GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

SAMOA

OECD

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

PHASE 2: IMPLEMENTATION OF THE STANDARD IN PRACTICE

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

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About the Global Forum

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

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

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

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

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

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

Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information (EOI) in Samoa as well as the practical implementation of that framework. The assessment of effectiveness in practice has been performed in relation to a three-year period (1 January 2011 to 31 December 2013). The international standard which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information partners.

2. Samoa is an independent state located in the South Pacific Ocean, approximately 3 300 kilometres northeast of New Zealand. Its economy is traditionally based on agriculture with a high dependence on external personal remittances and external development aid. With modernisation, Samoa has diversified its economic base, with the manufacturing and service sectors becoming significant contributors to Gross Domestic Product (GDP), driven mainly by industry (30%), tourism (25%), services (24%) and agriculture (11%).

3. Relevant entities and arrangements comprise companies, partnerships, trusts, and special purpose international companies (analogous to foundations), which are generally divided into domestic and international entities and arrangements. Commercial and tax legislation is in general sufficient to ensure the availability of ownership and identity information concerning domestic and international entities and arrangements. Anti-money laundering legislation is also sufficient to ensure ownership information with regard to all international entities and arrangements. Bearer shares have now been abolished. Enforcement of these provisions is secured by the existence of significant penalties for non-compliance. In practice, ownership information is generally available in respect of domestic entities and arrangements. However, the monitoring of obligations on trustee companies to maintain ownership information with respect to international entities and arrangements was not sufficiently rigorous, and the custodial regime in

place with regard to bearer shares was not sufficiently monitored during the review period. Samoa is therefore recommended to increase the monitoring and enforcement of these obligations.

4. Samoa's commercial and tax laws ensure that reliable accounting records and underlying documentation are maintained with regards to all relevant entities and arrangements, with the exception of liquidated companies, foreign benefiting trusts and unit trusts. Financial institutions in Samoa are required to keep all records pertaining to the accounts held by them, as well as related financial and transactional information. In practice, accounting information is generally available in respect of domestic entities and arrangements. However, accounting information with respect to international entities and arrangements was generally not required to be available during the review period, and the unavailability of accounting information has impacted EOI. Samoa is therefore recommended to monitor and enforce the new accounting records obligations.

5. Samoa's competent authority has broad powers to gather the information relevant to exchange of information. These powers are exercised predominantly by issuance of notice to the person(s) required to produce the information and are complemented by powers to inspect premises and seize the information as well as to compel oral testimony. Secrecy provisions found in domestic legislations are overridden for exchange of information purposes, and no domestic tax interest in the information sought is needed. These access powers are not restricted by prior notification requirements.

6. Since 2009, Samoa has concluded tax information exchange agreements with 17 jurisdictions, including with its two main trading partners. All these agreements follow closely the OECD Model TIEA and allow for exchange of information to the standard with relevant partners. The Tax Information Exchange Act 2012 ensures that Samoa's agreements become effective in domestic legislation. Negotiations are currently underway with four jurisdictions.

7. Samoa's practical experience with exchanging information is relatively limited to date. During the review period Samoa received four requests from three partners. Samoa organised its EOI unit in mid-2013 and a clear procedure has recently been formalised which covers all relevant steps in the EOI process. The policies and practices with respect to confidentiality are also sound. Inputs received from Samoa's EOI partners are generally positive, albeit noting that there have been significant delays in receiving responses.

8. Samoa 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 recommendations made in respect of Samoa's legal and

regulatory framework, and the effectiveness of its exchange of information in practice. These ratings have been compared with the ratings assigned to other jurisdictions for each of the essential elements to ensure a consistent and comprehensive approach. On this basis, Samoa has been assigned a rating of Compliant for elements A.3, B.1, B.2, C.1, C.2, C.3, C.4, and Partially Compliant for elements A.1, A.2 and C.5. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Samoa is Partially Compliant.

9. A follow up report on the steps undertaken by Samoa to respond to the recommendations made in this report should be provided within twelve months of the adoption of this report.

Introduction

Information and methodology used for the peer review of Samoa

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

11. The assessment has been conducted in two stages: Phase 1, carried out in 2012, and Phase 2, carried out in 2014. The Phase 1 Report, which was adopted and published by the Global Forum in October 2012, was based on the laws, regulations, and exchange of information mechanisms in force or effect as at August 2012, other materials supplied by Samoa, and information supplied by partner jurisdictions.

12. The Phase 2 assessment looked at the practical implementation of Samoa's legal framework during the three year review period of 1 January 2011 – 31 December 2013, as well as amendments made to the legal and regulatory framework since the Phase 1 review. The assessment was based on the laws, regulations, and EOI mechanisms in force or effect as at 14 August 2015. It also reflects Samoa's responses to the Phase 1 and Phase 2 questionnaires, other information, explanations and materials supplied by Samoa during and after the Phase 2 on-site visit that took place in Apia, Upolu from 9 to 12 December 2014 and information supplied by partner jurisdictions. During the on-site visit, the assessment team met with officials and representatives of the Inland Revenue Services, Samoa International Finance Authority, Ministry of Commerce and Labour, Central Bank of Samoa, Office of the Attorney General and Ministry of Foreign Affairs and Trade. A list of all those interviewed during the on-site visit is attached to this report at Annex 4.

13. The Terms of Reference break down the standards of transparency and exchange of information into ten essential elements and 31 enumerated

aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses Samoa's legal and regulatory framework as well as the practical implementation of the framework against these elements and each of the enumerated aspects. In respect of each essential element, a determination is made that either *(i)* the element is in place, *(ii)* the element is in place but certain aspects of the legal implementation of the element need improvement, or *(iii)* the element is not in place. Where relevant, these determinations are accompanied by recommendations on how certain aspects of the system could be strengthened. To reflect the Phase 2 component, an assessment is made concerning Samoa'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. An overall rating is also assigned to reflect Samoa's overall level of compliance with the standards.

14. The Phase 1 assessment was conducted by a team which consisted of four assessors: Ms. Ingeborg Granig-Sinz, tax expert/legal officer, International Department, Fiscal Authority, Liechtenstein; and Mr. Carlo A. Carag, undersecretary, Revenue Operations and Legal Affairs Group, Department of Finance, Philippines; and two representatives of the Global Forum Secretariat: Ms. Renata Fontana and Mr. Franceso Positano. The Phase 2 assessment was conducted by a team comprised of Mr. Carlo A. Carag, Department of Finance, Philippines; Ms. Antoinette Musilek, Ministry Of Finance And Public Administration, Spain; and Ms. Melissa Dejong from the Global Forum Secretariat. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Samoa.

Overview of Samoa

Governance, economic context and legal system

15. Samoa is an independent state located in the South Pacific Ocean, approximately 3 300 kilometres Northeast of New Zealand. The capital city is Apia. The total land area of Samoa is approximately 3 000 km^2, consisting of the two main islands of Savai'i and Upolu, which account for 99% of the total land area, and eight small islets. Samoa has a population of approximately 188 000 inhabitants and a zero annual population growth rate. The official languages are Samoan and English. The currency is the Samoan Tala (WST) and its exchange rate as of 14 August 2015 is WST 1 = USD 0.4 and USD 1 = WST 2.6.

16. The Samoan economy is traditionally based on agriculture with a high dependence on external personal remittances and external development aid.

Nevertheless, the economy has seen some real growth in the last decade. With modernisation, Samoa has diversified its economic base, with the manufacturing and service sectors becoming significant contributors to Gross Domestic Product (GDP), driven mainly by industry (30%), tourism (25%), services (17%), agriculture (11%) and financial sector (7%). In 2014, the estimated GDP amounted to USD 995 million.[1] Samoa's main trading partners are, by order of relevance: Australia, New Zealand, the United States, Japan, and China.[2]

17. Formerly a German colony, Samoa was under New Zealand's control from 1914 until it gained independence in 1962. Its political stability is largely attributable to a combination of selected elements of Samoa's traditional *matai* (chiefly) system and elements of liberal democracy. Samoa is a Parliamentary democracy and its written Constitution of 1960 provides for a Head of State, a Prime Minister and Cabinet of Ministers, and a Legislative Assembly. The Village Fono Act 1990 gives village councils authority over village law and order, health and social issues.

18. Samoa's court system is made up of two District Courts and a Supreme Court manned by six local judges, and an Appeal Court that sits once or twice a year and is overseen by overseas judges. There is a separate Land and Titles Court that deals with matters relating to customary land ownership and *matai* (chief) titles.

19. As with many Commonwealth jurisdictions, Samoa has a Westminster style legal system based on the English legal system and common law. The hierarchy of Samoan laws is, in decreasing order of rank: *(i)* the Constitution, *(ii)* legislation (Acts of Parliament, Ordinances continued from pre-independence, International Agreements), *(iii)* subsidiary legislation (Regulations, Orders, By-laws, Notices, etc.), *(iv)* common law and equity, and *(v)* Samoan custom and usage.

20. Samoa is a member of the Commonwealth, the United Nations (UN), the International Monetary Fund (IMF), the Asian Development Bank (ADB) and the World Trade Organisation. In 2003, Samoa signed the "Cotonou Agreement", thus joining the group of African, Caribbean and Pacific countries in partnership with the European Union. Samoa committed to the international standard of transparency and exchange of information for tax purposes in 2002, co-chaired the Global Forum and the Sub-Group on Level Playing Field, and participated in the development of the Joint Ad Hoc Group

1. CIA, Fact book. https://www.cia.gov/library/publications/resources/the-world-factbook/geos/ws.html The estimated GDP is expressed in US dollars and is calculated at purchasing power parity.
2. Statistical Department, Ministry of Finance of Samoa. www.sbs.gov.ws/Statistics/Economic/tabid/3283/language/en-NZ/Default.aspx.

on Accounts Report. Samoa is a member jurisdiction of the Global Forum on Transparency and Exchange of Information for Tax Purposes and its Peer Review Group.

Overview of commercial laws

21. The domestic sector comprises companies, partnerships, and trusts. Domestic companies are formed and governed under the Companies Act 2001 (CA), as amended in 2006, which provides for the incorporation of private and public companies. Domestic partnerships are regulated under the Partnerships Act 1975 (PA). Rules applicable to domestic trusts are primarily contained in common law and certain statutory rules applicable to trustees are established by the Trustee Act 1975. These entities and arrangements are subject to Samoan tax laws (income tax and other taxes).

22. The international sector is monitored and supervised by the Samoa International Financial Authority (SIFA), established under the Samoa International Finance Authority Act 2005. International companies are incorporated under the International Companies Act 1988 (ICA), and segregated fund international companies are formed under the Segregated Fund International Companies Act 1988 (SFICA). International insurance companies are licensed under the International Insurance Act 1987 (IIA), but are governed by the provisions of the ICA with respect to the availability of ownership and accounting information (IIA, ss.2, 5(1) and 14). International partnerships and limited partnerships are governed by the International Partnerships and Limited Partnerships Act 1988 (IPLPA). In addition, international trusts ("foreign benefiting trusts") can be established under the Trusts Act 2014 and unit trusts can be established under the Unit Trust Act 2008 (UTA).

23. International entities and arrangements must be established by trustee companies governed by the 1988 (TCA), which are licensed by SIFA and subject to the anti-money laundering legislation. International entities and arrangements are not subject to direct or indirect taxes or duties in Samoa, nor are they subject to currency or exchange control regulations with respect to transfer of foreign currency.

Overview of the financial sector and relevant professions

24. The Central Bank of Samoa (CBS) is established under the Central Bank Act 1984. Under the provisions of the Financial Institutions Act 1996 (FIA), the CBS is responsible for licensing and prudential supervision of all domestic financial institutions in Samoa (FIA, s. 28). Samoa's domestic financial sector encompasses a range of financial institutions governed by the Financial Institution Act 1996, including four commercial banks, eight

general and life insurance companies, four insurance brokers and nine insurance agents (both corporate and individual), four credit unions, fifteen money transfer and money changer operations and eight money lending institutions. As of June 2014, the total assets for all domestic financial institutions was USD 56 000 000.

25. Samoa's international financial sector is monitored and supervised by SIFA. International banks are licensed under the International Banking Act 2005 (IBA) and international mutual funds are governed by the International Mutual Funds Act 2008 (IMFA). International mutual funds may take the form of international companies, international and limited partnerships, or unit trusts, and the respective legislation with regards to ownership and accounting information will be applicable. As of June 2015, there were seven international banks registered with SIFA under the IBA and five international mutual funds registered with SIFA under the IMFA.

26. The Money Laundering Prevention Act 2007 (MLPA) applies to all domestic and international financial institutions, as well as to service providers and other relevant professionals, such as trustee companies, lawyers and accountants (collectively referred to as "financial institutions"). The Financial Intelligence Unit (FIU) has wide supervision and information gathering powers in relation to financial institutions, which are required to furnish suspicious transaction reports and conduct regular customer due diligence checks, in accordance with guidelines issued by the Money Laundering Prevention Authority.

General information on the taxation system

27. Samoa's tax system consists of both direct and indirect taxes. Direct taxes comprise income tax, capital gains tax and provisional tax. Indirect taxes comprise value added tax (Value Added Goods and Services Tax Act 1992 (VAGST)), excise tax and customs duties.

28. The Income Tax Act 2012 and the Tax Administration Act 2012 provide for direct taxes to be paid directly to the Government through annual income tax returns (for all businesses) and final tax deductions withheld at source by employers and non-residents in respect of certain Samoa-source income and remitted to the Inland Revenue Service. A natural person is considered a Samoan tax resident if he/she has a home in Samoa at any time during a tax year, or is present in Samoa for a period amounting to 183 days in any 12-month period, or is a citizen of Samoa who is an officer or employee of the Government or a statutory authority (Income Tax Act, s. 6). A company is considered a Samoan tax resident if: *(i)* it is incorporated, registered or formed in Samoa; or *(ii)* it has its central management and control in Samoa (Income Tax Act, s. 2).

29. For income tax purposes, individuals are taxed progressively and the nominal tax rate ranges from 0% to 27%, whereas companies are taxed at a 27% flat rate. Capital gains tax is levied at a rate of 27%. Residents are taxed on their worldwide income (Income Tax Act, s. 14(4). Non-residents (both natural and legal persons) are taxed on Samoa-sourced income (Income Tax Act, s. 7, 14(4)). This income is taxed by withholding at 15% in respect of interest, royalty, insurance premium, management fee, fee for personal (including professional) services, or natural resource amount from sources in Samoa (Income Tax Act s. 10) (with certain insurance premiums taxed at 7.5%). Income is taxed by withholding at 5% in respect of international transportation income derived from operating a ship or aircraft in international traffic (Income Tax Act, s. 11).

30. Value added tax on the supply of goods and services is imposed under the VAGST Act 1992/1993. Any person (natural or legal) who carries on a taxable activity in Samoa is required to register for VAGST. However, VAGST registration is optional for a person whose annual profit from their taxable activity is less than WST 78 000/USD 29 870 per year. VAGST is levied at 15% rate.

31. Excise tax is levied on imports as well as on domestic manufacture of excisable goods (tobacco products, alcohol, soft drinks, passenger vehicles, petrol, kerosene and aviation gas) in Samoa. Rates of excise vary according the classification of goods, but rates on import and domestic manufacture are identical. The relevant laws on excise tax are the Excise Tax (Domestic Administration) Act 1984, the Excise Tax (Import Administration) Act 1984 and the Excise Tax Rates Act 1984.

32. Custom duties are imposed at *ad valorem* rates based on the Harmonised System of Tariffs. The valuation of goods for the purpose of determining the applicable duties is done in accordance with the WTO Agreement on Customs Valuation. Customs duties are levied in accordance with the Customs Act 2014 and the Customs Valuation Regulations 2011.

33. Except for trustee companies, all entities and arrangements registered under the international financial services legislation benefit from tax exemptions. Accordingly, international companies, segregated fund international companies, international insurance companies, international partnerships and limited partnerships, foreign benefiting trusts, international banks, international insurance and international mutual funds are not subject to any taxes or duties (whether direct or indirect) on their profits or gains, or upon transactions and contracts and are exempt from tax filing obligations.

Other relevant factors for exchange of information

34. The core legislation for exchange of information for tax purposes in Samoa is the Income Tax Act 2012 and the Tax Information Exchange Act 2012 (TIE Act), which was enacted in March 2012. Under both Acts, Samoa's Minister for Revenue is authorised to enter into tax information exchange agreements (TIEAs), as well as double taxation agreements (DTCs) and agreements for the rendering of reciprocal assistance in the administration and collection of taxes. Samoa's Commissioner of Inland Revenue is the competent authority for EOI purposes.

35. The MLPA contains specific provisions allowing for exchange of information on money laundering, and terrorist financing offences, as well as serious criminal offences, including tax offences. Specifically, the FIU may, with the approval of the Money Laundering Prevention Authority, enter into an agreement for information exchange with foreign authorities regarding money laundering and the financing of terrorism.

36. Under Samoan law, there are potentially two other streams for information exchange in criminal (tax) matters:

- under mutual co-operation arrangements in criminal tax matters other than money laundering or terrorism offenses, as provided for under the Mutual Assistance in Criminal Matters Act 2007, for which the competent authorities are the Attorney General and the Ministry of Foreign Affairs; or
- under mutual co-operation agreements relating to money laundering, terrorist financing, and serious offences, including tax offences, as stipulated under the MLPA, for which the competent authority is the FIU.

37. The competent authority and timelines applicable to an EOI request on criminal (tax) matters will depend on the legislation under which the requesting authority chooses to seek assistance.

Recent developments

38. A bill to amend the Trusts Act and a bill to amend the Value Added Goods and Services Tax Act are currently before parliament and are expected to be passed before the end of 2015. Since the end of the review period, Samoa has received two additional EOI requests. Samoa has also created two new positions in the EOI unit in order to increase the staff capacity to respond to EOI requests.

Compliance with the Standards

A. Availability of information

Overview

39. Effective exchange of information (EOI) requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If the information is not kept or it 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 Samoa's legal and regulatory framework on the availability of information. It also assesses the implementation and effectiveness of this framework in practice.

40. Samoa's legislation imposes comprehensive obligations to ensure that up-to-date ownership and identity information is available for all domestic, international, and foreign entities and arrangements. This information is either in the hands of public authorities (Registrar of Companies, Minister for Inland Revenue, Commissioner, etc.) or in the hands of the entity itself. Anti-money laundering obligations apply with regard to all international entities and arrangements via their connection with trustee companies, or by way of direct obligations imposed on trustees and fiduciaries. However, in practice, the monitoring of compliance with these obligations is not always sufficiently in-depth to ensure that ownership and identity information is always available in a timely manner in all cases.

41. Bearer shares are no longer permitted for any entity in Samoa. During the review period, bearer shares were expressly permitted for international companies. Sufficient mechanisms were available under the statute law to ensure that the beneficial owner of such shares be identified, however compliance with these obligations was not monitored in practice. For the reasons highlighted above, element A.1 was found to be in place and rated as Partially Compliant. During the review period, all four of Samoa's EOI requests included a request for ownership information and these have been answered, albeit with delays.

42. As far as accounting information is concerned, Samoa's commercial and tax law generally imposes sufficient record keeping requirements on domestic and foreign entities and arrangements. Recent legislative amendments now ensure that reliable accounting records, including underlying documentation, be retained for at least five years in respect of international companies, segregated fund international companies, international partnerships, limited partnerships, and foreign trusts. However, shortcomings were identified with respect to liquidated domestic and foreign companies, foreign benefiting trusts and unit trusts. In practice, there was limited monitoring of the compliance with these obligations, and/or the obligations have been recently introduced and therefore not able to be monitored during the review period. For these reasons, element A.2 was found to be in place but needing improvement, and rated as Partially Compliant. During the review period, Samoa received two requests for accounting information and these have been answered, albeit with delays.

43. As to bank information, banks and other financial institutions have to comply with detailed customer due diligence obligations and must keep all records pertaining their customers' identity, as well as the nature and amount of financial transactions of account holders, for at least five years. In practice, all financial institutions are subject to detailed review in order to obtain a license. The compliance with record keeping obligations is monitored Element A.3 was therefore found to be in place and rated as Compliant. During the review period, Samoa received two requests for banking information and these have been answered, albeit with delays.

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.

44. The relevant entities and arrangements of Samoa are companies (*ToR A.1.1*), some of which were able to issue bearer shares until 27 January 2014 (*ToR A.1.2*), partnerships (*ToR A.1.3*), trusts (*ToR A.1.4*) and

special purpose international companies which are analogous to foundations (*ToR A.1.5*). This section also deals with enforcement provisions to ensure compliance with the laws on the ownership of relevant entities (*ToR A.1.6*).

Companies *(ToR A.1.1)*

45. As further detailed in this section, the following types of companies may be formed in Samoa: *(i)* domestic companies; *(ii)* international companies; and *(iii)* segregated fund international companies. In addition, this section also covers regulated activities performed by international banks, international insurance companies and international mutual funds, as well as foreign companies and nominees.

Domestic companies

46. Under the Companies Act 2001 (CA), as amended in 2006, domestic companies may be incorporated as private or public companies. Private companies are prohibited from offering securities to the public and the number of shareholders is limited to 100. A private company with one single shareholder is a single shareholder company, which has the same basic characteristics of a private company. A company that is not registered as a private company is a public company. As at 31 December 2013, there were 1 727 domestic companies established in Samoa.

47. Domestic private and public companies are required to maintain a share register that records for the last seven years: *(i)* the shares issued by the company, *(ii)* the name and last known address of each shareholder, *(iii)* the number of shares held by each shareholder, *(iv)* the date of any issue of shares to, repurchase or redemption of shares from each shareholder, and *(v)* transfer of shares by or to each shareholder, and in relation to the transfer, the name of the person to or from whom the shares were transferred (CA, s. 40(1)).

48. The share register must be kept at the registered office of the company in Samoa (CA, s. 40(2)(b)) or in other places as notified to the Registrar of Companies (CA, s. 119(4)(a)). Where the rules of the company so permit, the share register can be divided into two or more registers kept in different places, even outside Samoa (CA, s. 119(2) and (3)), provided that the principal register is in Samoa and that an updated copy of the other registers are kept at the same place as the principal register (CA, s. 119(2) and(4)).

49. Persons wishing to incorporate a domestic private or public company must submit an application to the Registrar of Companies, which is part of the Ministry of Commerce, Industry and Labour. Such an application must specify the full name and address of each shareholder as well as the number of shares to be issued to each shareholder (CA, s. 6(e)).

50. The directors must submit an annual return to the Registrar (CA, s. 124), disclosing any changes to shareholding that have occurred during the year. When a company issues new shares, acquires its own shares or redeems any shares, it must send a notice of the share transaction to the Registrar within ten working days of the transaction taking place (CA, ss.26(2), 31(3) and 35(5)).

51. Companies incorporated before the CA was amended in 2006 had to re-register with the Registrar on their own volition, or after receiving a notice from the Registrar. Under section 335 of the CA, the application for re-registration includes, in the case of a private company, the full name of every shareholder of the company and the class of shares held by each shareholder (CA, s. 335(2)(d)). If an existing company fails to reregister before the expiry of the transition period (i.e. which expired two years after the commencement of the CA), it may not carry on business until it is reregistered (CA, s. 338(d)). In any event, existing companies are required to maintain a share register that records ownership and identity information concerning their shareholders (CA, s. 40(1)).

52. In practice, since February 2013, new registrations are completed online through the Ministry of Commerce, Industry, and Labour's companies website.[3] When the Registry staff receives a new registration application, they check that the relevant forms are signed, that valid proof of identity of the directors is included (such as a drivers licence or passport), and verify that the names and address match those on the identification documents. If a director's consent form is not signed or a name is incorrect (such as being translated inaccurately), the registry staff return the form to the person to be corrected. Documents such as the copies of identification or documents requiring signature are first uploaded on to the system and assessed online by certain registry officers against the actual proof of identity provided. Once the registry officer is satisfied and the fee is paid, the applicant is given a username and password to access the system to complete the registration (and subsequent filings) online. It generally takes the Registrar staff three days to assess new applications.

53. The information to be submitted with an application to register a new company includes the name of the company, business and postal address, business activity, name and identification and consent of directors, and the name and address of each shareholder. The electronic register is publicly searchable, and displays details of the name of the company, registered office, director(s), shareholder(s), date of incorporation, regulatory filings including the annual return and notices of change in shareholding. The register can be searched according to company name, shareholder name or director name.

3. www.companies.gov.ws.

Documents submitted to the Ministry of Commerce, Industry and Labour in respect of registration that occurred prior to February 2013 are kept in paper copy and have been entered into the electronic register.

54. Annual returns are also submitted online to the Ministry of Commerce, Industry and Labour's companies website. The annual return provides information on the names of the current directors and shareholders. Periodic notifications of any change in company name, address, company rules, directors or shareholding are also filed online.

55. Under the Business Licence Act 1998 (BLA), any person (natural or legal) carrying on economic activity in Samoa has to obtain a business license from the Commissioner of Inland Revenue (BLA, ss.5 and 6). Business activity or economic activity is a broad definition and includes professions, trades, activity to generate revenue but would not include persons earning solely salary or wages. The Commissioner maintains a register of licences recording the name of the owners and the address or location of the place of business (BLA,s. 9(1)(b-c)). A licensee has to report to the Commissioner any change occurring to the information filed in such register within 30 days (BLA, s. 9(4)).

56. Furthermore, domestic companies with foreign shareholding are required to obtain a Foreign Investment Registration certificate, in accordance with the section 6 of the Foreign Investment Act 2000 (FI Act). In the application form to the Ministry of Commerce, Industry, and Labour, the company must disclose detailed ownership information concerning each shareholder, including the name, share capital held, address, contact details, passport photo, and passport details. Any change in shareholding must be provided to Ministry of Commerce, Industry and Labour with the same detailed information on new shareholders.[4] Foreign investment certificates are not subject to renewal but remain valid for the duration of the business.

57. In practice, business licence applications are submitted in paper form. Information submitted in connection with the business licence is kept in the same file as the taxpayer information at the Inland Revenue Service. The application form requires disclosure of the company name, MCIL registration number, address, shareholders with their percentage of share ownership and contact details, directors and contact details, and copies of photo identification of the shareholders and directors. If any of this required information is missing, the applicant is advised and it must be provided before the application is approved.

58. Business licences are not transferrable and thus where a change in controlling shareholders occurs, a new business licence application is

4. www.mcil.gov.ws/idipd_foreign_investment_reg.html.

required. Businesses granted a business licence are required to advise the Inland Revenue Services of any changes to the information contained in the application, and to renew their licence each year. The renewal form does not contain information regarding shareholders or directors but asks whether any outstanding returns or arrears in payments are outstanding.

59. The Tax Administration Act 2012 provides that a person liable for income tax or that has a loss for a tax year, and every person liable for capital gains tax must file each year a return with the Commissioner (s. 80, 89). The income tax return does not require details of directors or shareholders to be stated.

60. In practice, the numbers of new domestic companies registered with the Ministry of Commerce, Industry, and Labour and with the Inland Revenue Services in each year of the review period, and the total number of registered domestic companies, was as follows. In some cases, new companies may incorporate but not yet commence business, and therefore not yet register with the Inland Revenue Services; in other cases, the cumulative total also accounts for deregistration. The Inland Revenue Services co-ordinates with the Ministry of Commerce, Industry, and Labour, by ensuring that no business licences are issued to companies unless a valid certificate of incorporation is produced. Inland Revenue Services also monitors new company registrations using the online company registry.

	2011		2012		2013	
	New	Total	New	Total	New	Total
MCIL	131	1 028	118	1146	106	1 252
Inland Revenue Services	81	698	86	709	83	706

International companies

61. Under the International Company Act 1988 (ICA), international companies may only be owned by non-residents of Samoa, with the exception of trustee companies (ICA, s. 6(1)). They may carry on any business which may lawfully be carried on by an individual but cannot carry on banking or insurance business (see section on *Regulated activities* below), or act as a trustee company unless licensed or permitted to do so under Samoan laws (ICA, s. 7(1)). As of November 2014, there were 34 830 international companies registered in Samoa. Sections 13(3) and 13(4) of the ICA provide for the incorporation of the following types of international companies:

- a company limited by shares: a company having the liability of its members (shareholders) limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;

- a company limited by guarantee: a company having the liability to its members (guarantee members) limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up;
- a company limited by both shares and guarantee: a company having the liability of its members limited by the memorandum, in the case of members who have given a guarantee, to such amount as they have respectively undertaken to contribute to the assets of the company in the event of it being wound up, and in the case of members who are shareholders, to the amount, if any, unpaid on the shares respectively held by them;
- a limited life international company: which must be incorporated as a company limited by shares and is subject to specific provisions under sections 30A to 30M of the ICA.

62. In addition, segregated fund international companies may be incorporated under the Segregated Fund International Companies Act 2000 (SFICA). These companies can separate or quarantine their assets and liabilities among individual ownership units known as segregated funds or cells. Section 5 of the SFICA provides that the International Companies Act 1988 applies to a segregated fund international company, unless the SFICA provides otherwise. As such, incorporation of these companies follows the same rules as applicable to international companies. Like other international companies, ownership interests in these companies are restricted to non-residents of Samoa with the exception of trustee companies. As of 31 December 2013, Samoan authorities indicated that there were five segregated fund international companies in operation.

63. International companies are required to keep a register of all members, including changes in ownership, and persons who ceased to be a member during the last seven years (except in relation to bearer shares), including names, addresses, and details of the shares held by each member (ICA, ss. 30G(3) and 105). The register must be kept in Samoa, generally at the registered office of the company which is also the principal office of a trustee company (ICA, ss. 81 and 106).

64. International companies cannot register a transfer of shares or debentures unless a proper instrument of transfer has been delivered to the company (ICA, s. 66). The register of members is prima facie evidence of any matter inserted therein as required or authorised by the ICA (ICA, s. 105(2)). If default is made or unnecessary delay takes place in entering in the register any change in ownership, or if the name of any person is, without sufficient cause, entered in or omitted from the register, the person aggrieved or any

member of the company may lodge an application with the Registrar of International and Foreign Companies for rectification of the register (ICA, s. 109). International companies, except limited life international companies, may also register shares in their register at the request of the transferor in the event the transferee fails to notify the company (ICA, s. 68).

65. There is no general requirement for international companies to appoint a resident director but, if one is appointed, that resident director must be a trustee company (ICA, ss.30H(1) and 83). International companies (other than a limited life international company) must have a resident secretary or resident agent, which must be a trustee company (ICA, s. 90). A resident secretary is responsible for maintaining the compliance by the international company with the requirements of the ICA in relation to the lodging of all documents with the Registrar, the maintenance of the company's records and dealing with the communications addressed to the company at its registered office or elsewhere (ICA, s. 90(5)). Limited life international companies must appoint a resident agent, which must be a trustee company and which is responsible for maintaining the company's records in Samoa (ICA, s. 30J(1) and (3)).

66. Every segregated fund international company must have at all times a trustee company as registered segregated fund manager in Samoa, who must "keep records and accounts which shall identify shares or membership interests of shareholders or other members in respect of each segregated fund" (SFICA, ss.21(1) and 21(2)(c)). In addition, all international companies and segregated fund international companies must be incorporated and registered through a trustee company, which must lodge the memorandum and any changes thereto with the Registrar of International and Foreign Companies (ICA, ss.9(1), 14(1) and 30A(1) and SFICA, s. 6(1) and 6(5)(a)).

67. Pursuant to the Money Laundering Prevention Act 2007 (MLPA), trustee companies are service providers covered under the definition of "financial institution" (MLPA, s. 2(1) and Schedule 1(19)). As such, trustee companies are subject to general customer due diligence requirements. Section 16(1) of the MLPA requires a financial institution to identify, and verify the identity of, a customer and obtain satisfactory evidence of identity when:

- establishing a business relationship, meaning an arrangement between a financial institution and *any person*, the purpose of which is to facilitate the carrying out of financial business on a regular basis; or
- conducting any transaction, including when entering into any fiduciary relationship; or
- there is a suspicion of a money laundering offence or the financing of terrorism; or

- there are doubts about the veracity or adequacy of the customer identification or verification documentation or information it had previously obtained.

68. The Money Laundering Prevention Regulation 2009 (MLPR) further prescribes a comprehensive range of documentation for identification and verification, including information concerning natural persons (name and address) and legal entities (name, legal form, directors and control structure) (MLPR, ss.5 and 6). In relation to legal persons, a trustee company is required to take reasonable steps to understand and document the ownership and control structure of the customer (MLPR s. 6(2)). A trustee company is required to maintain updated customer information and to monitor transactions on an ongoing basis, as well as to retain records for at least five years (MLPA, s. 18(3) and MLPR, s. 12(1)).

69. All international companies and segregated fund international companies, as well as all special purposes international companies are exempt from income tax and from the payment of any other direct or indirect tax or import or stamp duty upon its transactions, contracts, securities and other dealings and upon its profits and gains, except where the income is derived by such companies in carrying on business in Samoa (ICA, s. 249(2)(a), SFICA, s. 5 and SPICA, s. 154(2)). Therefore, these entities are not required to file any tax return.

70. In practice, all international companies are incorporated through one of the nine licensed trustee companies. No registration form is used for international companies, but rather the trustee company files with SIFA three copies of the memorandum and articles of association, a notice of the registered office (which must be the office of the trustee company in Samoa), and a certificate from the trustee company to certify it has complied with all obligations under the ICA. These documents are filed in paper, although it is planned that electronic filing will occur in the coming year. The names of shareholders and directors are not required to be filed with SIFA upon registration.

71. The registration of international companies is renewed periodically. The renewal period is either annual, every five years, 10 years or 15 years, at the option of the international company (and different fees apply for the different renewal periods). In practice, most international companies renew annually. There is no prescribed form for the renewal, and the trustee company will simply write to SIFA indicating the intention to renew and provide the prescribed payment. SIFA's internal database shows which companies are due for renewal. A two month grace period is provided after the due date to remedy outstanding renewals. If the renewal is still outstanding, the company will be automatically struck off. There is no annual return requirement.

72. The requirement to update information on the identity of shareholders and directors is fulfilled by the international company filing these changes with the trustee company, who is required to maintain the share register, or a copy of the share register (ICA, s. 106). This information is not filed with SIFA. The monitoring of trustee companies with their obligations to maintain ownership information is described in section A1.6 below.

73. The registration process for segregated fund international companies involves an initial registration form for the fund and an initial registration form for the company, both of which are submitted to SIFA. These initial registration forms do not include details of shareholders, but do include the name of the fund manager and the directors, with the company's memorandum and articles of association, a notice of the registered office and a certificate of the relevant trustee company stating that all requirements of the Act have been complied with. The monitoring of trustee companies is described in section A1.6 below.

74. Segregated fund international companies must be renewed annually on 30 November. SIFA generally renews the registration unless there has been a failure to pay fees, which applied in the case of one segregated fund international company during the review period. SIFA's internal database shows which companies are due for renewal. A two month grace period is provided after the due date to remedy outstanding renewals. If the renewal is still outstanding, the company will be automatically struck off.

75. During the review period, the number of new international companies registered was as follows (where the cumulative total also accounts for deregistration during the period):

	2011		2012		2013	
	New	Total	New	Total	New	Total
International company	4 236	30 473	4 103	32 019	5 648	34 830
Segregated fund international company	0	4	1	5	0	5

76. In practice, three of the four EOI requests received during the review period included requests for ownership information in respect of international companies. The type of information requested was beneficial ownership information only, which is not required under the current Terms of Reference, but was required to be available with the relevant trustee company under Samoa's anti-money laundering law. Samoa was able to provide the relevant information, albeit with significant delays which were experienced in part because the relevant information was held offshore rather than with the trustee company as required. No penalties were imposed for this breach as the anti-money laundering authority preferred to focus its efforts at this time on encouraging voluntary compliance. See section C.5 for further details of the timeliness of EOI responses.

Regulated activities

77. Under section 4 of the International Banking Act 2005 (IBA), "no person shall transact any international banking business from within Samoa, whether or not such business is carried on in Samoa, unless the person is the holder of a valid international banking licence." Under section 13 of the IBA, every application for a licence must be submitted to the Inspector of International Banks and must be accompanied by a certified copy of the act, charter, memorandum of association and articles of association of the company, or other document or documents by which the company is constituted, as well as evidence of the ultimate beneficial ownership of the company. No shares or beneficial interest in shares or other securities of any licensee can be issued and transferred or disposed of in any manner without the prior written approval of the Inspector of International Banks (IBA, s. 18). Any changes to ownership information must be reported to the Inspector of International Banks forthwith (IBA, s. 25). As of June 2015, there were seven international banks licensed with the Samoa International Financial Authority (SIFA).

78. Similarly, the International Insurance Act 1988 (IIA) prohibits any person to carry on or transact any international insurance business in or from within Samoa without a valid a valid certificate of registration (IIA, s. 4). Applications for registration with SIFA must be accompanied by: *(i)* a certified copy of the act, charter, deed of settlement, memorandum of association and articles of association of the body corporate, or other document or documents by which the body corporate is constituted, *(ii)* evidence that the applicant has complied with its obligations under the IIA, *(iii)* evidence of the shareholding and management of the applicant, *(iv)* evidence of the ultimate beneficial ownership of the stocks or shares of the applicant, and *(v)* the address of its registered office in Samoa (IIA, s. 5). Any modification to information described above must be promptly reported to the SIFA (IIA, s. 12). As of June 2015, there were four international insurance companies licensed with SIFA.

79. The International Mutual Funds Act (IMFA) prohibits any person from carrying out activities as a mutual fund or fund administrator or manager without being approved in accordance with the IMFA (IMFA, ss. 7, 17, 21). The application form for approval as an international mutual fund requires that the application be accompanied by a copy of the constituting document of the entity, the address of the place of business, the name and address of the person authorised to accept service in Samoa, the name, address, place of birth, citizenship and qualifications of the directors/partners/trustees and other supporting information to verify that the applicant is fit and proper to be a fund. (IMFA ss.8, 18).The application form for approval as an international mutual fund administrator or manager requires that the application be accompanied by a certified copy of the memorandum and

articles of association, audited accounts, organisation chart showing the beneficial ownership of the group of related entities, copies of passports of all applicants, a list of all directors and executive officers, the address of the place of business, the name and address of the person authorised to accept service in Samoa, and other supporting information to verify the professional ability of the applicant to manage a fund (IMFA, s. 22).An approved applicant must notify SIFA of changes to the information contained in the application within 21 days (IMFA s. 30). Prior approval of SIFA is required before a change in ownership of a fund manager or administrator is permitted (IMFA, s. 25). As of June 2015, there were five international mutual funds registered, and five licensed mutual fund managers/administrators. The total assets held by international mutual funds is WST 17 million (USD 6.5 million).

80. Persons carrying on international banking business, international insurance business and international mutual funds are exempt from income tax and from the payment of any other direct or indirect tax or import or stamp duty upon its transactions, contracts, securities and other dealings and upon its profits and gains, except where the income is derived by such companies in carrying on business in Samoa (IBA, s. 40, IIA, s. 34 and IMFA s. 43). Therefore, these entities are not required to file any tax return.

81. In practice during the review period, the total number of international banks, international insurance companies and international mutual funds was as follows.

	2011		2012		2013	
	New	Total	New	Total	New	Total
International bank	0	8	0	8	0	7
International insurance company	0	4	0	4	0	4
International mutual fund	0	8	1	9	0	9

82. In practice, the international banks are group treasury centres for affiliated companies, and the international insurance companies are captive insurers. International banks, international insurance businesses and international mutual funds and mutual fund managers are formed as international companies under the ICA, and must abide by the registration and renewal obligations described above. International banks must have a physical presence in Samoa in the form of an administrative office to maintain the required records, in addition to being represented by a trustee company in Samoa.

83. In addition, in order to obtain the banking or insurance licence they must submit identification information to SIFA, including copies of passports, police background checks, professional references and financial statements of shareholders and directors, and a copy of the bank or insurance

business' anti-money laundering policy. SIFA will check the information against international credit report databases to make sure the applicants are fit and proper and financially sound. In general, licensing takes six months. Only one application was received during the review period, and no licenses were refused. SIFA advises that license applications had been refused in the early years following the introduction of the international financial banking and insurance entities, on account of the applicants being determined to be unsuitable or financially unsound.

84. International banks and insurers must obtain prior approval from SIFA before they transfer ownership or change directors. Failure to do so would give SIFA grounds to cancel the license. When SIFA receives such an application, it undertakes the same background checks on the new owners or directors as is undertaken for the initial licencing. During the review period, applications for transfer of ownership have been received and granted.

85. International banks and insurers must quarterly file their financial information, annually file their audited accounts, annual return, annual report and annual renewal of licence. Sanctions for late filing apply, being USD 200 per month for late audited accounts, USD 200 for late renewal and USD 50 per month for all other documents. These fines are applied automatically. During the review period, the total fines imposed for late filings were USD 92 000 in 2011; USD 114 000 in 2012 and USD 113 000 in 2013.

86. The licensing process for international mutual funds and mutual fund managers is very similar as applies for international banks and insurers, except that they also file a copy of the investment and management agreement between the fund and the manager. Prior approval from SIFA must be obtained before any changes in ownership of the fund manager are effected, and similar background checks are undertaken for the proposed new owner as is undertaken in the initial licensing process. The fund manager files with SIFA the audited accounts, annual return, annual report and annual renewal of licence. The fund manager is also responsible for maintaining the records of the list of the fund's customers. Penalties for late filing of audited accounts apply to the manager in the amount of USD 100 per month.

87. Monitoring of compliance with the international financial institutions' customer record keeping obligations is described in section A.3 below.

Foreign companies

88. A company is considered a Samoan tax resident if: *(i)* it is incorporated in Samoa; or *(ii)* it has its central management and control in Samoa (IT Act, s. 2). Like domestic companies, foreign companies which are tax residents of Samoa, as well as foreign companies deriving income in Samoa must submit an annual income tax return to the Commissioner of Inland Revenue

(Income Tax Act, s. 80). The income tax return does not include disclosure of ownership information.

89. In addition, under the BLA, any (domestic or foreign) person carrying on business or economic activity in Samoa has to obtain a business license from the Commissioner of Inland Revenue (BLA, s. 5). Business or economic activity is defined as including any activity aimed at generating revenue in trade, commerce or industry, and includes any trade or profession (BLA, s. 2). The Commissioner maintains a register of licences recording the name of all owners, as well as their address or location of the place of business (BLA, s. 9(1)(b-c)). Any change to information maintained in such a register must be reported by the licensee within 30 days from its occurrence (BLA, s. 9(4)). Foreign investors conducting business in Samoa must also obtain a Foreign Investment Registration certificate and disclose detailed ownership information in the application form to the Ministry of Commerce, Industry, and Labour (FI Act, s. 6).[5] As of December 2013, there were 255 foreign companies registered with the Ministry of Commerce, Industry, and Labour.

90. A foreign company can also apply for registration under the ICA when it: *(i)* has a permanent establishment; or *(ii)* is carrying on business within Samoa, and it is not registered under the CA (ICA, s. 200(1)). Foreign companies registered under the ICA are tax exempt. The legislation governing the availability of ownership and identity information of international companies equally applies to foreign companies registered under the ICA (ICA, s. 2) (see section *International companies* above).

91. In practice, during the review period, the total number of foreign companies that had a foreign investment registration certificate with the Ministry of Commerce, Industry and Labour and those that had a business license from the Inland Revenue Services was as follows.

	2011	2012	2013
MCIL	51	48	31
Inland Revenue Services	51	48	32

92. In practice, foreign incorporated or domestic but foreign owned companies wishing to do business in Samoa will first obtain an investment certificate from the Ministry of Commerce, Industry, and Labour. Once the investment certificate is obtained, the company will then apply for the business licence from the Inland Revenue Services. The business licence and investment certificate is cross-checked by the Inland Revenue Services, and any discrepancies are notified to the Ministry of Commerce, Industry and Labour.

5. www.mcil.gov.ws/idipd_foreign_investment_reg.html.

93. Companies that have obtained an investment certificate will then have the same annual return filings and obligations to notify the Ministry of Commerce, Industry, and Labour of changes in shareholders and directors as applies for domestic companies, and these changes and annual returns are filed online. Foreign investment certificates are not subject to renewal but remain valid for the duration of the business. The Ministry of Commerce, Industry, and Labour conducts annual inspections to ensure that only the authorised business activities are in fact being undertaken. In no case has an investment certificate been revoked, but this could occur if a company was carrying out unapproved type of business activities.

Nominees

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

95. Although nominee shareholding is not regulated under Samoa's commercial laws, shares may be held by a nominee. There is no requirement under the ICA or the SFICA for a person acting as a nominee to maintain information in respect of the person on whose behalf he or she holds shares. Nevertheless, international companies and segregated fund international companies need to resort to a trustee company in all cases – whether for incorporation, designating a resident agent, or simply as offering a registered office (ICA, ss.9(1), 30H, 30J, 83 and 90 and SPICA, ss.6(1) and 21(1)) (see section on *International companies* above). The trustee company is under an obligation to take reasonable measures to determine if a customer is acting on behalf of any other persons including on behalf of a beneficial owner or a controller (MLPR, s. 9(1)). Where the trustee company has reasonable grounds to believe that a person (e.g. acting as a nominee) is undertaking a transaction on behalf of any other person (i.e. the beneficial owner), the trustee company must verify the identity of both persons (MLPA, s. 16(3) and MLPR, s. 9(2)).

96. The MLPA applies to a number of financial institutions which act as, or arrange for another person to act as, a nominee shareholder for another person (Guidelines for the Financial Sector, April 2012, Part 4). These include trusts and corporate service providers, trustee companies, persons trading for their own account or the account of customers in transferable or negotiable instruments, investment business including portfolio management and

advice, safekeeping and administration of securities, safe custody services and acting as a securities dealer or futures broker; and lawyers (barristers and solicitors) when managing client money, securities or other assets (MLPA Schedule 1).Such service providers are required to keep identification records concerning their customers and beneficial owners. Therefore, service providers who would be expected to act professionally as a nominee shareholder are generally covered by the obligations under the MLPA to identify the person they are acting for (MLPA, s. 16(1) and Schedule 1(18), and MLPR, s. 5(1-3)). This information must be kept up to date and maintained for at least five years (MLPA, s. 18(3) and MLPR, s. 12).

97. Nominee shareholders, other than service providers covered by the MLPA, do not have a specific legal obligation to retain identity information on the person for whom they act as the legal owner. Nevertheless, it may be expected that such nominees do know who their client is in order to correctly perform their duties as a nominee. In addition, these nominees might establish a relationship with a financial institution in Samoa (e.g. opening a bank account to receive dividends on the shares they hold), in which case the financial institution is required to perform customer due diligence measures with respect to the person acting as nominee and the beneficial owner, as in the preceding paragraph. In any event, the group of nominee shareholders not covered by the MLPA would primarily consist of persons performing services gratuitously or in the course of a purely private non-business relationship and is therefore likely to be limited.

98. In practice, Samoan authorities do not have information on the occurrences of nominee shareholding, and consider that this practice does not arise in Samoa. The impact of this on exchange of information in practice should be monitored by Samoa on an ongoing basis. The monitoring and supervision of anti-money laundering obligations is described below in section A1.6.

Conclusions

99. Domestic companies are required to keep an updated shareholder register in Samoa and to disclose updated ownership information to the Registrar of Companies upon registration and then on an annual basis. Domestic companies and foreign companies that are carrying on business in Samoa required to disclose identity information concerning their shareholders in order to obtain a business licence. Under the MLPA, persons acting professionally as a nominee shareholder must identify the person who they are acting for as a nominee. In practice, up to date ownership information on domestic and foreign companies is maintained by the Ministry of Industry, Commerce and Labour as well as through the business licensing process undertaken by the Inland Revenue Services.

100. International companies and segregated fund international companies must keep at their registered office a list containing current ownership information concerning all their members. In addition, these entities must be established through and registered by a trustee company, which is subject to comprehensive obligations under the MLPA, including customer due diligence requirements. Trustee companies are required to identify the person for whom, or for whose ultimate benefit, a transaction (other than a one-off transaction) is being conducted, as well as the person undertaking a transaction on behalf of another person, i.e. acting as a nominee. Persons carrying on international banking business, international insurance business or international mutual fund business are required to disclose updated ownership information as part of the licensing or registration process, respectively with the Inspector of International Banks or SIFA. In practice, all ownership and identity information for international companies is maintained by the trustee company. The effectiveness of this arrangement in turn depends on the compliance of the trustee companies with their obligations, which is described in section A1.6 below. International banking, insurance and mutual funds operations provide detailed information to SIFA during the initial licensing process and SIFA must approve any changes in ownership.

Bearer shares *(ToR A.1.2)*

Domestic companies

101. The CA does not contain any specific reference to bearer shares. Nonetheless, the issuance of bearer shares under the CA is implicitly precluded by the requirements concerning the issue and transfer of shares. In particular, "a share is issued when the name of the holder is entered on the share register" and "a share is transferred by entry [*of the name of the shareholder*] in the share register in accordance with section 40" (CA, ss.27 and 38(2)) [*language added*]. Companies are required to maintain a share register that records the name and last known address of each person who has been a shareholder in the last seven years (CA,s. 40(1)). Entry of the name of a person in the share register as holder of a share is evidence that legal title to the share vests in that person (CA, s. 41). Therefore, domestic companies are not permitted to issue bearer shares.

International companies

102. International banks, limited life international companies and segregated fund international companies are forbidden from issuing bearer shares or shares warrants to bearer. Instead, shares issued by such companies must be registered shares (IBA, s. 18, ICA, s. 30E(g) and SFICA, s. 6(3)).

103. International companies may no longer issue bearer shares and share warrants to bearer under the ICA (International Companies Amendment Act 2014 (in force on 7 April 2014), International Companies Amendment Act 2015 (in force 27 April 2015)). Section 39 of the ICA now deems the memorandum of a company that had issued bearer shares to be amended with effect from 27 January 2014, to state that the company is not authorised to issue bearer shares or share warrants to a bearer, or to convert previously issued bearer shares and share warrants into registered shares. Section 39A of the amended ICA provides a transitional rule, such that any such bearer shares or warrants continued for a period of 12 months following 27 January 2014, at which point they cease to be bearer shares or share warrants. For the avoidance of doubt as to the effect of this deemed cessation, the International Companies Amendment Act 2015 clarifies that a further six month transition period is granted from the time of the commencement of the Amendment Act, within which the rights in such former bearer shares or warrants must be converted into registered shares. The Amendment Act further provides that any shares, warrants and the rights attached thereto that are not converted within this period are cancelled by operation of law. Accordingly, after 27 October 2015 (which is six months after the ICA amendment commencement date) it would not be possible for any bearer shareholders or warrant holders to subsequently revive their rights.

104. During the entire review period, international companies were permitted to issue bearer shares and share warrants under the ICA as it then was. Until 27 January 2014, the ICA provided that all bearer shares and share warrants to bearer issued by an international company had to be physically lodged with the trustee company (acting as a custodian for the beneficial owner) which provides the registered office for the international company (ICA, s. 39(1)). The registered office of the international company, which is also the principal office of a trustee company, must be in Samoa (ICA, s. 81). The trustee company then acted as a custodian of the original bearer instruments for the beneficial owners.

105. Custodians were forbidden from releasing the bearer shares or share warrants to bearer to the beneficial owner or to part with the physical possession of these documents, unless the bearer shares were to be cancelled by the international company or converted into registered shares (ICA, s. 39(2)). Where the beneficial owner of a bearer share or share warrant to bearer required that such bearer instrument be converted to registered shares, cancelled or transferred, the custodian must have first received satisfactory evidence of the identity of the person making the request and of any other person who, as a result of the request, was to become a registered shareholder or become the holder of a beneficial interest in the bearer share or share warrant to bearer (ICA, s. 39(3)). Samoan authorities indicated that "satisfactory

evidence" means the documentation related to customer due diligence, as provided under sections 5 and 6 of the MLPR.

106. Trustee companies are service providers covered under the definition of "financial institution" (MLPA, s. 2(1) and Schedule 1(19) and 1988, s. 2). As such, trustee companies are subject to general customer due diligence requirements and required to keep identification records concerning their customers and beneficial owners. The MLPR further prescribes a comprehensive range of documentation for identification and verification, including information concerning natural persons (name and address) and legal entities (name, legal form, directors and control structure) (MLPR, ss.5 and 6). The trustee company must identify each natural person who owns directly or indirectly any percentage of the vote or value of an equity interest in the company (MLPR s. 6(3) as amended by Money Laundering and Prevention Amendment Regulations 2014). These records must be kept up to date and maintained for at least five years (MLPA, s. 18(3) and MLPR, s. 12).

107. In practice, the Samoan authorities do not know how many bearer shares or share warrants were in existence during the review period. There was no monitoring of the custodial regime for bearer shares during the review period, as described below in section A1.6.

Conclusions

108. With regard to domestic companies, the CA ensures that ownership of each share issued by a company is known. International banks, limited life international companies and segregated fund international companies cannot issue bearer instruments. International companies can no longer issue bearer shares or share warrants and the existing bearer shares and share warrants will be either converted into registered shares or cancelled by operation of law by 27 October 2015. However, in practice no monitoring was undertaken with respect to the previous custodial regime that existed during the review period, and it is impossible to determine the level of compliance with those obligations.

Partnerships *(ToR A.1.3)*

109. As further described in this section, the laws of Samoa allows for the establishment of the following types of partnership: *(i)* domestic partnership, *(ii)* international partnership, and *(iii)* limited partnership. In addition, this section also covers foreign partnerships.

Domestic partnerships

110. The Partnerships Act 1975 (PA) governs the formation of domestic partnerships. Limited partnerships may not be established under the PA. Every partner is liable jointly with his or her co-partners and severally for the liabilities of the partnerships. A formal agreement is not necessary to determine the existence of a partnership. Where such a written contract exists, it is required that a copy be submitted for the records of the Ministry of Justice and Courts Administration. As at June 2015, there were 37 domestic partnerships established in Samoa.

111. Under the PA, partnerships are defined as "the relation which subsists between persons carrying on a business in common with a view to profit" (PA, s. 4(1)). Under the BLA, any person (including partnerships) carrying on economic activity in Samoa has to register for a business licence (BLA, s. 5). In addition, where two or more persons are operating as a partnership, they must obtain one licence in respect of each business or economic activity conducted by the partnership (BLA, s. 10). Information on the identity of the partners of the partnership must be filed with the Commissioner of Inland Revenue and any change must be reported within 30 days (BLA, s. 9(1)(b-c) and 9(4)).

112. In practice, business licence applications are submitted to Inland Revenue Services in paper form. Information submitted in connection with the business licence is kept in the same file as the taxpayer information. The application form requires disclosure of the name of the partnership, name of the partners and their percentage ownership and contact details, address of the partnership, copy of the partnership agreement, and copies of photo identification of the partners. If any of this required information is missing, the applicant is advised and it must be provided before the application is approved.

113. Business licences are not transferrable and thus where a change in controlling partners occurs, a new business licence application is required. Businesses granted a business licence are required to advise the Inland Revenue Services of any changes to the information contained in the application, and to renew their licence each year. The renewal form does not contain information regarding partners but asks whether any outstanding returns or arrears in payments are outstanding.

114. In addition, domestic partnerships with a non-resident partner are required to obtain a Foreign Investment Registration certificate, in accordance with the section 6 of the Foreign Investment Act 2000 (FI Act). In the application form to the Ministry of Commerce, Industry, and Labour, the partnership must disclose detailed ownership information concerning each partner, including the name, ownership interest held, address, contact details, passport photo, and passport details. Any change in foreign partnership must be provided to MCIL with the same detailed information on new foreign partners.

115. Under the Income Tax Act, partnerships fall under the definition of "persons" and "taxpayers", and are, consequently, obliged to file an annual return every year, regardless of whether they have taxable income (Income Tax Act, s. 80(2) Act, s. 2). Specifically in relation to partnerships, the Income Tax Act requires that the partnership file a return but the partnership itself is not liable for the tax. (Income Tax Act, s. 48). In addition, each partner must be separately assessed and liable for the tax payable on his or her total income, including the share of the income of any partnership (Income Tax Act, s. 50). Under section 81 of the Income Tax Act and section 29 of the Tax Administration Act 2012, every person (including partnerships and individual partners) is required to keep sufficient records to enable the tax liability to be readily ascertained by the Commissioner. In order for tax to be correctly assessed for each partner, it can be reasonably inferred that the partnership would need to hold at least all the records concerning the identity of all partners, as well as the assets, income and allowable deductions pertaining to each partner. In practice, partnerships use the company tax return form, which does not require disclosure of the details of the partners in the partnership.

116. During the review period, the total number of partnerships (both domestic and foreign) with a foreign investment registration certificate from the Ministry of Industry, Commerce and Labour, and those with a business licence, were as follows. Compliance with business licence obligations is described below in section A1.6:

	2011	2012	2013
MCIL	59	61	55
Inland Revenue Services	59	61	55

International partnerships and limited partnerships

117. The International Partnership and Limited Partnership Act 1988 (IPLPA) provides for the creation of two types of partnerships:

- an international partnership: every partner is jointly and severally liable for the liabilities of the partnership; or
- a limited partnership: every general partner is jointly and severally liable for all liabilities of the limited partnership, while every limited partner is generally only liable to contribute in money or money's worth to the common stock, as capital (IPLPA, s. 16(1)).

118. International partnerships and limited partnerships cannot carry out business nor engage in trade in Samoa, but can hold shares, debentures and other securities in international companies and foreign companies registered

under the ICA (IPLPA, s. 5). As such, they would not require a business licence. As of June 2015, no international partnership or limited partnership has been established or registered in Samoa.

119. International partnerships and limited partnerships must apply for registration with the Registrar of International Partnerships through a trustee company (IPLPA, ss.6(1), 9 and 20). A partnership agreement is required as the means by which an international partnership or limited partnership is evidenced (IPLPA, s. 2(1)). There is no prescribed form for a partnership agreement, but such agreement would as a matter of course contain details of the partners. The partnership agreement or any amendment thereto *may* be provided to the Registrar as part of the registration requirements (IPLPA, ss.11 and 22). The wording of this provision appears to suggest that the submission of the partnership agreement to the Registrar is left to the trustee company's discretion. Under the IPLPA, limited partnerships must complete, after registration and before commencing any business, a certificate disclosing the names and addresses of all partners distinguishing the general partners from the limited partners (IPLPA, s. 23(1)). This certificate may also be filed with the Registrar (IPLPA, s. 23(2)).

120. Registration of international partnerships and limited partnerships is submitted by a trustee company to the Registrar of International Partnerships, part of the SIFA. These partnerships cannot be registered with the SIFA unless the trustee company has provided the Registrar with a certificate attesting that one of the partner is a trustee company, an international company, or a foreign company registered under the ICA, and that each of the partner is non-resident of Samoa (IPLPA, ss.2(1), 10 and 21). For an international partnership or limited partnership to exist, there must be certainty that these conditions are met at all times (IPLPA, s. 2). As a consequence, the registering trustee company must have knowledge of the identity of the partners of such partnerships. Both international and limited partnerships must have a registered office in Samoa that is the principal office of a trustee company (IPLPA, ss.12, 18).

121. Trustee companies involved in the registration of these entities are required to identify and verify the identity of the customer when establishing any business relationship (MLPA, s. 16). The MLPR prescribes a comprehensive range of documentation for identification and verification, including information concerning natural persons (name and address) and legal entities (name, legal form, directors and control structure) (MLPR, ss.5 and 6). Moreover, the MLPR requires trustee companies to take reasonable measures to understand the ownership and control structure of the customer (MLPR, s. 6(2)). These records must be kept up to date and maintained for at least five years (MLPA, s. 18(3) and MLPR, s. 12).

122. In addition, the MLPR specifically requires the trustee company to take reasonable steps to understand and record the ownership and control structure of the customer, including the identification of the principal owner of a limited partnership, as well as of each natural person who owns directly or indirectly any percentage of the value of an equity interest in the limited partnership and any person exercising effective control (MLPR, s. 6(2-3) as amended by Money Laundering and Prevention Amendment Regulations 2014). Nevertheless, according to Samoa, information on all the partners of international partnerships and limited partnerships will be available in the partnership agreement, which must be kept by the trustee company (MLPR, s. 6(1)(d)).

123. International partnerships and limited partnerships are tax exempt and are therefore not required to file any tax return (IPLPA, s. 36(1)).

124. In practice, no international or limited partnerships have ever been registered. If an application was received, the initial registration would be undertaken by the trustee company. The same renewal process as applies for international companies would be used, which is a notification from the trustee company of the intention to renew and the payment of the prescribed fee. SIFA's internal database would capture these registrations and indicate whether a renewal was outstanding. The monitoring of trustee company's obligations is described in section A1.6 below.

Foreign partnerships

125. Foreign partnerships investing in Samoa are required to obtain a Foreign Investment Registration certificate, in accordance with the section 6 of the Foreign Investment Act 2000 (FI Act). In the application form to the Ministry of Commerce, Industry, and Labour, the partnership must disclose detailed ownership information concerning each partner, including the name, share capital held, address, contact details, passport photo, and passport details. Any change in details of the foreign partners must be provided to MCIL with the same detailed information to be provided on new foreign partners.

126. Under the BLA, any person (including foreign partnerships) carrying on economic activity in Samoa has to obtain a business license from the Commissioner of Inland Revenue (BLA, s. 5). The Commissioner maintains a register of licences recording the name of the owners, as well as their address or location of the place of business (BLA, s. 9(1)(b-c)). Pursuant to section 9(4) of the BLA, any changes in ownership must be disclosed to the Commissioner within 30 days. Any person who acquires a business licence under the BLA is automatically registered for income tax purposes.

127. The Income Tax Act provides that every person (including foreign partnerships) liable for income tax or having a loss must file a return with the Commissioner (Income Tax Act, s. 80). In addition, the individual partners will also be required to file annual tax returns, as the partners are taxed individually on their share of the foreign partnership's income (Income Tax Act, s. 50).

128. During the review period, the total number of partnerships (both domestic and foreign) with a foreign investment licence from MCIL and a business licence from Inland Revenue Services are described above at paragraph 116. Compliance with business licence obligations is described below in section A1.6.

Conclusions

129. Domestic and foreign partnerships carrying on economic activity in Samoa must obtain a business licence from the Minister of Inland Revenue and, consequently, are registered for income tax purposes. A foreign investment certificate is also required for domestic partnership with a non-resident partner, and for foreign partnerships. There are very few domestic and foreign partnerships in existence in Samoa, and compliance with the business licence obligations is described in section A1.6 below.

130. International partnerships and limited partnerships must maintain information on the identity of their partners and be registered through a Samoan trustee company, which is subject to comprehensive customer due diligence requirements under the MPLA and the MLPR. In practice there are no international or limited partnerships in Samoa.

Trusts *(ToR A.1.4)*

131. The following types of trusts may be created in Samoa: *(i)* domestic trusts; *(ii)* international trusts; and *(iii)* unit trusts. In addition, this section also deals with foreign trusts. Domestic, international and foreign trusts are governed by the Trusts Act 2014, which sets out comprehensive provisions relating to the formation of a trust, trustee's duties and powers, and remedies available to beneficiaries and the court in respect of a breach of trust. Unit trusts are governed by the Unit Trust Act 2008.

Domestic trusts

132. Trusts in Samoa include express, implied, and other forms of trusts (including discretionary trusts). A trust is not a separate legal entity. Rather, it is a (fiduciary) relationship between the trustee and beneficiary. As a common law jurisdiction, Samoa inherited and applies the common law

concept of trusts and the Constitution explicitly provides that "law" includes the English common law and equity for the time being in so far as they are not excluded by other laws in force in Samoa (Samoa Act 1921 (NZ), s. 349 and Constitution, Arts. 111 and 114).

133. Comprehensive legislation to govern domestic trusts was introduced by the Trusts Act 2014, which codified the common law trust principles (and the common law subsists alongside this Act). Section 5 of the Trusts Act states that for a trust to be valid, the settlor must have capacity and certain intention to create the trust, the beneficiaries must be ascertainable now or in the future (or the trust is a charitable or purpose trust), and the trust property must be ascertainable.

134. The Trusts Act 2014 does not require a written instrument in order to establish an express trust (Trusts Act 2014, s. 6). Samoan authorities have, however, indicated that it is normal practice for trusts to be established through written agreements in order to prevent fraud. Under the Trusts Act, trustees are required to keep accurate accounts and records of the trustee's trusteeship (Trusts Act, s. 29(3)) but there are no requirements concerning registration, verification or retention of information pertaining to the identity of settlors, beneficiaries and other trustees. However, charitable trusts are registered pursuant to section 11 of the Charitable Trusts Act 1965. As of December 2013, there were 200 charitable trusts in Samoa.

135. Trustees are assessable and liable for income derived by the trust (Income Tax Act, s. 53(1)). Where a beneficiary has an indefeasibly vested interest in the income derived by the trust, the beneficiary is treated as deriving that income, and this amount (and the associated deductions) are assessed to the beneficiary and not the trustee (Income Tax Act, s. 53(4)). Trustees are required to file an annual tax return in respect of the trust every year regardless of whether they are carrying on business activities or earn assessable income (Income Tax Act, s. 80(2)). In addition, co-trustees are jointly assessable thereon and are jointly and severally liable for the tax so assessed (Income Tax Act, s. 53(3)). Samoa has not developed a separate tax return for trusts and trustees, and currently use the company taxpayer form, which does not require the identification of the settlor or beneficiaries.

136. Under section 81 of the Income Tax Act and section 29 of the Tax Administration Act 2012, every person (including trustees) is required to keep sufficient records to enable his or her tax liability to be readily ascertained by the Commissioner. In order for tax to be correctly assessed on the trustee or beneficiary as the case may be, it can be reasonably inferred that the trustee would need to hold at least all the records concerning the identity of beneficiaries and other trustees, as well as the assets, income and allowable deductions pertaining to the trust. This information must be retained

for seven years, except when the Commissioner has notified the trustee that retention is not required (Tax Administration Act, s. 29).

137. In addition, some trusts (through the trustee) will also be required to apply to the Commissioner of Inland Revenue for a business licence pursuant to section 5 of the Business Licence Act. In practice, examples of where this has occurred include where the trust has engaged in renting real property, a hotel business, estate management and a private school. The Commissioner maintains a register of licences recording the name of the owners (which would include the trustee), as well as their address or location of the place of business (BLA, s. 9(1)(b-c)). Pursuant to section 9(4) of the BLA, any changes in the details of the information contained in the register must be disclosed to the Commissioner within 30 days. Any person who acquires a business licence under the BLA is automatically registered for income tax purposes. In practice, trusts may apply for a business licence, for example, where they are earning income from investments such as rental properties. In practice the Inland Revenue Services would require that the trust deed be submitted with the business licence application.

138. In practice, the number of trusts registered for tax purposes and the number of trusts with a business licence during the review period was as follows. Compliance with business licence obligations is described below in section A1.6:

2011		2012		2013	
Tax	BLA	Tax	BLA	Tax	BLA
3	3	3	3	2	1

139. There is no legal requirement for the establishment of a domestic trust through a service provider or a legal practitioner. Nevertheless, express trusts may be established through a person who qualifies as a "financial institution", as broadly defined under the MLPA under section 2(1) and Schedule 1(16). In such cases, trustees of express trusts are subject to customer due diligence requirements when establishing a business relationship or entering into any fiduciary relationship (see more details on section *International trusts* below).

International trusts (foreign benefitting trusts)

140. International trusts are formed and regulated under the Trusts Act 2014, and are referred to therein as "foreign benefitting trusts." A foreign benefitting trust is created under the law of Samoa, must not be created by a Samoan citizen or tax resident and must have non-citizen and non-resident beneficiaries at all times (Trusts Act 2014, s. 2). In addition, at least one of the trustees must be a trustee company. The trustee must, notwithstanding

anything contrary in the terms of the trust, keep accurate accounts and records of the trustee's trusteeship (Trusts Act, s. 29(3)(a)).

141. It is not necessary to register or file any documents with SIFA in order to create a foreign benefiting trust, and there is no obligation to renew or notify changes to the trust to SIFA. Rather, all ownership and identity information will be maintained with the trustee company in Samoa. Previously, and as applied throughout the review period, international trusts were created upon registration with the Registrar of International Trusts, which is part of the SIFA (ITA, s. 16).

142. Foreign benefiting trusts are tax exempt and are therefore not required to file any tax return (Income Tax Act, Schedule 2, Part A (1)(zb)).

143. The customer due diligence requirements provided under the MLPA apply to "financial institutions", as broadly defined in section 2(1) to cover any person whose regular occupation or business is the carrying out of any activity listed in Schedule 1. The activities listed in Schedule 1 include trustees and trust administrators, trustee and corporate service providers, trustee companies and lawyers when acting on the creation, operation or management of trusts (MLPA, Schedule 1(14, 16, 18, 19 and 20)).

144. Under the MLPA, persons providing services to trusts created under the laws of Samoa or administered in Samoa (including international companies and foreign companies formed under the ICA) are required to obtain satisfactory evidence of identity in relation to all customers when establishing a business relationship or entering into a fiduciary relationship (MLPA, ss.2(1) and 16(1)). As such, a financial institution must obtain and verify the trust instrument of customers who are entities resulting from legal arrangements (MLPR, s. 6(1)(a)(ii)).

145. In particular, when the customer is a trust or a similar arrangement, a financial institution must identify and verify the settlor, trustees and beneficiaries, regardless of the value or percentage of their vested interest (MLPR, s. 6(4) as amended by Money Laundering and Prevention Amendment Regulations 2014). Compliance with these obligations is described in section A1.6 below.

146. In practice, throughout the review period, foreign benefiting trusts were referred to as international trusts, which were regulated by the International Trusts Act 1988. Pursuant to the International Trusts Act, international trusts were subject to registration with SIFA. Registration was undertaken by one of the trustees, which was required to be a Samoan trustee company, international company or registered foreign company. In order to register, the trustee company would file an application form which included the name of the trust and name and address of the representative trustee, the written trust deed, a certificate of compliance with the International Trusts

Act and prescribed fee. Registration was renewed annually, by notifying SIFA of the renewal and paying the prescribed fee. SIFA's internal database would show whether any international trusts had failed to renew on time. There was no obligation to notify SIFA of changes in the identity of the trustees or beneficiaries, although this information would be expected to be held in accordance with the common law principles that otherwise govern the trust.

147. During review period, total numbers of international trusts registered with SIFA were as follows:

2011	2012	2013
154	154	155

Unit trusts

148. Unit trusts can be created under the Unit Trust Act 2008 (UTA). Unit trusts are schemes made for the purpose of providing facilities for the participation, by subscribers as beneficiaries under a trust (unit holders), in income and gains arising from the money, investments and other property that are subject to the trust (UTA, s. 2). They are therefore a form of collective investment fund and regulated accordingly. Every unit trust is subject to approval by the Ministry for Finance and must have a manager and a trustee (UTA, ss.3 and 4(1)). Pursuant to section 4(3) of the UTA, a trustee must hold the register of unit holders and make it available for inspection at all reasonable times on payment of the approved fee.

149. The manager, who must be a trustee company or a company approved by the Minister for Finance, is vested with the powers of day-to-day management of the investments and can be compared to a trust administrator (UTA, s. 5). The manager must lodge with the Registrar of Companies an authenticated copy of the trust deed, signed by a director or authorised officer of the trustee of the unit trust, and must communicate any amendment thereto to the Registrar within 14 days (UTA, s. 10). Moreover, a unit trust cannot operate unless a statement or prospectus has been lodged with the Registrar of Companies (UTA, s. 8). The particulars that are required to be disclosed in the prospectus include details of all the parties in the trust, including the settlors and other trustees (UTA, Schedule).

150. Every year, the manager must also file with the Registrar a list of name and address of each person who, in the preceding year, was a unit holder of the unit trust, including the extent of the interests held by each unit holder, as well as a statement setting out the number, amount and dates of each distributions during the previous five years (UTA, s. 21(1)). Furthermore, under the MLPA, trustees, managers or administrators of unit

trusts are subject to customer due diligence requirements (MLPA, ss.2(1) and 16(1) and Schedule 1(16)).

151. In practice, only one unit trust has been created, the Unit Trust of Samoa. Investors must be Samoan citizens or Samoan legal persons. The management company is a Samoan domestic company wholly owned by the government, and has a business license issued by the Inland Revenue Services which is renewed each year.

152. The trust deed governing the Unit Trust of Samoa requires that the management company maintain an up-to-date register of unit holders, containing the name, address, number of units, date of entry on the register, and date of ceasing to hold units. "Unit holder" is defined in trust deed as the person entered on the register, and as such there is no ability for units to be held by bearer and there can be no valid transfer of units between unit holders without the authorisation of the management company. When a new investor wishes to purchase units, they must present valid identification to the management company, such as a passport. Any redemption of units can only be effected by the management company. The trust deed provides that unit holders are to advise the management company of any changes to their details.

153. It is possible that new unit trusts will be established in future. It is not required that unit holders of a unit trust be Samoan citizens or persons. Prudential guidelines are being prepared by the Central bank of Samoa to provide additional guidance for the Ministry of Finance when approving a new management company.

Foreign trusts

154. Under Samoan law, there are no obstacles that prevent a Samoan resident from acting as a trustee or administrator of a trust governed by foreign law. Foreign trusts will be typically governed by foreign law, so it is unclear whether and which common law duties would apply with respect to these arrangements.

155. Under section 5 of the BLA, any person (including a trustee of a foreign trust) carrying on any economic activity in Samoa has to obtain a business license from the Commissioner of Inland Revenue. Any person who acquires such a business licence is automatically registered for income tax purposes. The Income Tax Act provides that every trustee (including a trustee of a foreign trust) must file each year a return with the Commissioner (Income Tax Act, ss.2, 80(2)), and must keep sufficient records to allow the Commissioner to determine the tax liability. In order for tax to be correctly assessed on the trustee or beneficiary as the case may be, the trustee would need to hold at least all the records concerning the identity of beneficiaries

and other trustees, as well as the assets, income and allowable deductions pertaining to the trust.

156. Furthermore, resident trustees of foreign trusts who qualify as "financial institutions" under section 2(1) and Schedule 1 of the MLPA will also be subject to the customer due diligence requirements provided for under the MPLA (see more details on section *International trusts* above).

157. In practice, nine foreign trusts are registered with the Inland Revenue Services. Compliance with tax and anti-money laundering obligations is described in section A1.6 below.

Conclusions

158. Under the Trusts Act 2014, trustees of domestic and foreign benefiting trusts are subject to a general duty to maintain accurate accounts and records of the trusteeship. In respect of domestic and foreign trusts that are carrying on a business or investment activity and thus require a business licence, the Inland Revenue Services will also have information on the trustees (as the business licence applicant) and a copy of the trust deed (which would generally include details of the settlors and beneficiaries). The tax filing and record keeping requirements which are applicable to all domestic trusts regardless of business activity or income, and all foreign trusts undertaking investment in Samoa, ensure the availability of ownership and identity information. Anti-money laundering obligations would also apply to ensure the availability of all ownership and identity information in respect of domestic and foreign trusts if the trustee is acting in a professional capacity.

159. The trustees of unit trusts and foreign benefiting international trusts qualify as "financial institutions" and are subject to customer due diligence requirements under the MLPA. This means that they are required to obtain satisfactory evidence of identity in relation to settlors, trustees and beneficiaries, regardless of their value held in the trust of the value of the trust (MLPR as amended by Money Laundering and Prevention Amendment Regulations 2014). In addition, trustees of unit trusts must keep a register of unit holders and file with the Registrar, on an annual basis, detailed updated identity information concerning the unit holder.

160. It is also conceivable that a trust could be created which has no connection with Samoa other than that the settlor chooses that the trust will be governed by the laws of Samoa. In that event, there may be no information about the trust available in Samoa. Any potential gaps are likely to be narrow. Samoa has not received any EOI requests relating to such trusts.

Foundations (ToR A.1.5)

161. The Special Purpose International Companies Act 2012 (SPICA) provides for the formation of special purpose international companies which operate like foundations in Samoa. They are hybrid entities with corporate form but no shareholders. According to the SPICA, these companies are established and administered for the ultimate benefit of charity and cannot distribute contributions or surplus other than for charity or for charitable purposes.

162. Special purpose international companies must be incorporated and registered through a trustee company, which must lodge the memorandum and any changes thereto with the Registrar of Special Purpose International Companies, which is part of the SIFA (SPICA, ss.15(2) and 17(10)). All special purpose international companies must keep at their registered office in Samoa a register containing the names and addresses of its directors, secretaries and resident agents (SPICA, s. 52(2)(3)). This information must be lodged with the Registrar and updated in the event of any changes (SPICA, s. 52(5)).

163. Special purposes international companies may carry on any business, except for banking, insurance or acting as a trustee company, unless it is licensed or otherwise permitted so to do under the laws currently in force in Samoa (SPICA, s. 6(1)). They may also issue founder's rights certificate, which entitles the holder to exercise all rights granted by the SPICA and the articles of the company, including determining specific charities to benefit from the distribution of the company's final surplus upon liquidation (SPICA, s. 16 and Schedule 2(B)). The beneficiaries of special purpose international companies are only charities or general charity purposes.

164. The SPICA provides for appropriate immobilisation mechanisms concerning the founder's rights certificates. Founder's rights certificate must be physically lodged with the trustee company whose office provides the registered office of the company (SPICA, ss.16(2) and 53(1)). The trustee company must not release the founder's rights certificate or part with the physical possession of the said document, unless the founder's rights certificate is to be cancelled by the company. Trustee companies must also maintain records concerning the identity of the holders of founder's rights certificate issued by special purposes international companies. Pursuant to section 136(2) of the SPICA, a trustee company must retain records of a company for seven years from the date the company was struck off the Registrar (SPICA, s. 136(2)).

165. In practice, no special purpose international companies have been created. There are no set forms for registration of a special purpose international company and a similar process as is used for international companies would apply. That is, the trustee company files with SIFA three copies of

the memorandum and articles of association, a notice of the registered office (which must be the office of the trustee company in Samoa), and a certificate from the trustee company to certify it has complied with all obligations under the SPICA. The names of shareholders and directors is not required to be filed with SIFA upon registration.

Conclusions

166. Special purpose international companies are established for charity or for charitable purposes. These entities must be established and registered with the Registrar of Special Purpose International Companies through a trustee company, which is subject to comprehensive obligations under the MLPA, including customer due diligence requirements. Special purpose international companies may issue founder's rights certificate, but appropriate immobilisation mechanisms are in place, in addition to anti-money laundering obligations applicable to trustee companies holding such certificates.

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

167. Jurisdictions should have in place effective enforcement provisions to ensure the availability of ownership and identity information, including sufficiently strong compulsory powers to access the information. This section of the report assesses whether the provisions requiring the availability of information with the public authorities or within the corporate entities reviewed in section A.1 are enforceable and failures are punishable. Questions linked to access are dealt with in Part B of this report.

168. Under section 40 of the CA, domestic companies are required to maintain a share register that records the details of the shareholders and of their shares. When companies keep the register in two separate places, a copy of all entries must be kept in the principal register in Samoa (CA, s. 119(2) and (4)). If a company fails to comply with these provisions, the company and each director commits an offence and is liable on conviction to a fine not exceeding 50 penalty units (WST 5 000/USD 1 914) (CA, ss.40(4) and 119(8)).[6]

169. In practice, the Registrar conducts regular inspections of domestic companies to determine compliance with these obligations. These are conducted at a rate of 10 companies per fortnight. Visits are made to the other main island of Samoa on a quarterly basis. At this rate, each domestic company would be inspected approximately every two years. Advance notice

6. In Samoa, 1 penalty unit equals WST 100. (Fines (Review and Amendment) Act 1998, s. 4).

is given to the company as to the date of their inspection. If information is missing from the share register, the Registrar staff will inform the company and return the following fortnight to check that it has been remediated. No penalties are applied in practice for a continuing fail to remediate any missing information. Information on the shareholders should be available on the Ministry of Commerce, Industry and Labour's companies website, to the extent the company has complied with the obligations to file its annual return and notification of change in shareholders.

170. Domestic and overseas companies registered at the Registrar of Companies are required to furnish an annual return, disclosing any changes to shareholding that might have occurred during the year (CA, s. 124).[7] In addition, when a company issues new shares, acquires its own shares or redeems any shares, it must send a notice of the share transaction to the Registrar within ten working days of the transaction taking place (CA, ss.26(2), 31(3), and 35(5)).If a company fails to comply with these provisions, the company and each director commits an offence and is liable on conviction to a fine not exceeding 50 penalty units (WST 5 000/USD 1 915) (CA, ss.26(4), 31(5) and 124) or ten penalty units (WST 1 000/USD 383) in the case of redemption of shares (CA, s. 35(6)). Administrative penalties apply for late filings, in the amount of WST 50 (USD 19) if the filing is less than 25 days late, or WST 150 (USD 57) if 25 days late or more.

171. In practice, annual returns are due each 12 month anniversary after the initial registration of the company. A first reminder is sent by email to each company in advance of the annual return due date. The Ministry of Commerce, Industry and Labour has an internal database which shows which companies have outstanding annual returns due and automatically generates reminder letters to the company. If the annual return is not filed on time, a reminder is sent after 25 days, and another two weeks thereafter if the annual return is still outstanding. If the annual return is still outstanding at that point, a maximum penalty of 200 WST (USD 77) would apply. Annual returns, once submitted, are checked against the return for the previous year to verify that periodic changes in name, address, company rules, directors or shareholders that were required to be filed during the year were in fact filed. There are no known instances of false information being provided in initial registrations or annual returns. Although the Companies Act allows for prosecution of the provision of false information, no instances of the provision of false information have arisen and as such the Samoan authorities have not had the occasion to prosecute.

7. www.mcil.gov.ws/rcip/forms/.

172. Over the review period, the numbers of companies struck off for non-compliance with obligations of the Companies Act, and the total penalties imposed for late payment of annual return fee, was as follows:

2011		2012		2013	
Struck off	**Penalties**	**Struck off**	**Penalties**	**Struck off**	**Penalties**
192	WST 10 050 (USD 3 848)	80	WST 10 020 (USD 3 837)	38	WST 9 450 (USD 3 619)

173. International companies and foreign companies registered under the ICA are required to keep a register and index of members of an international company, generally at the registered office of the company (ICA, ss.30G(3),105 and 106). If an international company fails to comply with this obligation, the company and each officer thereof (which includes a trustee company that is appointed as a resident secretary) who is in default commits an offence. The general penalty for non-compliance is 50 penalty units (WST 5 000/USD 1 915) on a first offence and 100 penalty units (WST 10 000/USD 3 830) for a second or subsequent offence (ICA, s. 219(1)). Violation of section 106 of the ICA – prescribing the location of the register of members – is punished upon conviction with a fine not exceeding 100 penalty units (WST 10 000/USD 3 830) or to imprisonment for a term not exceeding three months or both (ICA, s. 219(2)).

174. Under the SFICA, the fund manager of a segregated fund international company is required to keep the records and accounts which identify shares or membership interests of shareholders or other members in respect of each segregated fund (SFICA, s. 21(2)(c)). The penalty for non-compliance is 50 penalty units on a first offence and 100 penalty units (WST 10 000/ USD 3 830) for a second or subsequent offence (SFICA, s. 30(1)).

175. In order to obtain and keep a valid licence, international banks are required to disclose to the Inspector of International Banks updated ownership information (IBA, ss.13 and 25). Bearer shares are prohibited and shares can be issued or transferred only after approval of the Inspector of International Banks (IBA, s. 18). Under sections 33 and 49 of the IBA, providing false information is an offence, punishable upon conviction with imprisonment for a term not exceeding one year or to a fine not exceeding USD 10 000 or to both, and, if the offence is a continuing one, to a further fine not exceeding USD 500 for every day on which the offence has continued. In addition, every person who fails to update information provided upon registration commits an offence and is liable on conviction to a fine not exceeding USD 1 000 for every day during which the offence continues (IBA, s. 25(7)).

176. Persons carrying on international insurance business must disclose ownership information upon registration with SIFA, and must update this information (IIA, ss.5 and 12). Providing false statements to SIFA and failure to update ownership information are punished upon conviction with a fine ranging from 200 to 500 penalty units (WST 20 000 and WST 50 000/ USD 7 659 and USD 19 148) and/or imprisonment from one to two years (IIA, s. 40).

177. Persons carrying on business as an international mutual fund, or international mutual fund manager or administrator, must disclose ownership information upon registration with SIFA, and must update this information (IMFA, ss. 9, 22, 29, 30). Providing false or misleading information, or failing to provide required information is an offence (IMFA, s. 46). A person is liable upon conviction to imprisonment for a term not exceeding one year or to a fine not exceeding USD 10 000 dollars or to both and, if the offence is a continuing one, to a further fine not exceeding 500 dollars for every day on which the offence continues (IMFA, s. 47).

178. The monitoring and enforcement of obligations of international companies, segregated fund international companies, international banking and international insurance companies is described below under "monitoring by SIFA" below. No non-compliance was detected during the review period and no penalties were imposed.

179. The ICA no longer permits international companies to issue bearer shares and share warrants to bearer. However, during the review period, bearer shares and share warrants were permitted, but these bearer instruments were required to be held by a licensed custodian who, in turn, was required to hold identity information on the bearer (ICA, s. 39). The violation of this provision was punishable upon conviction with a fine not exceeding 100 penalty units (WST 10 000/USD 3 830) or to imprisonment for a term not exceeding three months or both (ICA, s. 219(2)).

180. The monitoring of compliance with these obligations was the responsibility of SIFA. SIFA does not know how many bearer shares or share warrants were issued. Although SIFA did conduct on-site inspections of trustee companies with regard to their other obligations under the International Companies Act, they did not review or monitor the obligations of trustee companies as custodians of bearer shares and share warrants. In 2009, when the custodial regime was introduced, trustee companies were given a six month period to write to their clients and advise them of the new obligations to have the bearer shares physically lodged with the trustee company. SIFA wrote to the trustee companies at that time to remind them of their new obligation. No applications for an extension of this six month transition period were made to SIFA. SIFA did not monitor whether the original immobilisation obligations were complied with.

181. Accordingly, no enforcement actions have been taken with regard to any trustee company for failure to comply with either the original immobilisation requirements or the custodial requirements. In 2015, Samoa commenced monitoring the abolition of bearer shares through on-site inspections, which included a discussion of the following issues with the trustee companies: whether clients have been informed of the changes to their rights; how well clients understand their obligations and rights regarding bearer shares; how many international companies have issued bearer shares; and what identity documentation is collected to identify the owner of the bearer shares.

182. The articles of organisations of a limited life international company must include a statement prohibiting such company from issuing shares to bearer or shares warrants to bearer (ICA, s. 30(E)(g)). The violation of this provision violation is subject to a fine of 50 penalty units (WST 5 000/ USD 1 915) and in the case of second or subsequent offence to a fine not exceeding 100 penalty units (WST 10 000/USD 3 830) (ICA, s. 219(1)).

183. Section 6(3) of the SFICA prohibits segregated fund international companies from issuing bearer shares. Any violation of this provision is subject to a fine of 5 penalty units (WST 500/USD 191) and in the case of a second or subsequent offence, to a fine not exceeding 10 penalty units (WST 1 000/USD 383) (SFICA, s. 30(1)). In addition, if an international company or a segregated fund international company violates any legal restriction, the SIFA is vested with the absolute right to direct such an entity to cease to carry on its business or part thereof either immediately or within such time as indicated by the SIFA (SFICA, s. 5and ICA, s. 225)

184. A partnership agreement containing details of the partner is required as the means by which an international partnership or limited partnership is evidenced (IPLPA, s. 2(1)). Under the IPLPA, limited partnerships must complete, after registration and before commencing any business, a certificate disclosing the names and addresses of all partners distinguishing the general partners from the limited partners (IPLPA, s. 23(1)). Each general partner in default commits an offence and upon summary conviction incurs a fine of 2.5 penalty units (WST 250/96) for each day during which such offence continues (IPLPA, s. 29(3)).The general penalty on any person committing an offence against the IPLPA is imprisonment for a term not exceeding 1 year or a fine not exceeding 100 penalty units (WST 10 000/USD 3 830) or both, and, if the offence is a continuing one, a further fine not exceeding 5 penalty units (WST 500/USD 191) for every day during which the offence has continued (IPLPA, s. 42). In practice, no international or limited partnerships have ever been registered.

185. The enforcement mechanisms that apply to trusts in Samoa are those under the income tax and anti-money laundering obligations, described below. During the review period, international trusts were required to register

with the Registrar of International Trusts and become subject to the provisions of the International Trusts Act (ITA, s. 16). The general penalty for every person committing an offence against the ITA was being liable upon conviction to imprisonment for a term not exceeding one year and/or to a fine not exceeding 100 penalty units (WST 10 000/USD 3 830). If the offence was a continuing one, such person is liable to a further fine not exceeding 5 penalty units (WST 500/USD 191) for every day during which the offence has continued (ITA, s. 30). The monitoring and enforcement of obligations of international trusts during the review period is described below under "monitoring by SIFA" below. No non-compliance was detected during the review period and no penalties were imposed.

186. Pursuant to section 10 of the Unit Trusts Act, the manager of unit trusts must file with the Registrar of Companies an authenticated copy of the trust deed, and must communicate any amendment to the Registrar within 14 days (UTA, s. 10). Every person who fails to comply with this provision is guilty of an offence and liable, upon conviction, to a fine not exceeding 10 penalty units (WST 1 000/USD 383) and/or imprisonment for a term not exceeding three months (UTA, s. 26(2)). In practice, the only unit trust in Samoa is the Unit Trust of Samoa, which is managed by a state owned domestic company and is operated only for the benefit of Samoan persons. Compliance with these obligations is monitored by the Ministry of Commerce, Industry and Labour and no breaches have occurred.

187. With regard to special purpose international companies, at least one resident director must be an officer or wholly-owned subsidiary of the trustee company holding the founder's rights certificate (SPICA, s. 43(2)). The founder's rights certificate must be physically lodged with the trustee company whose office serves as the registered office of the company (SPICA, s. 16(2)). A trustee company and every officer of the trustee company who is knowingly in default commits an offence and is liable, upon conviction, to a fine not exceeding 50 penalty units (WST 5 000/USD 1 915), and in the case of a second or subsequent offence, to a fine not exceeding 100 penalty units (WST 10 000/USD 3 830). In addition, the Registrar may strike off from the register the name of an entity if it ceases to comply with any of the requirements of section 16 or 43(2) of the SPICA. In practice, no special purpose international companies have ever been registered.

188. MLPA obligations, such as customer due diligence requirements, apply in the case of all international entities and arrangements (companies, partnerships, trusts, special purpose international companies), since they must be established through and registered by a trustee company, or because a trustee company provides a resident director, officer, agent or a registered office. All these services provided by trustee companies are defined as "carrying on business" under the TCA (TCA, s. 2), and, consequently, are subject

to the MLPA. Any financial institution or any person contravening the requirements and provisions of the MLPA is liable upon conviction to a fine not exceeding 500 penalty units (WST 50 000/USD 19 148), imprisonment for a term not exceeding five years or both (MLPA, s. 22).

189. The MLPR requires financial institutions to obtain a comprehensive range of documentation when conducting customer due diligence in relation to both natural and legal persons (MLPR, ss.5 and 6) as well as to maintain update such information and transactions on an ongoing basis (MLPR, s. 12). Specific identification minimum requirements apply respect to limited partnerships (MLPR, s. 6(3)), and in relation to any type of trusts (MLPR, ss.6(1-3)). Any person or financial institution who contravenes or fails to comply with any provision of the MLPR is liable to a fine not exceeding 100 penalty units (WST 10 000/USD 3 830) and/or imprisonment for a term not exceeding one year (MLPR, s. 22). The monitoring and enforcement of obligations of under the MLPR is described below in section A.3.

190. Domestic companies and foreign companies deriving income in Samoa or having their effective management in Samoa are required to furnish an annual return of income (Income Tax Act, ss.80, 89). In relation to domestic and foreign partnerships, the Income Tax Act requires that when income is derived by two or more persons jointly as partners, the partnership must file a partnership return (Income Tax Act, s. 48). In addition, each partner must be separately assessed and liable for the tax payable on his or her total income, including the share of the income of any partnership (Income Tax Act, s. 50). Trustees of domestic and foreign trusts are assessable and liable for income derived by the trust (Income Tax Act, s. 53) and, as such, they are required to file an annual tax return (Income Tax Act, s. 51(3)).

191. Under section 50 of the Tax Administration Act, a taxpayer who fails to lodge a return on time is liable for a late filing penalty of WST 300 (USD 114) for a company, or WST 100 (USD 38) in any other case. In addition, a person who fails to lodge a tax return on time commits an offence and is liable on conviction to a fine not exceeding 10 penalty units (WST 1 000 or USD 383) or to imprisonment for a term not exceeding one year, or both (Tax Administration Act, s. 70). A person that makes any false returns, statement or production of a document that results in a reduction in tax is liable to a penalty of 50% of the tax shortfall if the communication was knowing or reckless, or 20% of the shortfall in any other case (Tax Administration Act, s. 51). In addition, any person who makes a false or misleading statement to a tax officer, or omits information without which the statement is false or misleading, commits an offence and is liable on conviction to a fine not exceeding 30 penalty units (WST 3 000 or USD 1 149) or imprisonment for a term not exceeding one year, or both (Tax Administration Act, s. 75).

192. Under section 81 of the Income Tax Act and section 29 of the Tax Administration Act, every person must maintain records so as to enable the computation of the taxpayer's liability under the tax law to be readily ascertained. Every person who fails to comply with this obligation is liable to a penalty of 75% of the tax payable for the tax period to which the failure relates if the failure was knowing or reckless; or 20% of the tax payable for the tax period to which the failure relates; or if no tax is payable, then WST 300 (USD 114) for a company, and WST 100 (USD 38) for any other case (Tax Administration Act, s. 50). In addition, a person who knowingly or recklessly fails to keep, retain, and maintain documents as required commits an offence and is liable on conviction to a fine not exceeding 30 penalty units (WST 3 000 or USD 1 149) or to imprisonment for a term not exceeding one year, or both (Tax Administration Act, s. 73).The Commissioner is empowered to publish a list of persons against whom a penalty under a tax law has been imposed (Tax Administration Act, s. 83).

193. Any person (natural or legal) carrying on economic activity in Samoa has to obtain a business license from the Commissioner of Inland Revenue (BLA, s. 5). This obligation applies to domestic and foreign companies, partnerships and trusts, while international entities and arrangements are not subject to the BLA. The holder of a business license has to inform the Commissioner of any changes to the information maintained by the Commissioner in the Licence Register within 30 days of its occurrence (BLA, s. 9). If the holder fails to do so, its license will be cancelled, suspended, or he or she will be subject to a fine of 20 penalty units (WST 2 000/USD 766) (BLA, s. 9(5)). In addition, upon conviction for the breach any provision of any law relating to foreign investment, the Supreme Court will seize all assets of every description held by the licence holder (BLA, s. 18(3)).

In practice – tax laws

194. Compliance with income tax obligations is relevant to the availability of information regarding partnership and trusts. Inland Revenue Services has a system to identify taxpayers that fail to file a return. This system is now automated and generates reminders to the staff to enable identification of such taxpayers. Two reminder notices are sent to a taxpayer with an outstanding tax return, and thereafter direct contact with the taxpayer is made.

195. Compliance with the business licensing obligations is ensured in a similar manner. The same automated system generates reminders to staff as to which license holders are due to renew their licence. Monthly meetings of staff are held to identify how many renewals are due and how many are outstanding, and the work to issue reminders is assigned. In no case has a licence been suspended or cancelled for failure to comply with the licensing obligations.

196. Certain administrative penalties are automatically imposed on taxpayers by the system. These automatic penalties apply for the following forms of non-compliance:

- Late filing penalty of WST 300 (USD 115) for companies or WST 100 (USD 38) in any other case;
- Late renewal of business licence penalty of WST 200 (USD 77).

197. During the review period, total penalties imposed for late filing and late renewal of business licences were as follows. No penalties were imposed for false ownership or identity information.

2011		2012		2013	
Late filing	**Late renewal of business licence**	**Late filing**	**Late renewal of business licence**	**Late filing**	**Late renewal of business licence**
203 taxpayers; total penalty WST 42 500 (USD 16 275)	285 taxpayers; total penalty WST 55 580 (USD 21 284)	10 taxpayers; total penalty WST 2 400 (USD 919)	334 licensees; WST 66 800 (USD 25 581)	Figures not available	162 licensees; WST 32 400 (USD 12 408)

198. In addition to incurring an administrative penalty, the failure to file a tax return is also an offence under section 70 of the Tax Administration Act 2012. In 2013, 26 prosecutions were filed, most of which were withdrawn by leave after having been settled out of Court (where the taxpayer filed all outstanding returns within an agreed timeframe and made arrangements for the payment of any outstanding taxes). The Inland Revenue Services has also begun to exercise other statutory powers with a view to increasing compliance. This includes education an awareness programmes run by the Taxpayer Services Division on rights and obligations of taxpayers, establishing a partnership with the Samoa Institute of Accountants, seizures of property belonging to taxpayers, and collection of taxes from third parties.

In practice – monitoring by SIFA

199. The following entities and arrangements are subject to legislation that is administered by SIFA: international companies, segregated fund international companies, international and limited partnerships, all trusts (which during the review period, included international trusts since replaced as foreign benefiting trusts), and special purpose international companies. With the exception of domestic and foreign law trusts, these entities and arrangements cannot carry on business in Samoa and the only physical person with the legal obligations to maintain ownership and identity information in Samoa is the trustee company which is mandatory for all entities.

200. There are nine trustee companies in Samoa and each has on average five employees, who must be Samoan residents. These nine trustee companies act for all of the SIFA entities, being 34 830 international companies, four segregated fund international companies, 155 foreign benefiting trusts, seven international banks, four international insurance companies and five international mutual funds. Trustee companies must be registered as a domestic company under the Companies Act and are subject to the supervision of the Ministry of Commerce, Industry and Labour described above. At least one of the directors must be an individual resident in Samoa. These companies must then apply to the Inland Revenue Service for a business licence and to SIFA for a licence to operate as a trustee company. In most cases, the trustee companies are subsidiaries of entities engaged in the same business abroad, with most having being headquartered in Hong Kong and a few headquartered in Panama.

201. The licensing process for a trustee company takes approximately three to six months and involves a thorough background check on the individuals and the corporate group. The applicant must meet with SIFA in person, and file their know-your-customer manuals, and the identification, professional résumé and references for all company directors. SIFA conducts a police check on the directors and also considers the reputation, practices and good standing of the corporate group, where relevant. In one case the licence of a trustee company was revoked on account of a related entity in the corporate group being in breach of obligations in its jurisdiction of operation. The numbers of trustee companies has remained relatively stable, with the most recent licence granted to a trustee company in 2012.

202. The trustee company must obtain pre-approval from SIFA before a change of ownership is permitted. The same information must be provided and the same background check is undertaken in respect of the prospective owner. This is a relatively infrequent occurrence in practice. In one case, prior to the review period, an application for change in ownership was declined on the basis of adverse information about the proposed new owner, which related to previous charges of fraud and breach of anti-money laundering obligations. The trustee company must also inform SIFA of a change in directors, as well as informing the Ministry of Commerce, Industry and Labour.

203. SIFA maintains a register for all entities that it supervises (except trusts for which there is no longer a registration process). The register records the name of the entity, name of the trustee company acting for the entity, the due date for renewal, and records of renewal payments made.

204. SIFA undertakes annual or twice yearly on-site inspections of all of the trustee companies. During the review period, it was twice yearly in 2011 and 2012, and once in 2013. These usually involve three or four SIFA staff and are sometimes conducted as a joint inspection with the FIU. A template

checklist is used, which includes whether suspicious transaction reports have been made, whether records include identification and beneficial ownership records, measures the trustee company takes to determine the identity and beneficial ownership of a client, measures the trustee company takes to determine whether a client is acting on behalf of a third party, measures to address politically exposed persons, and the compliance regime such as whether policies are applied and whether training is provided on the anti-money laundering regime. Trustee companies are informed in advance of the inspection and are provided with a list of issues that will be covered. SIFA would spend approximately two or three days to cover the inspections for all nine trustee companies, spending approximately two – three hours per trustee company.

205. A sample of approximately 30 customer files is chosen at random to audit, ensuring coverage of each of the types of entity. Assuming that all 30 files chosen for inspection related to international companies (the most common type of entity), and all nine trustee companies were inspected twice per year, there would be at most 540 files inspected each year. This represents 1.5% of the total number of international companies. If all nine trustee companies were inspected once per year, 270 files would be inspected, representing 0.75% of the total number of international companies. SIFA will inspect the records to ensure that all information kept with the trustee is up to date and matches the information filed with SIFA. SIFA will also look at documents that are kept by the trustee company but not required to be filed with SIFA such as a register of directors of an international company or a copy of the trust deed of an international trust to check that the register is kept and that changes are recorded. The know-your-customer manuals will also be reviewed to ensure that any changes to the AML regulations are reflected in the manuals. In one case prior to the review period, the licence of one trustee company was revoked on account of the know-your-customer manual being inadequate. In that case, the customers of that trustee company migrated to the other trustee companies, and SIFA checked that the information gaps pertaining to those customers had been remediated.

206. A report of findings is produced at the end of the visit which would identify if information was missing. If remedial action was required, SIFA would advise the trustee company and mark the issue to be checked at the next visit, or, if the matter was urgent, then the trustee company would be required to file it with SIFA within a reasonable period. SIFA advises that during the review period, no substantial problems have been detected in the on-site inspections and it has not had cause to issue penalties. SIFA has imposed penalties for late filing of renewals. SIFA advises that if it found cause for concern, it would afford the trustee company the opportunity to remedy the issue before considering cancellation of the licence. However, in practice, EOI requests have been received with respect to beneficial ownership information of international entities, and in those cases the trustee company did not have

the information readily available as required under their anti-money laundering obligations, consequently causing significant delays in answering these requests. As such, this indicates that the monitoring and enforcement regime should be more rigorous in order to detect non-compliance.

Conclusion

207. Enforcement provisions are in place in the legal framework in respect of the relevant obligations to maintain ownership and identity information for all relevant entities and arrangements.

208. In practice, in respect of domestic companies there is periodic monitoring of these obligations. The Ministry of Commence Industry and Labour conducts inspections of share registers maintained by domestic companies and receives annual returns, the filing of which is monitored and late filing of documents is penalised. Tax and business licence filing obligations are also enforced.

209. No monitoring was undertaken by SIFA with respect to bearer shares issued by international companies during the review period and this fact is taken into account in considering the rating of element A.1. Although bearer shares have now been abolished, it is recommended that Samoa ensure that custodians of bearer shares are aware of the abolition of bearer shares and remediate any ownership information that was not maintained.

210. In respect of the international entities governed by SIFA, the availability of information is only able to be ensured through the trustee company. A careful background check is undertaken before a trustee company can be licensed. The monitoring of obligations of trustee companies is, however, quite limited given the large numbers of clients they act for (that is, nine trustee companies act for more 34 000 international companies). The size of the staff in SIFA and the FIU for undertaking this monitoring task is relatively small, and the thoroughness of the on-site visits does not appear to be rigorous enough to sufficiently cover the large number of international clients of trustee companies. In addition, information the subject of EOI request has not been available as required, notwithstanding that the monitoring conducted by SIFA during the review did not detect any deficiencies in record keeping. It is therefore recommended that Samoa conduct more in-depth inspections of its trustee companies in regard to the availability of ownership information.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 rating	
Partially Compliant	
Factors underlying recommendations	**Recommendations**
Although bearer shares have since been abolished, during the review period, the effectiveness of the custodial regime for bearer shares was not monitored.	Samoa should ensure that custodians of bearer shares are aware of the abolition of bearer shares and remediate any ownership information that was not maintained.
The monitoring of trustee companies is not sufficiently rigorous given the numbers of international entities and arrangements that the trustee companies represent.	Samoa should conduct more in-depth inspections of its trustee companies in regard to the availability of ownership information.

A.2. Accounting records

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

211. A condition for exchange of information for tax purposes to be effective, is that reliable information, foreseeably relevant to the tax requirements of a requesting jurisdiction is available, or can be made available, in a timely manner. This requires clear rules regarding the maintenance of accounting records. The *Terms of Reference* set out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. It provides that reliable accounting records should be kept for all relevant entities and arrangements.

212. To be reliable, accounting records should *(i)* correctly explain all transactions, *(ii)* enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time, and *(iii)* allow financial statements to be prepared (*ToR A.2.1*). In addition, accounting records should include underlying documentation, such as invoices, contracts, etc. (*ToR A.2.2*) and they must be kept for a minimum period of five years (*ToR A.2.3*).

General requirements (ToR A.2.1), Underlying documentation (ToR A.2.2), Document retention (ToR A.2.3)

Domestic companies

213. Section 129 of the CA provides that reliable accounting records must be kept that: *(i)* correctly record and explain all transactions; *(ii)* enable the financial position of the company to be determined with reasonable accuracy at any time; *(iii)* allow financial statements to be prepared in accordance with section 130 of the CA and any related regulations; and *(iv)* enable financial statements to be readily and properly audited (CA, s. 129(1)). If the directors fail to comply with these record-keeping requirements, each director commits an offence and is liable on conviction to a fine not exceeding 50 penalty units (WST 5 000/USD 1 915) (CA, s. 129(5)).

214. Pursuant to section 119 of the CA, these accounting records may be kept in Samoa or abroad. However, if the records are kept outside of Samoa, there must be in Samoa, accounts and returns that disclose with reasonable accuracy the financial position of the company at intervals not exceeding six months and that enable financial statements or any other document to be prepared (CA, s119(6)). A company that chooses to keep its accounting records overseas must give the Registrar notice of the place where the accounting records, accounts and returns are kept, within ten days of them being kept elsewhere or moved (CA, ss.119(6)(a) and 119(7)). If a company fails to comply with these requirements, the company and every director commits an offence and is liable on conviction to a fine not exceeding 50 penalty units (WST 5 000/USD 1 915) (CA, s. 119(8)).

215. In accordance with section 129 of the CA, the accounting records must contain:

- entries of money received and spent each day and the matters to which it relates;
- a record of the assets and liabilities of the company;
- if the company's business involves dealing in goods: *(i)* a record of goods bought and sold and relevant invoices; and *(ii)* a record of stock held at the end of the financial year together with records of any stock takings during the year; and
- if the company's business involves providing services, a record of services provided and relevant invoices.

216. Retail businesses that operate on a cash system, however, do not need to keep invoices for every transaction. It is sufficient if a retail business keeps a record of the total amount of money received each day (CA, s. 129(3)).

217. Pursuant to section 117(1)(f) of the CA, a company is required to keep the accounting records required under section 129 of the CA (which also covers underlying documents, such as invoices) for the current accounting period and for the last seven completed accounting periods of the company. If a company fails to comply with the requirements of section 117 of the CA, the company and every director commits an offence and is liable on conviction to a fine not exceeding 50 penalty units (WST 5 000/USD 1 915) (CA, s. 117(3)). However, a company can seek written approval from the Registrar to reduce the retention period (CA, s. 117(2)). It is unclear under the current law whether subsequent events, such as the liquidation of the company or the termination of a business relationship, will have an impact upon the minimum retention period.

218. In addition, all domestic companies are required to keep accounting records under the Income Tax Act and Tax Administration Act. As further detailed below (see further details on *Tax law* below), domestic companies are required to keep records for at least seven years (Tax Administration Act, s. 29). Furthermore, certain domestic companies that fall within the scope of the FTRA are also subject to the record keeping obligations imposed by that Act, as explained below (see section on *Anti-money laundering law*).

219. Therefore, a combination of obligations established under Samoa's commercial and tax laws is sufficient to ensure the availability of reliable accounting information concerning domestic companies. However, it is noted that domestic companies which have been wound up and finally dissolved are not required to keep reliable accounting records, including underlying documents, for at least five years. It is recommended that Samoa introduce legal requirements to ensure the availability of reliable accounting information (including underlying documentation) in respect of domestic liquidated companies for at least five years.

220. In practice, the Ministry of Commerce Industry and Labour does not inspect whether domestic companies maintain accounts as required by the Companies Act, but rather focusses its resources on monitoring the maintenance of the share register as described in section A.1 above. Although the Registrar has power under the Companies Act to inspect and copy documents, this power has not been exercised with respect to accounting records. As discussed below, the availability of accounting records is verified by audits undertaken by the tax authorities,

International companies

221. During the review period, Section 113(1) of the ICA required an international company, or a foreign company registered under the ICA, to keep such accounts and records as the directors consider necessary or desirable in

order to reflect the financial position of the company. Section 113(1) of the ICA has since been amended and now requires an international company, or a foreign company registered under the ICA, to keep accounting records which must:

a. correctly explain all transactions;

b. enable the financial position of the international company to be determined with reasonable accuracy at any time;

c. enable the directors to check that any accounts prepared by the company comply with the requirements of the ICA; and

d. allow financial statements to be prepared;

e. include underlying documentation, such as invoices, contracts and so forth;

f. reflect the following details:

   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 company.

(International Companies Amendment Act 2015, s. 3(1), in force 27 April 2015).

222. The international company must retain all the accounts and records for seven years after the end of the financial or accounting period to which they relate (International Companies Amendment Act 2015, s. 3(1A)). A failure to comply with these obligations is an offence, punishable by a fine not exceeding 100 penalty units (WST 10 000 or USD 3 830) (International Companies Amendment Act 2015, s. 3(1B)). In addition, when a member so requires, the directors must present at any meeting a profit and loss account and a balance sheet prepared no more than 12 months before the date of the meeting (ICA, s. 114(1)).

223. As to segregated fund international companies, during the review period, a registered segregated fund manager was required to keep records and accounts identifying all creditors, liabilities and assets of each segregated fund (SFICA, s. 21(1)(d)). By virtue of section 5 of the SFICA, the amended provision of the International Companies Act 1988 applies to a segregated fund international company. Therefore, international companies and segregated fund international companies are required to keep all accounting records in accordance with the international standard.

224. In practice, during the review period international companies were only required to keep such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company. The availability of accounting records was not monitored or enforced by SIFA. As the new accounting obligations on international companies were introduced after the review period, their effectiveness could not be tested. Accordingly, it is recommended that Samoa monitor the effectiveness of these provisions to ensure that all accounting records including underlying documentation are available for at least five years.

225. During the review period, Samoa received two requests for accounting records of international companies. The competent authority acknowledges that it had difficulties in obtaining the information, as in the relevant cases the international company kept the records outside of Samoa and the trustee company in Samoa was not always co-operative or timely in obtaining the records. Samoa was eventually able to obtain the accounting records requested, after a period of more than two years.

Foreign companies

226. If a foreign company is resident in Samoa for tax purposes by virtue of its centre administrative management, it is subject to the same general tax requirement imposed on resident domestic companies. Therefore, such foreign companies are required to keep reliable accounting records (including underlying documents) for at least seven years, under section 29 of the Tax Administration Act (see *Domestic companies* above). However, like domestic companies, foreign companies which have been wound up and finally dissolved are not required to keep reliable accounting records, including underlying documents, for at least five years. It is therefore recommended that Samoa introduce legal requirements to ensure the availability of reliable accounting information (including underlying documentation) in respect of foreign liquidated companies for at least five years.

Domestic partnerships

227. Under the Partnerships Act, there is an obligation on partners of domestic partnerships to render true accounts and full information of all things affecting the partnership to any partner or the legal representatives (PA, s. 29). The PA does not specify which accounting documents should be kept with respect to true accounts and full information of all things affecting the partnership.

228. Nevertheless, domestic partnerships and its partners are subject, under section 29 the Tax Administration Act, to general tax requirements

to keep accounting records and underlying documentation for a period of at least seven years (see further details on *Tax law* below).

International partnerships and limited partnerships

229. During the review period international partnerships and limited partnerships were not subject to any obligations in the IPLPA to keep records. Accounting information was partly required to be available through the MPLA, which is insufficient to comply with the standard (see section on *Anti-money laundering law* below). Section 46 of the IPLPA has since been amended, and now requires that an international partnership or limited partnership must keep accounting records which must:

a. correctly explain all transactions;

b. enable the financial position of the international partnership or limited partnership to be determined with reasonable accuracy at any time;

c. enable the directors to check that any accounts prepared by the international partnership or limited partnership comply with the requirements of the IPLA; and

d. allow financial statements to be prepared;

e. include underlying documentation, such as invoices, contracts and so forth;

f. reflect the following details:

   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 international partnership and limited partnership.

(International Companies Amendment Act 2015, s. 4(1), in force 27 April 2015).

230. The international partnership or limited partnership must retain all the accounts and records for seven years after the end of the financial or accounting period to which they relate (International Companies Amendment Act 2015, s. 4(1A)). A failure to comply with these obligations is an offence, punishable by a fine not exceeding 100 penalty units (WST 10 000 or USD 3 830) (International Companies Amendment Act 2015, s. 4(1B)).

231. Therefore, international partnerships and limited partnerships are now required to keep all accounting records in accordance with the international standard.

232. In practice, as no international partnership or limited partnerships existed during the review period, the availability of accounting records could not be reviewed or enforced by SIFA and Samoa could not have received requests for accounting records of international partnerships or limited partnerships. If international partnerships or limited partnerships are created in the future, Samoa should monitor the compliance with these provisions to ensure that all accounting records including underlying documentation are available for at least five years.

Domestic trusts

233. During the review period, the Trustee Act (as it then was) did not explicitly require the keeping of accounting records. Since then, the Trusts Act 2014 has replaced the Trustee Act, and now requires trustees to keep accurate accounts and records of the trustee's trusteeship (Trusts Act, s. 29(3)). In addition, under section 29 of the Tax Administration Act, trustees are required to keep reliable accounting records and underlying documents regarding the trust, for at least seven years, for income tax purposes (see section on *Tax law* below). It is also established case law that a trustee has a duty to render accounts under a trust and that the beneficiary may bring an action in equity for account against the trustee. This duty arises from the judgement in *Tillott v Wilson* [1892] 1 Ch 86, applied in *Peter Meredith Co. Ltd. v Drake Solicitors Nominee Company Ltd.* [2001] WSSC 32.

International trusts (foreign benefiting trusts)

234. Pursuant to section 17 and Schedule 2 Part A(1)(zb) of the Income Tax Act, foreign benefiting trusts are exempt from tax and therefore relieved of any obligation to file any accounts, returns, reports and records. During the review period, no specific legislation governed the keeping of accounting records in respect of international trusts. Since then, section 29(3) of the Trusts Act 2014 was introduced and now requires foreign benefiting trusts to maintain keep accurate accounts and records of the trustee's trusteeship. Some accounting information would also be available as a consequence of the general fiduciary obligation under common law on the trustee to keep accounting records. These common law duties, however, are not specific enough to ensure that accounting records are kept to the international standard. Trust service providers are also required to keep certain accounting records under the MLPA, which are insufficient to comply with the standard (see section on *AML law* below). Samoa is, therefore, recommended to amend

its legislation to ensure that foreign benefiting trusts are required to keep reliable accounting records (including underlying documentation) for a minimum of period of five years.

235. In practice, during the review period international trusts (as they then were under the International Trusts Act) were required to keep accounts and records of the trusteeship, and as otherwise required by fiduciary and common law duties, but were not subject to detailed obligations to maintain accounting records, including underlying documentation, for at least five years. No monitoring or enforcement of this obligation was undertaken by SIFA or any other Samoan government authority. No requests for accounting records of international trusts were received by Samoa during the review period.

Unit trusts

236. Under section 12 of the UTA, a trustee or the manager of unit trusts is compelled to keep proper books of account (UTA, s. 12(a)). Every person who fails to comply with this section commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units (WST 1 000/USD 383) or to imprisonment for a term not exceeding three months or both (UTA, s. 26(2)). In addition, every year, the manager of a unit trust is obliged to file with the Registrar an audited statement of the accounts of the trust and a summary of purchases and sales of property under the unit trusts, and a list of all the investments of the unit trusts as at the end of the period to which the accounts relate (UTA, s. 21(2)).

237. However, the UTA does not specifically require unit trusts to keep underlying documentation, nor does it mention for how long accounting records need to be maintained. It is, therefore, recommended that Samoa amend its legislation to ensure that unit trusts are required to keep and maintain reliable accounting records, including underlying documentation, for a minimum of period of five years.

238. In practice, the only unit trust that existed during the review period was the Unit Trust of Samoa. The trust deed requires the manager to keep accounting records that correctly record and explain the transactions and financial position of the trust and keep proper books of account that will enable the financial statements to be prepared each year (in accordance with IFRS) and be audited. The trust deed also requires that the Unit Trust of Samoa be audited each year. The manager, being a Samoan domestic company wholly owned by the government, is expected to be in compliance with the law although this is not monitored by any Samoan authority.

Foreign trusts

239. During the review period, the relevant accounting record keeping requirements were contained in the tax law and according to the applicable common law duties. Under section 29 of the Tax Administration Act, resident trustees of foreign trusts are required to keep accounting records and underlying documentation, for at least seven years (see section on *Tax law* below).

240. In addition, since the review period, section 79A of the Trusts Act 2014 has been introduced, which requires a Samoan trustee for a foreign trust must keep accounting records which must:

a. correctly explain all transactions;

b. enable the financial position of the foreign trust to be determined with reasonable accuracy at any time;

c. allow financial statements to be prepared;

d. include underlying documentation, such as invoices, contracts and so forth;

e. reflect the following details:

   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 foreign trust.

(International Companies Amendment Act 2015, s. 4(3), in force 27 April 2015).

241. A Samoan trustee for a foreign trust must retain all the accounts and records for seven (7) years after the end of the financial year or accounting period to which they relate (International Companies Amendment Act 2015, s. 4(3)). A failure to comply with these obligations is an offence, punishable by a fine not exceeding 100 penalty units (WST 10 000 or USD 3 830) (International Companies Amendment Act 2015, s. 4(3). As the new accounting obligations on foreign trusts were introduced after the review period, their effectiveness could not be tested. Samoa should monitor the effectiveness of these provisions.

Special purposes international companies

242. During the review period, special purpose international companies were required to keep "such accounts and records necessary to reflect accurately the financial position of the company" (SPICA, s. 58(1)) and to deliver

once a year, to the holders of the founder's rights certificates, an audited balance sheet and profit and loss account of the company (SPICA, s. 59). Since then, section 58(1) of SPICA has been amended and now provides that special purposes international companies are required to keep accounting records which must:

a. correctly explain all transactions;

b. enable the financial position of the international company to be determined with reasonable accuracy at any time;

c. enable the directors to check that any accounts prepared by the company comply with the requirements of the SPICA; and

d. allow financial statements to be prepared;

e. include underlying documentation, such as invoices, contracts and so forth;

f. reflect the following details:

   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 company.

(International Companies Amendment Act 2015, s. 4(1), in force 27 April 2015).

243. The company must retain all the accounts and records for seven years after the end of the financial or accounting period to which they relate (International Companies Amendment Act 2015, s. 4(1A)). A failure to comply with these obligations is an offence, punishable by a fine not exceeding 100 penalty units (WST10 000 or USD 3 830) (International Companies Amendment Act 2015, s. 4(1B)).

244. Therefore, special purpose international companies are now required to keep all accounting records in accordance with the international standard.

245. In practice, during the review period, no special purpose international companies existed. If such entities are created in the future, Samoa should monitor the effectiveness of these new accounting provisions.

Tax laws

246. In respect of Samoan domestic entities and foreign entities undertaking business activities in Samoa, sections 81 and 90 of the Income Tax Act require every person to keep such accounts, documents, and records as enable the

computation of the income tax or capital gains tax payable by the person for a tax year. The Tax Administration Act also requires that every person to maintain documents required by any tax law and which will enable the person's liability under the tax law to be readily ascertained (Tax Administration Act, s. 29). In addition, that section requires that a person carrying on a business must issue a serially numbered written receipt for any amount received in respect of goods sold or services performed in connection with that business and must retain a duplicate of the receipt. Alternatively, where such records are maintained by machine, the Commissioner may authorise that person to not issue receipts if the machine automatically records all sales made and the total of all sales made in each day is transferred at the end of the day to a record of sales.

247. Under section 29 of the Tax Administration Act, such records must be retained for seven years after the end of the tax period to which it relates, or such shorter period as provided in the tax laws. A shorter period of two years is stated for small business taxpayers, which are individuals carrying on business, where the assessable income is less than the VAGST threshold (WST 78 000 or USD 29 870) and the person is not registered for VAGST. Every person who fails to maintain records as required by the tax laws is liable to a penalty. The penalty is 75% of the tax payable for the tax period to which the failure relates if the failure was knowing or reckless; in any other case, 20% of the tax payable for the tax period to which the failure relates; or if no tax is payable, then WST 300 (USD 115) for a company, and WST 100 (USD 38) for any other case (Tax Administration Act, s. 50). In addition, a person who knowingly or recklessly fails to keep, retain, and maintain documents as required commits an offence and is liable on conviction to a fine not exceeding 30 penalty units (WST 3 000 or USD 1 149) or to imprisonment for a term not exceeding one year, or both (Tax Administration Act, s. 73).

248. In practice, most large taxpayers engage a registered tax agent to complete their returns and accounting obligations. Tax returns are accompanied by the financial statements. The underlying supporting documentation will be required in the event of an audit investigation. The Inland Revenue Services selects taxpayers for audit either as a result of IRS discovering a discrepancy in a tax return, as a result of taxpayers being profiled or selected through tax a compliance software programme, or on the basis of information provided by another division of Inland Revenue Services or from the public. In practice, a broad range of documents are required from taxpayers who are subject to audit investigations. In the past, this has included either a general category of documents (e.g. all invoices, receipts, etc.) or specifically named documents that are listed in a requisition letter (e.g. copies of contract agreements or exemption certificates). The following number of audits was undertaken during the review period: 74 in 2011: 152 in 2012: and 96 in 2013, which represents approximately 12% of taxpayers that are companies and partnerships. In addition, sales records are filed with Inland Revenue Services every two months for the purposes of VAGST.

Anti-money laundering laws and monitoring by SIFA

249. The MLPA requires financial institutions, including trustee companies, to maintain all business transaction records and correspondence relating to the transactions with the appropriate backup or recovery, in such a manner as will enable them to be retrieved or reproduced in legible and usable form within a reasonable period of time (MLPA, s. 18(1)(a)). The records must enable the transaction to be readily reconstructed at any time by the FIU or by a law enforcement agency (MLPA, s. 18(2)). Non-compliance with the obligation to maintain records is an offence punished upon conviction with a fine not exceeding 500 penalty units (WST 50 000 or USD 19 148), imprisonment for a term not exceeding five years, or both (MLPA, s. 22).

250. In practice, SIFA and the FIU have not monitored or enforced the availability of accounting records under the MLPA. Following the passage of the amendments requiring international companies, international partnerships and limited partnerships, segregated fund international companies and foreign trusts to keep accounting records, SIFA plans to monitor whether the accounting records obligation is included in the know your customer manual of trustee companies as part of the on-site visits of trustee companies. As noted above, the nine trustee companies in Samoa act for a very large number of international entities. As such, to the extent that trustee companies are required to maintain the accounting records, the monitoring of compliance with these obligations should be of sufficient rigour and frequency to ensure the availability of information.

Conclusion

251. Under their respective governing laws or tax laws, all domestic, foreign and international entities and arrangements must keep reliable accounting records (including underlying documentation) for at least five years, other than liquidated domestic and foreign companies, foreign benefiting trusts and unit trusts. Enforcement provisions are included in the relevant law in respect of these obligations to maintain accounting information. In practice, enforcement of the obligations has been undertaken with regard to Samoan taxpayer, through income tax audits undertaken by the Inland Revue Services. There was no monitoring or enforcement of the obligations on international entities and arrangements (to the extent such obligations existed) and in most cases these entities and arrangements had no or limited legal obligation to maintain such records until recently. Samoa had difficulty in obtaining accounting records of an international company in response to two requests from a treaty partner, but was eventually able to do so after a delay of more than two years (see discussion under element C.5 for more details). Accordingly, the element is determined to be in place but requiring improvement, and rated as Partially Compliant.

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**
Liquidated domestic and foreign companies, foreign benefiting trusts and unit trusts are not explicitly required to maintain their accounting records, including underlying documentation, for a minimum of five years.	Samoa should require all relevant entities and arrangements to keep reliable accounting records, including underlying documentation, for a minimum of five years.

Phase 2 rating	
Partially Compliant	
Factors underlying recommendations	**Recommendations**
During the review period, Samoa's laws did not require the keeping of reliable accounting records by all relevant entities and this caused an impediment to exchange of information in practice. Samoa has recently enacted new laws to ensure the keeping of accounting information and underlying documentation by all relevant entities in line with the international standard. Since the amendments are very recent they have not been tested in practice.	Samoa should monitor the practical implementation of the new laws to ensure that all relevant entities keep accounting records and underlying documentation and that all types of information are exchanged in line with the international standard.
During the review period, there was limited oversight or monitoring of the availability of accounting records. The only mechanism used to ensure the availability of accounting records was through tax obligations, which do not apply to the international entities and arrangements.	Samoa should put in place a sufficiently rigorous monitoring regime to ensure that all relevant entities and arrangements are maintaining accounting records as required.

A.3. Banking information

Banking information should be available for all account-holders.

252. Access to banking information is of interest to the tax administration only if the bank has useful and reliable information about its customers' identity and the nature and amount of financial transactions.

Record-keeping requirements (ToR A.3.1)

253. The MLPA applies to financial institutions, including persons carrying on banking business, as defined in the Central Bank of Samoa Act 1984 and the Financial Institutions Act 1996, as well as persons carrying on international banking business as defined by the IBA (MLPA, s. 2(1)).

254. Financial institutions are required to identify customers when establishing a business relationship and when conducting any transaction, and to verify their identity on the basis of reliable, independent source documents, data or information or other evidence of identity as may be prescribed (MLPA, s. 16(1)). A financial institution is also obliged to take all reasonable measures to ascertain the purpose of any transaction and the origin and ultimate destination of the funds involved in the transaction (MLPA, s. 16(2)).

255. These identification obligations do not apply in case of a one-off transaction not exceeding WST 50 000/USD 19 148, unless there are reasonable grounds for believing that there are linked transactions exceeding WST 50 000/USD 19 148 in total or that the transaction is suspicious or unusual (MLPA, s. 16(4)(b)). If the reporting institution has reasonable grounds to believe that a person is undertaking a transaction on behalf of another person, then it must also verify the identity of the other person for whom, or for whose ultimate benefit, the transaction is being conducted (MLPA, s. 16(3)).

256. A financial institution is also obliged to establish and maintain, with the appropriate backup or recovery all "business transaction records" and correspondence relating to the transactions and records of the person's identity obtained under section 16 of the MLPA (MLPA, s. 18(1)(a-b)).These records must be kept for a minimum of five years from the date of any transaction or correspondence, or when the evidence of the person's identity was obtained, or when the account has been closed or business relationships has ceased, whichever is the later (MLPA, s. 18(3)).

257. Under section 2 of the MLPA, a "business transaction" includes any arrangement or attempted arrangement, including opening an account, between two or more persons where the purpose of the arrangement is to facilitate a transaction between the persons concerned and includes any

related transaction between any of the persons concerned and another person and a one-off transaction. "Business transaction records" are those records as are reasonably necessary to enable the transaction to be readily reconstructed at any time by the FIU or a law enforcement agency (MLPA, s. 18(2)).

258. A financial institution is under obligation to maintain accounts in the true name of the account holder and cannot open, operate or maintain any anonymous or numbered account or any account which is in a fictitious, false or incorrect name (MLPA, s. 19). Banks and money transmission service providers must also include accurate originator information and other related messages on electronic funds transfers and other forms of funds transfers and such information shall remain with the transfer (MLPA, s. 21).

259. Any financial institution or any person who contravenes any of the provisions described above commits an offence and is liable upon conviction to a fine not exceeding 500 penalty units (WST 50 000/USD 19 148) or imprisonment for a term not exceeding five years, or both (MLPA, s. 22).

In practice

260. In practice, Samoa received two requests for banking information during the review period, and this information has been provided to the treaty partner. As described from paragraph 87 above, the domestic financial sector comprises four domestic banks, eight general and life insurance companies and 15 money transfer operators. These entities must be domestic companies and are all licenced and supervised by the Central Bank of Samoa. The initial licensing process considers the financial reputation, character reputation and experience of the entity and individual directors and shareholders, the applicant's anti-money laundering manual as well as liaison with any relevant supervisory authorities in foreign countries where the entity group operates. Financial information is reported to the Central Bank on a regular basis.

261. On-site inspections of all domestic financial sector entities are undertaken jointly by the Central Bank and the FIU approximately every two or three years. There was one joint inspection carried out by the FIU and the Central Bank in 2011, and no inspections in 2012. The most recent joint inspection was undertaken in 2013. The FIU has three staff. Up to five staff would attend an on-site inspection, depending on the risk profile of the entity. The inspection would take approximately one week and have a strong focus on financial risk such as credit and liquidity. Customer record keeping practices are also examined. Some problems were discovered during the 2013 inspection, such as missing supporting documentation and these identified issues were remedied by the financial institution within a short period. Penalties can be issued by the Central Bank, and this has occurred in the past in respect of a money transfer operator that was operating without a licence.

262. In terms of the international financial sector, there are seven international banks operating in Samoa. These figures have remained relatively steady, with the most recent licence granted to an international bank being in 2011. As described in paragraph 82 above, these international banks have been licensed to conduct group financing for affiliated companies. The finance transactions are carried out outside Samoa. International banks must have a physical presence of in Samoa, in the form of an administrative office. The office is generally staffed by approximately two employees to manage the record keeping requirements. This office is in addition to the trustee company acting for the international bank in Samoa. The licensing and periodic information filing obligations are described in paragraphs 83-85 above.

263. On-site inspections of the offices of the international banks are undertaken by SIFA, in some cases as a joint inspection with the FIU. The focus of these visits is determined on a risk basis, with a focus on the AML-KYC policy and know your customer record keeping. The inspection would review a random sample of between 10 and 20 of the international bank's files. The review of the files includes the client list (which is the list of companies in the affiliated client group, their place of incorporation, source of funds, and amount of deposits made during the year), information on directors, information on shareholders, any changes in directors or shareholders and whether the required pre-approval of the Inspector of Banks for a change in directors or shareholders had been obtained. Interviews of the relevant staff in the office would also be carried out. Inspections generally last for a maximum half day for each international bank. Inspections are undertaken at least every year, and were carried out at least annually during the review period. No inadequacies in record keeping were identified during the review period. These inspections are in addition to the inspections of trustee companies that act for the international banks, which are also undertaken at least once per year by SIFA, and which is also in addition to the inspection of the trustee companies in their capacity as agents for international companies and other entities, as described above at paragraph 206.

264. After every onsite visit, SIFA prepares a report. Issues included in the reports during the review period mainly relate to record keeping, such as where no copy of the customer identification was retained. Instant fines can be applied under the Financial Institutions Act, but this has not been used during the review period as it was considered that the issues raised were not sufficiently serious and were better addressed through discussion with the financial institution. Where a report identified issues for remediation, the financial institution has up to two months to respond by outlining their action plan to address the issue. The FIU or SIFA will verify this at the next on-site visit, although communications continue between the onsite visits. In addition, arrangements are in place to ensure information sharing and co-operation between the FIU, SIFA, Inland Revenue Services, Ministry of

Commerce Industry and Labour, Central Bank, Attorney General and police, immigration, customs authorities.

Conclusion

265. Enforcement provisions are included in the MLPR law in respect of the domestic and international financial sector. In practice, there is periodic monitoring of all entities in the financial sector by the FIU and either the Central Bank or SIFA.

Determination and factors underlying recommendations

Determination
The element is in place.

Phase 2 rating
Compliant

B. Access to information

Overview

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

267. Samoa's Commissioner of Inland Revenue is the competent authority for Samoa's EOI agreements and draws its relevant information gathering powers from the Tax Information Exchange Act 2012 (TIE Act) and the Tax Administration Act 2012. Under these acts, the Commissioner can access and collect a broad range of information for the EOI purposes, which includes ownership, identity, accounting, and banking information. Where necessary, the Commissioner also has means to compel the production of information sought.

268. The Commissioner's access powers apply regardless from whom the information is sought (e.g. from a government authority, bank, company, trustee, or individual) and whether or not the information is required for domestic tax purposes. The Commissioner has a variety of means to access and produce such information, including full and free access to all lands, buildings and places. Even though secrecy provisions apply to international entities and arrangements, the TIE Act overrides any obligation as to confidentiality found in other laws. For the reasons above, element B.1 was found to be in place.

269. A prior notification requirement applies when an EOI request relates to information protected from unauthorised disclosure. Nevertheless,

exceptions are provided in urgent cases or when the notification is likely to undermine the provision of the requested information, making this safeguard compatible with the international standard. Therefore, element B.2 was found to be in place.

270. In practice, access powers have been exercised for the purposes of obtaining information for an EOI request. The delays in providing information to treaty partners during the review period stem from some unavailability of information in Samoa in respect of international entities, litigation that ensued, and a lack of a clear EOI procedure in the Competent Authority, rather than because of insufficient access powers.

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); Accounting records (ToR B.1.2)

271. The competent authority's powers to access ownership and accounting information are found in the Tax Information Exchange Act 2012 (TIE Act) and in the Tax Administration Act 2012. The TIE Act provides that, for the purpose of complying with an EOI request, the competent authority may, by notice, require one or more of the following persons to provide relevant information:"*(i)* a regulated person, including a person who ceased to be a regulated person, under an international financial services legislation *(ii)* a person carrying on international financial services, *(iii)* a financial institution under the Financial Institution Act 1996 (FIA), *(iv)* a person acting in an agency or fiduciary capacity including nominees and trustee, and *(v)* a person reasonably believed to have the information"(TIE Act, s. 7(1)). A "person reasonably believed to have the information" covers both the person under investigation and third parties.

272. According to section 2 of the FIA, a "financial institution" is any person licensed under the Central Bank Act 1984 for doing banking business. Under section 2 of the Samoa International Finance Authority Act 2005, "international financial services" includes the carrying on of and the provision of services in relation to the businesses of trustee companies, banking, insurance, investment, asset management, trusteeship or company administration or the provision and administration of corporate and other business

structures and any matters ancillary to such businesses or structures, pursuant to any international financial services legislation.[8]

273. When a person has failed to furnish the requested information, or when the information requested may be removed, tampered or destroyed, the TIE Act provides the competent authority with the powers of inspections contained in the Tax Administration Act 2012 (TIE Act, s. 9). These powers give the Commissioner full and free access to any premises, place or property, document or data storage device, the ability to make extracts or copies of, or to seize, such documents and data storage devices, and the ability to interrogate either orally, in writing, or by statutory declaration the owner or occupier of the premises or place (Tax Administration Act, s. 27). These powers apply regardless of the type of information needed to be collected, and notwithstanding any law relating to privilege including legal professional privilege, or any contractual duty of confidentiality. An owner or occupier of a premises who fails, without reasonable excuse, to provide assistance commits an offence and is liable on conviction to a fine not exceeding 10 penalty units (WST 1 000 or USD 383) or to imprisonment for a term not exceeding one year, or both (Tax Administration Act, s. 72).

274. In addition, pursuant to section 28 of the Tax Administration Act, the Commissioner may also, for the purpose of administering any tax law, require any person to provide information, give evidence or produce any document in their custody, and may obtain such information on oath or by statutory declaration. These powers apply notwithstanding any law relating to privilege including legal professional privilege or any contractual duty of confidentiality. A person who fails to appear before the Commissioner, refuses to take an oath as witness, or having been sworn as a witness refuses to answer or produce a document commits an offence and is liable on conviction to a fine not exceeding 10 penalty units (WST 1 000 or USD 383) or to imprisonment for a term not exceeding one year, or both (Tax Administration Act, s. 72). A person who has been asked to attend to give evidence, and willingly gives false evidence, commits the crime of perjury (Tax Administration Act, s. 72(5)).

8. Financial services legislation includes the International Companies Act 1988, the Trustee Companies Act 1988, the International Banking Act 2003, the International Trusts Act 1988, the International Insurance Act 1988, the International Partnership and Limited Partnership Act 1998, the Segregated Fund International Companies Act 2000 and any successor legislation to those Acts or any other legislation as may, from time to time, be designated by the Minister as being international financial services legislation under this Act. As such, it includes the Trusts Act 2014 which repealed and replaced the International Trusts Act 1988.

275. For the avoidance of doubt, the Tax Administration Act 2012 authorises the use of those powers for the purpose of administering any tax law. "Tax law" is defined in the Tax Administration Act and includes the Income Tax Act 2012, Tax Administration Act 2012 and Tax Information Exchange Act 2012.

276. Section 4 of the TIE Act prescribes that, "upon receipt of a request for assistance, the Commissioner must provide a copy of the request to the Attorney General before acting on the request". Under section 11(1)(c) of the TIE Act, information provided to the Attorney General by the Commissioner must be treated as confidential and section 12(1)(a) of the same Act provides for sanctions for non-authorised disclosure (see further details on section *C.3. Confidentiality* below).

277. The Attorney General will advise whether the request is contrary to public interest or public order (Constitution of the Independent State of Samoa, article 41(2)). The TIE Act does not specify timelines under which the Attorney General would provide this advice, but the Samoan authorities have indicated that this procedural step does not cause an undue delay to effective EOI. In practice, this process has taken no longer than one week and the Attorney General has never determined that a request was contrary to public interest or public order.

278. In practice, the Competent Authority has been able to use the access powers effectively to obtain information required to respond to a request. This has included accessing ownership, accounting and banking information. All requests received to date have been in relation to international entities, which are not taxpayers. As such, the Competent Authority first issues a notice under section 9 of the TIE Act to SIFA to identify which of the trustee companies acts for the subject entity. The Competent Authority will then issue a notice to the relevant trustee company to compel the production of the requested information. When a notice is issued, the information holder is given an initial period of 14 days to provide the information. If the information request was complex, such as a request involving numerous different entities, up to a maximum of five weeks would be given. If a request was related to a domestic taxpayer and the information was already held by the Inland Revenue Services, the information would be extracted and provided directly. In practice, responses have been received from information holders within a range of 14 days for information held by banks and information held by other government agencies, and up to six months for information provided by trustee companies.

279. If the information holder asserts that the requested information is held offshore, the Competent Authority requests that electronic copies be obtained first in order to provide an interim answer to the requesting treaty

partner. In practice, this occurred during the review period in one case, and the information was provided within three months.

280. The powers of inspection and search are powers of the Commissioner. The Commissioner has provided a general delegation to the EOI staff for the purpose of exchange of information, which allows the EOI unit to exercise those powers without specifically obtaining the permission of the Commissioner for each case. The physical inspection and search powers have not been used for EOI purposes to date, but have been used for domestic tax compliance purposes.

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

281. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. The TIE Act provides the Commissioner with broad access powers for international co-operation with foreign competent authorities under EOI agreements. In addition, the Tax Administration Act grants access powers to information related to the administration of enforcement of all Inland Revenue Acts, which include the TIE Act (Tax Administration Act, s. 2 and TIE Act, ss.2(2)). Therefore, Samoan authorities have access to information for EOI purposes, regardless of the existence of a domestic interest in the information sought.

Compulsory powers (ToR B.1.4)

282. Upon approval by the Attorney General of a valid request as to whether such request is contrary to public interest or public order, the Commissioner will send a notice in writing to the person believed to have the information asking him or her to provide such information. The Commissioner has discretion to specify the deadlines before which the information is to be provided or produced (TIE Act, s. 7(1)(b)).

283. When a person fails to comply with a notice issued under section 7(1) of the TIE Act, or when it provides false statements in responding to the notice, that person commits an offence and is liable upon conviction to a fine not exceeding WST 25 000/USD 9 574, to imprisonment for a maximum of five years, or both (TIE Act, s. 12(1)(b-c)). The same penalties apply to persons who intentionally remove, tamper or destroy information requested under the TIE Act, or intentionally prevent or impede submission of that information (TIE Act, s. 12(1)(d-e)).

284. If a person fails to comply or only partly complies with a notice issued under the TIE Act, the competent authority may decide to exercise its

inspection powers under the Tax Administration Act (TIE Act, s. 9(a)). As noted above, the Commissioner and his or her duly-authorised representative has, at all times, full and free access to all lands, buildings and places and all books and documents, whether in the custody or under the control of a public officer or a body corporate or any other person whomsoever, and may, without fee or reward, make extracts from or copies of any such books and documents (Tax Administration Act, s. 27(1)).

Secrecy provisions *(ToR B.1.5)*

285. A range of confidentiality and secrecy provisions apply to entities and arrangements in Samoa. These provisions are, nevertheless, overridden for EOI purposes. Section 10(1) of the TIE Act states that the provisions allowing for the collection of information have effect "despite an obligation as to secrecy, confidentiality or other restriction upon the disclosure of information imposed by *any law or otherwise* on the persons referred to in section 7(1)(a)" (*emphasis added*). The TIE Act was amended with effect from 14 August 2015 to clarify that any obligation as to secrecy, confidentiality or other restriction upon disclosure imposed by any law or otherwise is subject to the provisions of the TIE Act, including a provision enacted after the commencement of the TIE Act (Tax Information Exchange Amendment Act 2015). The TIE Act also states that "a lawful obligation as to secrecy, confidentiality or other restriction on the disclosure of information does not prevent the Commissioner from disclosing information required to be disclosed under an agreement to an authorised officer of a competent authority" (TIE Act, s. 3(2)). As outlined below, the only exception to this rule concerns the disclosure or production of information that is protected by legal professional privilege.

Banking secrecy

286. There are no specific secrecy provisions found in the Banking Act 1960 and the Bank of Samoa Act 1990 that apply to commercial banks in Samoa. Nonetheless, section 5 of the Banking Act allows officers of a bank not to disclose or produce any book, nor to be witness on the content therein, when a bank is not a party to a legal proceeding. Moreover, examiners, advisors or Court-Appointed Managers are forbidden from disclosing any information obtained from a licensed institution, except where disclosure is required by a Court or is permitted by the Act or by other laws, for the purpose of financial supervision (FIA, s. 24). As explained above, however, the TIE Act specifically provides the Commissioner with powers to require, by notice, a financial institution under the FIA to provide information needed to comply with an EOI request (TIE Act, s. 7(1)(a)(iii)). Therefore, the Commissioner has direct access to information held by commercial banks.

287. With regard to international banks, sections 37-39 of the International Banking Act 2005 (IBA) forbid every person who, in its capacity as an officer, employee, authorised agent, or auditor, has become aware of information related to international business banking to divulge such information, except when as required by or provided for under the laws of Samoa (IBA, s. 38(1)). Moreover, the TIE Act makes explicit reference to the collection of information from regulated persons registered or licensed under any international financial services legislation (TIE Act, ss.2(1) and 7(1)(a)(i)), or persons carrying on international financial services (TIE Act, s. 7(1)(a)(ii)). Accordingly, the Commissioner can directly access information held by international banks.

Corporate secrecy (international entities and arrangements)

288. A number of secrecy provisions apply to regulated persons registered under an international financial services legislation or person carrying on international financial services. Nevertheless, these confidentiality duties are lifted by the TIE Act where such information is sought in response to a valid EOI request (TIE Act, ss.7 and 10). The TIE Act has been deliberately included in the list of "tax laws" in the Tax Administration Act, in order to ensure that the Commissioner be granted with all access powers that he or she enjoys under the ITA Act also when collecting information for EOI purposes. In addition, section 7 of the TIE Act, which authorises the issuing of a notice to collect information, has been amended to specifically note that section 28 of the Tax Administration Act applies for this purpose. Section 28 of the Tax Administration Act explicitly notes that the Commissioner's inspection powers apply notwithstanding any law relating to privilege or any contractual duty of confidentiality.

289. The International Partnership and Limited Partnership Act 1988 (IPLPA) establishes secrecy provisions for information concerning the establishment, constitution business undertaking or affairs of an international partnership or limited partnership, unless when allowed by this act (IPLPA, s. 39(1)). The International Insurance Act 1988 (IIA) and the International Mutual Funds Act 2008 (IMFA) establish provisions prohibiting any person in the Ministry, the Attorney General, or in the Samoa International Financial Authority (SIFA) to disclose information except for the purposes of exercising their duties under these acts, or when required to do so by any court of Samoa (IIA, s. 26(1) and IMFA, s. 41(1)). Despite these secrecy measures, the Samoan authorities have indicated that these confidentiality duties are lifted by section 10 of the TIE Act where such information is sought to respond to a valid EOI request.

290. Under the International Company Act 1988 (ICA), certain information regarding international companies and foreign companies must be kept

confidential. This includes ownership and identity information concerning any members, or the legal or beneficial interest of any members, as well as the company's business, financial or other affairs or transactions, assets or liabilities, or the contents of any register maintained by such a company (ICA, s. 227(1)). While the ICA does not explicitly allow for disclosure for EOI purposes and indicates that in case of inconsistency between the ICA and other laws the provisions of the ICA would prevail (ICA, s. 2(5)), the TIE Act specifically grants powers to the Commissioner to require information from a person carrying on international financial services (TIE Act, s. 7(1)(a)(ii)). Moreover, the TIE Act explicitly states that all other secrecy obligations are subject to the TIE Act (Tax Information Exchange Amendment Act 2015, s. 10(2)).

291. Previously, there was potential ambiguity in respect of secrecy obligations contained in legislation enacted after the TIE Act 2012. The Special Purposes International Companies Act 2012 (SPICA), which was enacted subsequently to the TIE Act, establishes confidentiality provisions in relation to special purpose international companies established in Samoa. Certain information must be kept confidential, including ownership and identity information concerning the entity's founders, managers and officers, as well as its business, financial or other affairs or transactions, assets or liabilities, or the contents of any register maintained by such an entity (SPICA, s. 147(1)). The Tax Information Exchange Amendment Act 2015 resolves this ambiguity, as it explicitly provides that section 10 of the TIE Act overrides secrecy obligations, including those contained in a law enacted after the TIE Act (s. 10(2)). In addition, the Tax Information Exchange Amendment Act 2015 amends the SPICA, adding new section 147(8) which provides that the secrecy obligations in section 147 of the SPICA are subject to section 10 of the TIE Act.

292. Similarly, the Trusts Act 2014 which was enacted subsequent to the TIE Act, prohibits a trustee from disclosing all documents and information whatsoever concerning the trust, except to the Court, to the settlor, the enforcer or the protector of the trust, or where authorised by the trust deed, to a beneficiary (Trusts Act 2014,.s 80). This potential ambiguity is resolved by the Tax Information Exchange Amendment Act 2015, as described above. In addition, the Tax Information Exchange Amendment Act 2015 amends section 80 of the Trusts Act, providing that section 80 of the Trusts Act is subject to section 10 of the TIE Act.

Professional secrecy and legal privilege

293. Under the TIE Act, the Commissioner may decline to provide assistance if he or she is satisfied that the EOI request "may impose an obligation to disclose trade, business, industrial, commercial or professional secrets

or trade process, provided that information held by a person referred to in Section 7(1)(a) is not treated as a secret merely because it is held by such person" (TIE Act, s. 6).

294. The IIA and IMFA provide for professional secrecy obligations, except in certain circumstances provided under these acts which do not include EOI for tax purposes (IIA, s. 32 and IMFA, s. 42). Section 42(1) of the IMFA provides for an exception allowing disclosure of such information when required by any other laws of Samoa, which includes the TIE Act. Even if no similar provision is found in the IIA, Samoan authorities have indicated that the TIE Act prevails over the professional secrecy provisions mentioned above, since it postdates these acts and it deals specifically with information which is relevant for tax matters.

295. Legal professional privilege in Samoa is a common law principle that applies to confidential communications between a client and the client's legal adviser for the dominant purpose of giving or receiving legal advice or for use in existing or anticipated litigation. Legal privilege is however also dealt with in statutes and professional rules.

296. The Companies Act 2001, defines privileged communication as only that between a legal practitioner in his or her capacity and another legal practitioner in that capacity; or a legal practitioner in his or her capacity and his or her client, whether made directly or indirectly through an agent, which is made for obtaining or giving legal advice or assistance, and it is not made for the purpose of committing an illegal or wrongful act (Companies Act, s. 344). Accordingly, the scope of legal privilege, as defined under the Companies Act, appears to be consistent with the international standard.

297. Section 1.07 of the Rules of Professional Conduct for Barristers and Solicitors of Samoa, issued by Samoa Law Society pursuant to the Law Practitioners Act 1976, provides for indications concerning attorney-client privilege in respect of facts and information gathered or learned by attorneys or legal advisers in connection with providing services to their clients. These stipulate that a practitioner has a duty to "hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship".

298. Although the Rules of Professional Conduct for Barristers and Solicitors of Samoa do not establish any restriction as to the communication protected under the attorney-client privilege, these provisions concerning legal professional privilege are overridden by the and the TIEAs in force in Samoa (Tax Administration Act, ss.27, 28). Samoan authorities have also indicated that although the Rules are for the purpose of regulating the conduct of the legal profession, they merely provide an instructive and educational dimension for the profession rather than a disciplinary threshold. The limits

on information which must be exchanged under Samoa's TIEAs mirror those provided for in the OECD Model TIEA. Accordingly, communications between a client and an attorney or other admitted legal representative are only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Therefore, the attorney-client privilege in Samoa meets the international standard.

299. In practice, no challenge to the Competent Authority's powers has been made on the basis of secrecy provisions in the above Acts. In one case an information holder litigated the Competent Authority's power to request information during the review period, but did not raise the argument of secrecy. In another case, an information holder challenged the breadth of a request which requested "all correspondence" related to a particular entity, on the basis that it included information that was legally privileged. The request was revised by the Samoan Competent Authority, after consultation with the requesting treaty partner, to exclude information that was legally privileged.

Determination and factors underlying recommendations

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)*

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

301. When an EOI request relates to information protected from unauthorised disclosure, the Commissioner is obliged to serve a notice to the person to whom the EOI request relates (TIE Act, s. 8(1)). Section 8(1) of the TIE Act also provides that service of a notice is effected by physically lodging a written notice on the person in question and no right of appeal is available to the person receiving the notice.

302. Under section 8(2) of the TIE Act, the Commissioner can decline to serve the notice in three cases, if he or she: "(a) does not have any information of the person referred to in subsection 1 [to whom the EOI request relates]; (b) is of the opinion that [a notice] is likely to prevent or unduly delay the effective exchange of information under an agreement; or (c) is of the opinion that [a notice] is likely to prejudice an investigation into an alleged breach of any law relating to tax of the country whose government the exchange of information agreement was made." Accordingly, the prior notification requirements and respective exceptions provided under the TIE Act are consistent with the international standard.

303. In practice, this exception from notification has not been used in practice. The Competent Authority interprets this provision to allow the Commissioner to exercise the exception either on her own motion or at the request of the requesting treaty partner. The Competent Authority indicates that it would always defer to a request of the treaty partner. The Competent Authority further interprets part (a) of the exception such that where it did not have an address for the person referred to in the EOI request, it would not be required to notify. The practice of the Competent Authority is to exhaust all third party information sources before contacting the subject of the EOI request to obtain the information.

304. Where notice is given to the subject of the EOI request, the notice indicates that a request for information has been received from a treaty partner and that the request is valid pursuant to the relevant TIEA. Where the subject of the information request is an international entity or arrangement, the notification requirement is considered to be fulfilled by notifying the relevant trustee company in Samoa. The information request from the treaty partner is not provided with the notification.

Determination and factors underlying recommendations

Determination
The element is in place.

Phase 2 rating
Compliant

C. Exchanging information

Overview

305. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. A jurisdiction's practical capacity to effectively exchange information relies both on having adequate mechanisms in place as well as an adequate institutional framework. This section of the report examines whether Samoa has a network of information exchange agreements that meet the standard and whether its institutional framework is adequate to achieve effective exchange of information (EOI) in practice.

306. Samoa's network for exchange of information comprises tax information exchange agreements (TIEAs) with 17 jurisdictions. Discussions or negotiations are also under way with an additional four jurisdictions. All of the TIEAs concluded so far by Samoa meet the international standard. Among these 17 TIEAs, 13 have already entered into force. For these reasons, element C.1 was found to be in place.

307. The treaty network covers Samoa's two main trading partners. Comments were sought from Global Forum members in the course of the preparation of this report, and no jurisdiction advised that Samoa had refused to negotiate or conclude such an arrangement. Accordingly, element C.2 was found to be in place.

308. All TIEAs concluded by Samoa contain confidentiality provisions which meet the international standard. Samoa's legislation also includes relevant confidentiality provisions, supported by sanctions for non-compliance. Consequently, element C.3 was found to be in place.

309. Samoa's EOI agreements ensure that the parties are not obliged to provide information that would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy. Samoa's domestic legislation ensures that the rights and safeguards are protected in accordance with the standard. Element C.4 was thus found to be in place.

310. There are no legal restrictions on the ability of Samoa's competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

311. In practice during the review period, Samoa received four requests from three partners. The Competent Authority had some initial difficulty in responding to requests, but has since put in place a clear process for managing EOI which includes all necessary confidentiality procedures. The first requests were answered more than two years from the receipt of the request. The response times have been improving since the first request was received and the most recent request in the review period was answered in five months. Samoa has the necessary resources and professional staff to exchange information effectively, commensurate with the number of requests made to date. As Samoa received relatively few requests during the review period, it is recommended that Samoa continue to monitor the organisational processes of the competent authority in responding to EOI requests.

C.1. Exchange of information mechanisms

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

312. Since 2002, Samoa has been committed to implementing the international standard on transparency and exchange of information for tax purposes. The EOI network of Samoa comprises TIEAs with 17 jurisdictions: Australia, Denmark, Faroe Islands, Finland, Greenland, Iceland, Ireland, Japan, Korea, Mexico, Monaco, the Netherlands, New Zealand, Norway, San Marino, South Africa, and Sweden (see Annex 2). Of these, 13 TIEAs with Australia, Denmark, Finland, Iceland, Ireland, Japan, Mexico, Monaco, the Netherlands, New Zealand, Norway, San Marino and Sweden have already entered into force.

313. Under the Income Tax Act 2012 and the TIE Act, Samoa's Minister of Revenue can explicitly enter into EOI agreements in the form of TIEAs, double tax conventions (DTCs) containing an EOI provision and agreements for the rendering of reciprocal assistance in the administration and collection of taxes (Income Tax Act, s. 105(1) and TIE Act, ss.2(1) and 3(1)). Samoa's Commissioner of Inland Revenue is the competent authority for EOI purposes (TIE Act, s. 5). In practice, the Competent Authority manages all negotiations of exchange of information agreements. As a matter of policy and practice, Samoa closely follows the OECD Model TIEA. Where deviations from the Model have been proposed by partners, Samoa has generally accommodated these requests, as discussed below. Once a draft agreement is concluded, the Competent Authority will provide the Attorney General with a copy for formal approval.

Foreseeably relevant standard (ToR C.1.1)

314. 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 1 of the OECD Model TIEA, set out below:[9]

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

315. All the TIEAs concluded by Samoa meet the "foreseeably relevant" standard set out above and described further in the Commentary to Article 1 of the OECD Model TIEA.

316. Samoa's legislation governing the approval of information requests mirrors its TIEAs. Section 5(c) of the TIE Act establishes that a request for assistance is approved when the competent authority of the requesting jurisdiction supplies information prescribed in Schedule 2 of the TIE Act. This includes the identity of the person under examination or investigation and, to the extent known, the name and address of any person believed to be in possession or control of the requested information (TIE Act, ss.5(1)(c) and Schedule 2, items 3 and 5). If the information provided by the requesting competent authority does not satisfy all the requirements expressed in Schedule 2 of the TIE Act, the Commissioner may request further information from that competent authority (TIE Act, s. 5(2)).

317. No concerns as to this issue have arisen in practice.

In respect of all persons (ToR C.1.2)

318. For exchange of information to be effective it is necessary that a jurisdiction's obligations to provide information are not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standard for exchange of

9. Article 26(1) of the Model Tax Convention contains a similar provision.

information envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

319. None of Samoa's TIEAs is restricted to certain persons such as those considered resident in or nationals of one of the contracting jurisdictions, or precludes the application of EOI provisions in respect to certain types of entities or arrangements. Under the TIEA concluded with Monaco, the requested party is under no obligation to provide information "which is neither held by the authorities nor in the possession or control by persons within its territorial jurisdiction, or which is *not obtainable* by persons within its territorial jurisdictions." Article 2 of the OECD Model TIEA uses, instead, the expression "in control of".

320. This language was originally included in the TIEA at the request of Monaco and Samoa accommodated that request. In practice, no exchange of information has occurred with Monaco. Samoa confirms that it would not handle requests from Monaco any differently as a consequence of the above language.

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

321. 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 Convention and the OECD Model TIEA, which are primary 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.

322. All TIEAs concluded by Samoa include a provision that mirrors Article 5(4) of the OECD Model TIEA, providing for the exchange of information held by banks, other financial institutions, nominees, agents, fiduciaries, as well as ownership and identity information. Section 3(2) of Part I of the TIE Act makes clear that any secrecy, confidentiality, or other restriction on disclosure of information does not prevent Samoa's competent authority from disclosing information required under an EOI agreement to the competent authority.

323. This is further reinforced by Section 10(1) of the TIE Act, pursuant to which "any obligation as to secrecy, confidentiality or other restriction upon the disclosure of information imposed by any law or otherwise on the persons referred to in section 7(1)(a)" is overridden when collecting information for EOI purposes. Section 7(1)(a) of the TIE Act covers "*(i)* a regulated person, including a person who ceased to be a regulated person, under an

international financial services legislation *(ii)* a person carrying on international financial services, *(iii)* a financial institution under the Financial Institution Act 1996, *(iv)* a person acting in an agency or fiduciary capacity including nominees and trustee, and *(v)* a person reasonably believed to have the information."

324. In practice, no challenges have been made by information holders on the basis of secrecy. Although the Competent Authority experienced some difficulties in obtaining information to answer requests, this was not on account of secrecy.

Absence of domestic tax interest (ToR C.1.4)

325. 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.

326. All of Samoa's TIEAs contain a provision similar to the Article 5(2) of the OECD Model TIEA, which obliges the contracting parties to use their information gathering measures to obtain and provide information to the requesting jurisdictions even in cases where the requested party does not have a domestic interest in the requested information. The Tax Administration Act 2012 grants access powers to information related to the administration of enforcement of all tax laws, which includes the TIE Act (Tax Administration Act, s. 2). Therefore, Samoan authorities have access to information for EOI purposes, regardless of the existence of a domestic interest in the information sought. No concern regarding domestic tax interest has arisen in practice.

Absence of dual criminality principles (ToR C.1.5)

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

328. All of Samoa's TIEAs explicitly exclude that the dual criminality principle may restrict the exchange of information. No concern as to dual criminality has arisen in practice.

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

329. 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").

330. All of the TIEAs concluded by Samoa provide for the exchange of information in both civil and criminal matters. Samoa's domestic legislation allowing for the exchange of information does not differentiate between information needed for civil or criminal purposes.

331. In practice, no requests received by Samoa have indicated that the investigation related to a criminal tax matter. The Competent Authority advises that the process for responding to a request in a criminal tax matter would not be different from the process used in civil tax matters. The role of the Attorney General would not be different than as applies for civil tax matters. Where appropriate, the Samoan FIU may be involved and offer assistance in a criminal tax matter.

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

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

333. All of the TIEAs concluded by Samoa expressly allow for information to be provided in the specific form requested, to the extent allowable under the domestic laws of the requested party. Section 7(2) of the TIE Act specifically empowers the Samoa's competent authority to require that information be provided in the form approved by it. In practice, one peer specifically mentioned that the answer to the request was provided in the form requested.

In force (ToR C.1.8)

334. Exchange of information cannot take place unless a jurisdiction has EOI arrangements in force. Where EOI arrangements have been signed, the

international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

335. In practice, negotiations are undertaken by email exchange, starting with the other party's model agreement as a base. It is the policy of Samoa to follow the OECD model closely and not to introduce new text. When the text is agreed in principle, it is referred to the office of the Attorney General. The Attorney General will endorse the agreement by issuing a letter certifying that there are no objections to the agreement. In all cases thus far, the Attorney General has issued this letter of endorsement. The Ministry of Foreign Affairs and Trade will then arrange for the Minister of Revenue to sign the agreement.

336. In Samoa, the Income Tax Act 2012 and TIE Act authorise the Minister to enter EOI agreements. Once signed by the Minister, the agreement has the force of law and no approval of parliament or other ratification process is required. EOI agreements may be included in Schedule 2 of the TIE Act, but this is a matter of presentation and ease of reference for taxpayers rather than a conferral of legal status. All the TIEAs concluded by Samoa at the time of the passing of the TIE Act were added to Schedule 2 when the TIE Act was given effect in March 2012. Samoa's EOI partners were notified of the enactment of the TIE Act. The TIEAs with Mexico, Japan and South Africa have been added to Schedule 2 through the Tax Information Amendment Act 2015. To date, the TIEAs concluded with Australia, Denmark, Finland, Iceland, Ireland, Japan, Mexico, Monaco, the Netherlands, New Zealand, Norway, San Marino and Sweden have entered into force. Nevertheless, Samoa has taken all necessary steps to bring its treaties into force and is awaiting confirmation from the other party in all other cases.

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

337. For information exchange to be effective the parties to an exchange of information arrangement need to enact any legislation necessary to comply with the terms of the arrangement. In March 2012, Samoa has enacted the legislation necessary to comply with the terms of its EOI agreements. Notably, the TIE Act is a comprehensive act providing for international co-operation with competent authorities under agreements facilitating exchange of information, and for related purposes.

338. In practice, once an agreement is signed by the Minister of Revenue, the Samoan Ministry of Foreign Affairs and Trade will advise the treaty partner that Samoa has completed its procedures. The TIEA will state the date for entry into force, which in most cases is 30 days after receipt of the later notification.

Determination and factors underlying recommendations

Determination
The element is in place.

Phase 2 rating
Compliant

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

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

339. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. EOI agreements cannot be concluded only with counterparties with economic significance. If it appears that a jurisdiction is refusing to enter into EOI 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.

340. Under the Income Tax Act 2012 and the TIE Act, Samoa can explicitly enter EOI agreements both under in the form of TIEAs, DTCs and agreements for the rendering of reciprocal assistance in the administration and collection of taxes (Income Tax Act, s. 105(1) and TIE Act, ss.2(1) and 3(1)). Samoa's first TIEA was signed in September 2009 with San Marino, while its most recent TIEA was concluded in May 2015 with Korea. Thus far, Samoa has signed TIEAs with 17 jurisdictions. Samoa is willing to conclude EOI agreements with all its trading partners and has already signed TIEAs with its two major partners, i.e. Australia and New Zealand. All of these meet the international standard.

341. Samoa indicated that TIEA negotiations have commenced with an additional four jurisdictions, all of which are Global Forum members. Comments were sought from the jurisdictions participating in the Global Forum in the course of the preparation of this report, and no jurisdiction advised the assessment team that Samoa had refused to negotiate or conclude EOI agreements with it. Samoa advises that in one case, it was approached for a TIEA and Samoa counter-proposed a double taxation agreement. That potential treaty partner has not yet reverted with its response. Samoa advises that if the potential treaty partner were to decline a double taxation agreement, Samoa would proceed with the TIEA.

Determination and factors underlying recommendations

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

Phase 2 rating
Compliant

C.3. Confidentiality

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

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

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

343. All TIEAs concluded by Samoa contain a provision similar to the Article 8 of the OECD Model TIEA, ensuring the confidentiality of information exchanged and limiting the disclosure and use of information received, which has to be respected by Samoa as a party to these EOI agreements.

344. These confidentiality provisions are also reflected in specific domestic law provisions, notably the Tax Administration Act and the TIE Act. The Tax Administration Act requires every person currently or formerly employed or engaged by the Ministry of Inland Revenue in any capacity (a "tax officer") maintain the secrecy of all information and documents received in the performance of duties, and must not communicate the information or documents to any other person except to the extent necessary for the purpose of carrying into effect any provision of the tax laws (which includes the TIE Act). Tax officers are require to take an oath of fidelity and to maintain

secrecy in conformity with this obligation, before beginning to perform any official duty (Tax Administration, s. 9). Members of the Inland Revenue Department are also not required to produce in any Court any book or document or to divulge or communicate to any Court any matter or thing coming under his or her notice in the performance of his or her duties as a member of the Department, except when it is necessary to do so for the purpose of carrying into effect any provision of the tax laws (Tax Administration Act, s. 9(3)).

345. Section 11(1) of the TIE Act establishes that the following information be treated as confidential: "(a) information that is supplied by a competent authority in connection with a request for assistance; (b) information that is obtained by virtue of the exercise of the powers under this Act; (c) information that is provided by the Commissioner to the Attorney General under section 4 [of the TIE Act]." As explained in Part B above, upon receipt of the request for assistance, the Commissioner must send a copy of the request to the Attorney-General, who provides an assessment as to whether the request for assistance is contrary to public interest or public security. Nevertheless, section 11 of the TIE Act explicitly extends the same confidentiality provisions to information transmitted to the Attorney General, and confidentiality is thus ensured.

346. According to section 11(2) of the TIE Act, confidential information can be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the EOI agreement under which the EOI request is made. Confidential information can also be disclosed to other person, entity, authority, or jurisdiction for the purpose of administration of the TIE Act, with the express consent of the competent authority of the requesting jurisdiction. This wording mirrors Article 8 of the OECD Model TIEA and reflects Samoa's obligations assume under the TIEAs signed to date. The Income Tax Act states that the duty of secrecy does not prevent the disclosure of information or documents to any authorised officer of the other contracting state as is required to be disclosed under a TIEA or DTC (Income Tax Act, s. 105(5)). Further, the Tax Administration Act states that the tax officer's duty of secrecy does not prevent the disclosure of information to the competent authority of the government of another country with which Samoa has entered into an agreement for the avoidance of double taxation or for the exchange of information, to the extent permitted under that agreement (Tax Administration Act, s. 9(4))

347. A person contravening the confidentiality obligations imposed by the TIE Act commits an offence and is liable upon conviction to a fine not exceeding 250 penalty units (WST 2 500/USD 957) or to imprisonment for a term not exceeding five years, or both (TIE Act, s. 12). A person contravening

the confidentiality obligations imposed by the Tax Administration Act commits an offence and the tax officer is liable on conviction to a fine not exceeding 100 penalty units (WST 10 000 or USD 3 830) or to imprisonment for a term not exceeding one year, or both.

All other information exchanged (ToR C.3.2)

348. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests.

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

Ensuring confidentiality in practice

350. The Ministry for Revenue's establishing legislation, the Tax Administration Act 2012, requires that all officers of the Ministry swear an oath of secrecy relating to all information that is received in the course of the officer's employment. This oath subsists for the duration of an officer's employment and remains applicable after their employment ceases.

351. The Ministry for Revenue's Code of Conduct requires that all confidential information be kept secret. It provides for the termination of employment in the case of a serious breach of the Code of Conduct, including by the disclosure of confidential information. The secrecy obligations are included in the induction training for new staff.

352. To manage the confidentiality of documents and information, the Ministry maintains and regularly reviews its Information Security Framework. This requires the classification of all information received and maintained by the Ministry and the coding of all documents according to their security classification. Information received pursuant to EOI requests is classified as highly protected information, which is the highest level of protection. This information can only be viewed by members of the Legal Division, Senior Management and the Commissioner.

353. All information gathered pursuant to EOI requests is kept within the Legal Division and is only released under cover of a formal letter from the Commissioner, which emphasises the confidential nature of the information.

Original hard copies are kept in a locked filing cabinet in the EOI unit office. Hard copies of documents that are no longer needed are disposed of by shredding. The EOI database of pending cases is on a secure server, which is password protected and accessible only by the EOI unit.

354. Members of the public are not permitted to enter the EOI Unit's office. Other officers in the Inland Revenue Services are not permitted to enter except in the presence of a member of the EOI unit. Access to passwords and keys is restricted to officers working in the EOI Unit.

355. Before sending information to a treaty partner, the Competent Authority will confirm whether it is acceptable to provide the information by a password protected email. If so, the email is sent with a separate email containing the password. All documents related to an exchange of information case bear a clearly visible confidentiality stamp and in electronic correspondence the following text is embedded as a header and/or watermark: "THIS INFORMATION IS FURNISHED UNDER THE PROVISIONS OF A TAX TREATY AND ITS USE AND DISCLOSURE ARE GOVERNED BY THE PROVISIONS OF SUCH TAX TREATY." Status updates are provided by regular email.

356. Where it is necessary to disclose some information to the court in connection with during court proceedings, the foreign competent authority would be informed of the disclosure in advance. The foreign competent authority's letter is not disclosed without the permission of the treaty partner. Samoa advises that if the partner did not agree to such a disclosure being made, Samoa would arrange a phone conference with the counterpart Competent Authority to consider mutually acceptable qualifications on the disclosure such as redaction of certain parts of the request or disclosure to the Court subject to a court suppression order so as to prohibit the information being published outside of the proceedings. This has occurred once during the review period in connection with court proceedings, and in that event the relevant treaty partner provided the permission in advance.

Determination and factors underlying recommendations

Determination
The element is in place.

Phase 2 rating
Compliant

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

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

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

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

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

359. In respect of the taxpayers' rights and safeguards, the OECD Model TIEA provides that they remain applicable "to the extent that they do not unduly prevent of delay effective exchange of information". The TIEAs with Australia and New Zealand provide that a requested party "shall use its best endeavours" to ensure that their application does not so unduly prevent or delay effective EOI. In practice, exchanges of information have occurred with Australia and this language has not caused any difficulty. The Samoan Competent Authority does not approach EOI with Australia differently than any other partner. All other TIEAs concluded by Samoa reflect the substance of Article 7 of the OECD Model TIEA.

360. Section 6 of the TIE Act indicates that a request can be declined where it may impose the disclosure of trade, business, industrial, commercial, or professional secrets or trade process (TIE Act, s. 6(a)), or where the information disclosed would be contrary to public policy (TIE Act, s. 6(c)). Nevertheless, the TIE Act expressly provides that information may not be treated as a secret or trade process merely because it is held by a person who is "a regulated person", "a person carrying on international financial services", "a financial institution under the Financial Institutions Act 1996", "a person acting in an agency or fiduciary capacity including nominees and

trustee", and "to a person reasonably believed to have the information to which the notice relates" (TIE Act, s. 7(1)(a)).

361. The TIE Act also states that "a lawful obligation as to secrecy, confidentiality or other restriction on the disclosure of information does not prevent the Commissioner from disclosing information required to be disclosed under an agreement to an authorised officer of a competent authority" (TIE Act, s. 3(2)). As such, the Commissioner is able to obtain and provide information requested by foreign competent authorities and the rights and safeguards establish under Samoan domestic law do not prevent of delay effective EOI.

362. Section 10(1) of the TIE Act establishes that a person is not required to disclose or produce information that he or she would be entitled to refuse to disclose or produce on the grounds of legal professional privilege. A legal practitioner may nonetheless be required to provide the name and address of the client. As noted above under Part B, domestic law provisions concerning legal professional privilege are overridden by the Income Tax Act and the TIEAs in force in Samoa (Income Tax Act, ss.52(1)(5) and 53(1-2)). The limits on information which must be exchanged under Samoa's TIEAs generally mirror those provided for in the OECD Model TIEA. Accordingly, communications between a client and an attorney or other admitted legal representative are only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Therefore, the attorney-client privilege in Samoa meets the international standard.

363. As also mentioned in Part B above, the Commissioner may not act on an EOI request before obtaining approval from the Attorney General, who advises on whether the request is contrary to public interest or public order (TIE Act, s. 4 and Constitution, s. 41(2)). In practice, this procedural step does not cause an undue delay to effective EOI.

364. In practice, Samoa follows the New Zealand approach to legal privilege. This is a predominant purpose test, and legal privilege attaches to documents which were prepared for the predominant purpose of legal advice or adversarial litigation. As such, privilege does not attach to all kinds of communication with a legal representative, but a more narrowly defined subset.

365. In one case, as noted in section B1.5 above, an information holder challenged the breadth of an EOI request which requested "all correspondence" related to a particular entity, on the basis that it included information that was legally privileged. The request was revised by the Samoan Competent Authority, after consultation with the requesting treaty partner, to exclude information that was legally privileged.

Determination and factors underlying recommendations

Determination
The element is in place.

Phase 2 rating
Compliant

C.5. Timeliness of responses to requests for information

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

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

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

367. Samoa's TIEAs require the provision of request confirmations, status updates and the provision of the requested information, within the timeframes foreshadowed in Article 5(6)(b) of the OECD Model TIEA. These compel the competent authority of the requested party to immediately inform the applicant party when it has been unable to obtain or provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish this information.

368. In practice, Samoa has received four requests from three treaty partners. The time taken to respond to these requests is as follows:

Year of request	Acknowledgment	Time for partial response	Time for complete response	Status updates
2012	None	18 months 21 months	32 months	18 months 21 months
2012	None	22 months	26 months	17 months 20 months 22 months
2013	None	5 months	15 months	14 months
2013	4 months	n/a	6 months	n/a

369. In the first two cases, the provision of information was particularly delayed as there was no process in place for answering requests. Samoa acknowledged that no or very limited work was done to respond to these requests until after May 2013 when the new Principal Legal Officer was recruited and a clear process for responding to EOI requests was created. In these two cases, the types of information requested were the following: beneficial ownership; assets and liabilities of person of interest; banking information; company formation; shareholding; directorship; accounting records; membership information; and general correspondence concerning person of interest. The EOI staff acknowledges that providing accounting information was difficult as there was no legal obligation on the information holder to keep all such information.

370. In the second case, once the Competent Authority commenced action to respond to the request, delays were further encountered on account of a legal challenge filed by the subject taxpayer. The taxpayer sought an order from the Supreme Court of Samoa that the notice issued by the Samoan Competent Authority for the purpose of obtaining information to respond to the EOI request was not lawful, on the basis that the underlying foreign tax law did not impose a tax liability on the taxpayer. The Samoan Competent Authority liaised closely with the Samoan Attorney General and ultimately prevailed against the taxpayer in the Supreme Court. Once the Supreme Court ruled against the taxpayer, the Competent Authority immediately sent out notices to collect the relevant information. The requested information was provided and sent to the foreign competent authority within one month of the court decision. The treaty partner has advised that it has closed the case as the remainder of the information is no longer required.

371. Two other requests have been received from treaty partners, both of which related to beneficial ownership of Samoan companies (which is not currently required under the Terms of Reference). Delays were encountered on account of the process being relatively new to the EOI staff and being new to information holders in Samoa. Delays were also encountered as the relevant information was held offshore. Notwithstanding the delays, the two peers indicated that the answers eventually received were satisfactory.

372. In May 2013, Samoa hired the Principal Legal Officer, who formerly worked in the Attorney General's Department. Upon commencing duties, the Principal Legal Officer examined the outstanding EOI requests, notified the relevant foreign competent authorities to apologise for the delay, and to clear the backlog of the three requests. She also prepared the written EOI manual outlining the procedure for responding to an EOI requests, which was finalised in September 2014.

373. Samoa has also created an EOI database. This is maintained by the Competent Authority and contains three sections to enable the monitoring of

timeliness and quality: *(i)* a summary of incoming EOI cases which records the number of requests received by each treaty partner each year; *(ii)* the case age profile which sets out the time over which each case remains open (in days) being 90 days or less, 91 days to 180 days, 181 days to 260 days, or > 360 days; *(iii)* a chronology which sets out in detail the events related to each request received. The database reminds the Case Officer when a task is due so as to avoid missing any deadlines.

374. The Competent Authority now also includes EOI work in its Annual Business Plan and has developed additional performance measures and indicators to monitor the handling of requests. These measures are new and will be implemented in the 2014/2015 financial year, using data from the current financial year as baseline figures. The relevant performance measure in the Annual Business Plan dictates that 100% of all EOI requests received will be responded to in the appropriate manner and on time.

375. In summary, during the review period, answering EOI requests in a timely manner has been a challenge for Samoa. In addition, acknowledgements and status updates were not routinely provided during most of the review period. However, towards the end of the review period, Samoa put in place an additional staff member to be responsible for processing EOI requests, who then created clear process to address the timeliness of responses. Following that, the response times towards the end of the review period were substantially improved. Samoa is therefore recommended to monitor the resourcing of its EOI unit to make sure that responses are able to be provided in a timely manner, and that status updates are always provided.

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

376. Under the TIEAs concluded by Samoa, the competent authority is the Minister of Revenue or an authorised representative of the Minister of Revenue. Pursuant to the TIE Act, Samoa's Minister of Revenue can explicitly enter into EOI agreements both under the form of TIEAs and DTCs containing an EOI provision (TIE Act, ss.2(1) and 3(1)). Samoa's Commissioner of Inland Revenue is the competent authority for EOI purposes (TIE Act, s. 5).

377. In practice, there are two persons working in the EOI unit that report to the Commissioner. These are the Assistant CEO of Legal and Technical Services (who is the manager of the EOI unit), and the Principal Legal Officer. The Principal Legal Officer is the primary case officer responsible for processing EOI requests. These two personnel also alternately represent Samoa at the Peer Review Group meetings. In recognition of the need to expand the EOI unit, training on EOI is being provided to four other staff in the Inland Revenue Services. These personnel are qualified in law or accounting. The training in EOI is based on the Global Forum manual on EOI.

378. Given that most of the information requested of Samoa will likely be in relation to entities supervised by SIFA, staff members within SIFA have also attended regional training events on EOI. The Assistant Chief Executive Officer of Legal and Registration of SIFA also represents Samoa at the Peer Review Group meetings.

379. The details of the Competent Authority are identifiable with the Global Forum. Updates as to contact details of the EOI unit are provided to EOI partners in a timely manner. Peer input is positive in connection with the ease of contacting the Samoan Competent Authority.

380. Procedures for handling EOI requests are set out in a step-by-step guide developed by Samoa, based on the Global Forum manual. The manual divides the procedure that applies for responding to a request for exchange of information is into four steps: *(1)* logging the request; *(2)* validating the request; *(3)* working the request; and *(4)* responding to the request. The manual was formally created in September 2014, but was based on existing practices implemented since mid-2013.

381. Requests are generally received by post addressed to the Commissioner of the Ministry for Revenue. The officer receiving the mail passes it to the Commissioner. The Commissioner will open the mail, read, sign a record of receipt and stamp with the date and a clearly visible confidentiality notice. The CEO then immediately refers the request to the EOI manager. The EOI manager will then assign the case to the Principal Legal Officer.

382. The Principal Legal Officer will send an email acknowledging receipt of the request to the foreign competent authority. She then logs the request by creating a new record of the request in the secure EOI database. The EOI database was created as an electronic spreadsheet in 2014 and was based on the original paper version. The database includes the following details, which is updated whenever new correspondence occurs or actions are taken:

- Requesting partner
- Reference number of the request for the exchange
- Date request was received
- Name of responsible case officer
- Type of information requested
- Date acknowledgment is sent to foreign competent authority
- Date that notice was sent to the Office of the Attorney General
- Name of local entities contacted and date request was sent

- Name of local entities that responded and date information was received
- Date information was sent to foreign competent authority
- Date response from requesting partner was received
- Date interim update was sent
- Actions taken
- Actions due
- Date final response issued

383. The request is then validated by the Principal Legal Officer, which involves examining the request against the requirements of the relevant treaty and the TIE Act. A request would be considered to be invalid, for example, if it deals with taxes that are not covered by the agreement or it is not signed by an authorised person from the requesting state. The EOI manual states that validation is to be completed within 14 days of receipt of the request, but in practice it takes less than a week to do so. None of the four request received during the review period were determined to be invalid or required clarifications from the treaty partner.

384. If the information request was unclear or incomplete, the Principal Legal Officer would email the requesting competent authority to provide more details to allow the request to be processed, and this would occur within seven days of validation. To the extent possible, the request would still be worked on in order for Samoa to provide information in respect of the part of the request that is valid.

385. On completion of the validation, the Principal Legal Officer will provide the EOI manager with a written memo explaining that all requirements of the TIE Act and the relevant TIEA are met, and the proposed actions to be taken. Upon approval of the manger, the Principal Legal Officer will hand-deliver a formal notification to the Office of the Attorney General pursuant to section 4 of the TIE Act 2012. The notification is a standard letter which includes a copy of the request, a statement that the Competent Authority has finalised its verification and has commenced gathering information, and a reminder of Samoa's obligation under the Global Forum standards to meet the request and the urgency of the matter.

386. At the same time, the Principal Legal Officer will draft the notice to the relevant information holder to obtain the information. The information gathering notice is sent out as soon as the approval of the Attorney General is confirmed. The acknowledgement from the Attorney General is contained in a one page letter, acknowledging the request and offering assistance to the

Competent Authority if necessary. In practice, the time taken by the office of the Attorney General has been one week. If the Attorney General was on vacation or otherwise out of the office when a request was received, this function would be delegated to a staff member in the office. In no case has the Attorney General raised any issue in respect of an EOI request. From the Attorney General's perspective, this process is treated as a notification for information purposes rather than a request for approval.

387. In order to process the request, the case officer creates a hard copy file, which is placed in the secure filing cabinet when not being worked on. The Case Officer would note whether the requesting State has assigned any particular urgency to the request and whether they have asked that the taxpayer not be contacted directly.

388. If information requested is already in the possession of the Inland Revenue Services), then the case officer will collect all necessary information within 14 days after validation. The information gathering process would involve the case officer contacting the relevant division of the Inland Revenue Services by email to obtain the required information.

389. Where it is necessary to contact another government agency(such as SIFA to identify which of the nine trustee companies acts for a particular client),the case officer will draft a formal letter of request to that agency, which is then signed by the Commissioner. Given the proximity of the government offices to one another in Apia, these notices are hand delivered. The government agency will be given 14 days to reply.

390. Once that initial information is provided, the Competent Authority will issue a new notice to the information holder (such as the relevant trustee company). If the request is simple, the information holder is provided with 14 days to reply to the Competent Authority. For more complex and detailed requests (such as where multiple entities are involved), an initial timeframe of 21 days is provided. If the information holder has not replied within the specified time, the case officer will make further contact by phone or email to find out why there is a delay. A further seven days for simple requests and 14 days for complex or detailed requests is given to that person to submit response. In practice, during the review period these time lines have not been adhered to and the Competent Authority did not impose any sanctions (although the powers of inspection under the Tax Administration Act and/or imposition of penalties under the Tax Information Exchange Act were both available). The Commissioner preferred, at least for the first requests, to take a more lenient approach as the process was new and to provide more awareness of the obligations.

391. Once information is received, it is compiled and reviewed by the case officer for completeness and, if relevant, that it is in the format required by

the requesting partner. If it is found that information is not complete, then the requested person will be notified of the deficiency and requested to provide the missing information. The information that partially responds to the request will be provided in the meantime pending the complete retrieval of all relevant information, with a description of the progress on retrieving the missing information. This has occurred in respect of one request during the review period.

392. Once the information is complete, a draft response to the foreign competent authority is then provided to the EOI Manager for review. All documentation being sent to the requesting State is stamped with an official stamp showing that the use and disclosure of all information furnished is governed by the provisions of the relevant TIEA. If exchange is sent by email to the foreign competent authority, it would state the following: "THIS INFORMATION IS FURNISHED UNDER THE PROVISIONS OF A TAX TREATY AND ITS USE AND DISCLOSURE ARE GOVERNED BY THE PROVISIONS OF SUCH TAX TREATY."

393. If the preference of the requesting State is to furnish all documentation in hard copies, the documents will be stamped "CONFIDENTIAL" and the covering letter would state that the information is furnished under the provisions of a tax treaty and its use and disclosure are governed by the provisions of such tax treaty. The date of sending the final response, and any response of the foreign competent authority, are entered into the EOI database.

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

394. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

395. As noted above in Part B above, one condition is posed on the ability of the Commissioner to exercise its powers to obtain and exchange information for tax purpose. The TIE Act prescribes that, upon receipt of a request for assistance, the Commissioner must submit a copy of the request to the Attorney General and that, before acting on the request, the Commissioner has to get approval from the Attorney General. As described above, this has not caused any significant impediment to exchange of information in practice.

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	
Partially Compliant	
Factors underlying recommendations	**Recommendations**
Samoa has experienced difficulties during the review period to answer EOI requests in a timely manner, with two of the four requests being outstanding for more than two years. This was due to a lack of sufficient staff, no clear procedure for operating the EOI unit for most of the review period and difficulties obtaining information where it was held offshore.	Samoa should ensure that answers to EOI requests are made in a timely manner in all cases.
Samoa did not always provide an update or status report to its EOI partners within 90 days in the event that it was unable to provide a substantive response within that time.	Samoa should provide status updates to its EOI partners within 90 days where relevant.
Samoa put in place a new process for responding to EOI requests towards the end of the review period and its effectiveness could not be adequately assessed. In addition, Samoa received relatively few requests during the review period.	Samoa should monitor the practical implementation of the organisational processes and resources of the EOI unit, in particular taking account of any significant changes to the volume of incoming EOI requests, to ensure that they are sufficient for effective EOI in practice.

Summary of determinations and factors underlying recommendations

Overall Rating
Partially 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)*		
Phase 1 determination: The element is in place		
Phase 2 rating: Partially Compliant	Although bearer shares have since been abolished, during the review period, the effectiveness of the custodial regime for bearer shares was not monitored.	Samoa should ensure that custodians of bearer shares are aware of the abolition of bearer shares and remediate any ownership information that was not maintained.
	The monitoring of trustee companies is not sufficiently rigorous given the numbers of international entities and arrangements that the trustee companies represent.	Samoa should conduct more in-depth inspections of its trustee companies in regard to the availability of ownership information.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
Phase 1 determination: The element is in place but certain aspects of the legal implementation of the element need improvement.	Liquidated domestic and foreign companies, foreign benefiting trusts and unit trusts are not explicitly required to maintain their accounting records, including underlying documentation, for a minimum of five years.	Samoa should require all relevant entities and arrangements to keep reliable accounting records, including underlying documentation, for a minimum of five years.

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Partially Compliant	During the review period, Samoa's laws did not require the keeping of reliable accounting records by all relevant entities and this caused an impediment to exchange of information in practice. Samoa has recently enacted new laws to ensure the keeping of accounting information and underlying documentation by all relevant entities in line with the international standard. Since the amendments are very recent they have not been tested in practice.	Samoa should monitor the practical implementation of the new laws to ensure that all relevant entities keep accounting records and underlying documentation and that all types of information are exchanged in line with the international standard.
	During the review period, there was limited oversight or monitoring of the availability of accounting records. The only mechanism used to ensure the availability of accounting records was through tax obligations, which do not apply to the international entities and arrangements.	Samoa should put in place a sufficiently rigorous monitoring regime to ensure that all relevant entities and arrangements are maintaining accounting records as required.
Banking information should be available for all account-holders *(ToR A.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		

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

Determination	Factors underlying recommendations	Recommendations
The jurisdiction should provide information under its network of agreements in a timely manner *(ToR C.5)*		
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: Partially Compliant	Samoa has experienced difficulties during the review period to answer EOI requests in a timely manner, with two of the four requests being outstanding for more than two years. This was due to a lack of sufficient staff, no clear procedure for operating the EOI unit for most of the review period and difficulties obtaining information where it was held offshore.	Samoa should ensure that answers to EOI requests are made in a timely manner in all cases.
	Samoa did not always provide an update or status report to its EOI partners within 90 days in the event that it was unable to provide a substantive response within that time.	Samoa should provide status updates to its EOI partners within 90 days where relevant.
	Samoa put in place a new process for responding to EOI requests towards the end of the review period and its effectiveness could not be adequately assessed. In addition, Samoa received relatively few requests during the review period.	Samoa should monitor the practical implementation of the organisational processes and resources of the EOI unit, in particular taking account of any significant changes to the volume of incoming EOI requests, to ensure that they are sufficient for effective EOI in practice.

Annex 1: Jurisdiction's response to the review report[10]

Having completed the Phase II Review process, Samoa is pleased with the findings of its Phase II Report. The Report provides an accurate account of Samoa's legislative framework for exchange of tax information, as well as its practical implementation.

Samoa would like to record its heartfelt thanks to the members of the Assessment Team for their excellent work in preparing a Report that accurately reflects Samoa's progress to date. Samoa would also like to thank all those who have been involved in the process – the Secretariat, the members of the Peer Review Group and the Global Forum – for their valuable input.

Since the completion of Samoa's Phase I Review in 2013, Samoa has undertaken several reforms in order to further its commitment to meeting the international standards on transparency and exchange of information for tax purposes. These reforms have been in the form of extensive legislative amendments and the introduction of structural and procedural changes within the Competent Authority and relevant Government agencies.

Samoa takes note of the positive findings of the Phase II Report, and restates its commitment to addressing the remaining recommendations.

10. 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

Bilateral agreements

List of exchange of information agreements signed by Samoa as at August 2015.

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
1	Australia	TIEA	20 March 2010	24 February 2012
2	Denmark	TIEA	16 December 2009	22 March 2012
3	Faroe Islands	TIEA	16 December 2009	Not in force
4	Finland	TIEA	16 December 2009	24 March 2012
5	Greenland	TIEA	16 December 2009	Not in force
6	Iceland	TIEA	16 December 2009	23 May 2012
7	Ireland	TIEA	8 December 2009	21 February 2012
8	Japan	TIEA	4 June 2013	6 July 2013
9	Korea	TIEA	15 May 2015	Not yet in force
10	Mexico	TIEA	30 November 2011	18 July 2012
11	Monaco	TIEA	7 September 2009	19 March 2012
12	Netherlands	TIEA	14 September 2009	2 March 2012
13	New Zealand	TIEA	24 August 2010	26 March 2012
		DTA	8 July 2015	Not yet in force
14	Norway	TIEA	16 December 2009	30 March 2012
15	San Marino	TIEA	1 September 2009	21 March 2012
16	South Africa	TIEA	26 July 2013	Not in force
17	Sweden	TIEA	16 December 2009	1 December 2012

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

Constitution

Constitution of the Independent State of Samoa 1960

Civil and Commercial laws

Charitable Trusts Act 1965

Partnership Act 1975

Trusts Act 2014

Business Licenses Act 1988

International Companies Act 1988

International Companies Amendment Act 2014

International Insurance Act 1988

International Partnership and Limited Partnership Act 1988

Trustee Companies Act 1988

Foreign Investment Act 2000

Segregated Fund International Companies Act 2000

Companies Act 2001

Insurance Act 2007

International Mutual Funds Act 2008

Unit Trusts Act 2008

Special Purpose International Companies Act 2012

Tax Information Exchange Act 2012

Tax Information Exchange Amendment Act 2015

Regulated activities and AML/CFT laws

Central Bank of Samoa Act 1984

Financial Institutions Act 1996

Samoa International Finance Authority Act 2005

Money Laundering Prevention Act 2007

Money Laundering and Prevention Regulations 2009

Money Laundering and Prevention Amendment Regulations 2014

International Banking Act 2005

Guidelines for the Financial Sector, April 2012

Tax laws

Income Tax Act 2012

Tax Administration Act 2012

Value Added Goods and Services Tax Act 1992

Annex 4: List of authorities interviewed

Primary government authorities

Ministry for Inland Revenue

Samoa International Financial Authority

Central Bank of Samoa

Ministry of Commerce, Industry and Labour

Office of the Attorney General

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: SAMOA

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.

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

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

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

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