneficiaries, or beneficiaries identifiable on the basis of objective criteria, or of the category of beneficiaries, have been designated by the founder, unless this is evident from the notified purpose of the foundation.

162. On each amendment or a circumstance contained in the notification of formation and on the existence of a reason for dissolution, the members of the foundation council are under an obligation, within 30 days, to deposit a notification of amendment at the Office of Justice (Art. 552(20)(3)). The accuracy of the information in the notification of amendment must be certified in writing by an attorney at law admitted in Liechtenstein, trustee or holder of an entitlement in accordance with Article 180a of the PGR.

163. The supervisory authority for foundations is the Office of Justice. The same measures are applied as in case of other entities required to register and file information with the Register. The application for registration in the Commercial Register must contain the information required by law. The Office of Justice examines whether the legal requirements are fulfilled including examination of whether all required information is provided. If not, the Office of Justice denies the registration. Every amendment of a registered

32. Foundations not obliged to register acquire legal personality without registration (Art. 552(20) PGR).

fact must also be reported without unreasonable delay. The office of Justice is entitled to verify the accuracy of the deposited notifications of formation and inspect the foundation documents.

164. The Office of Justice performs ongoing monitoring to identify entries which are no longer in accordance with the facts based on the information already contained in the Commercial Register and third party reporting. If the discrepancy is not remedied within 14 days the same monetary sanctions as in case of failure to register apply (see further section A.1.6). Further if the foundation is pursuing an illegal or immoral purpose the foundation can be dissolved, however, not keeping the required documentation does not represent a reason for dissolution. Liechtenstein authorities are of the view that it is rare that anyone who is obliged to register and update the information provided to the Commercial Register does not comply with this obligation because legal entities have a vested interest that entries are up to date, in particular because information contained in the Commercial Register can be relied upon by third parties. Further, failures to keep the information accurate are in most cases reported by third parties.

165. Common benefit foundations are supervised by the Foundation Supervisory Authority (FSA) which forms part of the Office of Justice. There are currently 1 233 common benefit foundations under FSA's supervision. All common benefit foundations are required to submit a statement to the FSA that information contained in the Commercial Register regarding the respective foundation is correct and in accordance with documentation kept by the foundation's service provider. FSA applies similar system of supervision as FMA, i.e. two tier system which includes on-site inspections carried out by licensed auditors on behalf of FSA.

Tax laws

166. Legal persons, including foundations, are subjected to same requirements as discussed in case of companies. Therefore as a general rule, foundations pay corporate income tax of 12.5% and are required to file a tax return. Private benefit foundations not carrying out any economic activity and thus potentially qualifying as PAS are subject to a minimum tax of CHF 1 200 (EUR 1 160) only and do not file annual tax returns, provided they have the necessary approval of the tax administration. Common benefit foundations may be granted tax exemption upon application to the tax administration and fulfilling the necessary conditions.

167. There is no withholding tax on the distributions by a foundation. However, Article 99 of the Tax Act obliges the foundations to issue certificates of payments to resident beneficiaries, similar to the obligation applicable to trusts.

168. In practice, foundations' compliance with tax obligations is supervised by the Fiscal Authority in the same way as in case of other taxpayers (see further section A.1.6).

Information available with service providers

169. As foundations are legal persons, the provisions of Article 180a of the PGR apply. Thus, a professional trustee who acts as a member of the foundation council or the foundation's 180a Director is obliged to conduct CDD. In addition, where the foundation conducts financial activity in Liechtenstein, the relevant financial institution with which it transacts business is an obliged entity under the DDA. These service providers must identify their customer (the foundation) and all natural persons who have at least a 25% interest in the foundation. It is noted that in majority of cases clients are introduced to Liechtenstein service providers by foreign intermediaries who provide them with certificates of beneficial owners. Nevertheless, information on immediate founders, members of the foundation council and beneficiaries is directly available with the service provider in Liechtenstein administering the foundation.

170. In practice, compliance of professional trustees acting as members of the foundation council and foundation's 180a Directors is supervised by the FMA for compliance in the same way as in case of other obliged persons (see further section A.1.1). The two tier system of inspections should ensure obliged persons' compliance with customer due diligence measures and record-keeping requirements as stipulated under Liechtenstein's law (see further section A.1.6). Nevertheless business relation between the audited company and the auditor may pose risks to objectivity of the auditor's assessment especially considering remedial actions and possible application of sanctions by the FMA linked to conclusions of the audit report. Considering strong reliance on service providers' compliance with their record keeping obligations it is therefore recommended that Liechtenstein monitors supervision of their compliance with record keeping requirements.

Conclusion

171. Foundations carrying on commercial business must be entered in the Commercial Register and a copy of the foundation deed is required to be submitted. The foundations not obliged to register are required to deposit a notification of formation to the Commercial Register. All foundations (including those not conducting commercial business) must have a founding deed which contains information on the founders, foundation council and the beneficiaries. Information on the payments made to beneficiaries resident in Liechtenstein is also required to be kept under tax law.

172. Supplementing this, obligations are imposed under the AML law for obliged entities to identify beneficiaries of their customer, which would result in identification of those persons holding at least a 25% interest in the foundation.

173. In practice the source of ownership information on foundations is the Liechtenstein's service provider, i.e. professional trustee who acts as a member of the foundation council or the foundation's 180a Director. Liechtenstein received 43 requests related to ownership information of foundations over the reviewed period. There was no case where the requested information was not available. Accordingly no peer expressed concern about the availability of ownership information in respect of foundations in Liechtenstein.

Other relevant entities and arrangements

174. Liechtenstein also has anstalts (establishments) and trust enterprises.

Anstalt (establishment)

175. This corporate form with legal personality appears to be unique to Liechtenstein and has no members or shareholders and is generally used as a legal form for a business enterprise or as a holding company for intangible assets or estate assets. Specific provisions are contained in Articles 534 through 551 of the PGR and have been part of this law since its inception in 1926. Establishments must have a minimum capital of CHF 30 000 or EUR 30 000 or USD 30 000. Establishments can engage in both commercial and non-commercial activities. Liechtenstein had 8 461 establishments in existence on 31 December 2014.

176. Establishments can be formed and operated by one or more founders, who may be natural persons, firms, communities or associations of communes or legal entities not otherwise entered in the Public Register. Written articles are required for the formation of the establishment, which must be signed by founders. The founding statute must explicitly designate the entity as an "Anstalt". Articles of association must include: name and designation of the establishment, the objects of the establishment, the powers of the supreme body and the bodies for the administration and, if necessary, for the auditing and the manner in which representation is implemented (Art. 536 PGR).

177. The authority for an establishment rests with the founder(s). The founder's rights can be assigned or otherwise transferred and inherited, giving the current holder of the rights considerable power over the establishment. The holders of founder's rights determine the articles of association and have rights to revise, alter or amend them. The articles of association govern the operation of the establishment, including the scope of managerial

authority, appointment of directors, use of profits and the rights of beneficiaries. The articles must determine (Art. 545 PGR) who shall benefit from the establishment and its possible net profit (beneficiaries) and the manner in which this is determined.

178. As long as no third parties have been appointed as beneficiaries, it must be presumed that the bearer of the founder's rights is the beneficiary (Art. 545 PGR). Pursuant to Article 540 of the PGR, establishments can issue shares to the founders if the articles of association provide for this.

Ownership and identity information required to be provided to government authorities

179. Establishments acquire legal personality upon entry in the Public Register. The application must include a certified copy of the articles and a formation deed, if that is not already included in the articles of association, the amount of Anstalt funds and a list of the members of the board of directors (giving the name and place of residence or name of the firm and registered office of the members).

180. The founder can at any time amend the articles and in particular, the objects, changing the governing bodies and other similar amendments; and instead of or in addition to the founder, the articles may empower other persons, legal entities, firms or authorities to amend the articles (Art. 549 PGR).

181. The bearers of founder's rights form the establishment's supreme body (Art. 543(1) PGR). The founders or bearers of founder's rights or the supreme body, as the case may be and provided in the articles, may make the changes in the founding deed. General provisions of the PGR applicable to all legal entities provide that every amendment to the articles, every change in the appointments to the bodies which are required to be stated at the time of registration and dissolution, must be reported to the Commercial Register (Art. 120). The same procedure is required to be followed by the persons entitled to sign for amendments to the articles as for the original articles, if those are changed. Liechtenstein has clarified that the resolution of the supreme body providing for the amendments to the articles as well as the information on the persons who have been vested founders rights is required to be provided to the registration authority.

182. In practice, establishments compliance with the obligation to register with the Commercial Register is supervised by the Office of Justice by the same measures as in case of other entities required to register and file information with the Register. Establishments come into existence only upon being entered into the Register. The Office of Justice performs ongoing monitoring to identify entries which are no longer in accordance with the facts based on the information already contained in the Commercial Register

and third party reporting. As in case of other entities required to register it is rare that the information required to be entered in the register is not updated as legal entities have a vested interest that register entries are up to date, in particular because registration in the Commercial Register has legally constitutive effect and changes in the registered information must be reported without unreasonable delay (see further sections A.1.1 and A.1.6).

Information available with service providers

183. The provisions of AML law applies in the same way as for other legal persons (e.g. see the section on foundations, previously). Accordingly, the same supervisory and enforcement measures are carried by the FMA to ensure obliged persons' compliance. As noted above supervision of service providers' compliance by licensed auditors nominated by the audited service providers creates risk of lack of independence and may have negative impact on effective implementation of Liechtenstein's law. It is therefore recommended that Liechtenstein monitors supervision of service providers' compliance.

Conclusion

184. The articles of association contain information on the bodies for the administration of the establishment. The formation deed is signed by the founders. Regarding beneficiaries, the articles of association must detail the beneficiaries of the establishment, though the bearer of the founder's rights is deemed to be the beneficiary if no other entitled beneficiaries are appointed. The supreme body or the board of directors must have this information on the establishment and updated information on the bodies of the administration of the establishment must be provided to the public register. AML laws also provide for identification of the owners of the establishment and some beneficiaries.

185. As in case of other entities or legal arrangements the source of ownership information is the service provider, i.e. trustee acting as a member of the director's board or 180a Director. Liechtenstein received 20 requests related to ownership information of establishments over the reviewed period. There was no case where the requested information was not available. Accordingly no issue regarding availability of ownership information in respect of establishments was indicated by peers.

Trust enterprise (treuunternehmen)

186. Provisions relating to trust enterprises, also known as business trusts, were incorporated in Article 932a of the PGR in 1928 under the title "Trust

Enterprise Act". Trust enterprises can be set up purely for holding assets or for conducting commercial trading activities. Liechtenstein had 1 396 trust enterprises on 31 December 2014.

187. A trust enterprise's statutes may provide for the trust enterprise to have legal personality. In absence of such a provision, a trust enterprise is presumed to have no legal personality. Therefore, the legal personality is derived through the articles of the enterprise.

188. A trust enterprise comes into existence only upon entry in the Public Register. All trust enterprises must register and a copy of the trust articles is to be filed with the application (Art. 932a(15) PGR). Alternatively, a certified extract of the articles containing the information that is entered in the Commercial Register may be filed. Each subsequent amendment to the facts and relationships which are registered must also be notified to the Public Register. The trust enterprise's articles of association (founding statutes) detail *inter alia* the number and form of appointment of the trustees as well as a statement concerning the future appointment of trustees. The trust enterprise's articles contain detailed regulation of the beneficial interest. But, the articles may also provide that further rulings may be reserved for an internal regulation (i.e. by-article).

189. The entry in the Commercial Register for a trust enterprise contains information on, amongst other things, the names, professions and places of residence, or the company names and domiciles, of the trustees of the trust enterprise.

190. Information on the settlor is contained in the articles. The articles of association of a trust enterprise are not required to contain information on the beneficiaries. Information on the settlors and beneficiaries may however be available in the by-laws, which are maintained by the trust enterprise.

191. In practice, trust enterprises compliance with the obligation to register with the Commercial Register is supervised by the Office of Justice by the same measures as in case of other entities required to register and file information with the Register. Trust enterprises come into existence only upon being entered into the Register. The Office of Justice performs ongoing monitoring to identify entries which are no longer in accordance with the facts based on the information already contained in the Commercial Register and third party reporting. As in case of other entities required to register it is rarely found that the information required to be entered in the register is not updated. In addition it is noted that legal entities have a vested interest that register entries are up to date, in particular because registration in the Commercial Register has legally constitutive effect and changes in the registered information must be reported without unreasonable delay (see further sections A.1.1 and A.1.6).

192. Article 932a(102) of the PGR contains provisions dealing with the register of beneficiaries. Trust enterprises engaged in the conduct of business, particularly in the case of family trust enterprises must maintain an up-to-date register of the specifically designated entitled beneficiaries. The register must contain information on the holders of any beneficial interest. However, the obligation to maintain the register does not arise if the designation of the beneficiaries is left to the unqualified discretion of the trustees, other offices or third parties or a trust enterprise with a non-profit making object with undesignated recipients of beneficial interest is not otherwise present. Nevertheless, under AML Laws, the trustee is obliged to keep appropriate due diligence files. Article 932a(119) deals with the provisions relating to tracing beneficiaries who are unknown or uncertain according to their residence. These provisions provide for tracing beneficiaries, who are adequately defined in the articles or by-laws, but the trustee does not know the name or address of the persons.

193. In practice, the register of beneficiaries shall be available for inspection by beneficiaries at the premises of the register keeper, i.e. director of the trust enterprise or at the Office of Justice if the register is deposited there for examination. Only persons entered in the register are entitled to be considered holders of the beneficial interest in the enterprise (Art. 932a § 102 PGR).

Tax laws

194. Trust enterprises with legal personality are treated like companies for tax purposes. Trust enterprises engaged in economic activities are subject to a flat tax of 12.5% and are required to file annual returns. Such tax returns must contain information on the beneficial owners taxable in Liechtenstein (Art. 41 Tax Act of 21 December 2010). However, if the trust enterprise is exclusively engaged in private wealth administration and not in any other economic activity as defined in Article 64 of the Tax Act, it is subject to a minimum tax of CHF 1 200 (EUR 1 160) and does not file annual tax returns, provided it has the necessary approval by the tax administration to be granted a PAS status. Trust enterprises without legal personality are subject to tax obligations similar to trusts. In practice, trust enterprises compliance with tax obligations is supervised by the Fiscal Authority in the same way as in case of other taxpayers ensuring that information required to be filed with the tax authority is available (see further section A.1.6).

Information available with service providers

195. A trust enterprise with legal personality is subject to provisions of Article 180a of the PGR. Only licensed trustees are allowed to establish trusteeships for third parties and assume trusteeships on a professional basis

(Art. 7 Act on Trustees). As professional trustees are subject to the obligations under the DDA, they are required to identify the founder and the beneficiaries with an interest of at least 25% in the trust enterprise. Financial institutions through which the trust enterprise conducts business are also obliged to identify the founders, trustees and protectors of trust enterprises. The provisions of 180a do not apply to trust enterprises without legal personality but such enterprises will be required to have a professional trustee which is subject to the obligations of the DDA.

196. In practice, due to the obligation set out in Art. 180a PGR and DDA all trust enterprises are required to have at least one director who is a licensed trustee or a person specifically authorised under the Act on the Supervision of persons under Article 180a PGR. Compliance of trust enterprises' 180a Directors or trustees is supervised by the FMA in the same way as in case of other obliged persons. Every 180a director or auditor is inspected every three years. The two tier system of inspections by the FMA and by the licensed auditors should ensure obliged persons' compliance with customer due diligence measures and record-keeping requirements. However possible lack of independence by the licensed auditors nominated by the audited trust enterprises may pose risks to objectivity of the auditor's assessment especially considering remedial actions and application of sanctions by the FMA which are linked to conclusions of the audit report (see further section A.1.1 and A.1.6).

Conclusion

197. The articles of association of a trust enterprise contain information on its settlor(s) and trustee(s). Trust enterprises engaged in commercial activities must keep registers of beneficiaries. This obligation does not apply to the many trust enterprises which are not engaged in commercial activities e.g. those simply holding assets. Provisions of 180a Director do not apply to trust enterprises without legal personality.[33] AML laws also provide for identification of the ownership and some beneficiaries of trust enterprises.

198. In practice ownership information related to trust enterprises is obtained from the service provider covered under AML obligations, i.e. trustee acting as a member of the director's board or 180a Director. Liechtenstein received eight requests related to ownership information of trust enterprises over the period under review. There was no case where the requested information was not available. Accordingly no peer expressed concern about availability of such ownership information in Liechtenstein.

33. Trust enterprises can be without legal personality, if statutes do not provide otherwise. This is also recognised in Article 44 of the Tax Act.

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

199. If a person, company or any other entity obliged to register in the Commercial Register does not meet that obligation, the Office of Justice will ask the person concerned by written order under reference to regulations and threat of a penalty to apply for registration within 14 days (Art. 967 PGR). If no application is filed within the stipulated time, the entry will be made ex-officio. An administrative fine is payable in person by the founders, representatives of the legal entities, business owners or shareholders who are required to register or who have other obligations to provided notifications to the Registry. The amount of the fine is up to CHF 5 000 (EUR 4 830). The fine can be imposed repeatedly until the application has been filed or it is proven that there is no obligation for application (Art. 977 and §65Abs.3 SchlT). The violations, if any, by the private foundations with regard to notification obligations attract penalties under §66cof up to CHF 50 000 or imprisonment of six months. In practice, the registration authority issued about two written orders per year over the reviewed period to remedy deficiencies in filing obligations with the Registry. In all cases the deficiency was remedied upon issuance of the order and therefore no fines were applied.

200. Ownership information on companies is maintained in the register of shareholders kept by all types of companies. Compliance with the duty to maintain a register of shareholders (including register of bearer shares) must be examined as a part of the annual audit or review, which is mandatory by law and it must be confirmed in the audit report by the person performing the audit or review. The audit reports are required to be annexed to the annual financial statements which are filed with the Commercial Register. In case of any deficiencies, the person performing the review must immediately submit a report to the Office of Justice who must request the company to remedy the deficiencies and fix a deadline for it. The Office of Justice must report to the Court of Justice, if the deficiencies are not remedied and fine up to CHF 10 000 (EUR 9 700) can be imposed repeatedly (Art. 326 and 329). The share registers must be kept at the company's seat in Liechtenstein and provisions of Article 1059 concerning duty to keep and retain business records apply. National courts and public authorities, within their area of competence may view the share register and produce copies of the share register (Art. 329b).

201. Since coming into effect of the new provisions in January 2014 the person conducting the audit or the review transmitted a report to the Office of Justice with giving notification of discovering deficits in approximately 10 cases. In all cases deficits were remedied after setting a deadline by the Office of Justice. As the new provisions are not sufficiently tested in practice Liechtenstein is recommended to monitor their implementation to ensure

that effective sanctions are applied in all cases where register of shareholders (including register of bearer shares) is not kept in accordance with Liechtenstein's law.

202. Chapter V of Tax Act deals with penalty provisions. Monetary penalties ranging from CHF 1 000 to CHF 10 000 (EUR 970 to 9 700) are prescribed under Article 135 for violation of procedural duties, where the taxpayer wilfully or negligently fails to comply with or incorrectly complies with an obligations pursuant to the Tax Act or Ordinance, such as filing a correct tax return. In practice, penalties under Article 135 were applied in 1 097 cases in 2011, 1 153 cases in 2012 and in 1 116 cases in 2013. The total amount of fines applied was CHF 424 700 (EUR 410 400) in 2011, CHF 339 900 (EUR 328 420) in 2012 and CHF 566 200 (EUR 547 080) in 2013. Tax evasion is a civil offence in Liechtenstein punishable with a fine equal to evaded tax, which can be reduced by up to two thirds, depending on the circumstances or in case of a major fault may be increased up to three times. In 2011 the Fiscal Authority identified one case of tax evasion and the amount of applied fine was CHF 30 900 (EUR 29 860). There were no cases in 2012 and 2013 mainly due to tax amnesty introduced in 2011. In 2014 there were three cases of tax evasion with a total amount of applied fine CHF 414 196 (EUR 400 210).

203. Article 30 of the DDA prescribes punishment in the form of imprisonment of up to six months or a monetary penalty of up to CHF 360 (EUR 348) daily to be imposed by the Court of Justice on persons who intentionally do not fulfil the requirements of the act. Defaults inviting the fine include not meeting CDD or record keeping obligations. In 2012 the fine was applied in three cases, one in respect of banks and in two cases in respect of trustees and trust companies. The total amount of fine was CHF 42 500 (EUR 41 060). In 2013 the fine was applied in three cases, one in respect of life insurance company and two in respect of trustees and trust companies. The total applied fine was CHF 25 500 (EUR 24 640). In 2014 the FMA filed 14 criminal complaints under Article 30 of the DDA. Out of these eight were made in respect of trustees and trust companies and one in respect of a company director under s. 180a PGR. In addition fines were applied in two cases in respect of trustees and company directors under s. 180a PGR. The total applied fine was CHF 6 000 (EUR 5 800). The FMA has also taken a number of remedial actions for each category of financial institutions and DNFBPs. The FMA identified in total 583 shortcomings in 2012, 431 in 2013 and 455 in 2014. The identified shortcomings related mostly to weaknesses in establishing a comprehensive and meaningful business and risk profile, transaction monitoring and organisational matters.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Information regarding the ownership of foreign companies that are resident for tax purposes in Liechtenstein may, under certain circumstances, not be available.	Liechtenstein should ensure that identity information on the owners of foreign companies that are resident for tax purposes in Liechtenstein is available to its competent authority.
Information on beneficiaries with less than a 25% interest in trusts and trust enterprises is not required to be maintained.	Liechtenstein should ensure that information is maintained on all beneficiaries and settlors of trusts and trust enterprises.

Phase 2 rating	
Largely compliant.	
Factors underlying recommendations	**Recommendations**
Liechtenstein recently introduced new rules, namely rules providing for identification of holders of bearer shares and provisions on oversight and enforcement of obligations to maintain registers of shareholders (including register of bearer shares), which should improve availability of ownership information in Liechtenstein. However these rules are not yet sufficiently tested in practice.	Liechtenstein should monitor implementation of the newly introduced rules and take measures to address any identified deficiencies.

A.2. Accounting records

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

General requirements (ToR A.2.1)

204. Requirements to keep accounting records are prescribed in the PGR and also in the Tax Act. All legal entities obliged to be registered in the Commercial Register and which operate according to commercial principles

must undertake proper accounting (Art. 1045 PGR). Additionally, all joint stock companies (AG), limited partnerships with share capital (KG), companies with limited liability (GmbH), European companies, unlimited partnerships (Kollektivgesellschaften) and limited partnerships (Kommanditgesellschaften) which have companies as limited partners are obliged to keep proper accounting records, even if they do not undertake commercial activities. Pursuant to an amendment to the PGR in 2012, foundations, establishments and trust enterprises as well as trusts not engaged in commercial activities now have to keep appropriate accounting records and retain necessary documents (as detailed below).

205. Neither the activities of investment and management of assets nor the holding of shares or other rights is considered commercial activity (Art. 107 PGR). Liechtenstein's authorities have advised that as at December 2009, 4 979 out of a total of 63 553 entities were engaged in commercial activities and subject to record keeping obligations of Article 1045 of the PGR. They also advised that after introduction of the Tax Act in 2010 the statistics on number of taxpayers engaged in commercial activity are not updated as this feature is not relevant anymore with abolition of tax exempt domiciliary status and amendments to the accounting rules under the PGR in 2012.

206. Article 1046 of the PGR lays down the principles for maintenance of (proper) accounting records and provides that the records must be such that a knowledgeable third person would be able to obtain an overview of the entity's transactions and its financial position within an adequate period of time. Transactions should be traceable to their origin and settlement. It is further provided that accounting entries must be complete, accurate, timely and orderly. It is necessary to create an accurate entry of all assets and liabilities at the end of each fiscal year. Further, all persons obliged to undertake proper accounting must prepare an accurate inventory of all assets and liabilities at the time of first entry in the Commercial Register and also at the end of each fiscal year (Art. 1047 PGR).

207. Articles 1048 to 1056 of the PGR contain provisions relating to financial statements. Entities required to undertake proper accounting must prepare financial statements, comprising a balance sheet, income statement and, if necessary, an appendix at the end of the fiscal year (Art. 1048). Accounts are required to be prepared in accordance with the principles of proper accounting (Art. 1050 PGR) and must give a true and fair view of the assets, liabilities, financial position and results of the company (Art. 1066).

208. The members of the administrative, management and supervisory organs of legal entities required to undertake proper accounting, as per Article 1045 of the PGR, have a collective duty to ensure that the necessary accounting documents are maintained and available at the office of the company for official checks within a reasonable time (Art. 182a).

209. Article 21(2) and 21(3) of the new Tax Ordinance[34] further specifies that legal persons which are not required to prepare full accounting records under the PGR still have to produce to the tax administration an itemisation of assets and liabilities as well as of income and expenses, provided the financial consequences of their business activity can be presented simply and clearly without proper bookkeeping. If the financial consequences of a legal person 's business activity cannot be presented simply and clearly without proper bookkeeping, the tax law requires it to keep proper accounting records in line with Article 1045 of the PGR. This provision captures all legal persons unless they received the approval to be taxed as a private asset structure (PAS[35]). A PAS only has to submit a declaration that a statement of assets exists (Art. 182b PGR, described previously). Provisions of Article 21 of the Tax Ordinance dealing with book keeping obligations do not apply to trusts and trust enterprises, which are not legal persons.

Article 1045

210. Articles 1045 to 1062a of the PGR prescribe general rules of accounting in Liechtenstein. Article 1045 concerns financial accountability and is the central obligation regarding the maintenance of accounting records. It provides that all legal entities obliged to register in the Commercial Register

34. Article 21 of the Tax Ordinance reads: “1) Legal persons which are subject to proper accounting rules under the Law on Persons and Companies shall use the annual accounts prepared in accordance with the applicable rules to determine taxable net corporate income. 2) Legal persons which are not subject to proper accounting rules under the Law on Persons and Companies and the financial consequences of whose business activity can be presented simply and clearly without proper bookkeeping shall provide itemisations of assets and liabilities as well as of income and expenses. For determining accrual results, expenses and income shall be itemised on an accrual basis. Assets and liabilities shall in principle be valued according to market value or repayment value; investment assets may also be valued at amortised cost. The selected valuation method shall also be applied in the subsequent years. 3) Legal persons which are not subject to proper accounting rules under the Law on Persons and Companies, but which do not meet the preconditions set out in paragraph 2, shall be required to keep proper books of account in order to determine taxable net corporate income. The accounting shall be in accordance with the general accounting rules (article 1045 et seqq. PGR). 4) Contributions by a foundation, special asset dedication, and foundation-like establishment to its beneficiaries shall not be deemed an expense.”.

35. The conditions for being qualified as a PAS under tax laws are provided in Article 37 of the Tax Ordinance. The ordinance provides that, on an application of the legal person, tax authority can transfer the inspection of compliance with the preconditions for granting the PAS status to a neutral auditor.

(Art 945) and which operate according to commercial principles (Art 107) must undertake proper accounting. It also provides that all joint stock companies, limited partnerships with share capital, companies with limited liability, unlimited partnerships and limited partnerships which have companies as limited partners must also undertake proper accounting, regardless of whether they undertake commercial activities. Legal entities required to keep proper accounting are subject to obligations concerning Business Books (Article 1046), requirement to prepare financial statements (Arts. 1048 to 1058) and duty of keeping and retention of business records (Art. 1059). The August 2011 report concluded that the rules of proper accounting under Liechtenstein law were in accordance with the standard.

211. Liechtenstein has enacted two amendments in Article 1045. The first amendment is made in paragraph 1 by adding the words "or name" and this now reads as, " Anyone under an obligation to register their company *or name* in the Commercial Register (Article 945) and who carries on a business run on commercial principles (Article 107) is obliged to comply with the principles of proper accounting". Therefore, the revised provisions also apply to anyone who registers a name and operates according to commercial principles and in particular may apply to associations which carry a name and not a company (Firma).

212. The second amendment adds a new paragraph 3 to Article 1045 which provides:

> "Legal entities not under an obligation to comply with the principles of proper accounting pursuant to paragraphs 1 and 2 shall, taking into consideration the principles of proper accounting, keep appropriate records and retain necessary documents, which are reasonable in the financial circumstances, through which the course of business and the development of the assets can be reconstructed; special statutory regulations shall remain reserved. Article 1059 shall apply accordingly to the keeping and retention of records and documents."

213. The new provisions are inserted to cover all legal entities not captured under the provisions of paragraphs 1 and 2 of Article 1045 i.e. those which are not obliged to undertake proper accounting. They are particularly directed to companies and establishments not carrying on commercial activities and include forms of entities that qualify for PAS status under tax law. The new principles envisage the keeping of suitable records and the preservation of bills and receipts appropriate to the entities financial circumstances from which it should be possible to see the course of business transactions and the development of assets. As entities are required to take into consideration the principles of proper accounting, they would be obliged to have regard to all of the principles stated in Arts 1046 through 1058. Liechtenstein

has clarified that, the legal clause "special statutory regulations shall remain reserved" in Article 1045(3) of the PGR is intended to make clear that any special duties to keep business documents or to produce reports stipulated by other laws/legal principles do still apply, for example Articles 4, 5 of the Disclosure Act etc. This also covers any stricter obligations that may be stipulated by the law in future.

214. It has been expressly stated that provisions of Article 1059 also apply to these entities. Article 1059 prescribes obligations to keep business books and accounting documents and business correspondence for 10 years.

Article 182a(2)

215. Paragraph 161 of the August 2011 report discussed provisions of Article 182a of the PGR. A new subsection is added to this Article to provide that members of administration must ensure that the account books (Article 1046) or records and documents (Article 552(26), Article 1045(3)) must be available at the registered office of the legal entity within a reasonable period of time. The Parliamentary session summary, which is part of the official records, explains that the term "reasonable period of time" is to be interpreted on a case by case basis depending on the time normally needed to transport the documents between the respective two places.

Article 182b

216. As mentioned in paragraph 153 of the August 2011 review report, Article 182b of the PGR requires that legal entities not operating according to commercial principles must submit a declaration to the Office of Justice that a statement of assets at the end of the preceding business year exists and that the entity has not carried out commercial business.

217. The amendment made to Article 182b(1)(a) now requires that entities must submit a declaration that "records and documents required by Article 1045(3) are available" rather than simply a "statement of assets".

218. The new provisions of Article 1045(3) read with Article 1059 create obligations for legal entities not subject to proper accounting requirements, to meet requirements of TOR A.2.1. These requirements are further strengthened by amendments in Articles 181 and 182 of the PGR.

Article 251a

219. Account keeping obligations for associations (verein) are separately prescribed in Article 251a of the PGR. Article 251a was amended so as to provide that the board of directors must keep accounts of the revenue and

expenditure and assets situation of the association pursuant to Article 1045(3). Provisions of Article 1045(1) apply to those associations that pursue commercial business and that are obliged to have statutory auditors (see paragraph 42 of the August 2011 report). Therefore, the requirement to keep accounting records by all associations regardless of carrying on commercial business or not are provided in Article 1045(1) and 251a respectively.

Trusts

220. The provisions of Article 1045(1) do not apply to trusts as these are not legal entities. Article 923 of the PGR deals with the accounting obligations of the trustee of a trust. A trustee is obliged to prepare an inventory of the assets and liabilities of the trust and this must be updated annually. These obligations are made more explicit by the amendment to Article 923(1). The amended Article reads as: "The trustee shall create a special list of assets relating to the trust property, unless this is already in place, pursuant to Article 1045(3) and shall adjust entries on an annual basis. The trustee shall ensure that the records and documents are made available at the domestic registered office within a reasonable period of time. Article 1059 shall apply to the keeping and retention of records and documents".

221. Paragraph 157 of the August 2011 report referred to the provisions of paragraph 5 to Article 923 under which a trust deed could provide a deviation from rules or relieve trustees from duties of account keeping. This paragraph is deleted by Law of 2012, therefore, any lighter requirements that may be provided in a trust deed will no longer have effect on the obligations of a trustee concerning the trustee's obligation to maintain accounting records.

222. The amended provisions of Article 923 and application of provisions of Article 1059 ensure the availability of accounting records consistent with the standard for trusts.

Trust enterprises

223. The provisions concerning accountancy in relation to trust enterprises are set out in § 34 of Article 932a of the PGR. These provisions oblige the managing trustee of a trust enterprise not engaged in commercial activities to observe the provisions of the PGR and the regulations concerning trusts in general relating to the drawing up of inventories of property and submission of accounts and keep accurate, regular, clear and appropriate accounts accompanied by receipts if necessary.

224. In respect of trust enterprises pursuing commercial objectives (business), § 34 of Article 932a of the PGR provides that the regulations of the PGR and those applicable to establishments undertaking commercial

activities apply. Further, Article 932a § 5(1).of the PGR provides that general provisions regarding collective legal entities apply to the trust enterprises with or without legal personality. Accordingly, due to application of provisions of Articles 182a(2), 923 and 1045 (1,3) of the PGR, trust enterprises would be obliged to keep accounting records.

Sanctions

225. Failure to provide accounting records is subject to fines under s. 66 of the schedule to the PGR. The Office of Justice can apply on the spot fine upon application or ex officio of CHF 1 000 (EUR 970) repeatedly every three weeks until the deficiency is remedied. The total amount of the fine should not exceed CHF 10 000 (EUR 9 700). In addition, the Court of Justice can apply fines up to CHF 10 000 for failure to maintain accounting records. The fines are imposed by the Court of Justice upon application or ex officio in extrajudicial proceedings.

Tax law requirements

226. Article 47 of the Tax Act requires determination of taxable net corporate income on the basis of the annual accounts prepared in accordance with the PGR. Further, Article 21(2) and 21(3) of the Tax Ordinance expands and further specifies the accounting requirements (see footnote 39). Legal entities which are not required to prepare full accounting records under the PGR have to produce an itemisation of assets and liabilities as well as of income and expenses, provided the financial consequences of their business activity can be presented simply and clearly without proper bookkeeping. If the financial consequences of a legal entity's business activity cannot be presented simply and clearly without proper bookkeeping, the tax law requires it to keep proper accounting records in line with Article 1045 of the PGR. This provision captures all legal entities, including foundations, establishments and trust enterprises having legal personality, unless they received the approval to be taxed as a private asset structure (PAS). Although under a PAS regime a taxpayer only has to submit a declaration that a statement of assets exists (Art. 182b PGR, described previously) under the new Art. 1045(3) of the PGR such taxpayer must keep appropriate accounting records.

227. Domestic branches of foreign companies are obliged to keep authentic business records (Art. 1062a PGR). Domestic branches are only allowed under PGR if they undertake commercial activities, so they are required to keep full accounting records. The requirements of the Tax Ordinance apply to them too.

228. Taxpayers whose exclusive purpose is to operate a commercially conducted business and whose average balance sheet total over the last three

business years did not exceed CHF 500 000 (EUR 483 240) do not pay the minimum tax and are charged at the standard rate of 12.5%. These provisions apply to all legal entities undertaking commercially conducted business.

229. The special regime of special asset dedications without legal personality (Art. 65 Tax Act) apply to all trusts and trust enterprises without legal personality, whether they carry on commercially conducted business or not. These pay minimum tax of CHF 1 200 (EUR 1 160), do not file tax returns and are not assessed. Therefore, record keeping requirements under tax law do not apply to them.

AML law requirements

230. Liechtenstein's AML requirements result in some partial obligations to maintain accounting records. Pursuant to Article 27 of the DDO, obliged entities[36] must keep due diligence files which *inter alia* must contain the documents and records concerning their clients' transactions and asset balances (Art. 27(1)(d) DDO). The files must also contain a "business profile" on each customer, showing the customer and the beneficial owner, the economic background and origin of the assets deposited, the profession and business activity of the effective depositor of the assets, and the intended use of the assets (Art. 20). This information must be kept for at least ten years (Art. 21). The requirements to maintain records for AML purposes result in maintenance of detailed transaction records but may not capture all relevant accounting records,[37] or associated underlying documentation, consistent with the *Terms of Reference*.

Other

231. When trustee for a foreign trust, Liechtenstein resident trustees will be subject to the obligations on trustees under the law governing the trust (e.g. UK law), and will thus be subject to the record-keeping requirements of the governing law.

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36. The entities obliged to conduct CDD include (Art. 3): *(i)* banks and investment firms licensed pursuant to the Banking Act; *(ii)* e-money institutions licensed pursuant to the E-Money Act; *(iii)* management companies licensed under the Law on investment undertakings; *(iv)* insurance companies licensed pursuant to the Insurance Supervision Act; *(v)* professional trustees and trust companies licensed under the Trustee Act; *(vi)* lawyers and law firms that are registered in the lawyers list and perform specified services for their clients; and *(vii)* auditors and auditing companies.

37. *(i)* all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; *(ii)* all sales and purchases and other transactions; and *(iii)* the assets and liabilities of the relevant entity or arrangement.

In practice

232. Competent authorities for the supervision of obligations to maintain accounting records in line with the legal requirements are the Fiscal Authority, the Office of Justice and the Court of Justice. All legal entities and arrangements assessed by the Fiscal Authority have to submit their financial statements. The financial statements must be prepared in accordance with the provisions of the PGR. In Liechtenstein trade balance sheet (in accordance with PGR) and tax balance sheet (based on tax law) are identical. All tax returns are audited by the Fiscal Authority to crosscheck the provided information and ensure that all documentation is provided including financial statements. If the required information is missing, the Fiscal Authority requests its submission. In majority of cases income tax returns are found accurate and complete and no action from the Fiscal Authority is needed. If an entity fails to submit tax return or provide the required information it is subject to sanctions under Article 135 of Tax Act (see further section A.1.6). Nevertheless in all cases over the reviewed period the missing accounting information was provided upon letter from the Fiscal Authority. There was also no case where financial statements were not provided despite obligation to do so.

233. The compliance rate with tax return filing obligations was 99% over the reviewed period. It is however noted that entities and arrangements previously tax exempt under domiciliary rules are required to file their income tax return including financial statements only in respect of taxable periods starting after 31 December 2013. Entities and arrangement previously tax exempt under these rules represent majority of Liechtenstein's taxpayers (about 16 000 out of 21 000 taxpayers). Compliance of these taxpayers with their record keeping obligations under the tax law therefore remains to be sufficiently tested.

234. Joint stock companies, private limited liability companies, limited partnerships and SEs are obliged to file their annual financial statements also with the Commercial Register. As in case of other filing obligations with the Commercial Register it is rare that the required information is not provided as information contained in the Register is relied upon by third parties including entity's business partners and it is subject to their reporting. Out of 5 980 entities required to file their annual financial statements with the Register about 100 (1%) needed to be reminded of their obligation each year. In all cases the missing documentation was provided and therefore no sanctions were applied.

235. In addition to filing requirements with government authorities entities and arrangements conducting business activities and joint stock companies, private limited liability companies, limited partnerships, SEs, common benefit foundations and private benefit foundations which opted

to be registered with the FSA (i.e. 15 out of 20 843 private benefit foundations) shall appoint an external auditor. The auditor must audit annual financial statements and has a responsibility to ensure compliance with the accounting and reporting standards by the audited entity or arrangement. The audit reports are required to be annexed to the accounting documentation kept by the entity or arrangement which is filed with the Commercial Register if there is requirement to financial statements with the Register. If the audit reveals deficiencies the auditor is obliged to report to the Office of Justice which carries out remedial actions and applies sanctions if necessary. According to Liechtenstein authorities there were a few cases where auditors indicated deficiencies in accounting record keeping requirements nevertheless these deficiencies were remedied upon letters from the Office of Justice and therefore no sanctions were applied.

Underlying documentation (ToR A.2.2)

236. The PGR and a related Ordinance provide for maintenance of underlying documentation related to the accounting records. The amended provisions of Articles 1045(3) and 923 explicitly provide that provisions of Article 1059 apply to entities covered by these articles. Accordingly, the provisions of Article 1059 now apply to all entities and arrangements subject to the requirements of Article 1045 and 923 of the PGR. As discussed above, Article 251a applicable to associations not carrying on commercial activities provides that the Board of Directors must keep accounts of revenue and expenditures and assets situation of the association pursuant to Article 1045(3). Accordingly, provisions of Article 1059 would also apply to associations covered by Article 251a.

237. Article 1059 sets out the duty of keeping and retention of business records. The Article requires that business books, accounting documents and business correspondence, that guarantees underlying transaction, must be maintained and preserved. The Article mentions that the detailed requirements are determined through a decree by the government. Paragraph 175 of the August 2011 report noted that Liechtenstein issued an ordinance on 19 December 2000 (LGB 1.2000 No. 271) which details the manner in which business records, business papers and accounting vouchers must be kept but does not further define exactly what types of documents this covers. Article 5 of this Ordinance concerns principles of proper maintenance and preservation of books. The provisions oblige the persons covered by the provisions of Article 1059 to keep business correspondence, vouchers, delivery documents and other supporting documents for the journal entries. Provisions of the Ordinance will now also apply to entities covered by amended law (Arts. 1045(3), 251 and 923).

238. Article 9 of the Tax Act provides that the tax authorities are authorised to place on all persons subject to Liechtenstein's tax jurisdiction the burden of proof to demonstrate the accuracy of their own tax affairs. In order to do so, legal and natural persons subject to tax in Liechtenstein must keep underlying documents related to their tax returns. The exact types of underlying documents to be kept are not specified.

239. In practice, the obligations to keep underlying accounting documentation are supervised by the Fiscal Authority as part of annual income tax assessments. Although the Fiscal Authority rarely needed to inspect premises of the obliged taxpayers, the underlying documentation was always available and provided when requested from the Fiscal Authority. Nevertheless, as stated above, majority of current taxpayers were entities and arrangements covered by the domiciliary tax exemption and therefore legally required to keep underlying documentation to substantiate their tax liabilities only for tax periods starting after 31 December 2013. Their compliance with record keeping obligations therefore remains to be sufficiently tested.

5-year retention standard (ToR A.2.3)

240. The applicability of provisions of Article 1059, which requires keeping of business books, accounting documents and business records for 10 years, to entities mentioned in Articles 1045(3), 251a and 923 ensures retention of records consistent with the standard.

241. Article 180a of the PGR obliges the members of the administration to ensure that account books, records and documents be made available at the registered office of the legal entity within a reasonable period of time. Section 66 of the schedule to the PGR has been amended to prescribe sanctions. Failure to make account books or records and documents available at the registered office of the legal entity within a reasonable period of time is punishable by the Regional Court on application or on its own motion in a non-contradictory procedure through the imposition of a spot fine of up to CHF 5 000 (EUR 4 830). In case of negligence, the spot fine is up to CHF 1 000 (EUR 970). This also applies to trustees of a trusteeship. The spot fines continue to apply until obligations are fulfilled or proof has been furnished that an obligation does not exist. In the case of a legal entity, the criminal provisions apply to the directors, agents, liquidators, or members of the administrative bodies who fail to fulfil the obligation.

242. In practice, compliance with obligation to retain accounting records and underlying documentation is supervised together with the obligation to maintain proper accounting records. During the period under review the Fiscal Authority did not come across a case where the accounting information was not kept despite legal obligation to do so.

Conclusion

243. All relevant entities and arrangements are obliged to keep accounting records and underlying documentation. Accounting records are required to be retained for a period of more than 5 years. The provisions of the new law apply to financial years beginning after 31 December 2013.

244. In practice, accounting information was in most cases obtained by the Competent Authority from representatives of the accounting entity or arrangement. Annual financial statements in respect of taxpayers filing income tax returns can be also retrieved from Fiscal Authority's tax database however entities or arrangements covered by PAS regime are not required to file their income tax returns and therefore their financial statements are not filed with the Fiscal Authority.

245. Liechtenstein received 58 requests related to accounting information over the reviewed period. Out of these eight requests related to accounting information of companies, 31 of foundations, 14 of establishments and five of trust enterprises. There was no case where the requested accounting information was not available. Accordingly no peer expressed concern about availability of accounting information in Liechtenstein. Nevertheless, obligations ensuring that all relevant entities and arrangements are required to maintain proper accounting in line with the standard apply to financial years beginning after 31 December 2013, i.e. currently to one closed financial year starting after the three year review period, and therefore remain to be sufficiently tested. Further, it is noted that filing of tax returns represents important supervisory tool however entities and arrangements previously tax exempt are required to file their tax return including financial statements for tax period only after 31 December 2013. While the information appears to be already available in practice it is nevertheless recommended that Liechtenstein monitors availability of accounting information pursuant to the newly introduced rules applicable after 31 December 2013 so that all relevant entities and especially trusts, foundations and establishments covered by PAS regime maintain accounting records including underlying documentation in line with the standard.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Largely compliant.	
Factors underlying recommendations	**Recommendations**
Obligations ensuring that all relevant entities and arrangements are required to maintain accounting information in line with the standard apply to financial years beginning after 31 December 2013 and therefore remain to be sufficiently tested.	Liechtenstein should monitor availability of accounting information pursuant to the newly introduced rules so that all relevant entities and especially trusts, foundations and anstalts covered by PAS regime maintain accounting records including underlying documentation in line with the standard.

A.3. Banking information

Banking information should be available for all account-holders.

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

246. Banks and other financial institutions are required to keep and retain accounting records and business papers, similar to other entities obliged to undertake proper accounting (Art. 1059 (1) PGR). The Banking Act does not contain specific requirements to keep and retain the transaction records of the customers.

247. Establishing and verifying the identity of the customer and the beneficial owners is a required part of CDD (Arts.6 and 7 DDA). The entities obliged to conduct CDD include (Art. 3):

- banks and investment firms licensed pursuant to the Banking Act,
- e-money institutions licensed pursuant to the E-Money Act;
- management companies licensed under the Law on investment undertakings;
- insurance companies licensed pursuant to the Insurance Supervision Act;
- professional trustees and trust companies licensed under the Trustee Act;
- lawyers and law firms that are registered in the lawyers list and perform specified services for their clients; and
- auditors and auditing companies.

248. Article 5(2) provides for the exercise of CDD in the following cases:

- establishment of a business relationship;
- where an occasional transaction amounts to CHF 15 000 (EUR 13 650) or more;
- where there are doubts about the veracity or adequacy of previously obtained data on the identity of the contracting party or the beneficial owner; and
- in cases of suspected money laundering or terrorist financing transactions.

249. Under the DDA and DDO, the directors of these entities, including directors who are not Liechtenstein nationals, have to identify and verify the customers and the beneficial owners of customers (Art. 7 DDA).

250. Compliance with the customer due diligence (CDD) requirements, including in particular the identification of the customer and its beneficial owners, have to be documented (Art. 20 DDA). For that purpose, they must keep and maintain due diligence files. Pursuant to Article 27 of the DDO the due diligence files must contain the documents and records prepared and used in order to comply with the provisions of the DDA and DDO. They must include the transaction records and asset balance data (Art. 27(1)(d) DDO). The obliged entities must keep the information and documents for at least ten years (Art. 21). Another important element of the due diligence files is the "business profile". The "business profile" has to contain information regarding the customer and the beneficial owner, the economic background and origin of the assets deposited the profession and business activity of the effective depositor of the assets as well as the intended use of the assets (Art. 20).

251. In addition, Article 8f of the Banking Act requires banks to record the orders received and the transactions made on and outside regulated markets for all financial instruments. The obligation is further specified in Regulation (EC) No. 1287/2006 of the Commission of 10 August 2006 on the implementation of Directive 2004/39/EC (see Art. 8f(3) Banking Act). Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds is also directly applicable in Liechtenstein (due to EEA membership), which requires that banks must keep records of all transfers and mandatory accompanying information.

252. Article 13(3) of the DDA prohibits keeping passbooks, accounts, or custody accounts payable to bearer only. The prohibition to issue new bearer passbooks was introduced in 2001. Banks are required under Art. 39 of the DDA which entered into force in 2004 to dissolve existing contractual relationships relating to anonymous passbooks immediately or as soon as

possible. In order to check the deposit or order a transfer the bearer of such a passbook has to be identified by the bank before performing any action with the account. According to Liechtenstein authorities banks' policy is to perform due diligence when a passbook is presented regardless of the account's balance. However as of December 2014, there have been 229 bearer passbooks left. The related assets amount to CHF 4.2 million (EUR 4.1 million), representing the very small fraction of 0.003% of the total assets held at Liechtenstein banks (approximately CHF 134 billion as of end 2014). The average amount per passbook was CHF 18 340 (EUR 17 720). This represents decrease since 2011 when 398 bearer passbooks existed with a total amount of approximately CHF 8 million (EUR 7.7 million) of deposits.

253. All banks and other financial institutions are supervised by the FMA for compliance with the DDA requirements, including customer due diligence measures and record-keeping requirements. As described previously the supervision is organised in a two-tier system. The first tier represents supervisory measures taken by the FMA and the second tier inspections carried out by auditors licensed by the FMA. The sample testing of CDD files including verification of ownership information kept by the service provider constitutes a central element of these on-site inspections. The FMA inspected 18% of banks in 2012, 25% in 2013 and 25% in 2014. In addition every financial institution is inspected every year on a full scope basis by licensed auditors. The high frequency and scope of these inspections provides for close monitoring of banks and financial institutions with respect to their compliance with customer due diligence measures and record-keeping requirements. Consequently, fine under Article 30 of the DDA was imposed in respect of banks only in one case over the last three years. The fine applied amounted to CHF 20 000 (EUR 19 320).

254. The combination of the AML/CFT laws and supervision by the FMA ensures the availability of banking information including all records pertaining to the accounts as well as to related financial and transactional information. Nevertheless limited number of bearer passbooks still exists and Liechtenstein is recommended to strengthen the implementation of its measures to ensure that information on the holders of bearer passbooks is available to its competent authority. Liechtenstein received 30 requests for banking information over the reviewed period. There was no case where the requested information was not provided because the requested information was not available with the bank. This was also confirmed by peers. Overall compliance with requirements to keep banking information ensures that such information is available in practice.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Compliant.	
Factors underlying recommendations	**Recommendations**
Although opening of bearer passbooks was prohibited in 2001, some pre-existing passbooks are still in existence and identity information on their holders is not available unless a transaction takes place.	Liechtenstein should strengthen the implementation of its measures to ensure that information on the holders of bearer passbooks is available to its competent authority.

B. Access to information

Overview

255. A variety of information may be needed in respect of the administration and enforcement of relevant tax laws and jurisdictions should have the authority to access all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities. This section of the report examines whether the Liechtenstein's legal and regulatory framework gives to the authorities access powers that cover the right types of persons and information, and whether the rights and safeguards that are in place would be compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice.

256. The Fiscal Authority (FA), Liechtenstein's competent authority for international exchange of information in tax matters, has wide-ranging powers, including compulsory powers, to obtain information from information holders. These powers are contained in Articles 10 to 16 of the Law of 30 June 2010 on International Administrative Assistance in Tax Matters (LIAATM). They allow for gathering of information from persons who hold information which is the subject of a request and allow for gathering all necessary ownership and accounting information. These powers provide the ability to obtain information held by banks and other financial institutions. In all cases banks have submitted the requested information at the request of the FA. There is no requirement that there be a domestic tax interest in the matter in order for the information gathering powers to be exercised.

257. The FA may also obtain necessary information from domestic administrative authorities, with the exception of the Financial Intelligence Unit. The FMA is also exempted from providing the information collected solely for purposes of financial market supervision.

258. In practice, most EOI requests that Liechtenstein receives ask for information that is typically not in the hands of the Liechtenstein (tax) authorities and therefore (also) not readily available to them through some

kind of database. This means that in practice, and in comparison for instance with many other jurisdictions, the Fiscal Authority in Liechtenstein has to take some additional steps in order to gather most of the requested information. For most requests (88%), the competent authority sends a registered letter to the information holder. The competent aauthority reports that it did not encounter any practical difficulties with the application of access powers employed for EOI purposes. During the review period, the Liechtenstein competent authority was able to access information to reply to EOI requests concerning ownership and identity information, accounting information and other types of information in virtually all cases.

259. The LIAATM provides for notification of the affected party when there is an international request for information concerning the party. In the context of Phase 1 it was further noted that no exceptions were provided to this notification requirement and it was recommended that Liechtenstein permit certain exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

260. However, Liechtenstein amended the LIAATM as of 1 August 2015 and it now provides for an exception to the prior notification in appropriate cases. Considering that the exceptions that have been introduced are in line with the standard, the Phase 1 recommendation made under element B.2 is removed and is now upgraded to "in place". However, considering the short period between the introduction of the exceptions, after the period under review and just before the cut-off date, the application of the exceptions could not be assessed and therefore Liechtenstein should monitor application of the exceptions to the prior notification procedure in practice.

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).

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

261. Liechtenstein enacted the Law of 30 June 2010 on International Administrative Assistance in Tax Matters (LIAATM) to implement the obligations arising out of its double taxation conventions (DTCs) and tax information exchange agreements (TIEAs). This law is applicable to all

TIEAs and DTCs, except those with the United States of America (USA) and the United Kingdom (UK), for which separate implementing laws were enacted.[38] The implementing legislation for the TIEAs with the USA and the UK are materially similar to the LIAATM, except as discussed in this report.

262. Liechtenstein's competent authority for international exchange of information in tax matters is the Fiscal Authority (FA) (Art. 4 LIAATM). Contact information for Liechtenstein's competent authority is fully identifiable in the Global Forum's secure Competent Authority database, as well as on the Fiscal Authority's public website. To inform its EOI partners about the correct contact point in Liechtenstein, the EOI Unit has sent letters to all its EOI partners providing the contact details of the FA, i.e. the mailing addresses and name of the individuals in charge of EOI.

263. The LIAATM provides that assistance is to be provided by the FA to its foreign counterparts with respect to information which is foreseeably relevant to the determination, assessment, enforcement or collection of taxes with respect to persons subject to such taxes, or the investigation or prosecution of criminal tax matters. It allows for international exchange of information held by domestic authorities or which is in the possession or control of persons who are within the territorial jurisdiction of the requested state (Art. 2). The form and content of requests is dealt with in Article 7, which provides that the request must be framed with the greatest degree of specificity possible and must specify, *inter alia*, the identity of the individual taxpayer whose tax or criminal liability is at issue. Article 9 refers to the verification of admissibility. The FA must verify whether a request meets the requirements of Article 7 or whether there are grounds for declining a request under Article 8.[39] A request constituting an impermissible attempt to obtain evidence (i.e. a fishing expedition) does not meet the requirements of Article 7.

264. The official interpretation of various provisions of the LIAATM is available in a report[40] of the Liechtenstein Government submitted to the

38. The law on mutual assistance in tax matters with the USA was enacted on 16 September 2009 and the law for implementing the TIEA and MOU with the UK was enacted on 30 June 2010.
39. A reuest may be refused if: *(i)* it is not made in conformity with this Act and, in particular, where the requirements of article 7 are not met; *(ii)* the sovereignty, security, or public policy of the Principality of Liechtenstein would be compromised; or *(iii)* the statute of limitations pertaining to the object of the request has expired pursuant to the laws of the requesting State.
40. Report and request of the Government to the Parliament of the Principality of Liechtenstein concerning the creation of a law on the implementation of the international assistance in tax matters (Administrative Assistance in Tax Matters; STeAHG), available at: http://bua.gmg.biz/BuA/?erweitert=true.

Parliament. It provides that Liechtenstein has to comply with an international request for information only if certain conditions are met, in particular only if the request includes detailed information on the identity of the taxpayer. The report does not indicate what constitutes sufficiently detailed information on the identity of the taxpayer. Protocols to the TIEAs with Andorra, Belgium and Ireland provide that "it is understood that it is not necessary to provide the name of the taxpayer in order to define its identity, if this identity can be determined from equivalent element". The protocol to the TIEA with the Netherlands contains an analogous provision. Liechtenstein's authorities have indicated that the identity of the taxpayer does not require the name of the taxpayer if his identity can be determined from other information.

265. The FA may already have the information requested by a foreign counterpart at its disposal. If not, it must obtain it from the holder of the information or from other government authorities. The scope of information which can be obtained by the FA is set out in Article 13 which indicates that, in particular, the following information may be obtained by the FA:

- information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- information regarding the ownership of legal entities, including information on all persons in an ownership chain;
- for partnerships; information regarding the identities of the members of the partnerships;
- for trusts; information on the settlors, trustees, and beneficiaries; and
- for foundations; information on the founders, members of the foundation council, and beneficiaries.

266. While the scope of the information obtainable by the FA does not refer explicitly to accounting information. Liechtenstein's officials are of the view that, the above list is not exhaustive as the provision indicates that the FA may "in particular" obtain the listed categories of information. As a result, the FA is empowered to obtain accounting information and other types of information not specifically mentioned in Article 13. In practice the competent authority did not encounter any practical difficulties with the application of access powers employed for EOI purposes. During the review period, the Liechtenstein competent authority was able to access information to reply to EOI requests concerning ownership and identity information, accounting information and other types of information in virtually all cases.

267. In practice, the main sources of information for the tax administration are:

- the tax database ("INES") – the IT system of the Fiscal Authority. It contains basic information that can be used for the identification of taxpayers and to gather information regarding their addresses, residency, TIN, etc. In practice it's also used to see whether an entity is a current taxpayer or has been liquidated. The database does not contain tax returns and tax files, they are kept as hand files.
- The taxpayer's file at the FA. It also contains basic accounting information regarding companies (balance sheet, profit and loss account etc.). When the information is in the hands of the FA, the tax inspector in charge is asked by telephone or e-mail to provide the requested information. Receipt of the information usually takes one or two days.
- Information held by other Liechtenstein governmental authorities: when the information is in the hands of another governmental authority (e.g. the Commercial Register), a representative of this authority is asked by e-mail to provide the requested information. Receipt by the EOI Unit usually takes two or three days. Liechtenstein officials report that co-operation is good and there are no problems for the FA to obtain the requested information.
- Service provider: for most requests, information would be obtained from service providers. In the majority of cases the Fiscal Authority used the form of a registered letter to the information holder (entity subject to the enquiry, related party of the taxpayer subject to the enquiry or bank – see below). The CA sends a registered letter requesting for the information to be provided within 14 days upon deliverance of the letter. In the letter attention is drawn to the consequences (coercive measures), should the information not be provided within the deadline. The deadline may be reasonably extended by the CA upon specific request and only in justified cases (mainly because of holiday absences).
- Banks in respect of banking information. Banks submit the requested information upon a request of the FA. The FA sends a registered letter to the bank requesting for the information to be provided within 14 days upon deliverance of the letter. This procedure remains the same regardless of whether the information is requested in criminal or civil tax matters.

268. As Liechtenstein officials explain, the taxpayer subject to enquiry is rarely an individual or company residing in Liechtenstein. In their experience, requests typically relate to a taxpayer that is resident in the requesting jurisdiction and that has presence in Liechtenstein through a Liechtenstein entity or has a bank account in Liechtenstein. Although most of these entities

are liable to tax in Liechtenstein, the tax returns of these entities would not contain the (beneficial) ownership information (regarding the foreign taxpayer) that is generally asked for. The Liechtenstein officials explain that this information is generally available with other sources within Liechtenstein, typically the information is with a service provider or a bank. Therefore, most EOI requests that Liechtenstein receives ask for information that is typically not in the hands of the Liechtenstein (tax) authorities and therefore (also) not readily available to them through some kind of database (see also details below in the next paragraph). This means that in practice the Fiscal Authority in Liechtenstein has to take some additional steps in order to gather most of the requested information.

269. Over the period under review, the requested information was:

- already at the disposal of the EOI Unit in 0% of requests[41.];
- already at the disposal of the tax administration in 10% of requests;
- already at the disposal of another governmental authority in 2% of requests;
- in possession or control of a third party in 66% of requests;[42.]
- in possession of a bank in 22% of requests.

270. As noted, the FA is empowered to "demand" that the holder of the information provide it to the FA within 14 days (this time may be extended) (Art. 10(1) LIAATM). The holder of the information is defined as any person with the information at his/her disposal. For most requests (88%), the CA used the form of a registered letter to the information holder (in this respect the information holder could be the entity subject to the enquiry, related party of the taxpayer subject to the enquiry or a bank). In addition to this power to demand information from the holder, under Articles 14-16 of the LIAATM, the FA has a range of coercive measures at its disposal to ensure the provision of information needed in order to respond to an international request for information (see section B.1.4 of this report).

Declining a request

271. Article 8 refers to grounds for refusing a request. During Phase 1 it was noted that the grounds are consistent with the international standard, except possibly the possibility that the FA can refuse to provide information when the request is based on information obtained by means of an act that

41. A majority of the requests asks for more than one type of information.
42. As Liechtenstein explains the taxpayer subject to enquiry is rarely an individual or company residing in Liechtenstein.

is judicially punishable in Liechtenstein (Art. 8(2) LIAATM). This ground for refusal of information is not covered in the implementing legislation for giving effect to the TIEA with the USA. The commentary to the LIAATM states that any request based on stolen data (data theft being a criminal act in Liechtenstein) would be against public policy would not be responded to. It was further noted that it remained unclear whether all of Liechtenstein's EOI partners were aware of this restriction, and it is unclear how Liechtenstein would determine that a request was based solely on stolen data. During the period under review this issue has come up in a number of cases and in relation to at least two EOI partners. Although Liechtenstein can use its access powers to obtain the information, it cannot be exchanged if the request is based on information obtained through an act that is judicially punishable in Liechtenstein, regardless how the information was obtained by the requesting jurisdiction. This issue is further discussed under element C.4.

272. In this respect the combined Phase 1 report noted that, to the extent that Article 8(2) of the LIAATM may go beyond the concept of "ordre public", it may create an additional threshold which is not consistent with the standard. As this involves Liechtenstein interpretation of its treaties this will be elaborated further below in the context of element C.4.

Co-operation with other authorities

273. Article 11 of the LIAATM deals with co-operation with domestic government authorities. Domestic authorities, with the exception of the Financial Intelligence Unit (FIU), are required to provide the FA with all information necessary for execution of the Act. The Financial Market Authority (FMA) is also exempted from providing the FA with information that has been collected solely for the purpose of financial market supervision.

274. With respect to the Office of Justice, Article 955a of the PGR allows disclosure of information to domestic criminal prosecution authorities, the FIU and the FMA. Although Articles 91a(2) and 100a(2) of the Ordinance[43]

43. Ordinance No.66/2003 of 18 February 2003, in its current version (LR 216.012). The relevant portion of the ordinance reads:

Foundations:

Art. 91a (Information to third parties)

1) Not any information shall be given to third parties, with the exception of the existence of a non registered foundation. The disclosure of the legal representative or the person authorised to accept service to prosecution offices, the FIU and the FMA.

2) To perform its tasks, the Office of Land and Public Registration is entitled to electronically capture and manage the announced information on not registered

on the Commercial Register require the Office of Justice to provide information on the deposited foundations and deposited trusts to the Liechtenstein tax authorities, sharing of information in respect of other entities is not explicitly provided. However, Liechtenstein has confirmed that under the LIAATM the Office of Justice has to provide all relevant information to the tax administration. This is corroborated by the Commentary on Article 11 of the LIAATM. Although, access to information held by the FIU and the FMA is important when such information is not available with any other authority or person and is the subject of a request from foreign tax authorities, in practice the FIU would not hold information which is not available and accessible from other sources in Liechtenstein.

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

275. The LIAATM was specially enacted to implement the obligations arising out of Liechtenstein's DTCs and TIEAs. It specifically grants the FA the role (Art. 4) and powers (Art. 13) to obtain information and provide it to international counterparts. Before obtaining the information, the FA verifies whether the request meets the requirements of Article 7 or whether there are grounds for declining a request as mentioned in Article 8. The FA has power to obtain information from any holder of information irrespective of whether Liechtenstein has a domestic tax interest in the information.

276. With respect to the period under review the FA reports that it did not encounter any practical difficulties with the application of access powers employed for EOI purposes. As noted, for most requests (88%), the CA obtained the information from the information holder in Liechtenstein, as the

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foundations in accordance with paragraph 1. A transfer of this information and of any deposited documents to other authorities is not permitted; except with respect to the disclosure to the Liechtenstein Tax Administration.

Trusts:

Art. 100a (Information to third parties)

1) Not any information shall be given to third parties, with the exception of the existence of a non registered trust. The disclosure of the legal representative or the person authorised to accept service to prosecution offices, the FIU and the FMA.
2) To perform its tasks, the Office of Land and Public Registration is entitled to electronically capture and manage the announced information on not registered trusts in accordance with paragraph 1. A transfer of this information and of any deposited documents to other authorities is not permitted; except with respect to the disclosure to the Liechtenstein Tax Administration.

taxpayer subject to the enquiry generally is not a Liechtenstein resident. The absence of peer comment to the contrary supports the statement that no issue regarding domestic tax interest arose in practice.

Enforcement provisions to compel production and access to information (ToR B.1.4)

277. Articles 14 to 16 of the LIAATM establish the compulsory measures which can be used for obtaining information. If the holder does not provide information requested of him under Article 10 within the stipulated time, the FA can resort to coercive measures in the nature of searches of homes and persons (Art. 14(1)). Application of coercive measures occurs by way of a decree approved by a ruling from a judge of the Administrative Court.

278. The coercive measures, outlined in Article 15 of the LIAATM, consist of: searches of homes and persons (Art. 92 Criminal Procedure Code); seizure (Arts.96-98); and coercive and contempt measures against witnesses (Arts. 113-114). These coercive measures are executed by the FA and it may request the assistance of the National Police in this regard (Art. 16).

279. The coercive measures in the form of search and seizure are strong in nature. If a request is not complied with, the next step is search, seizure or measures against witnesses. There is no option of monetary penalties or other means of ensuring compliance. However, in practice a record keeper (information holder) is demanded a second time to provide the requested information, usually within one week. Attention is then drawn to the consequences (coercive measures), in case the information is not provided within that deadline. If the information is not provided after the renewed formal (registered) request, the CA would immediately decree the appropriate coercive measure, such as the search of homes and persons, the seizure of material, or coercive and contempt measures against witnesses. Even when a third party would hold information that he or she is not legally required to be kept, that information would have to be handed out to the CA as well. A refusal will lead to coercive measures. Liechtenstein reports that the CA had to seek coercive measure only once during the review period.

280. In that specific case of May 2012, Liechtenstein explains that the EOI partner asked for the names of the shareholders of a certain Liechtenstein company. The information holder declared that a Liechtenstein entity was holding the shares and that the beneficiaries of that entity were neither citizens nor residents of the requesting State. The CA wanted to inspect documents as a proof of this statement but the holder of the information refused this. In his ruling, the judge of Administrative Court denied his approval to the CA's request for searching the company's premises, because the request at hand only asked for the names of the shareholders and not for the beneficial

owners. Liechtenstein notes that the CA's power to access the original information was not in question. In this respect Liechtenstein explains that, had the partner asked for information on the beneficial owners, the court would have had to decide differently as there are no restrictions for the CA to obtain information on beneficiaries. In this context Liechtenstein reports that such a review has not been refused (again) since. Furthermore, Liechtenstein explains that appeals (if any) can be expected at the end of the process when all relevant requested information is gathered, upon issuing the final decree. This is also facilitated by the fact that a (positive) ruling for coercive measures can only be appealed simultaneously with the final decree (art. 27(b)(2) LIAATM). These findings and the absence of any other cases where the CA had to seek coercive measures support the conclusion that the system of coercive measures in Liechtenstein in practice is effective for exchange of information purposes.

281. Liechtenstein's Criminal Code prescribes various sanctions applicable where someone tampers, alters, damages or destroys the requested information. These are applicable where someone does not comply with the coercive powers exercised by the FA as the LIAATM specifically cross-references the Criminal Code when outlining the FA's coercive powers (Arts.15 and 28). In particular, s. 223 (forgery of documents), s. 229 (suppression of documents), s. 293 (forgery of evidence) and s. 295 (suppression of evidence) carry imprisonment of up to one year.

282. Liechtenstein reports that in practice, there has been no case where a record keeper disputed the obligation to keep certain information, despite his obligation to do so. They further note that such a case would have to be reported to the Financial Market Authority (FMA) or the Office of Justice. Moreover, there has been no case where a person required to be in possession of the information asserted that he could not deliver it because it was located outside Liechtenstein. Overall, Liechtenstein indicates that practical difficulties in obtaining information by the CA from information holders outside the Fiscal Authority are rare, as described above. Systematic delays in obtaining the information have not been detected.

283. Liechtenstein explains that in practice, if the information holder would not agree, the information holder would provide the requested information and he would make an objection. Usually this will be dealt with in the course of the final decree, as the holder of the information and also any affected party have a right to appeal this final decree by means of a complaint made to the Administrative Court within 14 days of the final decree (Art. 26 LIAATM). The FA can send information to the requesting authority only after the appeal has been decided.

Secrecy provisions *(ToR B.1.5)*

284. Liechtenstein has a number of secrecy provisions in various pieces of legislation, primarily; the Tax Act, laws governing banking institutions, the DDA, the Law Governing Legal Assistance in Criminal Matters 2000 and the Banking Law 2001.

285. Members of the boards of banks and their employees and other persons working for banks are obliged to maintain confidentiality of facts that have been entrusted to them on the basis of business relations with customers or made available to them in connection with a customer relationship. This obligation also applies to members of the boards of investment firms and their employees and also to firms for such professionals (Art. 14 Banking Act). The obligations to maintain secrecy are not limited in time. Violations of secrecy provisions attract punishment in the form of imprisonment for up to one year or a daily fine of up to CHF 360 (EUR 350) (Art. 63).

286. Similar secrecy obligations are set out in laws governing the financial sector: Article 21 of the Asset Management Act; Articles 15 and 111 of the Investment Undertaking Act; Articles 44 and 64 of the Insurance Supervision Act; and, Articles 21 and 25 of Pension Funds Act. With regard to professionals, confidentiality provisions are also contained in the governing laws for each profession.

287. These secrecy provisions can be overridden in stated circumstances specified in the relevant legislation. For example, in the Banking Act, exceptions to the secrecy provisions apply with regard to testimony, information to be presented in criminal courts and information requested by supervisory bodies. Pursuant to Article 11 of the Trustees Act, trustees are obliged to secrecy on the matters entrusted to them and on the facts which they have learned in the course of their professional capacity and whose confidentiality is in the best interests of their client. They have the right to such secrecy subject to the applicable rules of procedure in court proceedings and other proceedings before government authorities.

288. For the purpose of international administrative assistance in tax matters, Article 12 of the LIAATM, which deals with confidentiality, provides that:

a. Legal provisions concerning professional or business secrecy shall not prevent the information from being obtained, except for the cases enumerated in paragraphs 2 and 3.

b. A lawyer subject to legal privilege is not required to divulge to the Fiscal Authority information that has been entrusted to him in his capacity as a lawyer for the purpose of legal advice or for the purpose of use in existing or contemplated legal proceedings. The lawyer must disclose any other information to the Fiscal Authority.

c. The holder of information is not required to disclose trade, business, industrial, commercial, or professional secrets or trade processes; but information shall not be deemed worthy of protection solely because it is in the possession of banks, other financial institutions, or persons acting as representatives or in a fiduciary capacity.

289. Liechtenstein advises that these specific provisions override the confidentiality provisions in other laws, including the Banking Act. However, there seems to be a conflict between these provisions and what is provided in the 1992 Banking Act. That act notes that bank secrecy (contained in Art. 14) can only be overridden for specific purposes.

1. The members of the governing bodies of banks and their employees and other persons working for such banks are obliged to maintain confidentiality of facts that have been entrusted to them on the basis of business relations with customers or made available. The secrecy is permanent.
2. This is subject to the statutory provisions relating to the testimony or information to be in the criminal courts and supervisory bodies and the provisions on co-operation with other supervisory authorities.
3. The provisions of paragraphs 1 and 2 apply to the members of the institutions of investment firms and their employees, and by analogy to other firms for such professionals.

290. The Banking Act permits disclosure of information needed for the courts or supervisory authorities. As "supervisory authorities" is not defined in the Banking Act, it is not clear whether the FA would fall within the scope of this override. Liechtenstein's authorities have clarified that due to the applicability of the *lex posterior* and *lex specialis rules* the LIAATM provisions have proper effect as they outrank the earlier Banking Act. Liechtenstein has provided copies of some decisions[44] explaining these principles. Moreover, Liechtenstein has confirmed that it has used these powers to obtain and exchange bank information. That said, it is recommended that Liechtenstein consider ways to make it clearer that bank secrecy can in fact be overridden when the FA needs information for the purposes of international exchange of information in tax matters. Although since the 2011 Phase 1 report there has been no change in the legal framework in this respect, it should be noted that in practice banking information was provided in all cases, as is confirmed by peer input.

291. Article 15 of the Lawyers Act states "Lawyers are obliged to secrecy on the matters entrusted to them and on the facts which they have learned in

44. These decisions are in German and the translation is not provided.

the course of their professional capacity and whose confidentiality is in the best interests of their client. They shall have the right to such secrecy subject to the applicable rules of procedure in court proceedings and other proceedings before Government authorities."

292. In terms of forms of professional secrecy, Article 12 of the LIAATM specifically provides that the legal provisions concerning professional or business secrecy shall not prevent the information from being obtained. Article 12(2) provides that a lawyer is not required to provide information that has been entrusted to him in his capacity as a lawyer for the purpose of legal advice or for the purpose of use in existing or contemplated legal proceedings. As the secrecy provisions under the Lawyers Act are overridden by the LIAATM, except in limited circumstances which are in line with the international standard, these provisions do not create any impediment in the matter of exchange of information.

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

294. Regarding banking information, it can be noted that banks submit the requested information upon a request of the Competent Authority, and, as noted above, there is no indication that banking information could not be obtained.

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

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

B.2. Notification requirements and rights and safeguards

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

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

Notification

296. After verification that the request is proper, the FA must notify the holder of the information "about receipt of the request and the information requested therein" (Art. 10(1)(a) LIAATM). This notification to the holder of the information is to occur regardless of whether the FA already has the information at its disposal (Art. 10(1)(b)).

297. In addition, the FA is required to mandate the holder of the information to notify any affected persons residing or domiciled abroad about the receipt of the request and the information requested (Art. 10(1)(c)). These affected persons have a right to participate in the domestic procedure. In the context of Phase 1 it was noted that no exceptions to these notification procedures were provided in the LIAATM which may not be consistent with the terms of some of Liechtenstein's TIEAs which ensure that the rights and safeguards secured to persons by the laws or administrative practices of the requested Party remain applicable to the extent they do not unduly prevent or delay effective exchange of information. However, it was also noted that if there are exigent circumstances such as a danger of a delay in obtaining the information, the LIAATM in Article 14(5) allows the FA to order coercive measures to obtain the information without prior demand of information from the information holder under Art.(10)(1)(b). Nevertheless, in this respect it was concluded that the ordering of coercive measures does not relieve the FA of the obligation to notify the holder of information and to mandate the latter to notify the affected person as required under Article 10(1)(a) of the LIAATM. The holder of the information is in turn mandated to notify the affected person (Art. 10(1)(c)).

298. Based on these findings the phase 1 report noted that there is no exception to the requirement that the person concerned be given prior notification before the information is exchanged with an EOI partner. Therefore the 2011 Phase 1 Report recommended that certain exceptions from prior notification be permitted (e.g. in cases in which the information requested is of a very urgent nature or the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction). Liechtenstein introduced amendments to the LIAATM that entered into force on 1 August 2015. These amendments introduced an exception to the prior notification process (articles 28a – 28m LIAATM). This "exceptional

procedure with subsequent notification of the affected persons" is described in more detail further below. However, it can be noted that this rule came into force only very recently in August 2015 and it could therefore not be tested in practice. Liechtenstein is therefore recommended to monitor the application of the exceptions to the prior notification procedure in practice.

299. During the period under review no exceptions to prior notification existed and therefore the competent authority sent a notification letter in all cases to the information holder, who was charged to notify any affected person residing abroad. This letter contains the legal basis for the request, the type of taxes and the tax years covered, the identity of the person subject to the request, the description of the requested information and a summary of the relevant background. Liechtenstein further states that, in the situation where the request contains attachments with supporting documentation (e.g. copies of bank accounts), this information is referred to but not disclosed. It can be noted that, to the extent that disclosure takes place to third parties or taxpayers of details that are not necessary for gathering the requested information, this may not be in line with the standard. This issue is further elaborated under section C.3.

300. Liechtenstein further reports that exceptions to notifications have been requested in five cases during the period under review. In one of these cases the EOI partner withdrew the request because they didn't want the taxpayer and/or information holder to be notified and in the four remaining cases the EOI partner proceeded with the request despite the fact that the person concerned would be notified about the request.

Exceptions to prior notification

301. The amendments to the LIAATM that entered into force on 1 August 2015 introduced an exception to the prior notification process (articles 28a – 28m LIAATM). These provisions provide for a temporary ban (12 or 24 months) on the holder of the information to notify the taxpayer or any other persons involved. If the conditions for the exception are met, the prior notification process will be basically transformed into a post exchange notification procedure, in combination with an anti-tipping off provision that applies to the information holder (the service provider).

302. The exception is to be made if the competent foreign authority

a. asks the Fiscal Authority not to disclose facts or procedures associated with the request to persons concerned by the request; and

b. credibly demonstrates that notification of any persons concerned would thwart the chances of success of the foreign investigation (Article 28a, para 1 LIAATM). [45.]

303. As a first step the Fiscal Authority has to examine whether the request is admissible and the criteria for making an exception with subsequent notification in the specific case have been met (Art. 28a, para. 2 LIAATM). Liechtenstein clarifies that the wording "credibly demonstrates" means that it is founded on reasonable grounds. As Liechtenstein further explains, in practice it means that the requesting competent authority just needs to demonstrate that the success of the investigation would be undermined. Further to this, Liechtenstein also confirms that the exception includes cases in which the information requested is of a very urgent nature or the notification is likely to thwart the chance of the success of the investigation conducted by the requesting jurisdiction.

304. If the criteria for making an exception have not been met, the Fiscal Authority will inform the foreign competent authority immediately. In that situation, the foreign authority has the option of either withdrawing the request or continuing with the regular administrative assistance procedure including notification (Art. 28a, Para. 3 LIAATM). In this respect Liechtenstein clarifies that the ban on information remains valid until it is explicitly revoked by the Fiscal Authority (Art. 28b lit. c with reference to Art. 28f – h LIAATM). The Fiscal Authority will only revoke the ban on information when this is permitted for the purposes of the investigation conducted by the foreign jurisdiction (Art 28f lit. a para. 1 LIAATM). This means that the Fiscal Authority has the possibility to keep the ban on information in tact in cases where the requesting jurisdiction withdraws the request.

305. As a second step, the procedure also involves verification by a judge of the Administrative Court. The judge will decide within five working days whether the criteria for an exceptional procedure and other procedural requirements have been met (Art. 28c, para 2 (b) LIAATM). In cases where the judge has ruled the exception with the subsequent notification is admissible, the Fiscal Authority is required to transfer the information to the foreign competent authority (Art. 28d para 1 LIAATM). Entitled parties can not contest the decision of the competent judge of the Administrative Court (art. 28c, para 3) or reverse the transfer of the information that already has taken place (Artt. 28i – 28k LIAATM).

306. However, verification by the judge only takes place after the gathering of the requested information from the information holder. The Fiscal

45. In the original German version letter b states: *b) glaubhaft darlegt, dass die Benachrichtigung allfälliger betroffener Personen den Erfolg des ausländischen Ermittlungsverfahrens vereiteln würde.*

Authority will inform the holder of the information of his/her right to comment on the request in writing within 14 days,[46] in particular with respect to its admissibility, the information the request seeks to obtain, the extent of the information to be conveyed and the necessity for the ban on information (Article 28b (d) LIAATM). In this respect Liechtenstein notes that the holder of the information has the right to inspect the records to enable him or her to make comments.[47]

307. At the same time, the Fiscal Authority will impose an anti-tipping off provision on the information holder that "the request and procedures in connection with the request are not to be disclosed to persons concerned or third parties" (Article 28b (c) LIAATM).

308. As Liechtenstein explains the purpose of this anti-tipping off provision is to prevent the information holder in particular from consulting his/her customers in order to comment on the request. However, from a broader perspective the ban can be seen as an element that's necessary in creating the exception to prior notification. This ban on information (notification) continues to apply until the Fiscal Authority advises that it has been lifted pursuant to art. 28h (c) LIAATM. Violations, if any, attract penalties under article 28l LIAATM consisting of imprisonment of up to six months or a fine of up to 360 daily income units or *Tagessätzen* (one *Tagessatz* is equal to one's daily income).

309. If the competent judge of the Administrative Court approves the execution of the administrative assistance, including the exception to prior notification, the Fiscal Authority will forward the information to the requesting jurisdiction. In that case the Fiscal Authority issues a final decree for the purposes of the transfer of information.

310. Article 28f and 28g LIAATM basically set out that the ban on information is in principle to be lifted after 12 months. However, an extension for a further 12 months may be granted in specific cases if the requesting jurisdiction states that the lifting of the ban on information after 12 months would undermine the chances of success of the foreign investigation. In that case, the Fiscal Authority will apply to the competent judge of the Administrative

46. According to the last sentence of Article 28b (b) this time may be extended in line with Art. 10(2) LIAATM.

47. In this respect Liechtenstein states that the request letter itself is never part of the documents for inspection by the holder of the information. However, article 24(2) LIAATM as amended states he is he has the right to examine extracts from the request that are relevant to the decision. This is further discussed under C.3. As stated under C.3 there are confidentiality concerns about the role played by the information holder after the information requested has been provided to the competent authority.

Court for an extension of the ban on information by a maximum of a further 12 months. The maximum time allowed for a ban is 24 months from its imposition (article 28f and 28g LIAATM).

311. In conclusion, it can be noted that the amendments to the LIAATM that entered into force on 1 August 2015 introduced an exception to the prior notification process in cases in which the information request is of a very urgent nature or the notification is likely to thwart the chance of success of the investigation conducted by the requesting jurisdiction that can be considered in line with the standard (articles 28a – 28m LIAATM). However, it should also be noted that this rule came into force only very recently and it is therefore not applied nor tested in practice. In all, Liechtenstein is recommended to monitor the application of the recently introduced exceptions to the prior notification procedure in practice.

Other rights and safeguards

312. The holder of information is not required to disclose trade, business, industrial, commercial, or professional secrets or trade processes (Art. 12 LIAATM). These safeguards are reasonable and mirror the provisions in the DTCs and TIEAs. As noted, there was no case during the period under review where the requested information was covered or might have been covered by corporate secrecy.

313. As noted above, at any time while the FA is gathering the requested information, the holder of the information or other affected party have the right to participate in the domestic procedure. However, this right is not absolute. Access to details and information concerning the EOI request and the FA's actions may be denied and right to appeal against the collection and sharing of information may be denied (Art. 24, para 2). This paragraph clarifies that:

Access to procedural records or participation in the procedure may be denied with respect to procedural documents and procedural acts only:

- in the interest of the foreign procedure;
- for the protection of an essential interest, if the foreign competent authority so requests;
- in light of the nature or urgency of the act of administrative assistance to be performed;
- for the protection of essential private interests; or
- in the interest of a Liechtenstein procedure.

314. However, as noted, Liechtenstein introduced certain amendments to the LIAATM that entered into force on 1 August 2015. Apart from the

amendments regarding prior notification as described above, these amendments also introduced some further guidance in respect of the rights of entitled parties as reflected under article 24 LIAATM. This is further examined under element C.3

315. Article 20 of the LIAATM also provides that, at any time before the conclusion of the procedure, the holder of the information and other affected parties may give consent in writing to transmit the information. If the consent only covers part of the information, the regular procedure must be continued for the remainder of the information.

316. After collecting the requested information, the FA issues a final decree concerning the information to be transmitted to the foreign competent authority (Art. 21 LIAATM). The holder of the information and also any affected party have a right to appeal this final decree by means of a complaint made to the Administrative Court within 14 days of the final decree (Art. 26). A ruling of the Administrative Court approving use of the coercive measures is also appealable, but the measure is executable immediately and the appeal is possible only with the final decree of the FA (Art. 27). These appeals can only be lodged within a seven day period after issuance of the final decree. Immediately following the 14 day period after issuance of the final decree has ended, the FA will send the response to the requesting authority. The FA can send information to the requesting authority only after the appeal has been decided.

317. Liechtenstein reports that in practice appeals to the Administrative Court were made in 10 cases. Six of them were subsequently brought before the Constitutional Court. Liechtenstein adds that only in two out of the 10 cases, the CA lost. These two cases regarded firstly the question whether a request to provide information on unnamed beneficiaries of a Liechtenstein foundation is a “fishing expedition” (described below in the context of C.1). The second case regarded the question whether names of bank employees (so-called uninvolved third parties) have to be redacted, if such persons have apparently nothing to do with the matter at hand. As the specific request only asked for banking information in a civil tax matter where names of bank employees were irrelevant, the Court saw no reason to decline the request for redaction by the bank. In the other eight cases, the courts upheld the CAs final decree and the information could be provided to the foreign CA.

318. Statistics provided by Liechtenstein indicate that the average time between the launch of the appeal and the final decision was 130 days (for both courts together). No peers provided any comments in this respect. Given the relatively moderate numbers of cases and the relatively short process time, in practice appeals with the final decree did not seem to impede effective information. However, as only information that is actually sent out can be appealed, the Liechtenstein CA in practice will do an inspection of the files

together with the information holder before the final decree is issued. This is further discussed under element C.3. Although this informal consultation procedure is likely to have reduced the numbers of appeals it still seems to be rather time and labour intensive. This aspect is further discussed under element C.5.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

<table>
<tr><th colspan="2">Phase 2 rating</th></tr>
<tr><td colspan="2">Largely Compliant</td></tr>
<tr><th>Factors underlying recommendations</th><th>Recommendations</th></tr>
<tr><td>During the period under review, Liechtenstein was asked to provide exceptions from notification. In one case the EOI partner withdrew the request.
Liechtenstein introduced exceptions to the prior notification procedure in August 2015. However, considering the short period between the introduction of the exceptions, after the end of the period under review and just before the cut-off date, the application of the exceptions could not be assessed.</td><td>Liechtenstein should monitor application of the exceptions to the prior notification procedure in practice to ensure that it is applied in accordance with the standard.</td></tr>
</table>

C. Exchanging information

Overview

319. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Liechtenstein, the legal authority to exchange information is derived from double taxation conventions (DTCs) and tax information exchange agreements (TIEAs) once they become part of Liechtenstein's domestic law. Furthermore, Liechtenstein signed the Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) on 21 November 2013. This section of the report examines whether Liechtenstein has a network of information exchange agreements that would allow it to achieve effective exchange of information in practice.

320. Liechtenstein committed to the internationally agreed tax standards for exchange of information on 12 March 2009, and has been actively engaged in extending its network of exchange of information agreements, which has resulted in signing of 41 bilateral agreements since December 2008, 36 of which are in force. In respect of the Multilateral Convention as well as a few of its signed DTCs, Liechtenstein has not yet taken all steps necessary for its part to bring those agreements into force. In general, these agreements provide for exchange of information to the international standards. However, during Phase 1 it was noted that seven agreements[48] deviate from the standards, e.g. with regard to restrictions on exchange of information in civil tax matters and criminal tax matters, thresholds or lack of exceptions to notification requirements. However, the DTC with one of these parties (the UK) provides for exchange of information in tax matters consistent with the standard in respect of any requests made related to the period after 31 March 2015. Furthermore, from the remaining six jurisdictions three[49] are covered by the Multilateral Convention. So, once Liechtenstein and these jurisdictions

48. Andorra, Antigua and Barbuda, Belgium, Monaco, Saint Kitts and Nevis, Saint Vincent and the Grenadines and the United Kingdom.
49. Andorra, Belgium, Monaco.

all ratify the Multilateral Convention, information exchange with these jurisdictions in line with the standard will in practice be covered. Also, the TIEA with St. Vincent and the Grenadines has been revised and entered into force in April 2015 and negotiations with Monaco and Andorra for a DTA are ongoing.Liechtenstein also has a treaty in force with Switzerland but this agreement does not contain an EOI article and hence does not meet the standard. However, a new DTA with Switzerland has been signed on 10 July 2015 which reflects the standard. Also in this respect it can be noted that Switzerland is a signatory to the Multilateral Convention. So, once both Liechtenstein and Switzerland ratify the Multilateral Convention, information exchange between these jurisdictions in line with the standard will in practice be covered. A comprehensive list of Liechtenstein's information exchange agreements can be found in Annex 2.

321. Liechtenstein confirmed that 8 requests were rejected during the period under review on the basis that they were considered a fishing expedition. As Liechtenstein explained, jurisprudence of the Liechtenstein Constitutional Court (Ruling of 3 September 2012) played an important role in this respect, as the outcome meant that 5 more requests had to be rejected. In all of these requests the requesting jurisdiction asked for the beneficiaries of a Liechtenstein Foundation, Establishment or Trust enterprise without providing the names or addresses of these beneficiaries. However, other information was provided that can be considered sufficient to identify the persons under investigation (the particular facts are discussed further below). Furthermore, Liechtenstein has redacted information in its responses to requests on the basis that it believed the information lacked relevance to the underlying investigation in the requesting jurisdiction.

322. The disclosure during the period under review to third parties or taxpayers of details that were not necessary for gathering the requested information, including the request letter itself, is not in accordance with the principle that information contained in an EOI request should be kept confidential. Liechtenstein amended its Act on Administrative Assistance in Tax Matters, which amongst other changes now introduces the right of entitled parties to examine extracts from the request letter that are relevant to the decision. Although Liechtenstein states that this access may be limited and has been their practice since 2013, this practice is very recent and there are doubts whether these new provisions can operate in practice in conformity with the confidentiality requirements of the international standard. Liechtenstein should therefore ensure that the recent amendment of its law to allow access to extracts of the EOI request does not exceed the confidentiality requirements as provided for under the international standard.

323. The commentary to Article 26 clarifies that a violation of "ordre public" should only be considered in "extreme cases", e.g. where a tax

investigation is motivated by political, racial or religious prosecution, or in cases where information requested constitutes a state secret (e.g. sensitive information held by secret services). Therefore, where a jurisdiction relies on ordre public to refuse a request this should be in very rare cases.

324. However, the Liechtenstein Fiscal Authority refuses EOI based on the concept of ordre public in all in cases where it considers that the requests are solely based on stolen data. In such cases, its policy takes no account of the circumstances in which the requesting jurisdiction came into possession of the information. This is based on a strict interpretation and application of Art. 8(2) of the LIAATM which provides that a request based on information obtained by means of an act that is judicially punishable in Liechtenstein shall be refused. In practice, it will ask the requesting jurisdiction to clarify that the information in its request is based on "independent investigations". It is not clear, however, in what circumstances an investigation that involves stolen data would be considered to be "independent".

325. In all cases where the issue of stolen data has been raised, whether by the Fiscal Authority or by information holders, no exchange of information has yet occurred and around 40% of all EOI requests received by Liechtenstein are currently pending.

326. Liechtenstein's approach regarding the application of the concept of ordre public has had a significant impact on EOI in practice. It is therefore recommended that Liechtenstein should modify its law and/or practice as appropriate to ensure that it can give effect to the obligations under its EOI mechanisms.

327. Although Liechtenstein's processes and resources are generally in place to ensure effective exchange of information, certain areas – mainly related to establishment and monitoring of deadlines and the workload of the EOI Unit – should be improved Liechtenstein should endeavour to improve its resources and streamline its processes for handling EOI requests to ensure that all EOI requests are responded to in a timely manner.

C.1. Exchange of information mechanisms

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

328. Liechtenstein has signed DTCs allowing for exchange of information with 14 jurisdictions: Austria; Czech Republic; Germany; Georgia; Guernsey; Hong Kong, China; Hungary; Luxembourg; Malta; San Marino; Singapore; Switzerland; United Kingdom and Uruguay. All of these DTCs provide for exchange of information to the international standards.

329. Liechtenstein has signed TIEAs with 27 jurisdictions. The Phase 1 report noted that the provisions of seven of these agreements[50] deviate from the standard in some matters. However, the DTC with one of these parties (the UK) provides for exchange of information in tax matters consistent with the standard in respect of any requests made related to the period after 31 March 2015. Also, the TIEA with St. Vincent and the Grenadines has been revised and entered into force in April 2015. Furthermore, from the remaining five jurisdictions three[51] are covered by the Multilateral Convention. So, once Liechtenstein and these jurisdictions have ratified the Multilateral Convention, information exchange with these jurisdictions will in practice be covered. During Phase 1 it was further noted that Liechtenstein also has a treaty in force with Switzerland but this agreement does not contain an EOI article and hence does not meet the standard. However, a new DTC with Switzerland has been signed on 10 July 2015 which reflects the standard. Also in this respect it can be noted that Switzerland is a signatory to the Multilateral Convention. So, once both Liechtenstein and Switzerland ratify the Multilateral Convention, information exchange between these jurisdictions will in practice be covered.

330. Liechtenstein is also covered by the EU *Savings Directive*[52] and has opted to withhold tax instead of an automatic exchange of information relating to payments of interest to the residents of EU Member States.

Foreseeably relevant standard *(ToR C.1.1)*

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

332. Liechtenstein's agreements provide for the exchange of information that is "foreseeably relevant" for carrying out the provisions of the Convention or of the domestic tax laws of the Contracting States.

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50. Andorra, Antigua and Barbuda, Belgium, Monaco, Saint Kitts and Nevis, Saint Vincent and the Grenadines, the United Kingdom.
51. Andorra, Belgium, Monaco.
52. Council Directive 2003/48/EC of 3rd June 2003 on Taxation of Savings Income in the Form of Interest Payments: http://info.portaldasfinancas.gov.pt/NR/rdonlyres/7EA63C6F-0908-4CFE-85E8-0D964A469013/0/Council_Directive_200348EC.pdf.

333. However, in the context of the Phase1 review it was noted that some agreements provide specific circumstances under which the requested jurisdiction may decline a request, and these limitations may result in a narrower scope of information exchange. Specifically, Liechtenstein's agreements with Andorra, St. Kitts and Nevis, Saint Vincent and the Grenadines and Monaco require that the requested jurisdiction may decline a request if the amount of tax or duty in question does not exceed the threshold of EUR 25 000. Although these agreements allow an exception to this rule when the case is "deemed to be extremely serious by the applicant party", there is no guidance as to what constitutes an "extremely serious" case. It is also unclear how the requested party will determine the tax amount, as often the amount of tax involved can only be determined *after* information has been exchanged, and how this rule would be applied in a group of cases, where in each case the tax amount is less than the threshold but the overall tax effect might be large. In practice, however, no information was requested or exchanged based on these agreements, so the issue didn't come up in practice. Furthermore, Andorra and Monaco are signatories to the Multilateral Convention. So, once both Liechtenstein and these jurisdictions have ratified the Multilateral Convention, information exchange between Liechtenstein and both jurisdictions will in practice be covered. Moreover, Liechtenstein stated that it will renegotiate the TIEAs with the other two partners that are not covered by the Multilateral Convention (Saint Kitts and Nevis, Saint Vincent and the Grenadines. The revised version of the TIEA with Saint Vincent and the Grenadines entered into force in April 2015). Liechtenstein has not included this wording in more recent agreements.

Requests qualified by Liechtenstein as fishing expeditions

334. As noted, Liechtenstein's domestic law in article 7(2) LIAATM provides that a request must be framed with the "greatest degree of specificity possible" and must specify, inter alia, "the identity of the individual taxpayer whose tax or criminal liability is at issue". However, article 7(3) LIAATM holds a treaty prevails rule and clarifies that article 7 is subject to the conditions contained in a TIEA that deviate from paragraph 2. Therefore, the specificity in which the request must be framed is depending on the relevant TIEA.

335. The TIEA Model in Article 5(5) requires that in connection with a request the requesting Party must provide certain information to the competent authority of the requested Party in order to demonstrate the foreseeable relevance of the information to the administration or enforcement of the applicant Party's tax laws. This includes the "identity of the person under examination or investigation" (article 5(5)(a)).

336. This issue regarding the specificity of the request became relevant in August 2011 when a major EOI partner sent a request to Liechtenstein for administrative assistance regarding a Liechtenstein Foundation and its deceased founder, Mrs A. A tax payer in the requesting jurisdiction (legatee) had declared a payment from a Liechtenstein Foundation for purposes of inheritance tax law. However, Mrs A, the deceased founder did not declare for tax the assets in the foundation.

337. The tax documentation provided by the legatee, including the articles and regulation of the foundation clearly showed that Mrs A was the economic founder of the foundation and that she exercised control over the foundation. However, all indications of the beneficiaries – with the exception of the mentioned legatee – had been anonymised or blacked out.

338. The requesting jurisdiction asked Liechtenstein for administrative assistance in this case. In its response the Liechtenstein Fiscal Authority transmitted the articles of the Foundation and the total assets summary, without blackening, to the requesting jurisdiction. The Foundation's regulation was also transmitted, with all names other than Mrs A made illegible, "since the request referred only to A".

339. In its supplemental request, the requesting jurisdiction asked for the name and known addresses of any beneficiaries that were residents of the requesting jurisdiction, given that this would be relevant to their taxation in the requesting jurisdiction. The Liechtenstein Competent Authority decided to provide the information sought in the supplementary request but an appeal was lodged to the Administrative Court, claiming that this was a fishing expedition.

340. The Administrative Court upheld the Competent Authority's position that the request was not a "fishing expedition", noting that the economic founder of the foundation – Mrs A – was a resident of the requesting jurisdiction, she exercised control over the foundation, her (domestic) tax files did not disclose the foreign foundation assets, the only secondary beneficiary known was a resident of the requesting jurisdiction and there were an additional seven secondary beneficiaries that were not known to the requesting jurisdiction. The Administrative Court noted that the requesting jurisdiction had specified the name of a foundation whose clearly limited number of beneficiaries include, with a certain degree of probability, persons taxable in the requesting jurisdiction". It therefore came to the conclusion that it made sense to conclude that one or more of the unknown secondary beneficiaries might be residents of the requesting jurisdiction, that they might be subject to taxation in the requesting jurisdiction, and that the information is foreseeably relevant to their taxation. The Administrative Court further pointed out that the category of persons is, furthermore, similarly narrowly circumscribed as would be the case for a bank account with several holders or beneficial owners.

341. The decision of the Administrative Court was appealed to the Liechtenstein Constitutional Court which decided that the request was a fishing expedition. Having reviewed the facts and the relevant provisions of the TIEA, the TIEA Act and its legislative history in the Liechtenstein Parliament, it noted that "the mere assumption that natural persons who might be resident taxpayers of the requesting State might be beneficiaries of the foundation known by name in the requested State is not suitable as a personal characteristic or other point of reference for the purposes of [the TIEA] in order to identify a person sufficiently whose name is unknown". In the Court's view this required the request to "mention either names, addresses, residences, or other specific characteristics that might permit identification of the persons concerned".

342. Liechtenstein confirmed that this ruling played an important role in its decision to reject five more requests as fishing expeditions, all of which asked for the beneficiaries of a Liechtenstein foundation, establishment or trust enterprise. Several peers have noted, including a major partner, that in these requests they sufficiently identified the persons under investigation and commented that these excessive requirements to identify a taxpayer lead to situations in which the exchange of information cannot function effectively in practice.[53]

343. As noted, Article 5(5)(a) of the Model TIEA requires the requesting Party to provide certain information to the requested Party to demonstrate the foreseeable relevance of the information sought. This includes the "identity of the person under examination or investigation" (article 5(5)(a)).The Model Convention is less formalistic in this regard and leaves more leeway to the competent authorities but the basic principle applies equally. However, the commentary to article 5(5) explicitly clarifies that the procedural requirements of subparagraphs a) through g) need to be interpreted liberally in order not to frustrate effective exchange of information (para. 67). Similarly, the commentary to article 26 of the OECD Model Tax Convention (para. 5.1) confirms that "a request for information does not constitute a fishing expedition solely because it does not provide the name or address (or both) of the taxpayer under examination or investigation". It further clarifies that "[…], in cases in which the requesting State does not provide the name or address (or both) of the taxpayer subject to inquiry or investigation, the requesting

53. It can be confirmed that the Court ruling has also relevance for requests that ask for regarding shareholders or beneficial owners of a company. However it can be noted that most information requested from Liechtenstein does not relate to companies, but rather to foundations, establishments or trusts. Regarding requests for information regarding the names of directors of a company it can be noted that the names of directors of a Liechtenstein company are publicly available with the Liechtenstein Commercial Register (see para. 37).

State must include other information sufficient to identify the taxpayer. […]". Particular emphasis was placed on this latter part of paragraph 5.1 of the commentary in the Constitutional Court decision.

344. In the case in question, the requesting jurisdiction provided pertinent information that identified the persons that were the subject of its investigation, namely the name of the foundation and its founder, the name of one of the foundation's beneficiaries and information indicating that there were known to be seven additional beneficiaries whose names were not known to the requesting jurisdiction (having been blacked out in the articles and regulations of the foundation which were in its possession). It also specified the relevance to its tax laws of the request seeking to establish the names of any of the seven additional beneficiaries that were its tax residents. The information provided by the requesting jurisdiction was sufficient for Liechtenstein to identify these persons and to provide the information sought.

345. A second issue arises in relation to Liechtenstein's interpretation of the standard of foreseeable relevance. Liechtenstein's domestic law (article 21 (2) LIAATM) that states that "Information that is foreseeably not relevant may not be transmitted and shall, where applicable, be removed or rendered unrecognisable". There is also jurisprudence concerning exclusion of so-called uninvolved third parties (for instance names of bank employees, if such persons have apparently nothing to do with the matter at hand). Redactions would further be made regarding private information if it is not directly related to the request or taxation, such as legal children, or issues concerning gender. Liechtenstein also explained that the jurisprudence of the Liechtenstein Constitutional Court (Ruling of 3 September 2012) in respect of foreseeable relevance impacted the extent of redactions considered necessary.

346. Redactions are made at the level of the CA, after collecting the requested information. However, information holders, such as banks, may specify what information they would like to have redacted. Liechtenstein confirmed that redacted information would include the names of beneficiaries considered as not being relevant, for instance if, based on address and citizenship it could be concluded that the beneficiary is not a resident of the requesting jurisdiction, or where a beneficial owner of a Liechtenstein entity is not related to the taxpayer in the requesting jurisdiction. Liechtenstein officials stated that in practice they would seek to clarify with the requesting jurisdiction elements that call into question foreseeable relevance.

347. Nevertheless, once the threshold of foreseeable relevance is met, the requested jurisdiction should not withhold requested information on the grounds that it considers that the information is not relevant, in particular based on factors such as the address or citizenship or assumed lack of family relationship.

Conclusion

348. The international standard requires information exchange to the widest possible extent, so long as the information is "foreseeably relevant" to the administration and enforcement of the tax laws of the requesting jurisdiction and does not constitute a fishing expedition.

349. Article 5(5) of the TIEA model contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, including an identification of the person under investigation. However, the commentary to article 5(5) explicitly clarifies that the procedural requirements in this respect need to be interpreted liberally in order not to frustrate effective exchange of information.

350. The decision of the Liechtenstein Constitutional Court appears to endorse a narrow interpretation of the standard of foreseeable relevance which is not in accordance with the international standard as expressed in the commentaries to the model TIEA and Article 26 of the Model DTC. This has had a practical effect of limiting effective exchange of information in a number of cases. Therefore, Liechtenstein's requirements in practice concerning identification of the persons under investigation and its redaction of information in responses to requests that meet the standard of foreseeable relevance are too restrictive and operate as a bar to effective exchange of information. It is therefore recommended that Liechtenstein should correct its interpretation of the foreseeably relevant standard to ensure that it does not impede the effective exchange of information. Liechtenstein has confirmed that it plans to clarify its interpretation of the foreseeable relevance standard in the upcoming revision of the LIAATM later this year.

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

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

352. All 41 of Liechtenstein's TIEAs and DTCs that allow for exchange of information, contain articles providing for the exchange of information in respect of all persons.

353. In practice, except from the issues identified above in section C.1.1, no other issues restricting exchange of information in respect of the residence or nationality of the person to whom the information relates or of the holder of the information has been indicated by the Liechtenstein authorities or their peers.

Exchange of all types of information *(ToR C.1.3)*

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

355. All of Liechtenstein's TIEAs and DTCs that allow for exchange of information, provide for exchange of information held by financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees and information regarding the ownership of companies, partnerships and other persons.

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

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

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

358. All 41 of Liechtenstein's EOI agreements contain explicit provisions obliging the contracting parties to exchange information without regard to whether the requested party needs such information for its own tax purposes.

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

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

360. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested jurisdiction if it had occurred in the requested jurisdiction. In order to be effective,

exchange of information should not be constrained by the application of the dual criminality principle.

361. None of Liechtenstein's EOI agreements provide for application of a dual criminality principle to restrict exchange of information and all contain positive statements that information must be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested party if such conduct occurred in the requested party. Accordingly, there has been no case when Liechtenstein declined a request because of a dual criminality requirement.

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

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

363. All of Liechtenstein's exchange of information agreements provide for exchange of information in both civil and criminal tax matters.

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

365. Liechtenstein signed a TIEA[54] with the United Kingdom on 11 August 2009 and an accompanying Memorandum of Understanding which sets out the terms of a five year taxpayer assistance and compliance programme by Liechtenstein and a five year special disclosure facility by the United Kingdom. Article 6(e) of the TIEA states that a requested State may *decline* a request if:

> the request is made on or before 31 March 2015 and does not relate to a criminal tax matter in respect of which the requesting State has formally commenced a criminal investigation, and the person identified in a request according to Article 5(6)(a) has not applied to disclose under a tax disclosure facility of the requesting party where he is eligible to do so, accordingly, for avoidance of doubt, the competent authority of the requested party may not decline a request by the requesting party for information relating to a person who has applied to disclose under a tax disclosure facility of the requesting party.

54. Liechtenstein enacted the Law of 30 June 2010 on Administrative Assistance in Tax Matters with the United Kingdom of Great Britain and Northern Island and also the UK TIEA Ordinance of 31 August 2010.

366. Therefore, in respect of requests in a civil tax matter or criminal tax matter where investigations have commenced prior to 31 March 2015, the request may be declined unless the taxpayer has applied to disclose his tax position under the tax disclosure facility. The agreement, therefore, puts restrictions on exchange of information in civil tax matters and criminal tax matters until 31 March 2015. These restrictions will no longer be applicable after 31 March 2015. Accordingly, the Phase 1 report noted that this agreement is not to the standard.

367. Liechtenstein signed a DTC with the United Kingdom on 11 June 2012. The language of Article 25 of this treaty concerning exchange of information mirrors language of Article 26 of the OECD Model Tax Convention on Income and Capital, accordingly tax information consistent with the international standard can be exchanged between two countries. However, the protocol to the DTC concerning the exchange of information states that, "it is understood that the competent authorities shall exchange information according to the terms and conditions of the Agreement on Tax information Exchange signed on 11 August 2009 between the Principality of Liechtenstein and the United Kingdom of Great Britain and Northern Ireland to the extent that a request for information comes within the scope of that agreement". It is understood, therefore, that, the limitations under the TIEA would continue to apply and therefore Liechtenstein did not have EOI relation with the United Kingdom in line with the standard until 31 March 2015. Therefore, at present these restrictions do no longer apply to any requests made related to the period after 31 March 2015.

368. The entry into effect of Liechtenstein's EOI provisions vary, but most of its EOI agreements provide for exchange of information for taxable periods or charges to tax arising following the entry into force of the agreement. Liechtenstein interprets its agreements as allowing for the exchange of information created prior to the date of entry into force of the agreement where that information is relevant for a period that is within the scope of the agreements' entry into force provisions. Liechtenstein explains that this came up in practice in a number of cases, for instance if more detailed information was requested in respect of:

- the creating of a bank account;
- signature cards, or
- founding documents of a foundation or company.

Liechtenstein confirms its willingness to send this type of information, even it would relate to a time period that is before the entry into force of the agreement. In addition, some of Liechtenstein's agreements provide for exchange of information in respect of periods beginning prior to the entry into force of the agreement but after the date of signature. Liechtenstein indicates that it would be willing to negotiate similar agreements with other partners if the other partner requests."

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

369. There are no restrictions in Liechtenstein's tax treaties or TIEAs that would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices. Agreements provide that the information must be provided in the form specified by the competent authority of the requesting party, including depositions of witnesses and authenticated copies of original documents.

370. One peer noted that it had requested accounting and other information in relation to companies in a number of cases, including information on the amount of tax paid by the company in Liechtenstein but that, while all other information was obtained, the tax return confirming the amount of tax paid was not provided. The peer stated that its request for this information was made in order to determine, for example, the presence of an aggressive tax planning. Liechtenstein has confirmed that it provided the peer with information about whether the company was registered for tax in Liechtenstein and whether it filed yearly tax returns in accordance with the Liechtenstein tax laws and that the peer had not contacted Liechtenstein for any further information or clarifications concerning the information transmitted. On that basis Liechtenstein initially considered the cases closed. However, in its response the peer reiterated that it had not received all the information in the form requested, and Liechtenstein confirmed that it would get in touch with the peer with a view to solve this issue. Apart from this issue, peer inputs indicate that Liechtenstein provides the requested information in adequate form and no further issues in this respect have been reported.

In force *(ToR C.1.8)*

371. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. The international standard requires that jurisdictions take all steps necessary to bring information arrangements that have been signed into force expeditiously.

372. Liechtenstein has signed bilateral tax treaties and TIEAs which allow for exchange of information with 41 jurisdictions as of 17 August 2015. Agreements with 34 jurisdictions[55] are now in force.

373. Liechtenstein signed the Multilateral Convention on 21 November 2013. In respect of the Multilateral Convention as well as a few of its signed DTCs, Liechtenstein has not yet taken all steps necessary on its part to bring those agreements into force. The average time for ratification of a treaty by Liechtenstein is around one year. Liechtenstein signed the Multilateral

55. DTCs signed with Germany (18 November 2011) and the United Kingdom (11 June 2012) are not in force, but TIEAs signed with these countries are in force.

Convention on 21 November 2013. In respect of the Multilateral Convention as well as a few of its signed DTCs, Liechtenstein has not yet taken all steps necessary on its part to bring those agreements into force. The average time for ratification of a bilateral treaty by Liechtenstein is around one year. In respect of the ratification of the Multilateral Convention, it can be noted that the actual signing took place at the end of 2013 and more than 20 months have passed since. Liechtenstein explains that it is in the process of amending its domestic legislation to fully implement the Multilateral Convention. This is scheduled for later this year and would be done in parallel with the ratification of the Multilateral Convention itself. The normal ratification time for bilateral tax agreements does not raise any concerns, and it is noted that the time taken in ratifying the Multilateral Convention also stems from the particular requirements of that agreement that require legislative changes. Nevertheless, it is recommended that Liechtenstein incorporates the necessary changes in its domestic legislation and ratifies the Multilateral Convention expeditiously.

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

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

375. Liechtenstein's EOI agreements become part of domestic law after they are ratified by the Parliament. According to the jurisprudence of the Constitutional Court of Liechtenstein, international treaties ratified by Parliament always enjoy at least the rank of legislation within the domestic legal order. A ratified agreement becomes part of national law on the date of its entry into force. The agreement is also directly applicable, as long as its provisions are sufficiently specific.

376. The TIEAs and DTCs signed by Liechtenstein require that the contracting parties have legislation necessary to comply with, and give effect to, the terms of the agreement. Liechtenstein enacted the legislation creating the domestic mechanism to implement its international agreements (other than with the United Kingdom and the United States) in June 2010. This legislation has to be amended to fully implement the Multilateral Convention.[56] Liechtenstein should ensure that the wording of its domestic access powers permits access to information for the purpose of Multilateral Convention, to the same extent as it does for Liechtenstein's DTCs and TIEAs. Separate

56. Liechtenstein explains it is in the process of amending its domestic legislation to allow for group requests. In addition, there will be a second amendment to fully implement the Multilateral Convention. This will be done in parallel with the ratification of the Multilateral Convention.

implementing laws have been passed with regard to the agreements with the United Kingdom and the United States. With regard to the period under review, there has been no case where any issue in this regard came up, and no peers have raised any issues in this regard either.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 Rating	
Partially Compliant	
Liechtenstein applies a restrictive interpretation of the foreseeable relevant standard when asked for ownership and identity information of foundations and other entities. Furthermore, while assessing the relevance of the information obtained from information holders, Liechtenstein has applied a restrictive interpretation of its relevance to requests. This has restricted the exchange of information in a number of cases during the review period.	Liechtenstein should correct its interpretation of the foreseeably relevant standard to ensure that it does not impede the effective exchange of information.

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

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

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

378. Liechtenstein's key trading partners are (in order) Switzerland, Austria, Germany, the United States, France, Italy and the United Kingdom. Liechtenstein's network of 41 bilateral information exchange arrangements

covers Germany, the United States, France, Italy, the United Kingdom and Austria. Furthermore, Switzerland is a signatory to the Multilateral Convention and both jurisdictions have also signed a DTC more recently that has an EOI provision that is in line with the standard. Therefore, once Liechtenstein and Switzerland have ratified the Multilateral Convention or the DTC, information exchange will in practice be covered. Italy is a party to the Multilateral Convention (Italy ratified the Convention already in 2012). Furthermore Liechtenstein signed a TIEA with Italy on 26 February 2015.

379. Most of Liechtenstein's 41 signed agreements (of which 36 are currently in force) provide for exchange of information to the international standards. The provisions of five of these agreements[57] deviate from the standard in some matters. However, as noted, from these five jurisdictions three[58] are Parties to the Multilateral Convention. So, once Liechtenstein ratifies the Multilateral Convention, information exchange with these jurisdictions will in practice be covered.

380. In addition to Liechtenstein's existing agreements, Liechtenstein has advised that it is actively expanding its treaty network, in conformity with the international standard, by initiating treaty negotiations and having responded to requests for negotiations of both DTAs and TIEAs. Since its Phase 1 review, Liechtenstein signed 5 additional TIEAs and 10 DTAs, as well as the Multilateral Convention, covering 89 jurisdictions in total. Liechtenstein stated its willingness to continue to accommodate requests for concluding EOI instruments (TIEA or DTA) by other countries or jurisdictions and initiate and conclude negotiations.

Determination and factors underlying recommendations

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

Phase 2 Rating
Compliant

57. Andorra, Antigua and Barbuda, Belgium, Monaco, Saint Kitts and Nevis.
58. Andorra, Belgium and Monaco.

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)*

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

382. All agreements concluded by Liechtenstein meet the standards for confidentiality including the restrictions on the disclosure of the information received and also use thereof by a contracting party. The agreements provide that any information received by a Contracting Party under the Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by the Contracting Party. The agreements also provide for the restriction on disclosure of information received and these provisions comply with the requirements of the international standards. The TIEA with the United States further provides that the information will not be disclosed to any other person, entity, or authority, or used for any other purpose other than for the purpose stated in Article 1 of the TIEA, except in the cases where the requested party provides prior, written consent.

383. Regarding the domestic law, all officials dealing with information on taxpayers are obliged to keep all the information confidential. An official or former official who discloses or uses a secret entrusted or made available to him solely in virtue of his office, where such disclosure or use is likely to violate a public or justified private interest, is punishable with imprisonment of up to three years, unless the offence is subject to more severe punishment pursuant to another provision (Art. 310 Penal Code). All the staff members of the Fiscal Authority, the persons in charge of EOI are subject to the professional secrecy (tax secrecy) embodied in art. 83 Tax Act. The confidentiality rules are further provided mainly in the Law on International Administrative Assistance in Tax Matters (LIAATM), as well as in the provisions on

confidentiality contained in bilateral agreements. They are also part of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

384. Complementing this, Article 22 of the LIAATM contains provisions relating to confidentiality in respect of information provided by the requested jurisdiction to the requesting jurisdiction.

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

385. The confidentiality provisions in Liechtenstein's agreements use the standard language of Article 26(2) of the OECD *Model Tax Convention* and Article 8 of the OECD *Model TIEA* and do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions that are contained in Liechtenstein's agreements apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

Confidentiality in practice

386. Liechtenstein has implemented a number of measures to ensure confidentiality in its EOI processes and practices. When an EOI request is received or sent, it is registered and filed in a locked cabinet within the CA offices. The documents have their own reference numbers and are kept separate from all other tax files. Electronic documents and emails are stored in a separate electronic folder, to which only the personnel involved in EOI has access. Liechtenstein's servers are secure and firewalled. Access to the premises of the Fiscal Authority is secured by electronic badge. Information is sent by registered mail/package with a tracking number, and e-mail is only used for other correspondence. The CA uses encrypted as well as non-encrypted e-mails, depending on the content of the e-mail.

387. Regarding the letter sent to information holder to obtain information sought in an EOI request, Liechtenstein explains that the information holder will initially only receive the information necessary to gather the requested information. The letter contains the legal basis for the request, the type of taxes and the tax years covered, the identity of the person subject to the request, the description of the requested information and a summary of the relevant background. However, once the FA has received the information from the information holder, the information holder may participate in the "proceedings" and exercise his or her rights, in particular the right to inspect files, if this is necessary in order to safeguard his or her interests that qualify for protection. The holder of information is not obliged (and not allowed

according to Liechtenstein) to comment for the purpose of protecting the interests of the taxpayer concerned or other third parties.

388. As noted above in Section B.2, during the period under review, no exceptions to prior notification existed and therefore in practice the Fiscal Authority sent a notification letter in all cases to the information holder. The information holder, in its turn is charged to notify any affected person residing abroad about the fact that the request has been received, about the information requested therein, about the domestic proceedings initiated in the meantime, and to inform them that they have the right to take part in the domestic proceedings and, where necessary, to appoint an authorised agent in Liechtenstein for the delivery of communications (Art 10, para 1 (c) LIAATM).

389. After such persons affected by the request have been informed, either by the FA if they are resident in Liechtenstein (Art 10(1)(d)), or by the information holder, they may take part in the proceedings in relation to the request and are granted access to relevant files. Liechtenstein explains that the file will include the information provided by the information holder, with redactions (if any) done by the CA. However, it can also be noted that during the onsite visit Liechtenstein explained that it only showed more information ("the full file") if the information holder or any other affected person specifically asked for it. As further discussed below, under the current procedure this would include extracts of the request, but not the request letter itself or the attachments. The possibility to take part in the proceedings is based on safeguarding their constitutional right to be heard. Liechtenstein considers such administrative proceedings as "court proceedings or the like", because any final order may be appealed (although it may be noted that no such an appeal lies in relation to the imposition of a ban on prior notification). Liechtenstein therefore considers that, as per the standard, the competent authority letter may be disclosed, unless the requesting State otherwise specifies. Nevertheless, following a change of practice in 2013 and based on Art. 24, para 2 LIAATM, access to the request or details of the request can be restricted and denied. This paragraph before its amendment provided that:

390. Access to procedural records or participation in the procedure may be denied with respect to procedural documents and procedural acts only:

- in the interest of the foreign procedure;
- for the protection of an essential interest, if the foreign competent authority so requests;
- in light of the nature or urgency of the act of administrative assistance to be performed;
- for the protection of essential private interests; or
- in the interest of a Liechtenstein procedure.

391. In the recent amendment that entered into force on 1 August 2015, further clarification was included in paragraph 2 of Article 24 concerning the right for the information holder and taxpayer involved to examine extracts from the EOI request. The following new wording (in italic) was added to the introductory clause of paragraph 2:

> *The entitled parties have the right to examine extracts from the request that are relevant to the decision*. Access to procedural records or participation in the procedure *beyond that* may be denied with respect to procedural documents and procedural acts only: […] *(emphasis added).*

392. Liechtenstein explains that this new wording was added to address both constitutional concerns as well as requirements in respect of confidentiality under the international standard. It further explains that access to the files for an information holder is restricted to the information that is relevant in respect of the information that he or she provided. In respect of the constitutional concerns, Liechtenstein refers to a ruling of the Constitutional Court of 1 July 2014 regarding co-operation with foreign authorities in connection with the supervision of securities markets. Regarding the basic right to inspect records, the Court based its ruling on the legal practice established in connection with international mutual legal assistance in criminal matters, which it in principle considers also to be relevant to administrative assistance procedure in matters of market abuse. The Court basically ruled that a general exclusion in respect of the right to inspect records before the issue of the final decree by the FMA was unconstitutional. The Court states that it must in any case be possible for a person (directly) involved in the administrative assistance procedure in market abuse matters, to have the opportunity to comment in writing against the handing over of documents that are not materially or personally relevant to the request for administrative assistance, nor relate to time considerations, before issue of the final decree.

393. Liechtenstein considers that certain parallels can be drawn between the FMA administrative assistance procedure and the administrative assistance procedure in tax matters. Thus, concerning the right for the information holder and taxpayer involved to examine extracts from the EOI request, Liechtenstein explains that from a constitutional point of view this means that "extracts from the request that are relevant to the decision are to be disclosed and/or may be inspected, i.e. entitled persons may obtain the information that is necessary for safeguarding their own interests deemed worthy of protection.".

394. Liechtenstein further states that the amendment of paragraph 2 of Article 24 also meets the requirements under the international standard to only disclose the minimum information contained in a competent authority letter that is necessary in order to obtain or provide on the requested information, but not the request itself, and that a statement to this effect is included in the

commentary to this amendment. However, it is not fully clear whether the newly introduced amendment to paragraph 2 of Article 24 reconciles both the constitutional concerns as well as the confidentiality requirements in respect of the EOI request under the standard. Neither paragraph 2 as amended nor its commentary for instance clarify how extensive access to such extracts might be and whether it could go beyond the standard, which per Paragraph 11 of the OECD commentary on article 26 of the OECD Model Tax Convention, is the minimum disclosure necessary to obtain or provide the information. In this respect it can also be noted that the amendment not only covers the amount of information that can be shared with the taxpayer, but also the information that can be disclosed to the information holder concerned and in advance of any appeal having been lodged. In contrast, it should be flagged that paragraph 11 of the Commentary only envisages such a more extensive disclosure by the requested state in the context of appeals and court proceedings. In all, the amendment seems to introduce a basic right for entitled parties to examine a minimum amount of information that is included in the EOI request. In summary there is doubt whether disclosure of extracts from the request that are relevant to the decision to exchange information in response to a request can go beyond the minimum disclosure necessary to obtain and provide the information. Nevertheless, Liechtenstein clarified that the right of the information holder to inspect the file is basically linked to the situation of an appeal procedure, and is limited to information relevant to protect his interests. The information holder would be able to see a short summary of the background of the case, to the extent that this information will be part of the final decree. The information holder has the right to see extracts of the request letter. As Liechtenstein explains the request letter itself will never be shown. Liechtenstein further explains that it can keep the request letter confidential altogether if the requesting authority has confirmed that the letter must be kept confidential throughout the proceedings.

395. In practice the FA also sends a summary of the response to the information holder and the persons affected and they have the possibility to review the draft answer and to give their view on whether all information prepared for delivery to the requesting CA is relevant and if redactions have been made correctly.[59] Especially in more complex cases, a meeting can take place in a more informal setting.

396. It should also be noted that there are now exceptions in relation to the prior notification of the taxpayer which were introduced at the end of the review period (see section B.2). If the request for an exception from notification is granted, the persons affected by the request are not notified and may not then participate in the proceedings. The information holder is banned from notifying them and they may only participate after the ban has been

59. As noted, art. 24, para 1, LIAATM provides the holder of the information or other affected party with the right to participate in the domestic procedure.

lifted (to determine whether the transfer of information was unlawful – Art 28k). However, the information holder may participate in the proceedings as explained above, including in relation to the necessity for the ban (28b d).[60] This preferential role of the information holder amplifies the concerns about the amount of information that would be disclosed to information holders under the new procedure. In all cases, the final decree will disclose the relevant reasoning of the FA for acceding to the request, including what information will be exchanged.

397. In the situation where there is a request that asks for an exception to prior notification (the "exceptional procedure"), the information holder may comment concerning the following points mentioned in Art. 28b lit. d:

- admissibility of the request;
- the information the request seeks to obtain;
- the scope of the information to be conveyed; and
- the necessity for a ban on information.

398. Liechtenstein explains that the possibility to comment for the information holder in this respect is also explicitly limited to his/her own interests. It explains that the information holder will therefore never come in a position to comment in the interest of other affected person/s (e.g. taxpayer as client). They further explain that the right to comment is, by law, no right to appeal.

399. As noted, in order to enable the information holder to make his or her comments, the information holder has the right to inspect the files. However, Liechtenstein explains that this access is limited in this situation. They explain that the FA limits access based on Article 24, para 2 to the information contained in the letter of notice, which can be understood as the information needed to collect the information that is requested. Liechtenstein further explains that the right to examine "extracts of the request letter" in this context should be understood as meaning that the information holder can only access the minimum information necessary to gather the information. This would in essence be the information that was already provided by the information holder and subsequently processed by the FA. Liechtenstein states that in this situation in no case the request letter will be disclosed to the Information holder.

400. Regarding the practice during the review period (2011-2013), Liechtenstein explained it only showed more information ("the full file") if the information holder or any other affected person specifically asked for it. Liechtenstein clarifies that their policy is to show only the part of the request that is relevant to the case. However, during the onsite visit Liechtenstein officials also stated that prior to 2013, Liechtenstein had been more open

60. Based on art. 24 in combination with art. 28e LIAATM.

showing information to the information holder and spoke about a learning experience. Liechtenstein clarifies that in the past there have been cases where the EOI request letter has been shared with a taxpayer if there was a specific reason but that it has since refined its procedures and this is no longer the case.[61] The Act on Administrative Assistance in Tax Matters was amended as of 1 august 2015 to reflect this position. Regarding the impact that these disclosures had, Liechtenstein states that it only became aware of the fact that it should not disclose the EOI request letter in 2012, following an amendment of the commentary to the OECD model. Liechtenstein states that it received around 44 requests in 2012 and before changing its practices. Liechtenstein indicates that it disclosed the EOI request letter in around five cases, all in the context of an appeal procedure. Liechtenstein further states that in all these cases it covered the names and further contact details of the foreign competent authority involved. Reflecting on this, Liechtenstein states that it is difficult to measure the impact that these disclosures might have had. Liechtenstein states that it did not receive feedback that information provided undermined or delayed the foreign investigations or proceedings.

Conclusion

401. The disclosure to third parties or taxpayers during the period under review of the EOI request and details that were not necessary for gathering the requested information, including the request letter itself, is not in accordance with the principle that information contained in an EOI request should be kept confidential.

402. Although Liechtenstein stated that it changed its practices in 2013

61. In this respect it can be noted that one peer expressed its doubts whether the Liechtenstein CA grants the information holder or taxpayer full access to the request. In respect to this request, that involves a discussion in respect of the issue of stolen data, the peer notes that its permission was not asked to give the full request together with the attachments to the information holder. The peer notes that, in the refusal to the request, text written by the information holder even referred to the contents of the attachments of the request. The peer concluded that it seems likely that the whole request might have been shown/given to the information holder. In its response, the Liechtenstein CA confirmed that it showed parts of the request to the information holder (but not the attachments). Liechtenstein further explains that the information holder has to give proof to them that the information is stolen. It can be expected that this necessitates to disclose information to the holder to allow the holder to make an assessment. However, Liechtenstein stein states that the particular circumstances of this case need to be taken into account. The pieces of information that were asked to be kept confidential in the administrative assistance procedure were already included in an earlier mutual legal assistance procedure.

and also amended its Act on Administrative Assistance in Tax Matters, which amongst other changes now should limit access to entitled parties to examine extracts from an EOI request, it should be noted that it is not fully clear whether the newly introduced amendment to paragraph 2 of Article 24 reconciles both the constitutional concerns as well as the confidentiality requirements in respect of the EOI request under the standard. In addition, there are also concerns in relation to the preferential role that the information holder plays when a requests for an exception from notification of the taxpayer is sought. Finally these changes are quite recent and therefore it remains to be seen how this can be balanced in practice in conformity with the confidentiality requirements of the international standard.

403. Liechtenstein is therefore recommended to monitor that the recent amendment of its law to allow access to extracts of the EOI request in certain circumstances does not exceed the confidentiality requirements as provided for under the international standard.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 Rating	
Largely Compliant	
The disclosure during the period under review to third parties or taxpayers of details that were not necessary for gathering the requested information, including the request letter itself, is not in accordance with the principle that information contained in an EOI request should be kept confidential. Liechtenstein amended its Act on Administrative Assistance in Tax Matters, which amongst other changes limits access to entitled parties to examine relevant extracts from an EOI request. Although Liechtenstein states that it already changed its practice in 2013, it should be noted that the amendment is very recent (August 2015) and so it remains to be seen whether this will operate in practice in conformity with the confidentiality requirements of the international standard.	Liechtenstein should monitor the practical application of the recent amendment of its law to ensure that it does not exceed the confidentiality requirements as provided for under the international standard.

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

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

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

404. The international standards allow requested parties not to supply information in response to a request in certain identified situations. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries.

405. All of the agreements concluded by Liechtenstein incorporate wording modelled on Article 26(3) of the OECD *Model Tax Convention* or Article 8 of the OECD *Model TIEA,* providing that requested jurisdictions are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney-client privilege/legal privilege or information the disclosure of which would be contrary to public policy.

406. As noted previously in Part B.1 of this report, the FA can refuse to provide information in response to a request when the request is based on information obtained by way of data theft, which is an act punishable in Liechtenstein, and therefore against public policy.

407. The scope of professional privileges in Liechtenstein is not so wide as to interfere with exchange of information to the standards (see section B.1 of this report).

408. Article 1 of Liechtenstein TIEAs with Andorra, Antigua and Barbuda, Belgium, Monaco and Saint Kitts and Nevis provide that "rights and safeguards secured to persons by the laws or administrative practices of the requested Party remain applicable". This provision misses the additional wording available in the Model TIEA that "… to the extent they do not unduly prevent or delay effective exchange of information", which is available in the TIEAs with France, the Netherlands, Ireland and seven Nordic jurisdictions. The absence of this additional provision has the potential to prevent or delay the exchange of information by Liechtenstein due to the lack of exceptions to the requirement to notify taxpayers of requests for information concerning them under the LIAATM, as discussed in Part B of this report.

409. Liechtenstein's TIEAs with Belgium, Germany, Ireland, Monaco as well as St. Kitts and Nevis contain protocols to the agreements which *inter alia* provide that:

> It is understood that the taxpayer, unless subject to criminal investigation, is to be informed about the intention to make a request for information. If the information of the taxpayer would jeopardise the purpose of the investigation, information is not necessary.

410. The wording in this regard in the protocol to the TIEA with Antigua and Barbuda reads: "unless subject to criminal investigations, taxpayer is to be informed about the intention to make a request for information". The TIEA with Andorra requires the taxpayer to be informed about the intention to make a request for information.

411. These agreements oblige the requesting jurisdiction to inform the taxpayer of their intention to make a request. Liechtenstein is advised to provide for exceptions to this notification requirement in these agreements. Liechtenstein has reported that it has already initiated the necessary internal proceedings to amend agreements with Andorra, St. Kitts and Nevis, Monaco and Antigua and Barbuda.

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

Ordre public

413. All of the agreements concluded by Liechtenstein incorporate wording modelled on Article 26(3) of the OECD Model Tax Convention or Article 8 of the OECD Model TIEA, providing that requested jurisdictions are not obliged to provide information the disclosure of which would be contrary to public policy.

414. The commentary to the standard clarifies that a violation of "ordre public" should only be considered in "extreme cases", e.g. where a tax investigation is motivated by political, racial or religious prosecution, or in cases where information requested constitutes a state secret (e.g. sensitive information held by secret services). The commentary concludes that "[Thus,] issues of public policy (ordre public) rarely arise in the context of information exchange between treaty partners."

415. Liechtenstein's approach regarding the application of the concept of ordre public has had a significant impact on EOI in practice. In practice the exception ordre public came up exclusively in relation to the issue of stolen data. In all cases where the issue of stolen data has been raised, no exchange of information has yet occurred. As a consequence around 40% of all EOI requests received by Liechtenstein are currently pending.

416. Liechtenstein's EOI Act (LIAATM) provides that the FA must decline a request if it is based on information obtained by means of an act that is judicially punishable in Liechtenstein with reference to the sovereignty, security, or public policy of the Principality of Liechtenstein(Art. 8(2) in combination with 8(1)(b) LIAATM).

417. The commentary to the LIAATM states that any request based on stolen data (data theft being a criminal act in Liechtenstein) should be against public policy and would not be responded to. Verification basically takes place at the moment that the CA looks at the admissibility of a request. Based on Article 9 of the LIAATM, the FA must verify whether a request meets the requirements of Article 7 regarding form and content of requests or whether there are grounds for declining a request under Article 8.[62]

418. In practice, there was one instance in December 2013 where the Liechtenstein CA initiated an inquiry about whether 59 requests received from one EOI partner were based on stolen data. In relation to these cases, the situation is the following:

- As Liechtenstein explains all requests were based on virtually the same set of circumstances, which, according to Liechtenstein, appeared to rely on stolen information.
- Liechtenstein contacted the requesting jurisdiction and explained that it was not able to process the requests on this basis, and asked the competent authority of the requesting jurisdiction for clarification of the basis for the requests. Liechtenstein stated that this clarification is still outstanding.[63] However, the peer confirmed in its input

62. A request may be refused if: *(i)* it is not made in conformity with this Act and, in particular, where the requirements of article 7 are not met; *(ii)* the sovereignty, security, or public policy of the Principality of Liechtenstein would be compromised; or *(iii)* the statute of limitations pertaining to the object of the request has expired pursuant to the laws of the requesting State.

63. These cases were discussed in a recent bilateral CA meeting and both CAs agreed on a procedure how to deal with these 59 cases. The requesting CA will provide a report regarding the background of these cases in parallel the requested CA will start collecting the information with the information holders. Liechtenstein provided an update explaining that Liechtenstein has asked for a clarification as to the foreseeable relevance in 15 cases. While all the entities in question were closed before the TIEA entered into force, the requests were processed and this information was given to the treaty partner. With respect to the remaining cases, the procedures are ongoing.". As the assessment team understands all 15 cases concern requests in relation to Anstalts, foundations or establishments that were closed before the entry into force of the TIEA between the two partners. Liechtenstein in all these 15 cases asked the EOI partner a clarification regarding the foreseeably

that its tax authorities had conducted investigations in response to an anonymous reporting received by them and these investigations had provided sufficient indications that a number of its taxpayers were related to a number of foundations and one establishment domiciled in Liechtenstein. It confirmed that its requests were based on the results of these additional investigations. The peer also noted that it would be of a purely speculative nature to assume or conclude that these 59 requests are based on stolen data. In response Liechtenstein has stated that it is not yet in possession of this background information and no conclusions have yet been reached.

- The peer added that it understood from the Liechtenstein CA that it would face difficulties when endeavouring to ascertain whether a request could be based on stolen data or not (see sections below).

419. Liechtenstein authorities confirm that in practice it is difficult for the competent authority to conclude from the request itself whether it is based on stolen data or not. For this reason, in practice, in most cases the issue did not come up when the competent authority verified the admissibility of the request, but at a later stage, during the information gathering process.

420. As noted, after verification that the request is admissible, the FA must notify the holder of the information "about receipt of the request and the information requested therein" (Art. 10(1)(a) LIAATM). Liechtenstein explains that it is in this stage that the external information holder – sometimes with the assistance of the notified taxpayer – will flag any issue of stolen data to the Liechtenstein FA. In such a situation the information holder will have to provide proof/evidence to the Liechtenstein FA. Liechtenstein points out that the information holder (bank, entity) will most likely know about a data theft concerning its client, and can be expected to provide evidence to support this claim.

421. As is the case in other instances where the information holder does not agree with the competent authority about transmission of any of the information, the information holder in practice would provide the requested information and it would make an objection. In such a case, the Liechtenstein competent authority informs the foreign competent authority of the objections put forward and asks the foreign CA for comments.

422. In practice, there were three cases in relation to two EOI partners in which the issue of stolen data was initially raised by the information holder and not the Liechtenstein Competent Authority. In relation to these three cases the situation is the following:

relevance of the requested information for current tax years (after the entry into force of the TIEA). This means that all 15 cases are currently still pending.

- The first two cases regarded the same EOI partner as above. The peer notes that these two cases were both rejected because Liechtenstein told that it had evidence that the request was based on stolen data. These requests were sent in August and December 2011 and both related to banking information in respect of the same bank. After Liechtenstein informed the EOI partner in the first case that the bank had raised concerns that the request may be based on stolen data, and that a person had been convicted in the requesting jurisdiction in connection with this case, Liechtenstein reports that the foreign CA wrote back stating that no further information was necessary and the request should be treated as closed.[64]
- The information holder again raised the concern that the request originated from stolen data, and linked the issue to the same data theft as mentioned above. In both cases the bank provided details of the thief's conviction and screenshots that the thief had made of the account.[65] According to the bank, dates that were visible in the screenshots were used in the request and, because it does not provide account statements with a date, it concluded that the dates could only have originated from the screenshots. Liechtenstein asked the requesting CA for its comments and it answered that its request was based on different evidence. Liechtenstein states that it asked the requesting CA to provide further evidence, as otherwise the request would have to be rejected. According to Liechtenstein, this case is still pending.
- A third request (originally dated from October 2012) was sent by a second EOI partner and related to ownership and bank information in respect of two foundations. After Liechtenstein had initiated the information gathering process at the end of January 2014,[66] the

64. In this respect Liechtenstein explains that the request was based on client data that had been stolen by a former employee of a Liechtenstein bank. Liechtenstein stated that this person had been convicted in the requesting jurisdiction, as he had tried to blackmail the bank as well as account holders of the bank that were living in the requesting jurisdiction in connection with the information that had been stolen.
65. As Liechtenstein explains the bank had this information as the bank was actually blackmailed with these screenshots.
66. Although this request dates from October 2012, it should be noted that first discussions took place concerning foreseeably relevance of the request between the CAs. Following a request for further clarification from Liechtenstein in November 2012, the requesting CA responded in September 2013 and in January 2014 and sent concrete explanations as to the necessity of this information for the tax assessment of the tax years under investigation as covered by the TIEA (2011 and later).

information holder raised concerns about the origin of the request being stolen data. It submitted copies of correspondence between the tax authorities of the requesting jurisdiction and a third country tax authority regarding the supply of a disk with relevant data.[67] Liechtenstein states that this mirrored the information included in the request, which also included a copy of the letter. Liechtenstein reported the concerns to the EOI partner in July 2014 and asked for comments. Liechtenstein states that this is still outstanding. However, in its input the peer notes that it interpreted the response from Liechtenstein as a refusal, as it did not see any possibility to provide Liechtenstein with the further evidence that would have allowed it *not* to apply Art 8(2) of the LIAATM. The Peer therefore concluded that Liechtenstein (eventually) would need to reject the request. The peer further stated that it has not purchased confidential bank information nor incited any employee of a bank in Liechtenstein to sell confidential bank information to the tax authority or other Government authorities of the requesting jurisdiction. The peer reports that the case is unresolved.[68]

423. The Liechtenstein FA has clarified that it processes the request as any other request. Where the information holder raises the concern of violation of ordre public, the FA asks the information holder for the respective evidence. If concrete evidence is given, the FA reports this fact to the requesting jurisdiction and asks for comments and whether its request is based on independent investigations ("*eigenständige Ermittlungen*"). The same procedure applies in cases where the FA itself has concerns that the request appears to rely on stolen information. According to the common understanding of the FA and the partner involved the FA will process the request if besides the mere existence of a piece of stolen information the requesting CA has demonstrated that they have conducted own investigations, in particular that they have pursued all means available to them, in order to establish the basis for their request. Liechtenstein has further stated that the mere fact that a person was part of a dataset that was stolen does not constitute sufficient grounds for the FA to refuse a request. Liechtenstein states that a request will only be denied in cases the request "is solely based on stolen data". They add that this means that information can and will be exchanged in all other cases and circumstances including when "independent investigations" have been demonstrated, when the general EOI requirements are met.

67. The EOI partner reports to have given this correspondence to the person under investigation (audit) on the basis of its domestic disclosure rules.

68. The assessment team understood this case has recently been declined, but this has not yet been confirmed by the requested state.

424. However, it is not clear in what circumstances an investigation that involves stolen data would be considered to be "independent" and even if the FA would accept such a basis it remains likely that the information holder may object and there is no guarantee that the phrase *based on information obtained by means of an act that is judicially punishable in Liechtenstein* (Art. 8(2) LIAATM) will not be narrowly interpreted by the Liechtenstein courts. There is no jurisprudence supporting the position that an "independent investigation" in a case involving stolen data will suffice nor what level other information would be needed to meet this threshold. In practice there have been no cases of exchange of information in relation to requests where Liechtenstein has raised the issue of stolen data. Nevertheless, it can be noted that both Liechtenstein and the partner involved have positive expectations of the prospects of such an approach.

425. Liechtenstein explained that the application of its policy in respect of ordre public (stolen data) will take place without taking into account the circumstances in which the requesting jurisdiction came into possession of the information grounding the request. In this respect Liechtenstein confirmed that it will decline to respond to requests in such cases, even when if it does not dispute that they were made in good faith. This would include situations where the requesting state acquired the data through a regular means, such as receiving it under an exchange of information instrument from another EOI partner jurisdiction. While the Liechtenstein FA indicates that they are looking for solutions to these cases, it appears that this would require the existence of completely independent grounds for the request. This means that Liechtenstein will not respond to a request if it believes it is based on stolen data, and regardless of the legal and factual basis on which the information in the request was obtained by the requesting jurisdiction.

Conclusion:

426. The commentary to Article 26 clarifies that a violation of "ordre public" should only be considered in "extreme cases", e.g. where a tax investigation is motivated by political, racial or religious prosecution, or in cases where information requested constitutes a state secret (e.g. sensitive information held by secret services).Therefore, where a jurisdiction relies on ordre public to refuse a request this should be in very rare cases.

427. However, the Liechtenstein Fiscal Authority refuses EOI based on the concept of ordre public in all cases where it considers that the requests are solely based on stolen data. In such cases, its policy takes no account of the circumstances in which the requesting jurisdiction came into possession of the information. This is based on a strict interpretation and application of Art. 8(2) of the LIAATM which provides that a request based on information obtained by means of an act that is judicially punishable in Liechtenstein shall

be refused. In practice, it will ask the requesting jurisdiction to clarify that the information in its request is based on “independent investigations”. It is not clear, however, in what circumstances an investigation that involves stolen data would be considered to be “independent” According to the Liechtenstein FA a request will only be denied in cases where the request “is solely based on stolen data”. They add that this means that information can and will be exchanged in all other cases and circumstances including when “independent investigations” have been demonstrated when the general EOI requirements are met. However this has not been tested in practice yet.

428. In all cases where the issue of stolen data has been raised, whether by the Fiscal Authority itself or by information holders, no exchange of information has yet occurred and around 40% of all EOI requests received by Liechtenstein are currently pending.

429. Liechtenstein’s approach regarding the application of the concept of ordre public has had a significant impact on EOI in practice. It is therefore recommended that Liechtenstein should modify its law and/or practice as appropriate to ensure that it can give effect to the obligations under its EOI mechanisms.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
The absence of exceptions to the requirement in the TIEAs with Andorra and Antigua and Barbuda to notify taxpayers has the potential to prevent or delay the exchange of information by Liechtenstein.	It is recommended that the TIEAs with Andorra and Antigua and Barbuda be updated to allow exceptions to the requirement to notify taxpayers

Phase 2 Rating	
Partially Compliant	
Liechtenstein’s approach regarding the application of the concept of ordre public has had a significant impact on EOI in practice.	Liechtenstein should modify its law and/or practice as appropriate to ensure that it can give effect to the obligations under its EOI mechanisms.

C.5. Timeliness of responses to requests for information

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

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

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

431. There are no provisions in Liechtenstein's agreements pertaining to the timeliness of responses or the timeframe within which responses should be provided. As such, there appear to be no legal restrictions on the ability of the competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

432. During the period of review from 1 January 2011 to 31 December 2013 Liechtenstein received 155 requests for information. Including the time taken by the requesting jurisdiction to provide additional information, the requested information was provided within 90 days, 180 days and within one year in 30%, 43% and 54% of the time respectively.[69]

433. The following table shows the time taken to send the final response to incoming EOI requests including the time taken by the requesting jurisdiction to provide clarification (if asked) over the 3 year period from 1 January 2011 to 31 December 2013.

	2011		2012		2013		Total	
	num.	%	num.	%	num.	%	Num.	%
Total number of requests received[a]	14	100%	44	100%	97	100%	155	100%
Full response[b]: ≤90 days	10	71%	25	57%	11	11%	46	30%
≤180 days (cumulative)	10	71%	36	82%	20	21%	66	43%
≤1 year (cumulative)	11	79%	41	93%	31	32%	83	54%
>1 year	0	0%	0	0%	2	2%	2	1%
Declined for valid reasons[c]	2	14%	2	5%	5	5%	9	6%
Failure to obtain and provide information requested	0	0%	0	0%	0	0%	0	0%

69. These figures are cumulative.

Notes: a. Liechtenstein regards a request as a single request, irrespective of the pieces of information requested or the number of taxpayers involved. A phased delivery of information requested (e.g. the later provision of financial statements which were not yet produced when the request was being dealt with) is counted as one delivery.

A supplementary request, i.e. a further request for information on the same matter, is counted separately, if it triggers the full administrative procedure in Liechtenstein (from information gathering to issuance of a new final decree). A supplementary request which builds on a first set of information delivery is counted as a separate request, unless it merely seeks for clarifications related to the transmitted information.

b. The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was received.

c. See "declined requests" section in the text below.

434. As the table shows the number of requests increased quite sharply from 14 in 2011 to 44 in 2012 and 97 in 2013. As the Liechtenstein authorities have pointed out, requests mainly originate from European countries.

435. Liechtenstein provided the requested information within 90 days for 30% of requests. Furthermore, an additional 13% of the requests are answered in the time period of three to six months. Liechtenstein officials have explained that cases where a response could not be provided within 90 days were not related to a particular type of information, but rather to the complexity of the request involved (for instance large cases involving multiple information holders (banks, entities), whether clarification had to be sought from the EOI partner involved and whether the CAs decision to transmit the information was appealed and taken to court. In respect of answering requests for banking information, for instance, Liechtenstein explains that the average time to reply to such a request is just within 90 days if no appeal to the courts is made. In cases when an appeal was made the average time increased to 175 days. In these cases typically an examination of the case file was requested by the affected individuals or additional investigations had to be made by the CA that were triggered by written observations of affected individuals or their representatives. Nevertheless, Liechtenstein explains that it replied to all requests during the review period within the 90 days by either providing the information requested or the reasons why the request is not well founded, by providing an update on the status of the request

436. Response times have remained roughly stable during the first two years of the period under review as Liechtenstein was able to reply to around 75% of the requests within the period of 180 days from 2011 to 2012. In this same period around 85% of the requests were responded to within a period of one year. At the same time, the number of requests replied to within 90 days decreased 75% in 2011 to 54% in 2012, indicating that in 2012 a

larger percentage of cases were responded to within the timeframe of 90 to 180 days. This process continued in 2013, as Liechtenstein was able to reply to around 61% of the requests within 180 days and 91% within one year. However, the numbers for 2013 in the table don't reflect this performance, as they are heavily influenced by 6 cases (requests) that were declined because Liechtenstein concluded they were fishing expeditions and 59 requests for banking information that are still pending but where Liechtenstein has indications that they are based on stolen information. These cases have been described above under elements C.1 and C.4.

Pending cases

437. In all, around 40% (61 requests) of all received requests over the period under review were pending at the date of the on-site visit. All these 61 requests are related to the issue of stolen data.

438. In the period under review (2011-2013), two requests (one related to banking information and one concerning entity information) were initially rejected[70] by Liechtenstein and one (related to banking information) withdrawn by the foreign CA. A further 59 requests that were made by this same jurisdiction in December 2013 are still pending. All these cases have been described above in section C.4.

Declined requests

439. During the period under review there were nine cases where Liechtenstein declined to provide the requested information (around 6% of all received requests). In eight cases Liechtenstein qualified the request as a "fishing expedition", i.e. invalid requests. These cases have been described under element C.1. above Liechtenstein declined these requests, as well as a ninth request that related to a tax period not covered by the treaty.

Updates

440. During the period under review Liechtenstein authorities regularly provided updates on the status of the request where, for any reason, Liechtenstein had not been able to obtain and provide the information requested within 90 days of receipt of the request. Liechtenstein explains that in all cases where the 90 days were exceeded, Liechtenstein has sent a letter or e-mail explaining the status of the request and the further steps to be taken.

70. Liechtenstein is waiting for the foreign CA's comments in these cases and therefore notes that these two cases are still pending.

441. Further, Article 19 of the LIAATM provides for immediate notification to the foreign competent authority if request cannot be complied for the reason that the information is neither held by the domestic administrative authorities nor in the possession or control of a person within Liechtenstein.

442. As noted above, six of Liechtenstein's TIEAs have protocols which *inter alia* provide that "it is understood that the taxpayer, unless subject to criminal investigation, is to be informed about the intention to make a request for information. If the information to the taxpayer would jeopardise the purpose of the investigation, information is not necessary". This provision, coupled with the fact that rights available to the holder of information and other persons with an interest in the information are very broad, has the potential to delay effective exchange of information (see Part B.1 of this report). This issue will be the subject of analysis in the Phase 2 review of Liechtenstein's exchange of information practices.

Organisational process and resources (ToR C.5.2)

443. Liechtenstein enacted Law of 30 June 2010 on International Administration Assistance in Tax Matters (LIAATM), creating a domestic framework for implementing the obligations arising out of the international exchange of information agreements signed by the Liechtenstein. Article 4 of the LIAATM provides that the Fiscal Authority (FA) is the competent authority for international administrative assistance pursuant to a DTC or TIEA. The FA accepts requests from foreign competent authorities and any requests received by other domestic authorities must be forwarded to the FA for action.

444. Within the Fiscal Authority, the International Division has the overall responsibility for exchange of information. Within the International Division, the Unit Exchange of Information upon Request (EOI Unit) is handling the EOI requests. The unit is staffed with one person. This official has a joint signatory authority with the head of the international division, and in her absence with the deputy head. The person staffing the EOI Unit is a senior official with a degree in legal science and long years of practical experience. The official has attended Global Forum assessor training courses and acted as an assessor in a Global Forum peer review.

445. All international requests for information are handled and processed by the EOI Unit. The EOI Unit is responsible for communication with the other competent authorities and for the administration of gathering the requested information. This includes checking whether the responses sent by other authorities or information holders (banks, service providers) include all the requested information and are in the requested format, and, if the requested information cannot be provided, ensuring that a sufficient explanation is provided as to why it was not able to provide all the requested information.

Handling of EOI requests

446. Once an EOI request is received the request will first be stamped and registered. The CA maintains a physical file for each EOI request and each file has its own unique reference number. All EOI related information is kept separately and treated as confidential. Physical access to the files is restricted to authorised officials only and appropriate security precautions are in place. The CA uses an excel file to log and track all EOI requests.

447. After registering, the EOI Unit confirms receipt of the letter and informs the foreign CA that it will be examined. This confirmation also contains the reference number of the case and is sent by fax or e-mail within 7 days upon receipt of the request.

448. As a next step, the EOI unit checks whether the request meets all legal and procedural requirements under the applicable EOI agreement and the LIAATM. This examination is based on a standard checklist. If all requirements are met, the CA informs the foreign CA by means of fax or e-mail that the request meets all requirements according to the TIEA/DTC and that the request is valid, or informs the foreign CA about the invalidity of the request and the respective reason(s). However, Liechtenstein notes that requests are rarely found to be invalid.

449. Where information required to process the request is missing the Liechtenstein CA in general supplements the missing information with information already at its disposal. Only if this is not possible does Liechtenstein request clarification regarding the facts of the request. In cases where an initial letter is unclear or incomplete, the EOI Unit seeks clarification or additional information from the requesting CA. As Liechtenstein explains this is for example done in the following cases:

- missing statement of reciprocity or of subsidiarity of the request;
- the relevant background is not clear;
- the foreseeable relevance of the requested information cannot be understood in context of the background information;
- the requested information relates to a time before the EOI agreement had entered into force (e.g. the requesting State asks for information related to this time period without giving reasons why such information is foreseeably relevant for the tax assessment of a time period that is covered by the agreement).

450. Statistics provided by Liechtenstein indicate that Liechtenstein has sought clarification in 25 cases during the period under review. The average feedback time in these cases amounted to 75 days. Liechtenstein notes that these requests for clarification and further background information lead to a

positive result in a number of cases and Liechtenstein subsequently was able to provide the information.

451. In practice the CA uses a process flowchart as guidance for processing the incoming requests. This flowchart is based on the respective domestic laws implementing EOI on request. When in doubt, the CA uses the OECD commentary to the Model TIEA and to Art. 26 (version of 2010) and the Global Forum Exchange of Information working manual, as well as other OECD material as guidance.

The actual processing of the request involves the following steps:

452. First a staff member of the EOI office assesses the request to see whether a reply to the request can be prepared on the basis of information that is available within the EOI Unit and/or the Fiscal Authority. If the information is (partially) available with the Fiscal Authority or another governmental authority, the EOI unit will get in contact with the colleague involved by e-mail or telephone (with the tax inspector) and ask to provide the requested information. Receipt of the requested information usually takes between one and two days (with the Fiscal authority) two or three days (other governmental authorities). When the information is in the hands of a third party (in most cases an information holder or a bank), the CA sends a registered letter requesting for the information to be provided within 14 days upon deliverance of the letter. In the letter attention is drawn to the consequences (coercive measures), should the information not be provided within the deadline. However, as noted above within the context of element B.1.4, coercive measures only had to be used once during the period under review.

453. After having received the requested information from the person in possession or control, the EOI unit verifies whether these documents are responsive to the question asked in the request. As Liechtenstein explains, information that is to be included should be responsive to the request. However, if there is clearly a mistake in the request, the Liechtenstein CA will make the necessary amendments themselves. This could be the case if the wrong person or company was described in the request or in a case where the request mentions a foundation instead of an Anstalt. Liechtenstein states that the idea behind this is to minimise court cases and possible delays. As Liechtenstein further explains the CA has the possibility to do a field audit (based on art. 15 LIAMM), however, there have been no cases in practice where the Liechtenstein CA wanted to use this power to ascertain the correctness of the information. Nevertheless, the Liechtenstein CA adds that in practice it happened that they came across inaccuracies when the Liechtenstein CA went through all the gathered information together with the information holder. The information was corrected in these cases.

454. If the CA comes to the conclusion that documents are responsive to the question asked in the request, the EOI officer will redact information that is not specifically relevant to the case at hand (regarding the practice of redacting information reference can be made to element C.1 above).

455. After collecting the requested information and drafting the response, Liechtenstein's domestic EOI law prescribes that the FA will issue a final decree concerning the information to be transmitted to the foreign competent authority (Art. 21 LIAATM). The holder of the information and also any affected party has a right to appeal this final decree by means of a complaint made to the Administrative Court within 14 days of the final decree (Art. 26). However, as only information that is actually sent out can be appealed, the Liechtenstein CA in practice will do an inspection of the files together with the information holder before the final decree is issued. At the same time, this informal consultation procedure (see element B.2 above) still seems to be rather time and labour intensive. As noted, the number of requests that could be answered within 90 days decreased during the review period. At the same time a larger percentage of cases were responded to in 2011 and 2012 within the timeframe between 90 and 180 days. This process continued in 2013, as Liechtenstein was able to reply to around 61% of the requests within the period of 180 days and 91% within one year. Although it's difficult to filter out the exact causes, as some delays were (also) related to clarifications asked by the Liechtenstein CA as well as a number of cases where the information holder or affected parties went to Court, these circumstances cannot fully explain the decrease in the performance in respect of timeliness of the Liechtenstein CA during the period under review. The EOI Unit is currently staffed with one person. In the light of the growing complexity of requests it can be recommended that certain areas – mainly related to establishment and monitoring of (internal) deadlines (see further below) and the workload of the EOI Unit – should be improved.

456. If, after the informal consultation procedure, the Liechtenstein CA concludes that the request can be complied with, it will issue a final decree concerning the information to be transmitted to the foreign competent authority (Art. 21 LIAATM). After the appeal period lapses, the CA will send the information by registered mail to the requesting jurisdiction.

Internal deadlines

457. The EOI Act does not hold a set deadline within which the EOI office is required to provide the requested information to the requesting jurisdiction. Instead it simply states that "administrative assistance procedures shall be carried out expeditiously". However, the EOI Act prescribes a number of internal timelines. For instance confirmation of a request takes place within 7 days upon receipt of the request. No official further time frames and

deadlines are provided for the individual steps regarding handling of requests and obtaining information.

IT tools, monitoring, training

458. The EOI Unit uses an Excel file to register and track the requests and the Outlook calendar as reminder system. Liechtenstein's experience is that these tools have proven adequate given the number of request handled. Liechtenstein further states that the status of all requests received and processed can be seen at any time. The Excel file also provides information with respect to those cases where information has already been exchanged. The EOI Unit and the Head of the International Division and her deputy have full access to both tools.

459. The CA maintains a physical file for each EOI request. Each file has its own unique reference number which is also communicated to the EOI partner. The file is continually kept up to date (from receiving a request until providing the information and therefore closing the case). When the case is closed, the file is kept for a year in case additional inquiries are made, and then it is archived.

460. Technical resources used are the secured general IT systems of the Liechtenstein National Administration, as well as access to the secured information system of the Fiscal Authority. The correspondences of the CA as well as emails are also stored electronically. Only the persons involved in EOI have access to these files.

461. The number of responses handled is published annually in an annual report of the Government to the Liechtenstein Parliament. In addition, Liechtenstein reports that the CA keeps statistical information on requests received, open EIO requests, cases of information transmitted and on the time period used for replying to a request. The CA also keeps statistical information of cases under court review.

462. Officers involved in EOI are well trained and appropriately educated. Liechtenstein clarifies that the official working in the EOI Unit, the Head of the International Division as well as her deputy have been trained in the internal process, the obligations under EOI mechanisms and confidentiality obligations. They add that the internal processes have been set up by the officials currently working on EOI in the Competent Authority. Staff is informed through regular meetings as well as ad hoc meetings about important changes or any other relevant news in the area of mutual assistance. Daily problems are discussed and best practices shared. Officials regularly attend international meetings like the Global Forum Competent Authority Meetings and the PRG-meetings where EOI matters are discussed. Country specific CA

meetings have been held with the USA, with Germany, Austria and with the Nordic countries.

463. Financial resources (e.g. for legal opinions) are available upon specified request to the Ministry of Finance.

464. Liechtenstein reports that the CA has applied for an increase in personnel resources (i.e. for the addition of one person to the EOI unit) with the Ministry, in view of the growing complexity and the expected future increase of requests. Apart from this, any (ad hoc) necessary additional resources to handle multiple requests and potential future group requests will be added using outsourcing and temporary personnel.

465. Although Liechtenstein's processes and resources are generally in place to ensure effective exchange of information, certain areas – mainly related to establishment and monitoring of deadlines and the workload of the EOI Unit – should be improved.

Unreasonable, disproportionate or unduly restriction conditions for EOI (ToR C.5.3)

466. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. Other than those matters identified earlier in this report, there are no further aspects of Liechtenstein's agreements or its laws that appear to impose additional restrictive conditions on the exchange of information.

Determination and factors underlying recommendations

Phase 1 determination
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.

Phase 2 rating	
Largely compliant	
Factors underlying recommendations	**Recommendations**
Although Liechtenstein's processes and resources are generally in place to ensure effective exchange of information, certain areas – mainly related to establishment and monitoring of deadlines and the workload of the EOI Unit – should be improved.	Liechtenstein should endeavour to improve its resources and streamline its processes for handling EOI requests to ensure that all EOI requests are responded to in a timely manner.

Summary of determinations and factors underlying recommendations

Overall Rating
LARGELY COMPLIANT

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1)*		
The element is in place but certain aspects of the legal implementation of the element need improvement.	Information regarding the ownership of foreign companies that are resident for tax purposes in Liechtenstein may, under certain circumstances, not be available.	Liechtenstein should ensure that identity information on the owners of foreign companies that are resident for tax purposes in Liechtenstein is available to its competent authority.
	Information on beneficiaries with less than a 25% interest in trusts and trust enterprises is not required to be maintained.	Liechtenstein should ensure that information is maintained on all beneficiaries and settlor of trusts and trust enterprises.
Phase 2 rating: Largely compliant	Liechtenstein recently introduced new rules, namely rules providing for identification of holders of bearer shares and provisions on oversight and enforcement of obligations to maintain registers of shareholders (including register of bearer shares), which should improve availability of ownership information in Liechtenstein. However these rules are not yet sufficiently tested in practice.	Liechtenstein should monitor implementation of the newly introduced rules and take measures to address any identified deficiencies.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
The element is in place.		
Phase 2 rating: Largely compliant	Obligations ensuring that all relevant entities and arrangements are required to maintain accounting information in line with the standard apply to financial years beginning after 31 December 2013 and therefore remain to be sufficiently tested.	Liechtenstein should monitor availability of accounting information pursuant to the newly introduced rules so that all relevant entities and especially trusts, foundations and anstalts covered by PAS regime maintain accounting records including underlying documentation in line with the standard.
Banking information should be available for all account-holders. *(ToR A.3)*		
The element is in place.		
Phase 2 rating: Compliant	Although opening of bearer passbooks was prohibited in 2001, some pre-existing passbooks are still in existence and identity information on their holders is not available unless a transaction takes place.	Liechtenstein should strengthen the implementation of its measures to ensure that information on the holders of bearer passbooks is available to its competent authority.
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(ToR B.1)*		
The element is in place.		
Phase 2 rating: Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Largely compliant	During the period under review, Liechtenstein was asked to provide exceptions from notification. In one case the EOI partner withdrew the request. Liechtenstein introduced exceptions to the prior notification procedure in August 2015. However, considering the short period between the introduction of the exceptions, after the end of the period under review and just before the cut-off date, the application of the exceptions could not be assessed.	Liechtenstein should monitor application of the exceptions to the prior notification procedure in practice to ensure that it is applied in accordance with the standard
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
The element is in place.		
Phase 2 rating: Partially compliant	Liechtenstein applies a restrictive interpretation of the foreseeable relevant standard when asked for ownership and identity information of foundations and other entities. Furthermore, while assessing the relevance of the information obtained from information holders, Liechtenstein has applied a restrictive interpretation of its relevance to requests. This has restricted the exchange of information in a number of cases during the review period.	Liechtenstein should correct its interpretation of the foreseeably relevant standard to ensure that it does not impede the effective exchange of information.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
The element is in place.		Liechtenstein should continue to develop its EOI network with all relevant partners.

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
The element is in place.		
Phase 2 rating: Largely compliant	The disclosure during the period under review to third parties or taxpayers of details that were not necessary for gathering the requested information, including the request letter itself, is not in accordance with the principle that information contained in an EOI request should be kept confidential. Liechtenstein amended its Act on Administrative Assistance in Tax Matters, which amongst other changes limits access to entitled parties to examine relevant extracts from an EOI request. Although Liechtenstein states that it already changed its practice in 2013, it should be noted that the amendment is very recent (August 2015) and so it remains to be seen whether this will operate in practice in conformity with the confidentiality requirements of the international standard.	Liechtenstein should monitor the practical application of the recent amendment of its law to ensure that it does not exceed the confidentiality requirements as provided for under the international standard.
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
The element is in place.	The absence of exceptions to the requirement in the TIEAs with Andorra and Antigua and Barbuda to notify taxpayers has the potential to prevent or delay the exchange of information by Liechtenstein.	It is recommended that the TIEAs with Andorra and Antigua and Barbuda be updated to allow exceptions to the requirement to notify taxpayers.

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Partially compliant	Liechtenstein's approach regarding the application of the concept of ordre public has had a significant impact on EOI in practice.	Liechtenstein should modify its law and/or practice as appropriate to ensure that it can give effect to the obligations under its EOI mechanisms.
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review. This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made		
Phase 2 rating: Largely compliant	Although Liechtenstein's processes and resources are generally in place to ensure effective exchange of information, certain areas – mainly related to establishment and monitoring of deadlines and the workload of the EOI Unit – should be improved.	Liechtenstein should endeavour to improve its resources and streamline its processes for handling EOI requests to ensure that all EOI requests are responded to in a timely manner.

Annex 1: Jurisdiction's response to the review report[71]

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

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

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

Exchange of information agreements signed by Liechtenstein as at 17 August 2015.

Liechtenstein has signed but not yet ratified the Multilateral Convention.

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
1	Albania	Multilateral Convention	Signed	In force in Albania
2	Andorra	TIEA	18.09.2009	10.01.2011
		Multilateral Convention	Signed	Not yet in force
3	Anguilla [a]	Multilateral Convention	Extended	In force in Anguilla
4	Antigua and Barbuda	TIEA	25.11.2009	16.01.2011
5	Argentina	Multilateral Convention	Signed	In force in Argentina
6	Aruba [b]	Multilateral Convention	Extended	In force in Aruba
7	Australia	TIEA	21.06.2011	21.06.2012
		Multilateral Convention	Signed	In force in Australia
8	Austria	DTA	05.11.1969	28.01.1971
		Protocol to DTA	29.01.2013	01.01.2014
		Tax Cooperation Agreement	29.01.2013	01.01.2014
		Multilateral Convention	Signed	In force in Austria
9	Azerbaijan	Multilateral Convention	Signed	In force in Azerbaijan
10	Belgium	TIEA	10.11.2009	12.06.2015
		Multilateral Convention	Signed	In force in Belgium
11	Belize	Multilateral Convention	Signed	In force in Belize
12	Bermuda [a]	Multilateral Convention	Extended	In force in Bermuda

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
13	Brazil	Multilateral Convention	Signed	Not yet in force
14	British Virgin Islands [a]	Multilateral Convention	Extended	In force in British Virgin Islands
15	Cameroon	Multilateral Convention	Signed	Not yet in force
16	Canada	TIEA	31.01.2013	26.01.2014
		Multilateral Convention	Signed	In force in Canada
17	Cayman Islands [a]	Multilateral Convention	Extended	In force in Cayman Islands
18	Chile	Multilateral Convention	Signed	Not yet in force
19	China, People's Republic of	TIEA	27.01.2014	03.08.2014
		Multilateral Convention	Signed	Not yet in force
20	Colombia	Multilateral Convention	Signed	In force in Colombia
21	Costa Rica	Multilateral Convention	Signed	In force in Costa Rica
22	Croatia	Multilateral Convention	Signed	In force in Croatia
23	Curacao [b]	Multilateral Convention	Extended	In force in Curacao
24	Cyprus [c]	Multilateral Convention	Signed	In force in Cyprus
25	Czech Republic	DTA	25.09.2014	Not yet in force
		Multilateral Convention	Signed	In force in Czech Republic
26	Denmark	TIEA	17.12.2010	07.04.2012
		Multilateral Convention	Signed	In force in Denmark
27	El Salvador	Multilateral Convention	Signed	Not yet in force
28	Estonia	Multilateral Convention	Signed	In force in Estonia
28	Faroe Islands [d]	TIEA	17.12.2010	03.04.2012
		Multilateral Convention	Extended	In force in Faroe Islands
29	Finland	TIEA	17.12.2010	04.04.2012
		Multilateral Convention	Signed	In force in Finland
30	France	TIEA	22.09.2009	19.08.2010
		Multilateral Convention	Signed	In force in France
31	Gabon	Multilateral Convention	Signed	Not yet in force
32	Georgia	DTA	13.05.2015	Not yet in force
		Multilateral Convention	Signed	In force in Georgia

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
33	Germany	TIEA	02.09.2009	28.10.2010
		DTA	17.11.2011	19.12.2012
		Multilateral Convention	Signed	Not yet in force
34	Ghana	Multilateral Convention	Signed	In force in Ghana
35	Gibraltar [a]	Multilateral Convention	Extended	In force in Gibraltar
36	Greece	Multilateral Convention	Signed	In force in Greece
37	Greenland [d]	TIEA	17.12.2010	13.04.2012
		Multilateral Convention	Extended	In force in Greenland
38	Guatemala	Multilateral Convention	Signed	Not yet in force
39	Guernsey [a]	DTA	11.06.2014	30.04.2015
		Multilateral Convention	Extended	In force in Guernsey
40	Hong Kong, China	DTA	12.08.2010	08.07.2011
41	Hungary	DTA	29.06.2015	Not yet in force
		Multilateral Convention	Signed	In force in Hungary
42	Iceland	TIEA	17.12.2010	31.03.2012
		Multilateral Convention	Signed	In force in Iceland
43	India	TIEA	28.03.2013	18.01.2014
		Multilateral Convention	Signed	In force in India
44	Indonesia	Multilateral Convention	Signed	In force in Indonesia
45	Ireland	TIEA	03.06.2011	30.06.2010
		Multilateral Convention	Signed	In force in Ireland
46	Isle of Man [a]	Multilateral Convention	Extended	In force in Isle of Man
47	Italy	TIEA	26.02.2015	Not yet in force
		Multilateral Convention	Signed	In force in Italy
48	Japan	TIEA	05.07.2012	29.12.2012
		Multilateral Convention	Signed	In force in Japan
49	Jersey [a]	Multilateral Convention	Extended	In force in Jersey
50	Kazakhstan	Multilateral Convention	Signed	In force in Kazakhstan
51	Korea	Multilateral Convention	Signed	In force in Korea

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
52	Latvia	Multilateral Convention	Signed	In force in Latvia
53	Lithuania	Multilateral Convention	Signed	In force in Lithuania
54	Luxembourg	DTA	26.08.2009	17.12.2010
		Multilateral Convention	Signed	In force in Luxembourg
55	Malta	DTA	27.09.2013	01.07.2014
		Multilateral Convention	Signed	In force in Malta
56	Mexico	TIEA	20.04.2013	24.07.2014
		Multilateral Convention	Signed	In force in Mexico
57	Moldova	Multilateral Convention	Signed	In force in Moldova
58	Monaco	TIEA	21.09.2009	14.07.2010
		Multilateral Convention	Signed	Not yet in force
59	Montserrat [a]	Multilateral Convention	Extended	In force in Montserrat
60	Morocco	Multilateral Convention	Signed	Not yet in force
61	Netherlands	TIEA	10.11.2009	01.12.2010
		Multilateral Convention	Signed	In force in Netherlands
62	New Zealand	Multilateral Convention	Signed	In force in New Zealand
63	Nigeria	Multilateral Convention	Signed	In force in Nigeria
64	Norway	TIEA	17.12.2010	31.03.2012
		Multilateral Convention	Signed	In force in Norway
65	Philippines	Multilateral Convention	Signed	Not yet in force
66	Poland	Multilateral Convention	Signed	In force in Poland
67	Portugal	Multilateral Convention	Signed	In force in Portugal
68	Romania	Multilateral Convention	Signed	In force in Romania
69	Russian Federation	Multilateral Convention	Signed	In force in Russian Federation
70	San Marino	DTA	23.09.2009	19.01.2011
		Multilateral Convention	Signed	Not yet in force
71	Saudi Arabia	Multilateral Convention	Signed	Not yet in force
72	Seychelles	Multilateral Convention	Signed	Not yet in force

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
73	Singapore	DTA	29.05.2013	25.07.2014
		Multilateral Convention	Signed	Not yet in force
74	Sint Maarten [b]	Multilateral Convention	Extended	In force in Sint Maarten
75	Slovak Republic	Multilateral Convention	Signed	In force in Slovak Republic
76	Slovenia	Multilateral Convention	Signed	In force in Slovenia
77	South Africa	TIEA	29.11.2013	13.05.2015
		Multilateral Convention	Signed	In force in South Africa
78	Spain	Multilateral Convention	Signed	In force in Spain
79	Saint Kitts and Nevis	TIEA	11.12.2009	19.02.2011
80	Saint Vincent and Grenadines	Protocol to the TIEA	10.07.2014	16.04.2015
		TIEA	02.10.2009	16.05.2011
81	Sweden	TIEA	17.12.2010	08.04.2012
		Multilateral Convention	Signed	In force in Sweden
82	Switzerland	DTA	22.06.1995	17.12.1996
		DTA	10.07.2015	Not yet in force
		Multilateral Convention	Signed	Not yet in force
83	Tunisia	Multilateral Convention	Signed	In force in Tunisia
84	Turkey	Multilateral Convention	Signed	Not yet in force
85	Turks and Caicos Islands [a]	Multilateral Convention	Extended	In force in Turks and Caicos Islands
86	Ukraine	Multilateral Convention	Signed	In force in Ukraine
87	United Kingdom	TIEA	11.08.2009	02.12.2010
		LDF	11.08.2009	11.08.2009
		DTA	11.06.2012	19.12.2012
		Multilateral Convention	Signed	In force in United Kingdom
88	United States	TIEA	08.12.2008	01.01.2010
		Protocol to the TIEA	16.05.2014	
		Multilateral Convention	Signed	Not yet in force
89	Uruguay	DTA	18.10.2010	03.09.2012

Notes: a. Extension by the United Kingdom

b. Extension by the Kingdom of the Netherlands

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

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

d. Extension by the Kingdom of Denmark.

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

Corporate Laws

Law of 20 January 1926 on Persons and Companies

Ordinance of 19 December 2003 on the Law on persons and Companies

Ordinance of 8 April 2003 on the Performance of Activities under Article 180a of the Law on Persons and Companies

Law of 9 December 1992 on Trustees.

Foundation Decree of 27 March 2009

Trust Enterprise Act

Ordinance on the Public Registry

Regulatory Laws

Law of 21 October 1992 on Banks and Investment Firms (Banking Act) Law of 6 December 1995 on the Supervision of Insurance Undertakings (Insurance Supervision Act; ISA)

Financial Market Authority Act

Taxation Laws

Law of 23 September 2010 on National and Municipal Taxes

Ordinance of 21 December 2010 on National and Municipal Taxes

Anti-Money Laundering/Counter-Terrorism Financing Laws

Due Diligence Act, 1996

Due Diligence Ordinance, 2005

Law of 11 December 2008 on Professional Due Diligence to Combat Money Laundering, Organised Crime, and the Terrorist Financing (Due Diligence Act; DDA)

Ordinance of 17 February 2009 on Professional Due Diligence to combat money Laundering, Organised Crime, and Terrorist Financing (Due Diligence Ordinance; DO)

Information Exchange for Tax Purposes Laws

Law of 30 June 2010 on Administrative Assistance in Tax Matters

Law of 30 June 2010 on Administrative Assistance in Tax Matters with the United Kingdom of Great Britain and Northern Island (UK TIEA Act)

Law of 16 September 2009 on Administrative Assistance in Tax Matters with the United States of America

UK-TIEA Ordinance of 31 August 2010

Other Laws

Law of 9 December 1992 on Auditors and Audit Companies

Law of 9 December 1992 on Lawyers

Ordinance of 17 December 1996 on the Laws on Supervision of Insurance Undertakings (Insurance Supervision Ordinance; SO)

Criminal Procedure Code

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: LIECHTENSTEIN

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

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

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

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

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