GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

NIGERIA

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Nigeria 2016

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

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(reflecting the legal and regulatory framework
as at January 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 130 jurisdictions, which participate in the Global Forum on an equal footing.

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

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

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

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

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

Executive summary

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

2. 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 on a timely basis with its exchange of information (EOI) partners.

3. Nigeria is located in West Africa, and lies on the Gulf of Guinea and Atlantic Ocean. Nigeria gained its independence from the United Kingdom on 1 October 1960. Nigeria is the largest economy in Africa. The Nigerian economy is heavily based on petroleum.

4. Nigeria committed to the principles of transparency and exchange of information in March 2002 and joined the Global Forum in April 2011. Nigeria now has 92 information exchange relationships via 17 Double Tax Conventions (DTCs) and the Convention on Mutual Administrative Assistance in Tax Matters, as amended (the Multilateral Convention). Of these, 12 DTCs are in force and the Multilateral Convention entered into force for Nigeria on 1 September 2015.

5. Nigerian law has provisions that generally provide for the availability of identity and ownership information in respect of all relevant entities and arrangements. Bearer shares cannot be issued in Nigeria. Information on nominee ownership is available with public companies and with service providers. In practice, several government regulatory and executive agencies monitor, supervise and enforce the legal obligations to maintain identity and ownership information and impose penalties for non-compliance. Despite this, the compliance levels of companies and partnerships are very low on their legal obligations to submit identity and ownership information regularly. Nigeria should enhance its monitoring and enforcement measures to ensure

that the identity and ownership information of companies and partnerships is available in practice.

6. The legal framework of Nigeria ensures that all relevant entities and arrangements have to keep general accounting records and underlying documentation that correctly indicate their correct financial position. In practice, the tax and regulatory authorities have in place several monitoring and enforcement mechanisms to ensure that relevant entities and arrangements maintain necessary accounting records and supporting documentation for a minimum period of 6 years. However, the overall compliance level of entities and arrangements in Nigeria on statutory reporting requirements is generally very low. This renders the possibility that the accounting information may not be available in some cases. Nigeria should ensure that strict and more effective monitoring and enforcement mechanisms are put in place to ensure that accounting information is maintained by all relevant entities and arrangements and regularly filed with relevant authorities in practice in line with statutory requirements.

7. Over the review period, no issues have arisen in Nigeria with respect to availability of ownership, accounting or banking information for EOI purposes.

8. As regards access to information, Nigeria has powers to access information and is able to exchange all types of information, including banking information. In practice, the competent authority has exercised its powers to access information in a timely and efficient manner.

9. The delegated competent authority in charge of exchanging information for tax purposes is the Executive Chairman, Federal Inland Revenue Service (FIRS). The exchange process is very well organised with internal processes in place for handling EOI requests as well as the unit being well resourced. Three of the treaty partners sent a total of eight requests to Nigeria but due to communication issues between two treaty partners and Nigeria, only two requests were received by Nigeria during the three-year review period from 1 July 2011 to 30 June 2014. Of the eight requests sent by peers, Nigeria received one request just after the review period for which response was provided within 180 days. Once the communication channels were properly established, Nigeria promptly provided response to two more requests. The other three cases were closed by the treaty partners by then and stated that they did not need information in these cases. Out of the requests that pertained to the review period and received by Nigeria, the requested information was provided within 90 days. Despite the fact that there were issues on communication between Nigeria and its treaty partners, the peers were satisfied with the quality and the timeliness of the responses.

10. Nigeria has been assigned a rating for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Nigeria'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, Nigeria has been assigned a rating of Compliant for elements A.3, B.1, B.2, C.1, C.2, C.3 and C.4, Largely Compliant for element C.5, and Partially Compliant for elements A.1 and A.2. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Nigeria is Largely Compliant.

Introduction

Information and methodology used for the peer review of Nigeria

11. The assessment of the legal and regulatory framework of Nigeria was based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes, and was prepared using the Global Forum's Methodology for Peer Reviews and Non-Member Reviews. The Phase I assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 27 August 2013, other materials supplied by Nigeria, and information supplied by partner jurisdictions.

12. The Phase 2 review of Nigeria analyses the practical implementation and effectiveness of the legal framework in the three year review period of 1 July 2011 to 30 June 2014, as well as any amendments made to the legal and regulatory framework since the Phase 1 review. This assessment is therefore based on the laws, regulations, and exchange of information mechanisms in force or effect as at 7 January 2016, Nigeria's responses to the Phase 2 questionnaire and the supplementary questions, information provided by exchange of information partners, and explanations provided by Nigeria during the on-site visit that took place from 22-24 June 2015 in Abuja, Nigeria. During the On-site visit, the assessment team met with officials and representatives of the Ministry of Finance, Ministry of Foreign Affairs, representatives from FIRS and State Board of Internal Revenue (SBIR), Corporate Affairs Commission, Securities Exchange Commission, Registrar of co-operatives, Nigeria Financial Intelligence Unit (NFIU), Special Control Unit against Money Laundering (SCUML), Central Bank of Nigeria and Ministry of Justice (see Annex 4).

13. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses Nigeria's legal and regulatory framework as well as the practical

implementation of framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. To reflect the Phase 2 component, recommendations are made concerning the practical application by Nigeria 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 Nigeria's overall level of compliance with the standards.

14. The assessment in respect of the 2013 Phase 1 Report was conducted by a team which consisted of two assessors and three representatives of the Global Forum Secretariat: Ms Nicola Guffogg, Assessor, the Treasury Income Tax Division, Government Office of Isle of Man; Ms Monica Olsson, Senior Tax Lawyer, Directorate of Taxes of Norway; and Ms Gwenaëlle Le Coustumer, Mr Shinji Kitadai and Mr Bhaskar Goswami from the Global Forum Secretariat.

15. The Phase 2 assessment was conducted by an assessment team which consisted of two expert assessors and one representative of the Global Forum Secretariat: Mr. Lars Aarnes, Directorate of Taxes, Norway, Mr. Eric Mensah, Assistant Commissioner, Ghana Revenue Authority, Government of Ghana; and Mr. P S Sivasankaran from the Global Forum Secretariat. The assessment team assessed the practical implementation and effectiveness of the legal and regulatory framework for transparency and exchange of information and relevant EOI arrangements in Nigeria.

Overview of Nigeria

16. The Federal Republic of Nigeria occupies a surface landmass of about 923 768 km^2 in the Western part of Africa. The Republics of Benin, Chad, Cameroon and Niger, all French-speaking countries, surround it, whereas Nigeria is an English-speaking country. Nigeria is the largest country in sub-Saharan Africa, both in terms of size and population. Nigeria's population is estimated at 160 million with an annual growth rate of more than 3%. Nigeria gained its independence from the United Kingdom on 1 October 1960 and it is now divided into 36 States, a Federal Capital Territory (Abuja), and 774 Local Government Areas. It has three major seaports: Lagos, Warri and Port Harcourt; and 11 international airports.

17. Nigeria is a middle income, mixed economy and emerging market, with expanding financial, services, communications, and entertainment sectors. Nigeria is the largest economy in Africa with its Gross Domestic Product

of USD 568.5 billion in 2014. The Nigerian economy is heavily dependent on petroleum, which constitutes around 80% of its export earnings and about 14% of its GDP was accounted for by the Crude Petroleum and Natural Gas industry in 2013. Nigeria's GDP grew strongly between 2007 and 2012 (from USD 295 billion to USD 450 billion) because of growth in non-oil sectors and robust global crude oil prices. In 2014, Nigeria's total exports were valued at NGN 16 304 041 million and total imports at NGN 7 374 370 million. Nigeria's main trading partners are the European Union (France, Italy, Netherlands, Spain and the United Kingdom), the United States, India, the People's Republic of China (China) and Brazil.[1] Its currency is the Naira (NGN) and as at 30 November 2015, EUR 1 equalled NGN 208.

General information on the legal system and the taxation system

18. Nigeria is a common law jurisdiction. The sources of Nigerian law comprise the following (in hierarchical order): The Constitution; Statutes; The Received English law[2]; Customary law (including Sharia); Case law and Authoritative texts and writings of legal experts.

19. Nigeria is a federation with three tiers of Government: The Federal Government; The 36 State Governments and Federal Capital Territory; and the 774 Local Governments. Nigeria operates a presidential system of government having an executive arm, a legislature and the judiciary.

20. At the federal level, the executive arm is comprised of the President with his ministers; the two legislative houses, namely the Senate and the House of Representatives, together form the National Assembly; and the judiciary is represented by the courts. At the State level, the executive arm is led by the Governor and his team of commissioners; the House of Assembly makes up the legislature while State courts adjudicate on legal matters. Each local government area (LGA) is administered by a Local Government Council consisting of a Chairman, who is the chief executive of the LGA and other elected members who are referred to as Councillors. The functions of Local Governments, as spelt out in the Constitution, includes (a) Consideration and making of recommendations to the State commission on economic planning or any similar body on economic development of the State, particularly in so far as the area of authority of the Council and of

1. National Bureau of Statistics (www.nigerianstat.gov.ng/).
2. Section 32(1) of the Interpretation Act provides that "the common law of England and the doctrines of equity, together with the statutes of general application that were in force in England on the 1st day of January 1900, shall, in so far as they relate to any matter within the legislative competence of the Federal legislature, be in force in Nigeria.".

the State are affected; and (b) Collection of rates, and radio and television licenses (Fourth Schedule to the Constitution).

21. The judicial system is a pool of both the federal and States' Courts. The Courts are stratified into three:

- States Courts of records include (i) Customary Courts, (ii) Sharia Courts, and (iii) Magistrate Courts. These Courts are the creation of the respective States based on customs and religion. Appeal from these courts lie to the State's High Court, Customary Court of Appeal or Sharia Court of Appeal as the case may be.
- Courts of superior records include (i) The Federal High Court, (ii) High Courts of States and Federal Capital Territory (FCT), and (iii) FCT or States' Customary Courts of Appeal and FCT or States Sharia Courts of Appeal. These courts are created by the Constitution; their decisions can be challenged at the Federal Court of Appeal (FCA).
- Appellate courts include (i) The Court of Appeal (CA), which hears appeals from any of the courts of superior records; (ii) The Supreme Court, which is the highest court of the country and hears and determines appeals from the CA.

22. Tax cases are heard by the Federal High Court; appeals from the Federal High Court go to the CA while appeals from the CA ultimately go to the Supreme Court.

The taxation system

23. The Federal Inland Revenue Service (FIRS) is responsible for the administration of all federal taxes while the task of the State Board of Internal Revenue (SBIRs) is to administer taxes for the respective States. The Local Government Revenue Committees (LGRC) collect rates and levies for the local governments.

24. The Nigerian tax system imposes worldwide taxation on the income of individuals who spend at least 183 days in Nigeria, including periods of temporary absence or leave (Third Schedule to the Personal Income Tax Act). An individual who does not meet this test will be treated as a non-resident and is taxed in respect of Nigerian source income. Partners in a partnership are liable to tax in their individual capacity on the income accruing to them under the partnership agreement, and must file their tax returns for that purpose. Personal income tax is levied at progressive rates up to 24% on an individual's taxable income for the year. The assessment year in Nigeria begins on 1 January and ends on 31 December.

25. All companies operating in Nigeria are required to pay income and education taxes. Companies in the oil and gas sector pay the Petroleum Profits Tax at the rate of 85% of chargeable profits while other companies pay Companies Income Tax at the rate of 30% of total profit. Education tax is at the rate of 2% of assessable profits. (Total profit is profit after deducting previous year losses carried forward and capital allowances. Assessable profit is obtained prior to deducting capital allowances.) Whilst resident companies pay tax on their worldwide income, non-resident companies are taxed on the proportion of their income earned in Nigeria. Companies are considered to be resident companies if they are registered or incorporated in Nigeria (Management and control are not taken into account for residence status in Nigeria).

26. The Companies Income Tax Act 2007 makes a distinction in tax treatment between a Nigerian company and a foreign company. A Nigerian company is one incorporated in Nigeria under domestic law, while a foreign company is one established outside Nigeria under the law in force in the foreign country. The profits of a non-resident company or a foreign company are taxable in Nigeria to the extent that they are attributable to operations carried on by the company in Nigeria. Such profits are determined and taxed in the same manner as those of a resident company. However, in case the tax authority is unable to determine the profit in this manner, a deemed profit of 20% of gross income, may be attributed. This is then taxed at the corporate tax rate of 30%, resulting in an effective tax rate for non-residents of 6% on gross income.

27. Companies in the oil and gas sector are subject to the petroleum profits tax on their revenue. Tax rates are different for resident companies in the upstream sector of the oil and gas industry. The rates range from 50% for some of the new production sharing contracts to 65.75% for others in the first five years, during which all pre-operation expenses are expected to be fully amortised, and 85% of their chargeable profits thereafter. The tax rate in the downstream sector is 30%. Chargeable profit is profit of the company after deducting allowances. Petroleum companies are required to file their returns of estimated tax within two months into a new accounting year and commence payment of the tax in 12 monthly instalments pending determination of the result of their operation at the closure of the year.

28. Some payments including dividends, interest and royalties paid to domestic companies, individuals and non-resident companies or investors are subject to a withholding tax at the rate of 5 or 10%. Withholding tax paid by resident persons and companies in Nigeria is considered payment on account of tax and can be used to offset part of personal and companies' income taxes except in the case of dividend and interest received by an individual; and dividend received by a company (Franked Investment Income) where the withholding tax becomes the final tax. Withholding tax paid by non-resident individuals and companies is the final tax.

29. All companies including those granted exemption from incorporation, whether or not the company is liable to pay tax must annually submit to the FIRS, among other documents, an annual tax return (including in some cases a self-assessment form), audited accounts, and a written statement showing profits from all sources. The return must be filed within 6 months after the end of the accounting period or within 18 months from the incorporation date, whichever occurs earlier (section 55, Companies Income Tax Act). Small companies (defined as having revenue of not more than NGN 1 million, i.e. EUR 4 800) are exempted from filing the self-assessment form but must still file an annual income tax return.

30. In Nigeria, personal income tax is chargeable by the State Governments. This is administered by the relevant State Board of Internal Revenue (SBIR). The other major taxes that are administered at the State level are the withholding tax, capital gains tax, stamp duties etc. Personal income tax is chargeable on individuals, families, communities and trustees. The tax is charged upon gains from trade, business, profession, vocation, salaries and wages, rents, received dividends and interest (paid by foreign companies), pensions and annuities. The person obliged to file the return must file the return with the relevant tax authority within 90 days of the assessment period.

31. The Capital Gains Tax Act 1967 provides for taxation of capital gains realised upon disposal of a chargeable asset. Generally, all legal entities are liable to capital gains tax, which is payable on the total amount of chargeable gain accruing to a person from the disposal of assets in the year of assessment, irrespective of whether they are situated in Nigeria or not. A disposal of assets arises where any capital sum is derived from a sale, lease, transfer, assignment, compulsory acquisition or any other disposal of assets. Disposal of assets in Nigeria by foreign companies is also subject to capital gains tax. Capital gains tax is governed by either FIRS (companies) or SBIRs (individuals).

32. Value Added Tax was introduced in Nigeria in 1993 to replace sales tax previously collected by State authorities. VAT is imposed on non-exempt supplies of goods and services within Nigeria as well as on goods imported. Export goods are non-taxable. The standard rate is 5%. VAT is generally assessed by a taxable person who supplies taxable goods and services and payment made when filing monthly returns. Transactions on basic food items produced within the country, books and educational materials, plant and machinery for use in Export Free Zones, agricultural equipment, and all medical and pharmaceuticals products and services, amongst others, are exempt from VAT.

33. There are 13 operational Export Free Zones (EFZ) in Nigeria, regulated by the Nigeria Export Processing Zone Act, 1992. The entities operating in these zones need to obtain a license to do so, from the Nigeria Export

Processing Zones Authority (NEPZA). The total number of operational entities in the EPZ is 106 while the total number of licensed entities is 323. The benefits that these entities enjoy are the following: (i) legislative provisions pertaining to taxes, levies, duties and foreign exchange regulations do not apply within the Zones; (ii) repatriation of foreign capital investment in the Zones at any time with capital appreciation of the investment; (iii) remittance of profits and dividends earned by foreign investors in the Zones; (iv) no import or export licences is required; (v) up to 25% of production may be sold into the customs territory against a valid permit, and on payment of appropriate duties; (vi) rent-free land at construction stage, thereafter rent is as determined by the Authority; (vii) up to 100% foreign ownership of business in the Zones allowable; (viii) foreign managers and qualified personnel may be employed by companies operating in the Zones. The entities operating in an EPZ do not have any relief from the provisions on the retention of ownership or accounting information that are applicable to other commercial entities in Nigeria. NEPZA has the power to inspect the records of the entities operating in the Zone, at any time.

Overview of the financial sector and relevant professions

34. The Corporate Affairs Commission (CAC) was established pursuant to the provisions of the Companies and Allied Matters Act (CAMA). It is responsible for the incorporation and supervision of companies, business names and incorporated trustees. The CAMA prescribes directives on governance issues such as shareholding, objects of entities, accounting, record keeping, dissolution. The respective industry regulators publish directives on issue s specific to each industry.

35. The Nigerian financial sector consists of (i) Banks and other financial institutions, (ii) Insurance Companies, (iii) Capital Market Operators, the Nigerian Stock Exchange and the Commodities' Exchanges. The statistics related to the deposits in the financial sector are tabulated below.

Financial sector deposit statistics as at 30 November 2015

	Deposit Type	NGN millions
1	Demand Deposits	4 348 569
2	Time and Saving Deposits	7 404 539
3	Foreign Currency Deposits	2 980 643
4	Central Government's Deposits	1871 759
	Total	16 605 510

Banks and Other Financial Institutions Act (BOFIA) (Cap B3, LFN 2004)

36. The BOFIA governs the banking and financial industry in Nigeria. The law provides rules for the licensing, management, operation and supervision of banks and other financial institutions by the Central Bank. The Central Bank of Nigeria (Establishment) Act (Cap C4, LFN 2004) established the Central Bank of Nigeria (CBN) with the responsibility of overall control and administration of the monetary and financial policy of the Federal Government.

37. The financial system of Nigeria consists of 21 deposit money banks, 4 merchant banks, non-interest banks (full-fledged banks, banks with windows to operate non-interest banking), 2 624 Bureau de change, 6 development finance institutions, 42 primary mortgage banks, 932 microfinance banks, 65 finance companies, 1 mortgage refinance company, 4 subsidiaries of foreign banks and 69 branches of foreign banks.

38. Nigerian exchange control regulations do not restrict inward and outward remittances for the purposes of investments in Nigeria by foreign investors and for facilitating outward capital investments by Nigerian investors outside Nigeria.

Insurance Act (Cap I.17, LFN 2004)

39. The Insurance Act provides the rules for the licensing, management, operation and supervision of insurance companies and other players in the insurance industry by the National Insurance Commission (established by the National Insurance Commission (NAICOM) Act CAP. N53 LFN 2004). The National Insurance Commission has the responsibility of overall control, regulation, supervision and administration of the insurance industry.

Investments and Securities Act 2007

40. The Investments and Securities Act established the Securities and Exchange Commission (SEC) as the apex regulatory authority for the Nigerian Capital market. The SEC is also responsible for ensuring that the market runs efficiently so as to protect investors, maintain fair, efficient and transparent markets and reduce systemic risk.

41. The CBN, as the apex regulatory body of the financial sector, chairs the Financial Services Regulation Coordinating Committee (FSRCC) established under the CBN Act. Members of the FSRCC are drawn from the NDIC, FMF, NAICOM, SEC, CAC and the Federal Ministry of Finance. The Committee as one of its duties is required to eliminate any information gap encountered by any regulatory agency in relation to any group of financial institutions (section 44, Central Bank of Nigeria Act).

42. The various professionals participating in the financial sector include: chartered accountants, tax practitioners, legal practitioners, stockbrokers, insurance practitioners and bankers. All the professional bodies are established and regulated by respective Acts.

International exchange of information for tax purposes

43. Nigeria committed to the principles of transparency and exchange of information in March 2002 and became a member of the Global Forum in April 2011. Since then, Nigeria has made steady progress in this field and it now has 92 EOI relationships, of which 12 are in force.

44. Finally, Nigeria signed the Multilateral Convention on 29 May 2013 and deposited the instrument for ratification to the OECD on 29 May 2015. The Multilateral Convention came into force in Nigeria on 1 September 2015. This allows Nigeria to exchange information to the international standard with other Parties to the Multilateral Convention and jurisdictions covered by the Convention. Nigeria was also one of the 22 countries that agreed the text of the African Tax Administrations Forum (ATAF) Multilateral Agreement on Mutual Assistance in Tax Matters (AMATAM), and the Nigerian authorities are working towards its ratification.

45. The Nigerian Financial Intelligence Unit (NFIU) is a member of the Egmont Group of Financial Intelligence Units. Parts A to D of "The Egmont Group Principles for Information Exchange between Financial Intelligence Units for Money Laundering and Terrorism Financing Cases, The Hague, 13 June 2001" provides a framework for information sharing between FIUs under the Egmont Group charter. The NFIU has signed MOUs for information exchange on money laundering and terrorism financing cases with FIUs that are non-members of the Egmont Group.

Recent developments

46. Nigeria signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 29 May 2013 and deposited the instrument for ratification to the OECD on 29 May 2015.

Compliance with the Standards

A. Availability of information

Overview

47. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority[3] may not be able to obtain and provide it when requested. This section of the report describes and assesses Nigeria's legal and regulatory framework for availability of information. It also assesses the implementation and effectiveness of this framework.

48. The Nigerian law provides for the incorporation of different types of companies primarily under the Companies and Allied Matters Act (CAMA) and for their registration with the Corporate Affairs Commission (CAC). The Nigerian domestic framework generally ensures the availability of ownership information by a combination of information held by different authorities, service providers and by the companies themselves. Foreign companies carrying on business in Nigeria are under the same obligations as any Nigerian

3. The term "competent authority" means the person or government authority designated by a jurisdiction as being competent to exchange information pursuant to a double tax convention or tax information exchange.

company that intends to do or does business in Nigeria. The new Designated Non-Financial Institutions (DNFI) regulation 2013, SCUML's administrative actions and its collaboration with other supervisory agencies to control and regulate nominee service activities in Nigeria ensure that full identity information of persons on whose behalf a nominee is acting is available in Nigeria.

49. Ownership information on general partnerships, limited partnerships and limited liability partnership is usually available with some public authorities in Nigeria, at the State level.

50. The law in Nigeria also allows for the creation of trusts. In respect of the identity and ownership information in respect of trusts, the trustee is required to provide identity information on settlors, trustees and beneficiaries at the time of registration with prescribed authorities like courts. Anti-Money Laundering (AML) regulations require trust service providers to obtain ownership information on all trusts, without any threshold. Nigerian law provides for various enforcement provisions under commercial laws and AML regulations to ensure the maintenance of identity and ownership information on trusts. SCUML registers and regulates all trust service providers in Nigeria. In practice, its administrative actions and collective efforts of relevant supervisory authorities and reporting entities ensure that all persons acting as trustees in Nigeria maintain identity information about the settlors, beneficiaries and other persons associated with the trusts.

51. All taxable persons are required to be registered for tax purposes and obtain a TIN. The unified TIN registration Project was initiated by the Joint Tax Board in 2008 to replace the existing TIN system run by FIRS and SBIRs separately. The actual registration commenced in 2012 and has covered around 800 000 taxpayers in Nigeria as at 30 November 2015. This new unified TIN system will unify the taxpayer databases in all the 36 States tax authorities and the FIRS. The TIN provides a unique identity number to every taxpayer (individual and corporate) and stores relevant identity information in a common database. The identity information includes name and address, photograph, biometric finger prints, incorporation information of corporate bodies and identity information of the promoters.

52. Enforcement measures consisting of administrative penalties and criminal sanctions are set out in the various regulatory Acts, Companies Income Tax Act (CITA), Personal Income Tax Act (PITA) and the AML regime to ensure compliance with the information keeping requirements. In practice, monitoring and supervision of entities' ownership information obligations are carried out by CAC, SCUML, FIRS, SBIRs, SEC, CBN, Economic and Financial Crimes Commission (EFCC) and NFIU via off-site audits and on-site inspections. Various agencies monitoring compliance with respect to ownership obligations have also enforced many defaulters by imposing fines in practice. In Nigeria, CAMA requires all companies

to file annual returns with which audited financial statements and updated identity and shareholder information is also required to be filed by the companies. These annual returns are the primary source of information for CAC. However, only 3.5-7 % of total number of companies registered in Nigeria files annual returns with CAC.

53. On the issue of low compliance levels of companies, Nigerian authorities state that more than 50% of companies registered with CAC are dormant. Out of the rest, a large number of the companies are small scale enterprises, which remain outside the regulatory and administrative oversight of the Nigerian authorities due to lack of awareness and the limited size of their businesses and transactions. They also state that the compliance rate of companies with FIRS is thrice that of CAC and there are other additional regulations by CBN on companies engaged in foreign exchange transactions. These factors, according to Nigerian authorities, ensure that the companies relevant for this review purpose are closely monitored and information is available in practice. Although the compliance mechanism of CAC and the tax authorities is risk based and as such, the small scale enterprises pose low risk to revenue as well as EOI, it is pertinent to note that the regulatory and filing requirements under CAMA and the CITA apply equally to all companies registered with CAC regardless of their size. Further, while there was an active oversight system and inter-agency co-operation in place in Nigeria during the review period, the fact that the general compliance levels of companies in Nigeria are very low is a cause of concern. Therefore, Nigeria is recommended to ensure that the companies registered in Nigeria strictly comply with their information reporting obligations and thus, updated ownership information is maintained in Nigeria.

54. The legal framework of Nigeria ensures that relevant entities and arrangements have to keep general accounting records that correctly indicate their correct financial position and also have a clear obligation to keep underlying documents for audit purposes. Compliance in respect of companies to maintain accounting information is monitored by CAC, SEC and FIRS by requiring companies to get their books of accounts statutorily audited by qualified chartered accountants and by annual filing requirements of all audited financial accounts. In addition, FIRS also ensures companies maintain underlying documentation by monitoring the submission of accounting information in the tax returns as well as verified in the course of the off-site scrutiny and on-site inspection programmes. Similarly, State BIRs have monitoring and enforcement mechanisms, and audit procedures in place over all the other entities and individuals in Nigeria to ensure that proper accounting records and underlying documents are maintained by all those entities and individuals. However, as specified in the paragraph above, the general compliance levels of companies in Nigeria on their reporting obligations are very low. The present monitoring and enforcement mechanisms has not created sufficient deterrence on those companies not filing annual returns either with CAC or with FIRS,

and therefore, may not be sufficient in ensuring that accounting records and underlying documentation of all companies is available in Nigeria.

55. To the extent that other entities such as partnerships and trusts are registered with the tax authorities, adequate monitoring mechanism exists with the tax authorities to ensure that proper accounting information is maintained by these entities. However, there is general lack of compliance levels among partnerships with CAC. Further, there is no adequate mechanism with the tax authorities to ensure that all partnerships and trusts in Nigeria are registered with the tax offices and therefore maintaining accounting information in practice. Therefore, it is recommended that strict monitoring and enforcement mechanisms be put in place to ensure that accounting information is maintained by all relevant entities and arrangements and regularly filed with relevant authorities in practice in line with statutory requirements.

56. Sufficient legal obligations are in place for banks and financial institutions to maintain all records pertaining to accounts as well as related to financial and transactional information. CBN has put in place an oversight system of financial entities primarily by regularly conducting off-site and on-site inspections. In the course of the inspections of financial entities, compliance with the customer due diligence requirements under the AML regime is also verified.

57. Concerning the three year review period (1 July 2011-30 June 2014), Nigeria received and responded to a total of five requests from three different treaty partners. Four of these requests concerned ownership and accounting information and one request concerned banking information. As of September 2015, Nigeria gathered the information (ownership, accounting and banking of individuals and companies) for all of these requests and forwarded them to its treaty partners. Although the compliance levels of companies are very low, in practice, Nigeria has been able to provide complete set of information on entities which include companies in Nigeria. However, the number of requests is too few to draw any firm conclusion on availability of information. Further, three requests that were sent during the review period but not received by Nigeria were closed by the treaty partners.

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.

58. Several types of entities can be created in Nigeria: companies, partnerships, trusts and foundations, as well as co-operative societies. The Companies and Allied Matters Act also allows for the registration of business names. This registration could be in the names of individuals, firms or

corporations including companies registered for the purposes of carrying out business activities (section 573, CAMA). In Nigeria, if a business is registered, it is presumed that it is carrying out business activities. Even passive investments would fall under the ambit of "business activities". It is illegal for any individual or business entity to carry on business in Nigeria without having been incorporated or registered by the CAC under the CAMA.

Companies *(ToR **4** A.1.1)*

Types of companies in Nigeria

59. Nigerian law requires that companies be incorporated under the Companies and Allied Matters Act (CAMA) and registered with the Corporate Affairs Commission (CAC). Under section 21 of the CAMA, there are three kinds of companies that can be created in Nigeria:

i. a company limited by shares (which may be a private or public company) is defined by section 21(1)(a) of the CAMA as a company "having the liability of its members limited by the memorandum to the amount, if any, unpaid of the shares respectively held by them". Private companies are those that by their articles of association restrict the transfer of their shares. The total number of shareholders in a private company cannot exceed 50. A private company, cannot, unless authorised by law, invite the public to subscribe for any shares or debentures of the company or deposit money for fixed periods or payable at call, whether or not bearing interest. A public company must be so stated to be one in its memorandum of association.

ii. a company limited by guarantee is defined as a company "having the liability of its 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" (section 21(1)(b) of the CAMA). Section 26 further specifies that "A company limited by guarantee shall not be incorporated with the object of carrying on business for the purpose of making profits for distribution to members" and cannot be registered without the authorisation of the Attorney-General of the Federation; and

iii. an unlimited company: defined as one "not having any limit to the liability of its members" although registered with a share capital (sections 21(1)(c) and 25 of the CAMA).

4. Terms of Reference to Monitor and Review Progress towards Transparency and Exchange of Information.

60. All three kinds of companies may be private or public (section 21(2), CAMA). It is illegal for any business entity to carry on business in Nigeria without having been incorporated or registered by the CAC under the CAMA.

61. Apart from companies incorporated under the CAMA, governments at different levels (federal, State and local governments) can enact laws to create statutory corporations. The Statutory corporations are regulated by the laws creating them and they do not require further incorporation. They are however subject to industry regulations, should their activities fall under any regulated industry. Statutory corporations are generally created to provide social services and are not expected to make a profit. They are not required to file income tax returns but they are subject to VAT, PAYE and withholding tax from their employees' emoluments and contractors' payments respectively. However, in the event of them earning a profit, they are required to file returns under the Income Tax Act. The owners of statutory corporations can only be public authorities which could be federal, State or local government.

62. The government authorities of Nigeria maintain certain ownership information on the different types of companies. The CAMA also requires that some ownership information be held by the companies themselves and some by service providers.

Ownership information held by government authorities

63. The CAC is the authority vested with the duty to register all types of companies incorporated under the CAMA. The CAC holds a register that contains ownership and identity details of companies. The tax authorities do not maintain ownership information in the form of a register but the information is available in the tax return maintained by the tax authorities. Some other authorities like the Securities and Exchange Commission do maintain ownership information for the companies under their supervision.

Registration requirements

Domestic companies

64. Section 35 of the CAMA requires that for the registration of a company, the CAC must receive the memorandum of association (which contains ownership information on all the subscribers) and the articles of association, together with notice of the registered office and head office of the company, if the head office is different from the registered office (a postal box address or a private bag address cannot be accepted as the registered or head office). The other details that need to be provided to the Commission are a statement, in the prescribed form, containing the list and particulars of, together with

the consent of, the persons who are to be the first directors of the company; a statement of the authorised share capital signed by at least one director; and any other document required by the Commission to satisfy the requirements of any law relating to the formation of a company. In addition to the details filed under section 35 CAMA, there should also be filed by a legal practitioner a statutory declaration in the prescribed form that the requirements of the CAMA for the registration of a company have been complied, and the CAC may accept such a declaration as sufficient evidence of compliance.

65. The CAC registers the memorandum and articles of association unless it is of the opinion that they do not comply with the provisions of the Act; the business which the company is to carry on, and/or the objects for which it is formed, are illegal; or any of the subscribers to the memorandum is incompetent or disqualified in accordance with section 20 of the CAMA; there is non-compliance with the requirement of any other law as to registration and incorporation of a company; or the proposed name conflicts with or is likely to conflict with an existing trade mark or business name registered in Nigeria. Once the memorandum and articles of association have been registered, the Commission, issues a certificate that the company has been incorporated. The entity registered is issued a unique registration number.

66. As for the details that must be contained in the memorandum, section 27 of the CAMA prescribes that the memorandum of association must contain the name of the company, the registered office of the company situated in Nigeria, the nature of the business or businesses which the company is authorised to carry on, the restrictions, if any on the powers of the company, whether the company is a private or a public company and whether the liability of the members is limited by shares, by guarantee or unlimited.

67. The memorandum for all kinds of companies must be signed by each subscriber in the presence of at least one witness who attests the signature.

68. In cases of companies that are limited by share capital, the memorandum is also required to state the amount of authorised share capital (not being less than NGN 10 000 (EUR 48) for a private company and NGN 500 000 (EUR 2 400) for a public company). Each subscriber must write opposite to his/her name the number of shares he/she takes. Where shares are held in trust by a subscriber, the latter must disclose this fact in the memorandum along with the name of the beneficiary. One of the documents required to be filed at that time is the "notice of allotment of shares" showing details of shares allotted by the company to the shareholders (section 129, CAMA). Subsequent allotments of shares must also be filed with the CAC.

69. The provisions described above ensure that the identity of all the legal owners is required to be disclosed at the time of registration.

70. Changes in the ownership structure of companies limited by shares must also be reported to the CAC on an annual basis, pursuant to section 370 of the CAMA. The annual return by a company having shares other than a small company (which can be companies limited by shares and unlimited companies) must contain the registers of members and debenture holders, and the names and addresses of the persons who became or ceased to be members during the year, and the names of directors and secretary (section 371). Companies limited by guarantee and small companies limited by shares or unlimited companies must also fill in an annual return that indicates the location of the register of members (sections 372 and 373). (Small companies are private companies limited by shares with a turnover below NGN 2 million and net assets below NGN 1 million (EUR 9 614 and 4 807 respectively), whose directors hold not less than 51% of its equity share capital and whose none of the members is a foreigner).

71. All incorporated companies must file annual returns under the provisions of CAMA containing updated ownership information (sections 370 to 373). The consequences of not filing the annual return with the CAC would result in a penalty of NGN 1 000 against the company and every director or officer of the company in the case of a public company and NGN 100 in the case of a private company (section 378 CAMA). The company could also be presumed to be defunct and its registration cancelled (section 525 CAMA).

72. Other public authorities receive ownership information on the companies they regulate. By virtue of section 54(5) of the Investments and Securities Act, all sales and transfers of shares of a public company must be filed with the Securities and Exchange Commission. Changes in ownership information of public quoted companies must be lodged with the Nigerian Stock Exchange. In addition, changes in share ownership of a public company resulting in transfer of at least 5% of the total voting interest in the company must be filed with the Securities and Exchange Commission (SEC Rule 109A). The Central Bank of Nigeria also holds ownership information about all banks operating in Nigeria.

Registration in practice

73. CAC registers business names for all entities in Nigeria. Entities seeking to start a business file online application for registering their business name. Name search of business is performed online. The processing of business names by CAC is real time based. Information recorded during this process are: name of proprietors/partners, residential addresses, nature of business, branches, phone numbers, email addresses, age, photo identity and photos of partners. If there is any change in the information recorded, CAC should be informed. The identity document should be either a passport or a driving license or a national identity card. The certificate of registration

of business name contains the business name, general nature of business, address of the principal place of business and the date of registration.

74. A company filing application with CAC for registration has to file the evidence of approval of business name, completed and duly signed and sealed incorporation forms, resident permits for resident foreigner shareholders/directors etc. Post-incorporation, a company needs to inform the CAC for change in directorship (form CAC 7A), re-registration or conversion of company (form CAC 2.7), change of registered address (form CAC 3) and return of allotment (form CAC 2A). The changes in most cases must be filed with CAC within 14 days of the resolution by concerned companies. Annual returns are to be filed by all companies registered with CAC immediately after 42 days of the holding of the annual general meeting for the year.

75. There are some internal checks in the system to ensure regulatory compliance of companies. Without a company being registered by CAC, the company cannot open a bank account or obtain a TIN from FIRS. A company is not formed until it is registered with CAC. Under section 559 of CAMA, it is an offence to carry on business under the guise of a company without registration with CAC. In practice, if the registration documents delivered to CAC are verified to be correct, the certificate of registration is issued within 24 hours. In the case that a company is to operate in a regulated sector such as banking or insurance or securities market, the company must obtain an Approval-in-Principle (AIP) from the relevant authority before it is registered by the CAC and will attach the AIP as part of the registration documentation.

76. Particulars of persons holding shares of a company at the date of filing of the annual return are to be furnished in the annual return. Changes in shareholding during the year are not reported to CAC but the shareholder registers are to be kept by the companies concerned and the addresses where the registers are kept are furnished in the annual returns. Audited financial accounts should be mandatorily annexed to the annual returns. All the documents are scanned and uploaded to the CAC site. CAC conducts random enforcements based on complaints or risks. Surprise checks are conducted by the inspection unit of the compliance department of CAC to the suspected companies. This unit is staffed by 120 officials. During 2012, CAC conducted on-site inspections on 504 companies. Similarly, for years 2013 and 2014, inspections on 976 and 1 539 companies were conducted by CAC. As a normal practice, all the statutory books are verified during the inspections.

77. The annual reporting requirement is mandatory for all companies registered with CAC. Total number of companies registered with CAC, number of companies that filed annual returns and their compliance levels during the review period is as follows:

Year (ending 30 June)	Number of companies registered	Number of companies filed annual returns	Compliance rate (in %)
2011	1 075 474	74 636	7
2012	1 179 821	61 292	5.2
2013	1 031 110	58 354	5.6
2014	1 296 363	45 185	3.5

78. As seen from the above, the compliance rate of companies that are obligated to file annual returns (the main source for updated identity and ownership information) was in the range of 3.5-7 % during the review period. CAC state that it is aware of the problem of the low compliance rate of companies, which is on account of unique issues in Nigeria. One is that more than 50% of companies registered with CAC are dormant/inactive as it is a common practice in Nigeria to register companies with the intention of doing business activities at a later date and to register business names. Second, out of the companies that are active, most of them are domestic small scale enterprises and are either unaware of the legal obligations or lax in filing annual returns as it involves cost and they are generally out of the radar of CAC's enforcement net owing to their low risk nature.

79. Based on the statistics available with CAC, the Nigerian authorities state that out of the companies that are active, most of them are domestic small scale family enterprises, membership of which is mainly composed of family members and that the identity and ownership information of these category of companies rarely change. They added that companies are obligated to only notify the CAC when changes occur in their ownership information by filing updated ownership information in Form CAC 2A "Return of Allotment", which is the the primary source of updated ownership information on companies. The information in annual returns (compulsory for all companies registered with CAC) only put the CAC on notice of any disparity between the identity and ownership information on record and those in the annual returns. When such disparities are observed in the annual returns, the CAC rejects the returns and requests the companies to update their identity and ownership information on record. Further, according to Nigerian authorities, the overwhelming proportion of companies and business names/ partnerships in Nigeria is composed of artisans, retailers, general traders, personal service providers and small family businesses which rarely witness changes in ownership. Accordingly, their identity and ownership information remains largely constant. As such, the obligation to update ownership and identity information in respect of these classes of business rarely arises, but fictitiously creating an impression that there is low compliance.

80. Further, the Nigerian authorities state that out of the total number of companies registered with CAC, only a very small proportion of them consists of "companies other than small companies" (i.e. companies having turnover of more than NGN 2 million or net assets of more than NGN 1 million or any of its shareholders is an alien, etc.). This list includes multinational companies, stock-exchange listed companies and large unlisted public or private companies. The authorities also state that although the exact number of "companies other than small companies" filing annual returns with CAC is not readily available, these companies constitute an overwhelming percentage of companies that file annual returns. This assertion of CAC is based on the off-site inspections conducted over the years and through sample studies. The statistics on the percentage of "companies other than small companies" is as follows:

Year (ending 30 June)	Total number of companies registered	Number of "companies other than small companies" registered	Percentage of "companies other than small companies" out of total number of companies registered	Number of companies filed annual returns with CAC
2011	1 075 474	73 074	6.8	74 636
2012	1 179 821	81 998	7.0	61 292
2013	1 031 110	91 713	8.9	58 354
2014	1 296 363	101 667	7.8	45 185

81. The Nigerian authorities state that for any approval required by companies from CAC under CAMA, they need to maintain their filing obligations up-to-date without which CAC does not accept applications from companies. There are other additional regulations specified by CBN on companies doing foreign exchange transactions (capital investments/loans or operational income/expenses) and are monitored by authorised dealers through which foreign currency remittances are undertaken by companies. The monitoring includes obtaining Tax Clearance Certificate before remitting foreign currencies from or to the Nigerian entities. Nigerian authorities state that the compliance rate of companies with FIRS is thrice that of CAC and the compliance levels are improving. These factors, according to Nigerian authorities, ensure that the companies relevant for this review purpose are closely monitored and information is available in practice.

82. CAC state that acknowledging the low compliance rate of companies in adhering to legal obligations under CAMA, it launched the striking off exercise in 2008. As per CAC, this was a very elaborate exercise wherein those companies that have never filed annual returns once in their existence were shortlisted and opportunities had been provided to them to update their records. In 2010, 9 341 companies were struck off from the CAC's register. The next round of the striking off exercise started in 2013. CAC states that it has completed all the legal requirements for striking-off of defaulting

companies and the next list of struck off companies will be published soon. Nevertheless, the actions of CAC seem to have not served as deterrent on the companies not complying with the legal obligations and the compliance numbers have not improved.

83. CAC has offices in all the States of Nigeria including the National Capital Territory. Applications are received in these offices wherein verifications are done. Once business names are allotted, all the documents are moved to the central office of CAC in Abuja. The archival system of documents is centralised and files are sent to the central office every month. For CAC, accessing information is easy as it is centrally located. The online database of CAC is real-time connected with the FIRS and Tax Information and Exchange Unit (TIEU) offices. Therefore, if the EOI request is limited to registered information available online, the information is retrieved instantaneously. The records of the CAC are kept in perpetuity.

84. The Securities and Exchange Commission (SEC) supervises and regulates public and fixed income securities. As of June 2015, there are 192 companies registered with SEC. Market participants are also registered with SEC, which licenses and regulates them. SEC has designated one of the directors as focal officer for liaising with FIRS. There are 23 Registrars licensed by SEC. Registrars maintain shareholder registers of all companies traded in the Nigeria Stock Exchange (NSE). SEC conducts regular inspection to monitor corporate governance of publicly traded entities to protect investors and uphold market confidence. 182 on-site and off-site inspections were conducted by SEC during 2013-14 based on complaints and by in-house monitoring. In 2014, SEC cancelled licenses of 3 market operators while the NSE delisted 7 companies and penalty to the extent of NGN 855 million was imposed on the operators failed to comply with rules. In 2015, 84 companies had their licenses cancelled by SEC for reasons including from failure to file returns, failure to meet up with the minimum capital requirement and inactivity. Market infractions are penalised and a separate tribunal has been instituted by Nigeria for expediting appeals. The statistics on enforcement action of SEC is as follows:

Securities and Exchange Commission							
Record of inspections and penalties of capital market operators							
Year	Fined	Inspection	Suspension	Referred to other Agencies	Sealed off	Recommended for wind up	Withdrawal of license
2011	9	125	9	14		5	
2012		165	12	49	29	7	35
2013		73	17	64	21	6	

Foreign companies

85. A company incorporated outside of Nigeria, which has the intention of carrying on business within Nigeria must take all steps to obtain incorporation as a separate entity in Nigeria (CAMA, s. 54). Until the company is so incorporated, it is not allowed to carry on business in Nigeria, and infringement is subject to a penalty of not less than NGN 2 500 (see also section A.1.6 below).

86. In Nigeria, a company that is registered under the CAMA is regarded as a Nigerian company, whether or not the owners are Nigerian residents. Accordingly, the requirements of CAMA governing ownership and accounting information are the same irrespective of the residence status of the owners. This position will not change even if all the activities of the company are carried on outside Nigeria. The CAC therefore receives information on the legal owners of the company at the time of registration and updates after registration (and all types of companies must keep a register of members). All companies must thus provide ownership information to the CAC at the time of registration. The same penalties apply to all companies incorporated in Nigeria, whether or not they carry out business in Nigeria.

87. The CAMA allows for some exemptions to the provisions that are laid down in section 54 on incorporation under the CAMA, in sections 56 to 59. These apply to foreign companies that are invited by Nigeria to undertake a specific individual project, foreign companies that are in Nigeria for the execution of a specific individual loan project on behalf of a donor country or international organisation, foreign companies engaged solely in export promotion activities, and engineering consultants and technical experts on contracts approved by the Government of Nigeria. There are currently 77 such exempted companies operating in Nigeria, mostly international non-governmental organisations.

88. The exemptions are available to foreign companies only when they have duly applied for such an exemption. The application needs to be addressed to the Secretary to the Federal Government and has to provide details that include the name and place of business of the foreign company outside Nigeria and in Nigeria, the name and address of each director, partner or other principal officer of the foreign company, a certified copy of the charter, statutes, memorandums and articles of association, the names and addresses of the persons resident in Nigeria authorised to represent the company. Whether ownership information is included in these documents would depend on the law of the country of origin of the company, i.e. on whether this law requires all subscribers to be named in the statutes. Every exempted foreign company must make an annual report in a prescribed form to the CAC with no ownership information but the company name, place/country of registration date of registration principal place of business, share capital, date of exemption, description of business in Nigeria, expected date of completion of business in Nigeria and name,

address and contact details of principal officers, directors and representatives. Exempted foreign companies need not keep a register of members in Nigeria as they are treated as unregistered companies (section 58, CAMA, but ownership information is provided to the tax authorities, see below).

89. CAC treats a foreign company registered in Nigeria (excluding exempt companies) similar to a Nigerian company for monitoring and regulatory purposes. The filing requirements are the same for all companies irrespective of their ownership pattern. Similarly, foreign companies are subject to the same system of oversight and enforcement programme as is applicable for domestic companies. Exempted companies file annual report but there is no legal requirement for them to disclose ownership information under CAMA. These companies are exempt from payment of tax but are not exempt from the obligation to file annual returns with tax authorities and their tax returns are filed with the relevant tax offices of FIRS. The applicable tax return form is the same as that of other domestic companies and therefore the identity and ownership information of exempted companies are available with the tax authorities. Further, all companies (including foreign companies) that have controlled transaction with a related party are required to file Transfer Pricing returns with the FIRS. These returns include the Transfer Pricing Declaration Form (which contains ownership information and records of the controlled transactions).

90. In addition to regular monitoring exercises conducted by CAC on foreign companies, CBN and its Authorised Dealers also monitor foreign companies. This is in view of the regulatory requirements on account of foreign exchange controls that impose obligations on foreign companies to update their filing requirements with CAC and FIRS. Under the Foreign Exchange Manual 2007 issued pursuant to Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 2004, for any outward remittances, entities need to file supporting documents for transactions, which include Tax Clearance Certificate (issued by FIRS only after ensuring that all the filings and tax obligations are fulfilled). For inward remittances (including share capital investments/loans), similar documentation relating to the companies that receive the remittances is submitted. Financial institutions also conduct enhanced due diligence measures on foreign entities in accordance with CBN regulation, 2013 to comply with AML/CFT requirements. Over the review period, Nigeria did not receive any requests relating to foreign companies in Nigeria.

91. Pursuant to the DNFI regulations 2013 issued under the Money Laundering (Prohibition) Act, 2011, all DNFIs in Nigeria conduct enhanced due diligence measures on high risk categories of customers which include all non-resident customers. In carrying out enhanced CDD measures, DNFIs collect updated identity and ownership information from their customers. In this manner, under the AML regulations, relevant information about foreign companies as required by the Standard is made available by DNFIs

Requirements under tax laws

92. Having registered with the CAC, all companies (including foreign and non-profit organisations) must register for tax purposes with the tax authorities and obtain a Taxpayer Identification Number (TIN; section 8(q) FIRS Establishment Act (FIRSEA)). Tax filing obligation and penalties for non-compliance under the CITA is also applicable to foreign companies. The Nigerian authorities indicate that foreign companies exempted from registration with the CAC must nonetheless register with the FIRS for tax purposes. All companies are also required to file tax returns when due. Ownership information is provided to the tax authorities at the time of registering and obtaining a TIN.

93. Section 55 of the Companies Income Tax Act (CITA) states that all entities, including those exempted from incorporation, whether or not a company is liable to pay tax for a year of assessment, have to file a self-assessment return with the Federal Inland Revenue Service (FIRS). This return, filed in prescribed form, must contain the audited accounts, tax and capital allowances allowing computation for the year of assessment and a true and correct statement in writing, containing the amount of profit computed from each and every source. This return must be attested by the director or secretary of the company. Section 55 does not formally require disclosure of shareholding information. Nigeria has indicated that the disclosure of shareholding details of principal shareholders is not statutorily required (except in respect of disclosure of ultimate holding company and of directors' shareholding) but is nonetheless done in practice as this information is part of the audited financial statements of companies annexed to the tax return.

94. Failure to comply with these requirements would attract a penalty (as penalty for late filing) of NGN 25 000 in the first month when the failure occurs and NGN 5 000 for each subsequent month in which the failure continues (EUR 120 and 24 respectively). These penalties have been further described in section A.1.6.

95. Ownership information is available to the tax authorities as the same is provided while registering and applying for a TIN under section 8(q), FIRSEA.

Tax registration and filing in practice

96. The Joint Tax Board (JTB), which was established under section 86 of PITA, is responsible for ensuring uniformity and harmony in tax administration in Nigeria. JTB consists of the head of FIRS and heads of 36 State boards, and is headed by the Executive Chairman, FIRS. JTB is responsible for implementing the unified TIN project in Nigeria. Registration under TIN project was started in 2012. As of June 2015, the TINs to resident and

non-resident taxpayers were distributed in 32 States. Registration of taxpayers (both individual taxpayers and corporates) for TIN is done by filing online application along with necessary identification documents. For individuals, the identity document could be: Passport, national identity card, driver's licence, resident permit, voter's card or staff identity card of any recognised organisation. For corporates, the identification document is the Company's registration certificate number (RC Number). The registration process of individuals includes registering biometric identification for individuals to ensure non-duplication. The documents necessary for registration are scanned and attached to the online application. As at 30 November 2015, the total number of TIN registered is approximately 800 000. TIN has been widely accepted as the identification document for opening bank accounts or any dealing with government agencies for registrations or conducting a number of transactions such as import/export licenses, real estate registration etc. All legal entities must be registered with FIRS or SBIRs for tax compliance purposes.

97. The registration for TIN is online through the Online Taxpayer Registration Portal and is an electronic system generated number. Once a company obtains TIN number, and if it is involved in business activities, then the company has to register its file with local tax office of FIRS. Further, for the purposes of VAT, within 6 months of incorporation, a separate registration is done with the FIRS. The deadline for filing company income tax returns is within 6 months from the end of the accounting period for that company or within 18 months from the date of its incorporation whichever is earlier. The deadline for filing personal tax returns on salary income (filed by employers on behalf of their employees) is on or before 31 January every year whereas the deadline for filing personal tax returns on incomes other than salary is on or before 31 March.

98. If any entity stops filing tax returns, this anomaly is automatically detected by the FIRS IT system and the name will be included in the list of non-filers/stop-filers generated after the due date for filing returns. The FIRS auditors make a Best of Judgement (BOJ) assessment of the entity based on the third party information available with FIRS and on the previous years' revenue and income information. If the taxpayer agrees with the BOJ assessment, he needs to pay taxes and let the case closed by the tax authorities. But this situation automatically triggers a case for further investigation and in the event, a reference is made to the special investigation department for intrusive probing. If the taxpayer feels that the assessment is not realistic, he approaches the tax office; file the tax return with all supporting information; pays taxes as per his self-assessment and pays penalty for late filing of tax returns.

99. Any company filing annual income tax return submits the following information: CAC issued Certificate of Incorporation; CIN number;

Memorandum of Association; details of bank accounts; name and address of the tax auditor/tax consultant; registered and business address of the company; name and address of the directors and shareholders; nature of business; accounting year information; date that the company commenced business; and share capital structure. This requirement is applicable to all companies, which includes exempted companies.

100. In addition, employers file returns for withholding tax information in paper format. They can also file electronic returns at their choice through the FIRS web portal. Resident individuals or those individuals having income in Nigeria file their income tax returns with State BIRs in form A at the beginning of the year. As of now, all individuals file their annual income tax returns in paper format. The information attached with the tax returns is: name, address, TIN number, all the supporting documentation in relation to income earned, bank accounts information, all accounting records, and supporting documentation. The income tax determination is based on the self-assessment of entities based on the income of the preceding year.

101. Another source of identity and ownership information is the filing of tax returns. In 2007, the structure of VAT administration was changed. Presently, income tax and VAT are administered in one office. VAT returns are filed under section 15 of VAT act in form 002 every month. Penalties are imposed by FIRS officials if returns are either filed late or not filed at all.

102. All companies, irrespective of earning taxable income or not, must file annual tax returns. The total number of companies registered with FIRS, number of companies that filed annual returns and their compliance levels during the review period is as follows:

Year	Number of Companies registered	Number of companies filed annual returns with FIRS	Compliance rate (in %)
2012	215 656	60 892	28.2
2013	377 258	92 417	24.5
2014	539 628	131 414	24.4

103. The number of companies registered with FIRS is far less than that of companies registered with CAC although all companies are required to register and file annual tax returns. The existing procedure is that a company first registers with CAC and then proceeds to FIRS to register for TIN. Nigerian authorities state that since it is possible in Nigeria to register companies with the intention of doing business activities at a later date, most of the companies that did not do any business and have become dormant/inactive are not registered with FIRS. However, FIRS and CAC are in the process of integrating CAC and FIRS database systems such that a company registered at CAC is automatically registered at FIRS.

104. The Nigerian tax authorities state that the compliance levels of companies registered with the tax authorities are better than that of CAC. FIRS officials also state that out of those companies registered with FIRS, 20-30% of those companies are dormant (83 950 in 2012, 104 768 in 2013 and 111 375 dormant companies in 2014). Nigerian authorities explained that under the Self-Assessment system, the Tax office maintains an annual filing compliance programme, which amongst other things requires Tax officers to conduct routine visits to taxpayers who fail to file Tax returns after the expiration of the due date. The dormancy status of businesses is confirmed by such routine monitoring visits.Nigeria is of the view that if the dormant companies are excluded from the statistics for compliance, the compliance rate would be doubled and therefore the actual compliance levels of active companies are good. One of the reasons for higher compliance levels with the tax authorities is that no company can commercially deal with government agencies or commercial banks unless it submit a tax clearance certificate for which updated tax return filing is mandatory.

105. In addition to the monitoring of tax filing obligations, there is a system of oversight of the ownership obligations under the CITA in place by FIRS in the form of desktop reviews and an active system of on-site inspections of entities registered for tax purposes. The audits are risk based. One of the audit points is to verify the shareholders register for any discrepancies. In 2014, 2 970 on-site audits were concluded while 2 273 were concluded in 2015.

106. With respect to foreign companies, Nigerian authorities indicate that most of the foreign companies registered with FIRS file their annual tax returns with the Large Taxpayer Office of FIRS and are audited regularly. Further, FIRS has a separate unit for transfer pricing audits. This unit audits large taxpayers with related party and controlled transactions. The number of foreign companies that filed returns with Large Taxpayers Office (LTO) of FIRS in 2012 is 115, 127 in 2013 and 77 in 2014. 648 companies filed Transfer Pricing returns with the FIRS' Transfer Pricing Division in 2014 and 437 companies have filed as of November 2015. Therefore, identifying non-filers/stop filers of tax returns among foreign companies and monitoring foreign companies is effective as compared to domestic companies. Further, foreign companies are subject to enhanced due diligence measures from financial institutions and DNFIs, which require updated documentation on identity and ownership information.

Ownership information held by the companies

107. Under section 83(1) of the CAMA, every incorporated company is required to keep a register of its members/shareholders. (These provisions do not apply to exempted foreign companies as they have the status of unregistered companies pursuant to section 58, CAMA).The register must contain

(i) the names and addresses of members, (ii) number of shares or stocks held by each member, (iii) amount paid or agreed to be paid on the shares so held, (iv) the date registered as a member, and (v) the date ceasing to be a member. Any change must be noted in the register within 28 days of its occurrence (section 83(2), CAMA).

108. Further, every company having more than 50 members is required to keep an index of members or otherwise maintain its register of members in such a way as to constitute an index. The index must contain sufficient indication to enable the account of that member in the register to be readily found. Every company is also required to keep a register of the particulars of directors' shareholding.

109. If a company fails to comply with the obligation under section 83, the company and every officer of the company who is in default is liable to a fine of NGN 25 (EUR 0.12) and daily default fine of NGN 5 (EUR 0.024).

110. The register should normally be kept at the registered office of the company (section 84, CAMA). However, if the work of making the register is carried out at an office other than the registered office, the register could be kept there. In case the work of making the register is given by the company to another person, the register could be kept at the office of that person. Section 84 of the CAMA makes it clear that the register cannot be kept at a place outside Nigeria in the case of a company that is registered in Nigeria. Every company is bound to inform the CAC of the location of the register if it is not kept at the registered office of the company and any change in its location (section 84, CAMA). Failure to provide this information to the CAC makes the company liable to a fine of NGN 10 (EUR 0.048) and daily fine of NGN 5 (EUR 0.024) while the default continues. The index of members, which needs to be kept for companies that have more than 50 members, needs to be kept at that same place as the register of members. Default of maintaining the index itself or not keeping it at the prescribed place invites a fine of NGN 50 (EUR 0.24).

111. The register of members must be kept open during business hours and any member of the company can inspect it free of charge (section 87(1), CAMA). Other persons can also inspect the register of shareholder with the permission of the company and subject to the payment of a fee of NGN 1 (EUR 0.004) maximum. In case such an inspection is refused to a member, the officer of the company who is liable for this default is liable to a fine of NGN 10 (EUR 0.048) (section 87(3), CAMA).

Ownership information held by service providers

112. Service providers are required to carry out Customer Due Diligence (CDD) on their customers (section 2.6, CBN AML/CFT Regulation, 2009, AML/CFT manual of the SEC). The duties upon the financial service

providers include verifying their identities using reliable, independently sourced documents, data or information. Service providers also need to identify the beneficial owners and take reasonable measures to verify his/her identity using relevant information or data from independent sources. Designated Non-Financial Institutions (including legal practitioners) are also required to carry out CDD (Paragraph 2 of the SCUML and KYC Manual).

113. To strengthen the monitoring and supervision of Non-Financial institutions and financial service professionals, Nigeria enacted Federal Ministry of Industry, Trade and Investment (Designation of Non-Financial Institutions and other related matters) Regulations, 2013. In accordance with this regulation, the DNFIs are required to undertake CDD measures which include identifying a customer, whether existing or occasional, natural or legal person, or any other form of legal arrangements, using identification documents as prescribed in relevant laws and regulations. DNFIs are also required to verify the identity of the customers using reliable, independent source documents, data or information and identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner in the similar manner. Further, where the client or customer is acting on behalf of another person, the DNFIs are required to take reasonable steps to obtain sufficient identification data to verify the identity of that other person.

114. On the issue of ascertaining the beneficial ownership, section 25 of the Money Laundering Prevention Act refers to a "beneficial owner" as (i) a natural person who ultimately controls a customer, (ii) the natural person on whose behalf the transaction is being conducted and (iii) a person who exercises ultimate effective control over a legal person or arrangement. Thus, beneficial ownership is interpreted as the person behind a nominee as far as the chain can go.

115. CAMA requires that every application for registration of a company with the CAC be supported with a statutory declaration by a legal practitioner stating that all the requirements of the Act for the registration of a company have been satisfied. In the standard form for this declaration (Form CAC4), the legal practitioner is obligated to take reasonable steps to verify the information (including ownership information) disclosed in the application. The information that needs to be verified is that specified under section 35 of the CAMA (discussed earlier in this report), including the identity of the subscribers of a new company. Form CAC4 is basically a verification statement that is signed by the legal practitioner before a Commissioner of Oaths or Notary public that he/she has taken all reasonable steps to verify the said information. In case the CAC decides to refuse the declaration, it shall within 30 days of receipt of the declaration send the applicant the notice of the refusal and the grounds for doing so.

116. As stated above, the legal practitioner is obligated to take reasonable steps to verify the information (including ownership information) disclosed in the application. On what is "reasonable steps" to verify the information that is contained in the CAC4, is governed by the Money Laundering Prevention Act. Section 3 states that "A Financial Institution and Designated Non-Financial Institution shall (a) Identify a customer, whether permanent or occasional, natural or legal person, or any other form of legal arrangements, using identification documents as may be prescribed in any relevant regulation; (b) Verify the identity of that customer using reliable, independent source documents, data or information; and identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the Financial Institution or the Designation Non-Financial Institution is satisfied that it knows who the beneficial owner is". The identification requirements are also mentioned at section 5 of the MLPA. Section 5(6) of the MLPA prescribes penalties for the non-compliance of these requirements. A Designated Non-Financial institution that fails to comply with the requirements on customer identification and the submission of returns on each transaction as specified in this Act within 7 days from the date of the transaction commits an offence and is liable on conviction to (a) a fine of NGN 250 000 for each day during which the offence continues; and (b) suspension, revocation or withdrawal of licence by the appropriate licencing authority as the circumstances may demand.

117. Section 25 of the MLPA defines, "financial institution" to include banks, body association or group of persons, whether corporate or incorporate which carries on the business of investment and securities, a discount house, insurance institutions, debt factorisation and conversion firms, bureau de change, finance company, money brokerage firm whose principal business includes factoring, project financing, equipment leasing, debt administration, fund management, private ledger service, investment management, local purchase order, financing export finance, project consultancy, financial consultancy, pension funds management and such other business as the Central Bank or other appropriate regulatory authorities may from time to time designate. An OTC transaction is defined to include "financial investments and securities transaction processed through a bank without reference to a bank account or one that is normally carried out otherwise than in organised exchange market and without any prescribed form".

118. The legal provisions that Nigeria is relying upon covers the legal practitioners who fill in the CAC4 form as legal practitioners are included in the definitions of DNFI covered by the SCUML AML/CFT Regulation and Know Your Customers Manual. The Know Your Customer Manual provides detailed steps to be taken by a DNFI in order to verify the identity of clients or customers (sections 3, 5 and 25, MLPA). Penalty for false declaration

in Form CAC 4 includes prosecution for the criminal offence of perjury (i.e. false declaration under oath) punishable with fine or imprisonment or both fine and imprisonment (Section 560, CAMA).

Ownership information held by service providers in practice

AML obligation in practice

119. The Nigerian Financial Intelligence Unit (NFIU) is the central national agency in Nigeria, responsible for the receipt and analysis of financial disclosure (Currency Transaction Reports (CTRs) and Suspicious Transaction Reports (STRs)) and dissemination of intelligence generated therefrom, to competent authorities in order to counter money laundering and terrorism financing. Nigeria has an effective AML/CFT regulatory framework consisting of statutory regulatory agencies mandated to oversee the activities of operators under their respective purview.

120. The following supervisory agencies co-ordinate with NFIU for proper and effective implementation of AML/CFT regime in Nigeria. Each of these agencies has regulations that guide the operations of their operators and empower these agencies to monitor the activities of these agencies. The regulations are as follows:

- Central Bank of Nigeria (Anti-Money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions in Nigeria) Regulations 2013;
- National Insurance Commission (Anti-Money Laundering and Countering the Financing of Terrorism) Regulation 2013;
- Securities and Exchange Commission (Capital Market Operators Anti-Money Laundering and Combating the Financing of Terrorism) Regulations 2013;
- The Anti Money Laundering/Combating the Financing of Terrorism (AML/CFT) Regulations for Designated Non-Financial Businesses and Professions in Nigeria, 2013 – administered by the Special Control Unit against Money Laundering (SCUML).

121. NFIU being the nodal agency for AML monitoring, it has access to various databases:

- In-house database (Secure GOAML platform) on financial institutions, intelligence information based on STRs, CTRs, etc.
- Customs declaration
- Drivers' license

- International passport information
- Company registration
- Mobile subscriber information
- Asset declaration
- The NFIU carries out off-site compliance examination on renditions received from reporting entities.

122. NFIU's regulatory role is complemented by EFCC, which is the enforcement agency for investigating crimes committed under various economic laws and crimes under AML/CFT legislation. Economic offences will be referred by supervisory agencies and NFIU to EFCC. NFIU receives STRs and CTRs from reporting agencies and other intelligence information from supervisory agencies. Within NFIU, the Compliance and Enforcement Department is responsible for receiving financial reports and conducting off-site and on-site checks on reporting entities in line with AML/CFT measures. The Monitoring and Analysis Department is responsible for the analysis of financial reports with a view to developing actionable intelligence packages for Law Enforcement Agencies, Anti-Corruption Agencies, and counterpart FIUs. Also it is primarily responsible for responding to domestic and international requests for information. The Compliance and Enforcement Department conducts off-site checks on a quarterly basis on the quality, validity and timeliness of reports filed by the reporting entities with NFIU. As a result, exception reports are generated and findings are communicated to the erring reporting entities for explanation. Where a prima facie case is established, NFIU sends advisories for sanctions and penalties to regulators/supervisors from off-site examinations carried out by it. On-site checks are usually conducted as the need arises (spot and targeted) and sometimes along with sector regulators. The statistics on the number of entities on which on-site checks were conducted by NFIU is as follows:

S.No	Period	No of entities	Type of inspection
1	2012	29	Maiden and Target Examination
2	2013	22	Target Examination
3	2014	1	Target Examination
4	2015	1	Target Examination

Ownership information held by nominees

123. Nominee ownership is allowed in Nigeria, but full identity information of persons on whose behalf a nominee is acting must be disclosed to the public authorities.

124. In a public company, a person (including an individual or a legal person) who either directly or through an individual or corporate nominee, holds shares that entitles him/her to exercise at least 10% of the unrestricted voting rights at the company's general meeting, is required to give the company written notice stating his/her name and address and full particulars of shares so held (including the name of the nominee) (section 95, CAMA). This notice has to be given to the company within 14 days of the person becoming aware that he/she is a substantial shareholder. This notice needs to be given despite the fact that the person may also cease to be a shareholder within this period of 14 days. Failure to provide this information will make the person liable to a penalty of NGN 50 (EUR 0.24) for every day that the default continues.

125. In addition, a public company is empowered to require all persons holding shares in that company other than as beneficial owner, and absent any consideration of threshold in percentage of shares, to indicate in writing in what capacity he/she is holding the shares and if he/she holds the shares not as beneficial owner, to disclose the identity of the person(s) interested in the shares (section 94(1), CAMA). Section 94 also requires the nominee to indicate whether the persons interested in the same shares are party to any agreement relating to the exercise of any rights conferred by the holding of these shares.

126. Under section 94(4), any person who fails to comply with a notice under section 94(1) or provides a statement that is false in a material particular, shall be liable to imprisonment for six months or a fine of NGN 25 for each day that the default continues. Public companies must keep "a register of interests in shares" that contains information received pursuant to sections 94 and 95.

127. Private companies do not appear to have any obligation to keep ownership information on the persons on whose behalf a legal owner may act. At the time of registration, where shares are held in trust by a subscriber, the latter must disclose this fact in the memorandum along with the name of the beneficiary (s. 27 CAMA). However, under the amended anti-laundering regulations (discussed below), nominees are required to maintain the actual ownership information at any point of time.

128. To strengthen the monitoring of service providers, Federal Ministry of Industry, Trade and Investment (Designation of non-financial institutions and other related matters) Regulations 2013 was issued by the Government under sections 5(4) and 25 of the Money Laundering (Prohibition) Act, 2011. Through this regulation, the following categories of professions were added to the existing list of DNFIs for the purposes of registration, reporting and conduct of customer due diligence: law firms, notaries, and other independent legal practitioners, accountants and accounting firms, and trust and company

service providers. With the existing list of DNFIs such as chartered accountants, audit firms, tax consultants, legal practitioners etc. as reporting entities and the new list of DNFIs, Nigeria has covered all kinds of professionals rendering services to entities in Nigeria as reporting entities for AML purposes.

129. SCUML is responsible for the registration, supervision and monitoring of the activities of DNFIs in Nigeria, in collaboration with NFIU and other relevant regulators (CBN, CAC, SEC etc.), professional bodies and self-regulatory organisations (ICAN, Bar Council etc.). In consultation with SCUML and NFIU, the self-regulatory organisations are responsible for: registering and compiling the names of its members; developing an internal compliance system and training programmes for its members on AML/CFT obligations and due diligence measures; monitoring its members to ensure compliance with the AML regulations; and applying relevant administrative sanctions on its members, including revocation, withdrawal and suspense of licence of members for failure to failing in their duties.

130. The reporting obligations of law firms, notaries and other independent professionals; audit firms; accountants and accounting firms shall arise when they render services to and carry out transactions for any client concerning, among others, acting or arranging for another person to act as a nominee shareholder for another person. The trust and company service providers are also covered under the reporting obligations when they are acting as or arranging for another person to act as a nominee shareholder for another person.

131. Under the DNFI regulations 2013, the requirements for CDD are applicable to all new customers as well as, on the basis of risk, to existing customers or beneficial owners. One of the special circumstances under which DNFIs should identify, record and verify all of their clients' identities is when they are acting as arranging for another person to act as a nominee shareholder. A DNFI failed to comply with these regulations is sanctioned in accordance with the MLPA. NFIU and SCUML may apply administrative sanctions under MLPA or any other laws or regulations. The relevant self-regulatory organisation or professional body may also apply administrative sanctions and shall withdraw, revoke, or suspend the licence of professionals where there is persistent and deliberate breach of provisions of the DNFI regulations 2013 or MLPA 2011 and any other related laws.

132. The SCUML authorities stated that with the additions in the list of professionals as DNFIs by the DNFI regulations 2013, all persons acting as nominees in Nigeria are regulated by SCUML. To ensure that all the existing service providers acting as nominees register with SCUML and regulate their activities, SCUML collaborated with CBN and other agencies for creating internal checks in the financial system. For instance, CBN issued a circular (No. FPR/CIR/GEN/VOL.1/028) dated 2nd August, 2012 to all banks and

other financial institutions that prior to establishing business relationship with DNFIs, financial institutions should confirm that a DNFI has registered with SCUML of the Federal Ministry of Industry, Trade and Investment. Further, the banks and other financial institutions should update their records of the existing customers within 6 months from the date of this circular and the defaulting customers' accounts should be closed. The list of DNFIs was expanded by the CBN circular in accordance with the new SCUML regulations. According to SCUML authorities, this initiative automatically translated into more registrations and supervisory work. Number of trust and company service providers registered with SCUML is 1 282. There are 2156 legal practitioners, 1989 chartered/professional accountants, 133 audit firms and 119 tax consultants registered with SCUML as DNFIs.

133. SCUML is pursuing all means to get all the existing DNFIs registered and regulated. To avoid the situation wherein a non-professional renders nominee services without being registered with SCUML, banks and financial institutions were advised by SCUML that they should continuously monitor the existing accounts and detect changes in customer's pattern of transaction. Thus when an entity deviates from its stated line of business into that of a DNFI, evidence of registration with SCUML must be obtained immediately in respect of that customer. Similarly, Banks and financial institutions require the business name certification issued by CAC from their clients as part of CDD operations. Since this certificate specifies the line of business/profession/activities, the entity or individual needs to register with SCUML without which he cannot open a bank account. A total of 82 advisories were issued by SCUML between 2011 to 2014 to Banks and Self-Regulatory Organisations on DNFIs. The office of SCUML has a separate division for monitoring and inspections. 56 on-site inspections were conducted by SCUML in 2012 in collaboration with EFCC to test the level of compliance with Money Laundering Prevention Act 2011 (MPLA). A total of 14 service providers were found not to be complying. Their business premises were sealed off and the cases were referred to EFCC for further investigation. These investigations are ongoing as of November 2015. The outcome of the inspections led to the issuance of SCUML Regulation 2013 and the CBN circular on registration of DFNIs. Following this, instead of inspection, 1 572 sensitisation visits were carried out on DNFIs in 2014 to create awareness on the obligations of DNFIs in accordance with SCUML Regulation 2013 and the CBN circular. Full inspection resumed in October-December 2015 in which 176 DNFIs were inspected across Nigeria.

134. The SCUML authorities stated that one of the registration requirements with SCUML for any person providing company services (including nominee services) is that he should have a license from one of the professional bodies or self-regulatory agencies. Therefore, in practice, only a chartered accountant or a lawyer can perform the services of a nominee shareholder.

These measures are taken by SCUML for administrative purposes to ensure strict regulation of these activities and service providers. SCUML has not received any objection for these administrative measures. Any unregulated service provider could face sanctions under the DNFI regulations 2013 and MLPA. When infractions are observed, the same is recommended to the reporting entity's regulator who in turn is expected to impose administrative sanctions on the erring institution(s). EFCC, the enforcement agency takes active enforcement measures on the complaints from SCUML or other regulatory authorities. During the review period, SCUML referred 14 unregulated service providers to EFCC for further investigation and prosecution. Investigation is still ongoing.

135. By administrative arrangements with CAC and CBN, SCUML has ensured that only the professionals certified by a self-regulatory body and registered as DNFIs with SCUML can perform the nominee services to actual shareholders. Non-professional individuals are not permitted to obtain business names or to open bank account or to register with SCUML for rendering nominee services. Therefore, to conclude, the new DNFI regulation 2013, administrative actions of SCUML and collaboration of other agencies to control and regulate nominee service activities in Nigeria ensure that full identity information of persons on whose behalf a nominee is acting is available in Nigeria.

Bearer shares *(ToR A.1.2)*

136. Bearer shares cannot be issued in Nigeria. This has been the case since 1990 (section 149(1), CAMA) and the bearer shares that existed before that date have been converted into nominative shares or simply cancelled. Section 149(2) of the CAMA expressly provides that "Every company shall within a period of 30 days from the date of commencement of this Act, cancel any share warrants previously issued by it which are still valid on that date and enter in its register of members the names and relevant particulars of the bearers of the share warrants". Nigeria explains that under its laws, the "share warrant" is in fact the instrument held by the holder of the bearer share. This means the company holds ownership information in respect of all these persons. The CAMA has commenced on 2 January 1990. Failure to cancel share warrants in accordance with the provisions of the Act is an offence punishable under the Act (section 554, CAMA).

Partnerships *(ToR A.1.3)*

137. Nigerian law provides for different types of partnerships. The United Kingdom's Partnership Act, 1890 was adopted as a Statute of General Application into Nigeria. In 1959, the Western Region enacted its own

Partnership Law, which derived from the UK Partnership Act. Lagos State Partnership Law, 2009 (LSPL) and partnership laws of other States are substantially similar except for the introduction of the limited partnership and Limited Liability Partnership (LLP) (Lagos State only).

Types of partnerships

138. General Partnership (GP): exists in all States of the Federation. It arises either by express agreement of the parties or by operation of law. A General Partnership is not created under any statute in Nigeria. It is a formal or informal business relationship existing between two or more persons recognised under the common law. It is a business arrangement that does not guarantee partners' legal rights beyond those provided under common law and Received English Law on partnerships. General partnerships therefore do not need to be registered under the CAMA. However, if the number of partners in a general partnership exceeds 20, the partnership should be registered with CAC under CAMA as a company. General partnerships are normally used to carry out small local businesses and are mainly found in the informal sector among peasants.

139. Limited Partnership (LP): can be found in the old Bendel State (Delta and Edo States), Lagos and other Western States in which the Partnership Law of 1958 (Cap 86) of the former Western Region applies (section 46, Lagos State Partnership Law, 2009). If a limited partnership is not registered under the CAMA it is deemed to be a general partnership (Section 47, Lagos State Partnership Law, 2009).

140. Limited Liability Partnership (LLP): provided for in section 58 of the Lagos State Partnership Law, 2009.

141. As at October 2015, there are 48 Limited Partnerships and 31 Limited Liability Partnerships operating in Nigeria. A partnership can also be registered as a Business Name under Part B of the CAMA (section 573, CAMA and section 81 of the Lagos State Partnership Law, 2009). A person or entity must register a business name if the business name consists of more than the true surnames and forenames or initials of the partners, true surname and forename or initials of an individual or the corporate name of a corporation in the case of a firm, an individual or a corporation respectively. A Business Name is defined as the name or style under which a business is carried on whether in partnership or otherwise (section 588, CAMA). This is merely a partnership that registers a business name under the CAMA. The exceptions to this rule are (i) if the addition to the true surname and forename only indicates that the busines is carried on in succession to a former owner of the business name; (ii) if the addition is merely an "s" in the case of two or more partners with same surname and (iii) if the business name is carried on by a

receiver or manager appointed by any court (Section 573, CAMA). Nigeria reports that most registered partnerships in the States are registered with CAC as business names. As at 18 December 2015, the total number of business names registered under CAMA is 2 382 046. This number includes both partnership and non-partnership business names.

Ownership information held by government authorities

142. While not all partners are registered with the State Registrars, all must be registered for tax purposes.

Registration requirements

143. Pursuant to Section 8 (Partnership) of Personal Income Tax Act, any partnership, without notice of demand from SBIR, should register with the local office of the SBIR under which jurisdiction the principal office of partnership is located. The documents produced before the tax authorities include a certified copy of the partnership deed or, where no written deed is in existence, particulars of any written or oral agreement under which the partnership is currently established. After registration with the local tax office, if the partnership undergoes any change including change in partners, the subsequent change should be registered within thirty days of the occurrence of such changes. SBIRs ensure that the ownership information supplied by the partnerships at the onset of each tax year agree with the names supplied the previous year. Where there is a change that has not been reported and it is established that it has exceeded the statutory period, the penalties as stipulated in Section 94(1) of PITA (as amended) shall apply. However, there has been no instance where this has been recorded.

144. The requirements for registration of Limited Partnerships (LP) are substantially the same under the various State laws as they all derived from the Partnership Act 1890 of the United Kingdom. A Limited Partnership is required under section 49 of the Lagos Partnership Law, at registration, to furnish information to the State Registrar of Limited Partnerships including: the firm's name, general nature of the business, the principal place of business, the full name of each of the partners, the date of commencement, the sum contributed by each limited partner and whether paid in cash or otherwise. Section 48 of the LSPL provides for the appointment of the Registrar of Limited Partnerships and specifies that the Public Service Commission shall appoint any person that it deems fit as the registrar, who shall have his office at Lagos. The Registrar is located in a public authority in the office of the State Attorney General.

145. In case any change takes place in the material particulars (including changes in partners) of the LP, the change must be notified to the registrar

within seven days. In case there is a default on this account, each of the general partners is liable for a summary conviction and a fine of NGN 2 for each day that the default continues.

146. The Partnership Law of Lagos State 2009 also provides for the formation of Limited Liability Partnership (LLP). The following ownership information is required to be provided to the Registrar (same as for LPs) at registration: the name of the partnership; registered address of the partnership; and names and addresses of partners (Section 60(2) (a)-(f)). Any change in the ownership information must be disclosed to the Registrar within 14 days of the change (sections 50 and 70, Lagos State Partnership Law).

147. Partnerships registered as Business Names are required at registration to furnish the ownership information to the Registrar of Business Names (in the State where the business is carried out) including, the business name and the full postal address; full names of partners, nationality (if that nationality is not the nationality of origin, the nationality of origin), any other business occupation of each partner; and the corporation's name and registered office (section 574, CAMA). Any change in the ownership information must be disclosed to the appropriate State Registrar (section 577, CAMA).

148. Sanctions for non-compliance with filing of information are set out under Lagos State Partnership Law in the cases of Limited Partnership and Limited Liability Partnership (section 58 and 80), and under section 584 of the CAMA, in the cases of Partnerships Registered as Business Names. This has been further described under section A.1.6.

Requirements under tax laws

149. A Partnership does not pay income tax in its own name, but partners pay tax on their individual share of the profits of the partnership. Therefore, each partner is required to register and must furnish the tax authority with a certified copy of the partnership deed or, where no deed is available, particulars of any written or oral agreement within 30 days. Partners must also file returns individually with the tax authority in his/her State of residence or the Federal Capital Territory, as the case may be (section 8, Personal Income Tax Act).

150. Partnerships are nonetheless required to register for value added tax purposes and to file annual returns. The ownership information required to be furnished at registration includes full names and addresses of all partners, contact addresses of partners, form of identification (passport, driver's licence, resident permit etc.), date of birth of partners, and occupation of partners. The annual return filed by the partnership (though the incidence of tax is upon the partners) serves as a check in the details that are filed by the partners in their respective tax returns. The FIRS can always seek

information from the State Boards and then cross-check against the return filed by the partnership with the FIRS. For partners who are resident in the Federal Capital Territory, cross-checking is done internally by FIRS since both returns are maintained by the Service.

Information held by the partnership or partners

151. Limited Partnerships and Limited Liability Partnerships are required to keep records pertaining to the ownership and operations of the partnership. (Sections 25, 29 and 49, Lagos State Partnership Law 2009). These records include the firm name, the details of the business, the principal business conducted, name of the partners, sums contributed and the term of the partnership. Failure to maintain these details will result in a fine of NGN 100 000 (EUR 480) or a term of imprisonment for six months or any other non-custodial punishment. In addition, a penalty of NGN 1 000 (EUR 4.8) for every day in which the failure to make notification continues (section 80, Lagos Partnership Law).

152. General Partnerships and Partnerships Registered as Business Names are not subject to legal requirement for partners, nor are these partnerships required to keep information regarding the identity of the partners. However, all partners are required, for income tax purposes, to furnish the tax authority with a certified copy of the partnership deed or particulars of any oral agreement (section 8, Personal Income Tax Act).

Information held by service providers

153. Service providers (Financial Institutions and Designated Non-Financial Institutions) are required to obtain full identity of their clients using identification documents such as may be prescribed. Every service provider in Nigeria must obtain full particulars of partners such as: proof of identity (an official document bearing names and photograph or evidence of registration for corporate body), proof of address (confirmed by receipt of payment for public utility), and information as to the true identity of ultimate beneficial owners of accounts from persons acting on behalf of another person (Sections 3 and 5, Money Laundering (Prohibition) Act).

Partnership ownership information in practice

154. As of October 2015, there were 48 LPs and 31 LLPs registered with the State Registrars. Similarly, there are 16 325 General Partnerships generally registered with the CAC for business names and the process for doing so is similar to that as above outlined for companies (see section A.1.1 *Registration of companies in practice).* The application form (CAC/BN/1)

requires details such as proposed name of business, full address of principal place of business, full address of branches, identity and address information of all the partners of the partnership, date of commencement of business etc. wherever any change is made or occurs in the information provided to the registrar of business names (CAC), this change is notified in 28 days.

155. Upon submission of the relevant forms for registering a partnership, the relevant authority issues a certificate of registration. The returns filed by LPs and LLPs for change in ownership and annual returns filed by general partnerships with CAC contain all partners names, the general nature of the business, addresses of the partnership, names, address, occupation and other identification of the partners. The number of partnerships that filed annual return with CAC is as follows:

Year	Number of partnerships filed annual returns with CAC
2011	1 039
2012	912
2013	849
2014	1 101

156. Nigerian officials indicate that the information submitted is cross-checked with information provided with other authorities in order to ensure that partnerships are in compliance with their obligations. After registration of business name from CAC, the partnership through its employee or agent in charge of the principal office or place of business of the partnership, should approach the local tax office of the SBIR and get registered. A file is created in the tax office with all relevant information such as registration of business name, identity documentation and residence details of partners, partnership deed and all other information that the tax officer deems necessary. The changes in the partnership information filed with the tax office should be notified to the tax office. This filing requirement is mandatory for all partnerships and irrespective of whether a partnership is doing business in Nigeria or not.

157. Nigerian authorities state that the statistics on registered partnerships with tax authorities is not centrally available as each tax authority registers its taxpayers separately prior to the unified JTB TIN Project. However, each State authority maintains this information in one or other form. For example, 2 017 have been registered under the unified JTB TIN Project, 258 479 business names are registered with FIRS (which include partnerships), 2 partnerships are registered with the Edo State Internal Revenue Service, 86 registered partnerships are in Benue State Internal Revenue Service and 736 are registered with the Lagos State Internal Revenue Service. The authorities state that monitoring and enforcement is done through verifying annual filing of returns and following investigations. The legal and operational arrangement under the

auspices of JTB provides for close co-operation between FIRS and SBIRs for domestic exchange of information as well as for EOI with foreign partners. At the management level, the Heads of all the SBIRs and the Head of the FIRS meet regularly to, *inter alia,* discuss issues in exchange of information among the tax boards. At the operational level, the delegated competent authority and other designated officials of FIRS liaise with the focal officer of each board to obtain information. Since partnerships are registered with FIRS for VAT purposes, FIRS has sufficient information to identify the SBIR with which the income tax information of a partnership would be available. Nigerian authorities state that there has been close co-operation between SBIRs and FIRS for domestic exchange of information for VAT purposes, cross-checking partners income, verification of expenses etc., on a case-to-case basis. More recently, FIRS and SBIRs have collaborated to conduct joint audit on corporate taxpayers and their employees' income.

158. In practice, partners (for LLPs, LPs and GPs) are registered with FIRS/SBIRs as individual taxpayers. While filing annual tax returns, a partner includes his income from partnership and attaches the partnership deed as part of his filing requirement. Failing to file annual tax returns will lead to further enforcement measures by the tax authorities. Non-filers list is generated by the tax authorities and BOJ assessments are made. Notices are issued with tax liabilities on those taxpayers based on previous years' income and third party information. Penalties are levied for non-filing of tax returns separately.

159. Monitoring of partnerships is decentralised with 37 tax authorities in Nigeria. Nigerian authorities state that apart from the tax return filing obligations, all entities are subject to other filing return obligations under CITA and PITA. The provisions under Sections 78-81 of CITA and Sections 69-73 of PITA provide for withholding tax (WHT) deductions and filing of returns on WHT deducted. Where a partnership fail to comply with annual returns filing, such entity may be discovered through the WHT returns filed with the tax authorities by another entity that have made payments to them. For FIRS, the statistics of penalties on defaulting businesses (which include partnerships) are shown below:

Year	No. of records	Total amount (NGN)
2011	2 876	944 882,705.87
2012	4 565	947 268,160.11
2013	9 099	2 769,815 958.27
2014	11 798	3 534,127 887.58

160. Under the CBN's AML regulations, all the entities including partnerships having customer relationship with financial institutions and DNFIs provide their TIN as part of the identity requirements and Tax Clearance

Certificates in some cases, to those AML regulated institutions to fulfil the CDD obligations. To a possible extent, these measures ensure that partnerships file regular tax returns with the tax authorities in order to update CDD documentation and continuing their relationship with FIs and DNFIs. Further, general AML regulations and CDD requirements of financial institutions and service providers also require that all partners in partnerships be identified.

161. Under the SCUML regulation, one of the mandatory information to be collected by DNFIs from their customers is the particulars of directors and shareholders in the case of companies and proprietors/partners in the case of business names (this is supported by copies of CAC certified Forms CAC C02, C07) for companies and Form CAC BN 1 for business names). Below is the table of inspection/sensitisation by SCUML on DNFIs for the period under review:

	Sensitised/Inspected			
Sector	**2011**	**2012**	**2013**	**2014**
Hotels	79	161	811	217
Car dealers	92	196	840	130
Estate surveyor	140	334	2 802	443
Law firms	24	99	656	129
Supermarkets	11	72	578	26
Accounting/Tax consultant	21	27	1248	152
Casino/Pool betting	1	14	12	17
NGOs	0	95	1 088	280
Jewellery dealers	16	23	153	58
Clearing and settlement agents	7	4	130	23
Trust and Company Service Providers	0	92	1425	79
Mechanised farming	0	0	0	18
Total	**391**	**1 117**	**9 743**	**1 572**

162. Nigerian authorities state that identity and ownership information on business names (including partnerships) are available both at registration and after registration. At registration, business names proprietors/partners are required to provide identity and ownership information. The overwhelming proportion of business names/partnerships in Nigeria is composed of artisans, retailers, general traders, personal service providers and small family businesses which rarely witness changes in ownership. Accordingly, their identity and ownership information remains largely constant. As such, in the view of Nigeria, the obligation to update ownership and identity information in respect of these classes of business rarely arises.

Conclusion

163. It is evident that complete and updated ownership information is available with public authorities (the State Registrars and the tax administration), with the entities themselves and/or the service providers. In case of partnerships which are not carrying on business in Nigeria, in addition to the registration requirement of partnerships with local tax offices of SBIRs, if the partners are residing in Nigeria, they will be taxed individually on the worldwide income of general partnerships and therefore tax return filing requirements will ensure that ownership information is available to the tax authorities in Nigeria. In practice, various supervisory and enforcement measures are applied by CAC, State registrars, the tax authorities and supervisory authorities (for AML purposes) to ensure the availability of identity and ownership information on partnerships. These obligations are fairly comprehensive to ensure that identity information on all partners of relevant partnerships is being maintained. However, general compliance levels of partnerships with CAC on their annual return filing obligations in Nigeria are generally not encouraging. Therefore, it is recommended that Nigeria should take adequate supervisory and enforcement measures to ensure availability of identity and ownership information on all partnerships in Nigeria in practice.

Trusts *(ToR A.1.4)*

164. It is possible to create a trust under the laws of Nigeria. The concept of trust involves the transfer of possession and control of a property to a trustee for the purposes of management for the benefit of the beneficiary.

Types of Trusts

165. A trust may be created publicly or privately, expressly or by implication. Types of trusts and applicable laws are:

- Trusts created under a will: The testator transfers the possession, control and administration of a property to a trustee for the benefit of a beneficiary. (Wills laws of the various States of Nigeria)
- Trusts created under the Administration of Estates Laws: The property of a person who died intestate is vested in an administrator to manage for the benefit of the deceased's dependants. (Administration of Estates Laws of the various States of the Federation)
- Trusts created under customary laws: in this case family properties are held by the head of the family in trust for all members of the family; or the properties of a deceased person, who has died intestate, is held by a member of his family in trust for the deceased's minor children. This is regulated by the customary law which is largely unwritten except the Islamic Customary Law.

- Trusts created under section 1 of the Land Use Act (Cap L5, LFN 2004). The law vests all land in a State in the Governor of that State on trust for the use and benefits of all Nigerians. All land is therefore publicly owned in Nigeria. Private property right is given in the form of leasehold of not more than 99 years. The leaseholder, whether as a private home owner or business entity, pays annual ground rent and tenement rent to government at prescribed rate.
- Trusts created by Deeds: These are required to be registered in the land registry of each State if land is involved. (Land Instrument Registration Laws of various States).
- Trusts that do not involve land need not be created by a deed.
- Court Appointed Trustees: in situations where a property is the subject of litigation, the court may appoint a third party to hold the property in trust pending the determination of the suit.
- Investment Trusts: These comprise unit trusts created under collective investment schemes. (Sections 152 and 179, Investments and Securities Act, 2007).

Registration and information maintained by the authorities

166. Under the following circumstances, a trust is required to be registered with various entities according to the respective laws, and identity information on settlors, trustees and beneficiaries is required to be provided upon registration.

- Where a trust is created under a will: Such trusts are registered with the Probate Registry of a State High Court (High Court Law of the respective States). Where a person dies intestate, an administrator is appointed (section 3(1) (2) and section 20, Administration of Estate Law, State of Lagos). Other States have similar laws. The trust is registered with the Probate Registry of a State High Court (High Court Laws of the respective States).
- Where the trust affects a land: Registration lies with the Land Registry (Section 3(2) Lands Registration Act (FCT)).
- Where a trust is created by a deed, the deed must be registered at the Deeds Registry, but only if assets include some land property (Lands Instrument Registration Laws of respective States).
- In the case of investment (including unit) trusts, registration is with the Securities and Exchange Commission (SEC) (Section 161, Investments and Securities Act).

167. For the purposes of monitoring trust transactions against money laundering, all professional trust service providers must be registered with the SCUML of the Federal Ministry of Trade and Investment (Sections 2(ii) and 3 SCUML Operational Guidelines).

168. With respect to investment trusts, the Managers (in fiduciary capacity) must be a corporate body registered with the CAC (and its ownership information is available with the CAC). In addition, particulars of the unit holders (contributors to the unit scheme) must be filed with the SEC in the prescribed form. An Investment Trust Scheme is a financial product floated by a Trust Manager and it is regulated by the SEC. Consequently, the Trust Manager has the obligation to obtain identity information of all contributors and file same with the SEC (Rule 247(f), SEC Rules and Regulations). The Trust Manager must file notification as to changes in the ownership structure of the Trust Fund with SEC.

Requirements under tax laws

169. Income accruing to a trust is subject to tax under the Personal Income Tax Act. Each person involved in a trust as a settlor, trustee or beneficiary is required to register and obtain a TIN for tax purposes and declare its assets or income related to the trust (section 41 CITA) whether or not the trust is registered with another public authority. A person resident in Nigeria for tax purposes is taxable on its world-wide income. Consequently, income earned from outside Nigeria must be disclosed for income tax purposes. While these obligations alone may not be sufficient to ensure the availability of identity information on trusts, they are complemented by obligations on trustees under common law and the anti-money laundering framework.

Identity information maintained by trustees and service providers

170. There is no specific requirement for the qualification of a trustee under the Trust and Equity Law. However, in general, a trustee must be of sound mind and must have the capacity to act as a trustee.[5] Incorporated trustees under CAMA must be resident in Nigeria (Schedule 2, Companies' Regulation of the CAC). A court may remove a convicted felon as trustee upon the application of a co-trustee or beneficiary under the trust, or may appoint corporations or individuals to act as trustees or as administrators of estate or as public trustees in instances where the settlor fails to name a trustee.

5. Section 592(1) disqualifies the following persons from being appointed trustees (i) infant, (ii) person of unsound mind (iii) an un-discharged bankrupt and (iv) a person who has been convicted of fraud or dishonesty within five years of his appointment.

Common law

171. The modern concept of trust in Nigeria is part of the Received English Law which became applicable in Nigeria under Ordinance No. 3, 1863. This position is further reinforced by section 32(1) of the Interpretation Act, 2004, which provides that "the common law of England and the doctrines of equity, together with the statutes of general application that were in force in England on the 1st day of January, 1900, shall, in so far as they relate to any matter within the legislative competence of the Federal legislature, be in force in Nigeria". Nigeria has reported that a Received English Law is still applicable in Nigeria (in so far as it is not repealed in Nigeria), notwithstanding the fact that it might have been repealed in England.

172. Under common law, for a non-charitable trust to be valid, the trust needs to meet the three certainties: the certainty of intention, the certainty of subject matter and the certainty of object. This means that a trust is only valid if evidenced by a clear intention on behalf of the settlor to create a trust, clarity as to the assets that constitute the trust property and identifiable beneficiaries (Knight v. Knight (1849) 3 Beav 148). Identifiable beneficiaries can include a class of beneficiaries. A written declaration of trust may not exist or not identify the settlor on the face of the document. However, trustees have a duty of care to act in accordance with the wishes of the settlor. As a matter of good practice trustees would keep sufficient records to enable them to perform their duties.

173. Trustees should obtain "good receipt" from beneficiaries when they distribute trust property. This requires trustees *inter alia* to establish that the person receiving the trust property is the correct beneficiary of the trust property being distributed (Evans v. Hickson (1861) 30 Beav 136 and Re Hulkes (1886) 33 Ch D 552). An assessment of the effectiveness of the common law requirements with respect to availability of identity information pertaining to settlors, trustees and beneficiaries of trusts will be considered as part of the Nigeria Phase 2 review.

Anti-Money laundering obligations

174. In the case of investment trusts, only persons who have been registered by the SEC may act as a trustee (section 179, Investments and Securities Act). These individuals or entities are then subject to the Nigerian AML laws and regulations.

175. The Money Laundering (Prohibition) Act requires professional service providers to identify their clients, including the true identity of ultimate beneficial owners of accounts from persons acting on behalf of another person (sections 3 and 5, Money Laundering (Prohibition) Act). The law does not contain specific provisions on the identification of persons linked to a trust.

176. Section 5.3.1 of Know Your Customer Manual provides that trustees are required to obtain identification evidence in respect of the settlor and other trustees. Service providers in Nigeria are required to obtain full identity of their clients (settlors, trustees or beneficiaries of a trust) using identification documents. Currently, KYC manuals are issued by the regulators of the respective industries namely: (a) Central Bank of Nigeria for banks and financial institutions; (b) Securities and Exchange Commission for capital market operators; (c) National Insurance Commission for insurance companies; and (d) SCUML, a unit of the Federal Ministry of Industry, Trade and Investment for Designated Non-Financial Institutions. All service providers (including business trustees) are covered by the requirements of the SCUML KYC manuals.

177. Every service provider, including banks in Nigeria must obtain full particulars of settlors, trustees or beneficiaries of a trust such as: proof of identity (an official document bearing names and photograph or evidence of registration for corporate body), proof of address (confirmed by receipt of payment for public utility).

178. Considering that the AML law prescribes that no individual can make or accept cash payment of a sum exceeding NGN 5 million (EUR 23 200) and body corporates payments above NGN 10 million (EUR 46 400) except in a transaction through a financial institution (section 1 MLPA), in practice most payments to a trustee or beneficiary of a trust will have to be made through a financial institution which must identify its customers (international transfers must also be reported to the Central Bank when above NGN 10 000 (EUR 46).

179. Nigerian authorities state that in practice most payments to a trustee or beneficiary of a trust are made through a financial institution which must identify its customers (international transfers must also be reported to the Central Bank when above USD 10 000 or its equivalent). The SEC registers, regulates Unit Trusts Schemes and the operators of such schemes. The SEC carries out over sight functions on the unit trust schemes by way of creating rules, off-site and on-site inspections including target inspections.

Trust ownership information in practice

180. Any Nigerian resident who acts as a trustee or a settlor or a beneficiary or in any way involved in a Nigerian or a foreign trust registers with the tax authorities and obtain TIN for tax purposes. While filing personal tax return with the tax authorities, he includes all the asset details of the respective trust in his financial statements attached with the tax return. In practice, he also attaches a copy of the trust deed as part of the supporting documents along with the tax return. The trust income is taxed in the hands of all persons receiving income from the trust (be it beneficiaries, settlors or

trustees). The individuals (settlor, beneficiary or trustee) whosoever, receive this income will reflect such income in their annual tax return and pay taxes accordingly. To justify the genuineness and correctness of the said income, other supporting documents related to the trust income is also attached with the return form. Therefore, under the general filing requirements and practices, the identity of settlors, beneficiaries, protectors and trustees of a trust will be disclosed to the tax authorities.

181. The Nigerian authorities state that the statistics on total number of trusts registered with the tax authorities is not centrally available. However, 28 640 trusts are registered for TIN under the unified JTB TIN Project. 291 trusts are registered with the tax authority of Lagos State. Below is statistics of registration of relevant service providers with SCUML:

Sector	2011	2012	2013
Accountant/Audit and Tax	754	26 618	31 518
Law firms	3	129	1 184
Trust and company services provider	-	7	8 765

182. SCUML monitors trust entities under its regular supervision programme. The number of inspections conducted by SCUML on the relevant entities is specified in paragraph 164 above. To strengthen the monitoring of service providers, DNFI Regulations 2013 was issued by the Government under MPLA. Through this regulation, the following categories of professions were added to the existing list of DNFIs for the purposes of registration, reporting and conduct of customer due diligence: law firms, notaries, and other independent legal practitioners, accountants and accounting firms, and trust and company service providers. With the existing list of DNFIs such as chartered accountants, audit firms, tax consultants, legal practitioners etc. as reporting entities and the new list of DNFIs, Nigeria has covered all kinds of professionals rendering trust services to domestic or foreign trusts under AML regulations.

183. Any DNFI acting or arranging for another person to act as a trustee of an express trust or performing the equivalent function for another form of legal arrangement has reporting obligations under DNFI regulations 2013, which is administered by SCUML. As part of it, DNFI conducts due diligence measures to identify the customer, using proper identification documents. The DNFI also verifies the identity of the customer using reliable, independent source documents, data or information and identify the beneficial owner, and takes reasonable measures to verify the identity of the beneficial owner in the similar manner. Further, where the client or customer is acting on behalf of another person, the DNFI also takes reasonable steps to obtain sufficient identification data to verify the identity of that other person.

184. In order to mitigate risks, DNFIs perform enhanced CDD measures for higher risk categories of customers. This category includes legal persons or legal arrangements such as trusts that are personal asset-holding vehicles. A DNFI that fails to comply with these regulations is sanctioned in accordance with the MLPA. NFIU and SCUML apply administrative sanctions under MLPA or any other governing laws or regulations. Actions expected of the DNFIs have been tested by inspections in 2012 and 2015. 56 on-site inspections were conducted by SCUML in 2012 in collaboration with EFCC to test the level of compliance with Money Laundering Prevention Act 2011. Out of the inspections conducted by SCUML, 14 DNFIs were found not complying and their business premises were sealed off by SCUML/EFCC to enforce compliance. The relevant self-regulatory organisation or professional body is also advised by SCUML or NFIU to apply administrative sanctions and to withdraw, revoke, or suspend the licence of professionals where there is a persistent and deliberate breach of provisions of the DNFI regulations 2013 or MLPA and any other related laws. No advice for disciplinary action was issued to the relevant professional bodies by SCUML during the period under review. However, post review period, SCUML has embarked on another nationwide inspection exercise between October and December 2015 to cover the review period. The report of the 176 inspections carried out during this period is still being computed to determine the level of non-compliance. The relevant professional bodies or government agencies are being advised on the observed non-compliance from the inspection for appropriate actions.

185. The SCUML authorities state that with the specific addition of trust service providers as DNFIs by the DNFI regulations 2013, all persons acting as trustees in Nigeria are regulated by SCUML. To ensure that all the existing service providers acting as trustees register with SCUML and regulate their activities, SCUML collaborated with CBN and other agencies for creating internal checks in the financial system. On its part, CBN issued a circular (No. FPR/CIR/GEN/VOL.1/028) dated 2nd August, 2012 to all banks and other financial institutions that prior to establishing business relationship with DNFIs, financial institutions should confirm that a DNFI has registered with SCUML of the Federal Ministry of Industry, Trade and Investment. Further, the banks and other financial institutions should update their records of the existing customers within 6 months from the date of this circular and the defaulting customers' accounts should be closed. The list of DNFIs was expanded by the CBN circular in accordance with the new SCUML regulations. According to SCUML authorities, this initiative automatically resulted in more registrations and supervisory work.

186. Banks and financial institutions are advised by SCUML that they should continuously monitor the existing accounts and detect changes in customer's pattern of transaction. Thus when an entity deviates from its stated

line of business into that of a DNFI, evidence of registration with SCUML must be obtained immediately in respect of that customer. Similarly, banks and financial institutions require the business name certification issued by CAC from their clients as part of CDD operations. Since this certificate specifies the line of business/profession/activities, the entity or individual needs to register with SCUML without which the entity or individual cannot open a bank account. A total of 82 advisories were issued by SCUML between 2011 to 2014 to Banks and Self-Regulatory Organisations on DNFIs. The office of SCUML has a separate division for monitoring and inspections. 1 572 sensitisation visits were carried out by SCUML on DNFIs in 2014 to create awareness on the obligations of DNFIs in accordance with PMLA, SCUML Regulation 2013 and the CBN circular.

187. The SCUML authorities stated that any person who acts as a trustee in Nigeria will be considered as a trust service provider and he should register with SCUML and regulate his activities in line with AML requirements. Therefore, in practice, a specific category of non-professional trustees does not exist. These measures are taken by SCUML for administrative purposes to ensure strict regulation of these activities and service providers. SCUML has not received any objection for these administrative measures. Any unregulated service provider could face sanctions under the DNFI regulations 2013 and MLPA. When infractions are observed, the same is recommended to the reporting entity's regulator which in turn is expected to impose administrative sanctions on the erring institution(s). EFCC, the enforcement agency takes active enforcement measures on the complaints from SCUML or other regulatory authorities.

188. During the tax audit, an auditor calls for the trust deed from the taxpayer concerned if it is not provided along with the tax return. Off-site enquiries and on-site inspection mechanisms are in place for tax officials to gather information if the information is not voluntarily provided in the tax return.

Foreign law trusts

189. There is no law prohibiting a resident of Nigeria from acting as a trustee or otherwise in a fiduciary capacity in relation to a trust formed under foreign law. The duties especially under the anti-money laundering laws that have been described in respect of all other trustees in the preceding paragraphs, will apply to the Nigerian trustees of foreign law trusts. This indicates that all service providers including trustees (including also trustees of foreign law trusts) are required to ensure that the settlor and beneficiaries of trusts are known and properly recorded.

Conclusion

190. In conclusion, the common law obligations, together with the AML obligations, ensure that identity information on relevant trusts is available in Nigeria as all professional trustees in Nigeria have to identify all settlors, trustees and beneficiaries of all trusts they manage. The new DNFI Regulation 2013, administrative actions of SCUML and collaboration of other agencies to control and regulate trust services in Nigeria ensure that identity and ownership information on settlors, beneficiaries and trustees is available in Nigeria.

Foundations *(ToR A.1.5)*

191. Under Nigerian law foundations are not a separate type of entity. Foundations may be registered either as a company limited by guarantee or as incorporated trustee (sections 26(1), 590 CAMA). There are 10 043 registered foundations in Nigeria. The number of foundations registered with the FIRS for claiming tax exemptions is 418.

192. To explain further, a foundation can be formed as a "company limited by guarantee" solely for the promotion of any one or more of the following objects: commerce, art, science, religion, sports, culture, education, research, charity or other similar object (sections 21(b) and 26, CAMA).

193. Second, any one of three classes of persons may appoint one or more trustees who may then apply to the CAC in the prescribed manner for registration as a corporate body under the Act. The three classes are: (i) a community of persons bound together by custom, religion, kinship or nationality; (ii) any body established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose; or (iii) any association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose (Section 590, CAMA).

194. As foundations are not a specific form of entity the reporting obligations of any foundation depend on those applicable to the type of entity it happens to be.

Requirements under tax laws

195. Every company registered in Nigeria, is required to register for tax and file returns for income tax and VAT purposes. In order to be registered, the company is required to provide: certified true copies of its Memorandum and Articles of association, a certified true copy of certificate of incorporation, names and addresses of directors, shareholding information on principal shareholders, and information on associated companies.

Other entities and arrangements

Cooperative Society

196. Co-operative Societies are corporate bodies formed under the Nigerian Co-operative Societies Act and similar laws in the respective States. For any society to be registered as a Co-operative Society under the law, it must be a limited liability society and have as its objects the promotion of the socio-economic interests of its members. The Nigerian authorities indicate that co-operative societies are used by mostly in small businesses, mostly in agriculture, artisanship, workplaces, transport etc. A co-operative society normally comprises people of a common trade or profession where every member is known to one another.

197. Nigerian laws provide for the creation of different types of co-operative societies namely: Primary Society (consist of a minimum of 10 qualified persons); Industrial Society (consists of a minimum of 6 persons and which business must be economically viable); and Secondary Society, which is established for facilitating the operations of a registered society (it must have a minimum of 5 registered societies as its members). Tertiary Co-operative Societies are classified into two: State Apex Societies and National Apex Societies. (Sections 2 and 3, Nigerian Co-operative Societies Act).

198. Co-operative Societies formed under the Nigerian Co-operative Societies Act, are required to register with the relevant authorities. Primary and Industrial Societies should be registered with the Office of the State Director or Registrar of Co-operatives, and Secondary Societies should be registered with the Federal Department of Co-operatives. The operations of Co-operative Societies are also guided by State Regulations and the various societies' Bye-Laws.

199. At registration, every co-operative society is required to provide an application with copies of the proposed Bye-law of the co-operative. A formal application must be signed in the case of primary societies, by a minimum of 10 members; and in the case of a secondary society, by a duly authorised member of every member-society forming the secondary society. Where all the members of a secondary society are not registered societies, by ten other members and when there are less than ten members, by all the members (sections 2 and 4, Nigeria Co-operative Societies Act).

200. Every co-operative society is required to keep a register of members and file it with the Federal Director of Co-operatives, as and when required. The register of members, in practice, does contain details of the identity of the members which includes names, addresses and occupations (section 8, Co-operative Societies Act). It is mandatory at registration to put in place the register of members as prescribed by the law. Consequently, every registered

co-operative society must have met this requirement before being registered. Nigerian authorities state that in all the inspections conducted, there were no observed cases of non-compliance.

201. As of June 2015, the number of co-operative societies at the national level was 17 (10 apex and 7 national primary co-operatives). Relevant information on all the registered co-operative societies is available either at the Federal or State level and can be retrieved as often and as when required. The Registrar of Co-operatives stated that the existing co-operatives in Nigeria should be around 126 000 in number. In a bid to centralise the information on all the co-operative societies in Nigeria, the Federal Government embarked on the Co-operative Data Analysis System (CODAS) project in 2012. The system will pool into a central database, information of all registered co-operative societies in Nigeria. Currently, the CODAS project is at the pilot stage and information on 19 786 co-operative societies have been pooled into the central database as at 30 November, 2015. As the project progresses, it is expected that information on all registered co-operative societies would be pooled into this central database. To improve exchange of information, FIRS has an MOU with the Federal Director of co-operatives for access to information about the co-operatives at all levels.

202. At the operational level, a questionnaire is circulated to all co-operatives and the responses are analysed for further inspection and supervision. Annual reports are filed by co-operatives. These reports are accompanied by duly audited annual accounts. All annual reports are filed with the respective directors of co-operatives. The directors of co-operatives verify all these reports and certify that the reports are in order. Co-operatives will rework the annual financial accounts and report if the Registrar finds some faults. The professional auditors will rectify the accounts on behalf of the co-operatives and resubmit the reports, which will be subject to inspections. Routine inspections are conducted at all levels. The target is minimum of 4 inspections per quarter at the federal level. At the State level, the inspections are more frequent. A copy of the register of members of co-operatives is not attached with annual reports filed with the directors of co-operatives but the legal obligation to maintain the register at the premises of co-operatives is supervised by the directors of co-operatives and verified during inspections. Further, whenever required, the directors of co-operatives call for the register of members for off-site inspection. In 2014, the federal registrar conducted 1 inspection on a national primary co-operative and 1 on a national apex co-operative. Sanctions were imposed. For instance, in 2012, a national co-operative society was deregistered and gazetted. Below is Statistics of Inspections carried out by registrars in some of the States of the Federation and the Federal Capital Territory (FCT) in 2014:

S/No	State	No. of inspection visits
1	Abia	1 380
2	Adamawa	1 133
3	Akwa-Ibom	2 500
4	Anambra	1 050
5	Bauchi	4 800
6	Bayelsa	601
7	Borno	13
8	Cross-River	144
9	Enugu	54 675
10	FCT	360
11	Jigawa	648
12	Kaduna	460
13	Kano	17 930
14	Katsina	517
15	Kebbi	121
16	Kogi	213
17	Kwara	2 769
18	Nasarawa	510
19	Niger	18 000
20	Ogun	4 000
21	Ondo	3 875
22	Sokoto	828
23	Taraba	17
24	Zamfara	33
	Total	116 577

Requirements under tax laws

203. The idea behind the formation and existence of co-operative societies is that they promote the business interest of their members.

204. In the light of this objective, the co-operative society is only expected to generate income for and on behalf of its members. The income so generated is exempt from income tax in the hands of the co-operative society, if the income is generated from purely co-operative activities. The income when distributed to members is wholly taxable in the hands of individual members. If a co-operative society is engaged in business activities other than

co-operative activities, income derived from such ventures is fully taxable in the hands of the co-operative society (section 23(1)(b) CITA).

205. In the process of registering for tax purposes, the Co-operative society must obtain a TIN. In order to process the issuance of a tax identification number, the Co-operative society must furnish the relevant tax authority with full details of the identities of its principal officers (but not of its members). The number of co-operative societies registered with the Medium Tax Office of FIRS is 80.

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

206. The existence of appropriate penalties for non-compliance with key obligations is an important tool for jurisdictions to effectively enforce the obligations to retain identity and ownership information.

207. Every company is required to keep a register of its members. If a company fails to do so, the company and every officer of the company who is in default shall be liable to a fine of NGN 25 (EUR 0.12) and a daily default fine of NGN 5 (EUR 0.024) (sections 83, CAMA). Public companies having more than 50 members are further required to keep an index of members or otherwise maintain its register of members in such a way as to constitute an index. Non-compliance with this provision attracts a fine of NGN 50 (EUR 0.24) the company and every officer of the company who is in default (section 85(4), CAMA).

208. Foreign companies are required to register with the CAC before carrying on the business in Nigeria (section 54, CAMA). If the company fails to comply with the requirements under this section, it shall be liable to pay a penalty of not less than NGN 2 500 (EUR 12). Apart from the fine upon the company, every officer or agent of the company who wilfully authorises or permits such a default is liable to a fine of not less than NGN 250 (EUR 1.2) and where the offence is a continuing one, to a further NGN 25 (EUR 0.12) for each day that the default continues.

209. For partnerships, except General Partnership, sanctions are provided for failure to register, filing of a false statement, and failure to notify changes in ownership. Failure to comply with the registration requirements are subject to a fine of NGN 100 000 (EUR 480) or imprisonment for six months or any other non-custodial punishment. In case of Limited Liability Partnerships (section 80, Lagos State Partnership Law 2009), failure to register or filing a false statement will invite a fine of NGN 50 (EUR 0.24) for every day during which the default continues for Partnerships Registered as Business Names (section 584, CAMA). In the case of Limited Partnerships, a partnership shall be deemed to be a General Partnership if it fails to register (section 47, Lagos State Partnership Law, 2009).

210. Failure to comply with these requirements to file tax returns with the FIRS will attract a penalty (for late filing) NGN 25 000 (EUR 120) in the first month when the failure occurs and NGN 5 000 for each subsequent month in which the failure continues. If it is proved that that an officer such as a director, manager, secretary, servant or agent has connived in this offence, he shall be liable for a fine not exceeding NGN 100 000 (EUR 480) or imprisonment for a term not exceeding two years or both.

211. A person (an individual or a legal person), who either directly or by his nominee holds shares in a public company that entitles him to exercise at least 10% of the unrestricted voting rights at the company's general meeting, is required to give the company written notice stating his name and address and giving full particulars of shares so held (including the name of his nominee) (section 95, CAMA). This notice has to be given to the company, within 14 days of the person becoming aware that he is a substantial shareholder. Failure to provide this information will make the person liable to a penalty of NGN 50 (EUR 0.24) for every day that the default continues. This is enforced by the CAC.

212. Any application for registration of companies limited by guarantee that does not comply with the requirements under the CAMA will be rejected. A company operating without being incorporated by the CAC is liable to prosecution under the CAMA. The promoters and principal officers of such company may be fined or sentenced to a term of imprisonment.

213. Making a false statement for the purposes of incorporating a foundation under section 590 CAMA attracts imprisonment for one year or a fine of NGN 100 (EUR 0.48) (Sections 591(5), CAMA).

214. Relevant entities are also subject to the requirement of registration for tax purposes. Every taxable person is required to register for tax purposes with the FIRS and obtain a "Tax Identification Number" (TIN) (section 8(q), FIRS Act). In addition, if a taxable person fails to register for VAT purposes, a penalty of NGN 100 000 (EUR 480) in the first month and NGN 5 000 (EUR 24) for each subsequent month in which the failure continues shall be imposed (Section 32, Value Added Tax Act).

215. The Money Laundering (Prohibition) Act provides for sanctions for non-compliance. Non-compliance with the requirements of customer identification by service provider will attract a fine of NGN 250 000 (EUR 1201) for each day during which the offence continues, and suspension or revocation or withdrawal of licence (section 5(6)). In addition, failure to obtain identity information or furnishing false identity information subjects imprisonment for a term not less than 3 years or a fine of NGN 10 million (EUR 48 076) or both (in the case of individuals) and NGN 25 million (EUR 120 192) (in the case bodies corporate).

216. It is seen in many cases the monetary penalties are very low. However, in these cases the monetary penalty is accompanied by a possible term of imprisonment which should have a sufficient deterrent effect.

Enforcement in practice

217. CAC monitors, supervises and regulates all companies registered under CAMA. It is also responsible for striking off and winding up of companies, removal of business names from the register and dissolution of incorporated trustees. As specified in paragraph 80 of this report, there is a huge gap between the number of companies registered with CAC and companies filing annual returns (varies between 3.5-7%). However, during the on-site visit, the CAC officials stated that CAC is taking all possible efforts to streamline the non-filers and to improve the compliance mechanism in Nigeria. CAC has stepped up its monitoring mechanism in last 7-8 years and is actively engaged in conducting enquiries/inspections and imposing penalties on defaulting companies.

218. CAC maintains the record of non-filers of annual returns. Penalties are levied on late-filers. However, in the case of non-filing over a period of time, the sanction applied is striking off of the defaulting entities from the CAC register. The table below shows the statistics for penalties applied by CAC.

Year	Number of companies penalised	Amount (NGN)
2013	4 706	108 254,808.97
2014	2 861	105 090,445.25
Jan to Oct. 2015	1 647	60 998,581.37

219. In addition, where CAC has reasonable cause to believe that a company is not carrying on business or in operation, the procedure requires that CAC sends notice to verify from the company whether such company is carrying on business or in operation. If no response is received within one month of the letter, the Commission sends another letter to the company within 14 days from the expiration of the one month referring to the first letter and stating that if an answer is not received within one month from the date thereto, a notice shall be published in the Gazette with a view to striking the name of the company off the register. If CAC does not receive any response from the company within one month after sending the second notice, it may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein shall, unless cause is shown to the contrary, be struck off the register.

220. In its first striking off exercise, CAC identified around 400 000 companies as dormant. On risk assessment, CAC ascertained the list of companies that had not filed annual returns for a particular period of time and had not responded to striking off notices. As a result, 9 341 companies were struck off from the companies register in 2008. Nigeria state that one in every two companies registered with CAC had not filed annual returns since their registration, thereby contravening Sections 370-378 of CAMA. To strengthen the corporate regulatory regime, CAC took efforts to weed out the dormant companies from its register. However, it remains the case that out of the dormant companies that exist in Nigeria, only a minor fraction of companies was struck off. Nigerian authorities mentioned that the second phase of striking off, which commenced in 2013, is at the final stage of publication and CAC has issued final notice to gazette 38 717 defaulting companies as struck off from the CAC register.

221. Companies Regulations 2012 indirectly ensures that companies comply with the legal compliance requirements in practice. Where a company seeks to register a business name, incorporated trustee or acquire shares or undertaking of another company, CAC does not process the application unless the annual returns of the company is filed up to date; and the company is not in default in respect to any requirement of the Act. Similarly, for registration of any other changes such as change of Memorandum and Articles of Association, increase or reduction in share capital, allotment of shares or change of directors or company secretary, the companies need to have updated their annual returns. To sum up, post incorporation, before a company approaches CAC for any reason, it is forced to streamline its compliance requirements. This is also applicable for all entities that obtained business names from CAC. They update their filing requirements (annual returns) before approaching CAC for change of name, address or proprietor/partners name etc.

Enforcement of tax law obligations

222. The percentage of registered taxpayers with FIRS actually filing annual tax returns is around 25%. If tax returns are not filed within due date, a list of non-filers will be generated by the Compliance department and sent to the tax auditors having jurisdictions over those non-filer cases. At the beginning of the year, each tax office is required to develop filing compliance programme showing the due date for filing tax returns by each company registered with FIRS. Based on this compliance programme, the companies that have not filed tax returns will, as a routine, receive filing notices from the tax authorities before their due dates and enforcement notices after the due date. The FIRS auditors will make a BOJ assessment of the entity based on the third party information available with FIRS and on the previous years' revenue and income information. If the taxpayer agrees with the BOJ assessment, he needs

to pay taxes and let the case closed by the tax authorities. But this will automatically trigger a case for further investigation and a reference will be made to the special investigation department for intrusive probing. If the taxpayer feels that the assessment is not realistic, he will approach the tax office; file the tax return with all supporting information; pays taxes as per his self-assessment and pays penalty for late filing of tax returns. As of October 2015, there are 5 253 officers (auditors, investigators and returns processors) within the FIRS responsible for all aspects of tax return filing and enforcement of tax obligations. FIRS concluded 2 970 field audit cases in 2014. Statistics on penalties imposed by FIRS on none or late filers of annual tax returns are as follows:

Year	Total amount of penalties (in NGN)	Number of taxpayers	Total number of taxpayers registered with FIRS
2012	19 005 928 251	18 936	215 656
2013	17 295 665 876	24 974	377 258
2014	18 296 396 531	24 406	539 628

223. Tax authorities receive information about taxpayers from other agencies and outside sources. This information is cross-checked with the information in the records of FIRS. Any anomalies will be enquired. Penalties for late filing and non-filing of annual returns and falsification of information are levied regularly. Audit targets are fixed for different offices to improve compliance of tax law obligations and monitored at the highest level. Though Nigerian authorities state that they do not have complete information about penalties imposed and prosecutions by all the SBIRs, they provided sample information from one SBIR. Prosecutions by Edo SBIR for failure to file tax returns are – 191 in 2012, 157 in 2013 and 196 in 2014. Convictions were obtained on them in form of monetary fines.

Enforcement by regulators

224. CBN carried out on-site inspection programme which consisted of 789 on-site inspections in 2011, 788 on-site inspections in 2012, 794 on-site inspections in 2013 and 813 in 2014. In year 2014, 24 banks were examined under the routine AML/CFT examination. 23 banks and 3 holding companies were examined under the Risk Based Examination framework. A total sum of NGN 98 million penalty was levied on infractions. In 2015, 24 banks have been examined under the routine examination and 22 banks and 3 holding companies examined under the routine AML/CFT examinations. A total of NGN 8 million penalty was levied under the Risk Based Examination and a total of NGN 14 million under the Routine AML/CFT examinations.

225. Financial institutions and DNFIs are subject to the requirements of MLPA 2011 and DNFI regulations 2013 and their compliance with the requirements are supervised by supervisory agencies and overseen by NFIU. SCUML, NFIU and supervisory agencies carry out regular on-site and desktop inspections on entities subject to MPLA in order to monitor their compliance with the requirements of the law including the requirements to maintain ownership information in the course of conducting CDD and enhanced CDD measures. Officials from SCUML have reported that they have designed a form that must be completed in the course of on-site visits and this will demonstrate if reporting instructions are complying with the AML regime.

226. NFIU sends advisories for sanctions and penalties to regulators/supervisors from off-site examinations carried out by the NFIU. In 2012, it sent 8 advisories to CBN, 2 to SEC and 1 to NAICOM. Similarly, for years 2013 and 2014, it sent 7 and 1 advisories to CBN, 2 and 1 to SEC, and 1 in each year to NAICOM. In 2013, out of the prosecutions filed by EFCC for various economic crimes in Nigeria, in 117 cases, the persons involved in crime were convicted. In 2014, there were 126 convictions.

227. EFCC investigates and prosecution of all offences connected with or relating to economic and financial crimes (AML offences inclusive). Other executive agencies that handle prosecution to specific predicate and related AML offences are: the Independent Corrupt Practices and Other Related Offences Commission (ICPC), National Agency for the Prohibition of Trafficking in Persons (NAPTIP) and National Drug Law Enforcement Agency (NDLEA). However, State prosecution is also be handled by the Office of the Attorney General. FIRS signed a MOU with NFIU for accessing information. Through this, FIRS has access to banks' database (UBAN, BVN) without approaching the banks or financial institutions.

228. In 2013, the EFCC received 6 089 petitions of which 2 883 were found relevant. Evidence gathered after preliminary and final investigations could only support 485 prosecutions. From the prosecutions 117 convictions were secured. In 2015, EFCC has investigated 1 881 cases and secured 78 convictions. Cases sent to EFCC on AML by different Agencies during the review period are:

Cases under investigation	87
Cases in court for prosecution	22
Conviction	1
Cases dismissed	49
Total number of AML cases	149

229. While it is noted that CAC had undertaken enforcement actions to strike off the dormant companies from its register and sanctions were imposed against non-compliance, these measures have been ineffective and insufficient in providing effective deterrence against the continuing existence of dormant companies during the review period. Therefore, it is recommended that Nigeria should take adequate and more effective enforcement measures to weed out the dormant companies from the CAC register. Further, while there are several regulatory and law enforcement agencies in Nigeria, which monitor and supervise the activities of companies, the compliance levels of companies in adhering to legal information filing requirements are very low. The quantum of penalties for non-compliance in various regulations has been very low and is inadequate to ensure that sufficient levels of deterrence exist in Nigeria. Low level of compliance of companies in Nigeria could possibly be attributed to low administrative penalties and very few criminal sanctions by regulatory and supervisory agencies in Nigeria. Therefore, it is recommended that Nigeria take adequate and more effective regulatory and penal measures to ensure that companies file their identity and ownership information to the CAC and tax authorities in accordance with the statutory requirements. Moreover, Nigeria should monitor the adequacy of sanctions imposed under the relevant tax and commercial laws to ensure that they are effective in providing deterrence against non-compliance of the filing requirements.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Partially Compliant	
Factors underlying recommendations	**Recommendations**
More than 400 000 companies registered with CAC are dormant in Nigeria. Those companies do not comply with filing obligations. The enforcement actions undertaken by CAC to strike off the dormant companies from its register and sanctions imposed against non-compliance have been ineffective and insufficient in providing effective deterrence against the continuing existence of dormant companies during the review period.	Nigeria should take adequate and more effective enforcement measures to strike off the dormant companies from the CAC register.

Phase 2 rating	
Partially Compliant	
Factors underlying recommendations	**Recommendations**
Although the regulatory and tax authorities monitor and enforce actions against companies and partnerships that do not comply with information filing requirements, the compliance levels of these entities are very low.	Nigeria should take adequate and more effective regulatory and enforcement measures to ensure that companies and partnerships maintain and report their identity and ownership information to the Nigerian authorities regularly in accordance with the statutory requirements. Moreover, Nigeria should monitor the adequacy of sanctions imposed under the relevant tax and commercial laws to ensure that they are effective in providing deterrence against non-compliance of the filing requirements.

A.2. Accounting records

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

230. The Terms of Reference set out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. They provide that reliable accounting records should be kept for all relevant entities and arrangements. To be reliable, accounting records should: (i) correctly explain all transactions; (ii) enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared. Accounting records should further include underlying documentation, such as invoices, contracts, etc. Accounting records need to be kept for a minimum of five years.

General requirements (ToR A.2.1)

231. Section 331 of the CAMA states that every company must keep accounting records which shall be sufficient to show and explain the transactions of the company and must be such as to (a) disclose with reasonable accuracy, at any time, the financial position of the company; and (b) enable financial statements to be prepared. These accounting records must, in particular, contain (a) entries from day-to-day of all sums of money received and

expended by the company, and the matters in respect of which the receipt and expenditure took place; and (b) a record of the assets and liabilities of the company. Accounting records of a company must be kept at the registered office of the company or such other place in Nigeria (section 332(1)). Except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified must also be kept. A foreign company that is exempted from incorporation must comply with the same rules and obligations concerning accounting information just like incorporated companies (section 546, CAMA).

232. A company that fails to comply with sections 331 and/or 332 is guilty of an offence and the officer of the company responsible for the default is liable to imprisonment for a term not exceeding six months or to a fine of NGN 500 (section 333). If a company fails to comply with these provisions, every officer of the company who is in default will be guilty of an offence unless he/she shows that he/she acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable. An officer of a company shall be guilty of an offence if he/she fails to take all reasonable steps for securing compliance by the company with section 332 of this Act, or has intentionally caused any default by the company under it.

233. The Financial Reporting Council ensures that companies' financial statements and the underlying accounting records meet the prescribed standards which are consistent with international financial reporting standards (Sections 8 and 11, Financial Reporting Council Act 2011). The Financial Reporting Council has a Board that consists of representatives of the Auditor General, the Accountant General, the CAC, the Nigerian Central Bank and various ministries of the Government of Nigeria. The task of the Council and its Board is to develop common financial reporting standards to be used in the country.

234. If a taxable person/company fails or refuses to keep books of accounts which, in the opinion of the tax authority are adequate for the purposes of income tax, the tax authority may by notice in writing require it to keep such records, books and accounts as it considers to be adequate in such form and in such language as may be specified in the said notice (section 63 of CITA, section 52 of Personal Income Tax Act). Nigeria reports that an individual in business would be required, in practice, to support his/her tax returns with full audited financial statements; a partner in a partnership falls into this category. A partner in a general partnership is not exempt from the obligations imposed by section 52 of PITA with respect to keeping books of accounts.

235. Section 29 of the Lagos State Partnership Law provides that limited partnerships and limited liability partnerships are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representative. Accounting information is required to be kept in Nigeria (section 25(i)). Every partnership which is taxable in Nigeria also falls under the requirements of the relevant tax laws. This will ensure that accounting information of these entities will be available.

236. All Nigerian resident individuals (be it trustees or settlors or beneficiaries) involved in a trust and having taxable income (from any sources worldwide) are required to keep accounting information for tax purposes. Similarly, non-resident individuals having Nigerian source income taxable in Nigeria are required to keep accounting information for tax purposes. The Investment and Securities Act provides that the trustee of an investment trust shall hold books, documents and information on the trust (section 157, Investments and Securities Act). Failure to comply with this provision attracts a penalty of NGN 100 000 and NGN 5 000 for every day in which the default continues (section 303(1)).

237. The trustee of a trust created under a will has the obligation to file the accounts of his administration in Court and continue to do so periodically as directed by the court until the completion of the administration. This includes supplying an inventory of expenditure, account of the administration, and vouchers in the hands of the trustee.

238. Foundations registered as companies limited by guarantee are subject to the same obligation as other companies to keep accounting records in Nigeria (section 331, CAMA). In addition, the various tax laws require registered persons (including foundations) to keep accounting records (section 63 of CITA, section 11 of VATA).

Underlying documentation *(ToR A.2.2)*

239. Section 331 of the CAMA provides that every company is required to keep proper accounting records which must be sufficient to show and explain the transactions of the company. Reference to underlying documentation is found in section 360(3) CAMA that deals with the documentation that must be provided to auditors. Section 360(3) states, "*every auditor of a company shall have a right of access at all times to the company's books, accounts and vouchers, and be entitled to require from the company's office such information and explanation as he thinks necessary for the performance of the auditor's duties*". This implies that such documents must be kept by audited companies. The same would not apply to partnerships and trusts, which are not audited.

240. The various tax laws (section 63 of CITA, section 52 of PITA and section 11 of VATA) require registered persons to keep accounting records, books and accounts as required by the relevant tax authority but do not expressly define what constitutes "books" and whether it includes underlying documentation supporting the records. However, there are several obligations on taxpayers under PITA, CITA, VATA and FIRSEA which require them to maintain all necessary underlying documentation supporting accounting records.

241. In Nigeria, partners file personal annual income tax returns, which include their income from partnership and other income in their individual capacity. In case of general and limited partnerships wherein all the partners are non-residents, the partners file tax returns if the partnerships have taxable income in Nigeria. This also applies for trustees and all others involved in trusts registered in Nigeria. Further, if a trustee or anyone associated with any Nigerian trust or with those trusts created under laws of other jurisdictions (foreign trusts) but administered in Nigeria, is a Nigerian resident, the accounting records are maintained along with that of the personal income and tax. Under Section 40 of PITA, the persons signing the income tax return form are responsible for all matters for the purpose of assessment of the income of the entity or arrangement. Section 41 of PITA requires that along with the return of income, one shall also file true and correct statement in writing containing the amount of income from every source and such particulars with respect to any income, allowance, relief, deduction or otherwise as may be material for a tax auditor of FIRS/SBIR to determine correct income of the taxpayer. Parallel provisions also exist in CITA for companies. Similarly, the underlying documentation requirements under the CITA and PITA for exempted companies and co-operative societies respectively are the same as those for other entities.

242. The requirement under section 41 of PITA ensures that a taxpayer filing return submit supporting documents along with the financial statements for the tax auditor to assess his income appropriately. In the case that some information or documents are not filed, Section 47 of PITA empowers the tax authority to call for such returns, books, documents and information from a taxpayer for the purpose of assessing the tax liability of the tax payer. To this end, the tax authority issues notice to the tax payer to produce the relevant documents, which it deems necessary for determining the correct income of the taxpayer. Under section 52 of PITA, if a taxable person fails or refuses to keep books of accounts which, in the opinion of the relevant tax authority, are necessary for the purpose of the tax, the relevant tax authority may by notice in writing direct the person to keep such records, books and accounts in such form as specified in the notice and, the taxpayer shall keep the records, books and accounts as so directed.

243. Although PITA does not specify what constitutes "books" and "documents", in determining them, the tax authority refers to FIRSEA. The tax authorities in Nigeria are statutorily governed by FIRSEA, which is the establishment act for the tax officials of FIRS and SBIRs. Section 69 of FIRSEA defines the term "books" which includes any register, document or other record of information and any account or accounting record however compiled, recorded or stored, whether in written or printed form or micro-film, digital, magnetic or electronic form or otherwise. The term "Document" is also defined in FIRSEA which includes any record of information supporting accounts and accounting records, including reports or correspondences or memoranda or minutes of meeting, however compiled recorded or stored, whether in written form or micro-film, digital, magnetic, electronic or optical form or otherwise and all types of information stored in computer and any other similar equipment.

244. In view of the above, it can be concluded that the combined requirement of provisions in FIRSEA, CITA and PITA ensure that all entities and individuals in Nigeria are required to maintain underlying documentation supporting accounting records.

Document retention *(ToR A.2.3)*

245. Accounting records which a company is required by section 331 of the CAMA to keep must be preserved by it for a period of six years from the date on which they were made (section 332(2), CAMA). The Attorney-General of the Federation may require that the books and papers of a company which has been wound up be not destroyed for a period of five years from the dissolution of the company (section 178, Companies Winding Up Rules).

246. Relevant tax authorities are empowered to examine accounting records of taxpayers for tax purposes for up to six years after the year of assessment. To this end, all taxable persons/companies would need to keep accounting records until after such time that routine audit are no longer feasible (6 years) (section 55 of PITA, section 66 of CITA). Penalties for non-maintenance of accounting records are provided under section 52(1), PITA and section 92, CITA. Under the PITA the penalty is NGN 50 000 and a possible term of imprisonment of six months. Under the CITA, the penalty prescribed is NGN 500 000 and/or a term of imprisonment of six months.

247. The Financial Reporting Council requires registered professional accounting firms and other professionals to maintain for a period of not less than six years, audit work papers and other information related to any audit report, in sufficient detail to support the conclusion reached in the report (section 61(2), Financial Reporting Council Act). This applies to all entities including companies, partnerships and trusts.

Availability of accounting information in practice

248. In Nigeria, every company, engaged in business or not, is required to file an audited financial statement along with the annual return filed with CAC. The obligations on companies to maintain reliable accounting records and underlying documentation are monitored by CAC and FIRS. CAC monitors the record keeping requirements of companies registered with it in accordance with International Standards on Auditing and Nigerian Standards on Auditing issued by the Chartered Accountants of Nigeria. As mentioned in A.1.6 of this report, CAC conducts off-site examinations and on-site inspections to verify the companies on their adherence to legal compliance requirements. Off-site inspection is an everyday activity in the course of verifying applications submitted to the CAC for filing. Nigerian authorities stated that the ability of CAC to inspect off-site has been enhanced since the deployment of the new Company Registration Portal (CRP) in 2014. The CRP enables online submissions of documents to CAC. This way, companies' records are automatically archived in CAC's database. Thus, CAC would easily be able to determine whether any post incorporation obligation is outstanding or whether annual return has been filed or not. Penalties are levied for various infractions that include not maintaining accounting records as per the recognised standards or not filing audited financial statements or not getting the books of accounts audited by qualified and licenced Chartered Accountants. Nevertheless, the actions of CAC seem to have not served as deterrent on the companies not complying with the legal obligations and the compliance numbers have not improved.

249. The annual returns filed by Companies with CAC as required by CAMA can only be filed if accompanied by audited financial statements. Otherwise, the return filed by a company is treated as invalid. Further, to get any approval or verification done from CAC at any point of time for a going concern, one of the requirements is to file updated annual return filed with CAC. This acts as a check for all companies actively engaged in business to file their annual returns and keep their compliance to position up-to-date.

250. On behalf of CAC, the statutory audit is done by qualified chartered accountants, who will verify the books of accounts and will provide an Independent Auditors' Report. The chartered accountant conducting the audit should confirm that the financial statements are in agreement with the accounting records which have been properly kept. The Code of Professional Conduct requires all Chartered Accountants (CAs) to be honest and truthful in professional relationships and should not make false declarations or misrepresents the facts, including statements in connection with tax compliance.

251. The Institute of Chartered Accountants of Nigeria (ICAN) requires its members to strictly observe the Professional Code of Conduct as a condition for continuing membership. Non-observance of these rules results in

disciplinary action if a member is found guilty of misconduct. The investigation panel and the Accountants' Disciplinary Tribunal demands compliance from members and enforce the maintenance of standards of professional conduct required of a Chartered Accountant. On receipt of a complaint either from Government authorities or from the public against a member, the Investigation Panel enquires its member for violating Code of Conduct, exercise disciplinary powers, and is entirely free to decide every case on its merit.

252. The Professional Practice Monitoring Committee of ICAN carries out practice monitoring exercise regularly. Until February 2014, a total of 229 firms have been reviewed and made recommendations to rectify the weaknesses observed by the reviewers. Between July 2013 and February 2014, the Investigation Panel considered a total of 49 cases of alleged Professional misconduct. Out of these cases, 13 cases related to defective reporting and unethical conduct. 2 cases were referred to the Disciplinary Tribunal for adjudication and 14 cases were concluded. During this period, the Disciplinary Tribunal considered a total of 20 cases and concluded 3 cases. Between July 2014 and February 2015, 24 cases of professional misconducts were taken to Investigating panel. One case was concluded and one referred to the Disciplinary Tribunal. The remaining 22 cases were pending as of November 2015.

253. Apart from the statutory audit on books of accounts under CAMA, tax audit is conducted by the officials of FIRS to verify and express opinion on whether the taxpayers concerned adhere to the legal requirements of CITA. All companies filing tax returns with FIRS annually should also file the tax audit report duly signed by a qualified chartered accountant. This report will ensure that the taxpayer maintains proper books of accounts, which are audited by an external auditor. Generally tax officials engage in two types of audit: Desktop audit and on-site (field) audit. Tax investigations are a more in-depth process. Both off-site and on-site inspections are conducted by tax officials to verify the correctness of the income tax liability of a taxpayer. If some documents are not available or the taxpayer is unable to produce, an adverse inference is drawn by the tax officials. Such a situation will lead to additional tax liability for the taxpayer, which the taxpayer is not liable to pay otherwise. Non filing of audited accounts may lead to a penalty and triggers a case for detailed scrutiny.

254. The statutory powers provided to tax authorities under FIRSEA and PITA to call for additional documentation and information from taxpayers is often exercised by the tax authorities in their off-site and on-site inspections to examine and ascertain the right tax liability of the taxpayers. Annual returns are to be mandatorily filed by taxpayers before the due date. The taxpayers covered by PITA include individuals who are subject to tax based on their salary income or business income from proprietorship firms, partners

in partnership firms, trustees as well as all others involved in trusts (settlors and beneficiaries), and other non-corporate entities having income. The partners, trustees, settlors or beneficiaries file their individual tax return wherein they include assets and income details of the entities they are responsible for and pay taxes on the income earned. In case of those involved in trusts, even if there is no income from the trust, they need to add all the asset details (domestic or foreign) in their financial statements while filing returns. Since the FIRSEA and PITA requires that the onus to prove the correctness of income and its source lies with a taxpayer, all the financial records and the underlying supporting documentation related to the trust assets and income are also maintained by these individuals. The partners are also subject to the same rules and therefore maintain underlying documents related to the assets and income of the partnerships.

255. Once tax returns are filed, the return processing unit in the tax office places them in specific file folders and sends them to the tax audit team which has the jurisdictions to audit the case. Desk examination is conducted preliminarily to check if all the documents necessary to assess the tax liability are provided by the taxpayer. If the officer is not convinced about the sufficiency of the documents, a notice will be issued to the taxpayer to produce additional documents (including underlying supporting documents) for assessment of tax. It is in the interest of the taxpayer that most of the relevant records are filed along with the tax return or submitted on receiving the notice. If adequate documents are not produced, it could lead to disallowance of deductions which could result in increased tax liability. Nigeria is rolling out computerised risk profiling as well as a new ITAX project for focussed tax examinations.

256. Nigerian tax authorities stated that at the State level, most of the cases filing tax returns with the SBIRs are audited through off-site or on-site every year. During on-site audits, the tax authorities will require the taxpayer to produce all relevant information and supporting documents for examination. Every year, 15-20 % of taxpayers filing return are actively assessed by SBIRs. Assessments are normally done for 2-3 years put together. Therefore, within 5 years, most taxpayers registered with the SBIRs are assessed and books of accounts are scrutinised for multiple years. The tax authorities can assess up to a maximum of 6 years. Combined with the fact that there is no predictability in the selection of cases for assessment each year, taxpayer, in practice, is forced to maintain all the underlying documents for his business interest in addition to the statutory requirements. Penalties are levied for not maintaining records and for non-filing of tax returns. The stop-filers/non-filers list is generated regularly to investigate the tax liability and evasion of the taxpayers. There is an active compliance programme to find non-filers. The report goes to the controller of tax audit teams for action. The Nigerian

authorities state that this information is not kept centrally. However, the statistics from some States and FIRS (for FCT) are shown below.

State	2012		2013		2014	
	Scrutinised	Audited	Scrutinised	Audited	Scrutinised	Audited
Edo	342	293	309	121	585	168
Lagos	7 995	7 161	11 191	9 266	11 699	10 899
FIRS (FCT)	541	40	1 525	139	2 005	144
Kaduna	150	185	170	203	200	216
Benue	512	302	580	290	490	320

257. The FIRS auditors will make a Best Of Judgement (BOJ) assessment of the entity based on the third party information available with FIRS and on the previous years' revenue and income information. If the taxpayer agrees with the BOJ assessment, he needs to pay taxes and let the case closed by the tax authorities. But this will automatically trigger a case for further investigation and a reference will be made to the special investigation department for intrusive probing. If the taxpayer feels that the assessment is not realistic, he will approach the tax office, file the tax return with all supporting information, pay taxes as per his self-assessment and pay a penalty for late filing of tax returns.

258. In general, taxpayers are required to obtain a Tax Clearance Certificate (TCC) annually which is a mandatory document to be submitted for conducting many business transactions (section 101 of CITA and Section 85 of PITA) such as outward remittances through Authorised Dealer banks or other financial institutions, application for or renewal of trade license, import/export license, acquisition of immovable properties, registration as contractors, application for registration of a limited liability company or business names, issue of share capital etc. All the relevant authorities are aware of their obligations to verify the Tax Clearance Certificate before proceeding with the applications. This ensures that companies, partnerships and proprietorship firms that are actively engaged in business will require Tax Clearance Certificate from officials of FIRS or SBIRs at one point or another, and thus the availability of updated financial records and complying with the tax audit requirements.

259. Therefore, along with the legal obligations to maintain accounting records and underlying documentation for all relevant entities, tax authorities and CAC undertake active monitoring and enforcement measures to ensure that necessary accounting information is maintained by all relevant entities in Nigeria. However, as specified in A.1.1, despite various measures by regulatory and executive authorities to enforce the compliance of companies in Nigeria, the percentage of companies complying with the annual filing

requirements before CAC is 3.5-7%, which is very low. Nigeria's position is that a large number of companies (around 50%) are dormant or inactive, which constitute the majority of non-filers of annual returns. Of the active companies in Nigeria, most of them comprise of small companies and on the other hand, the compliance of companies other than the small companies is actually high. The Nigerian authorities state that the only legal recourse for CAC to take action against the non-complying dormant or inactive companies is to strike them off from its register and that such exercise has been undertaken by CAC. However, even after excluding the dormant/inactive companies, the compliance rate among the active companies during the review period is less than 15% only.

260. The compliance levels of companies with FIRS are better than that of CAC, but the overall compliance rate is not encouraging. The non-complying companies may not conduct statutory audits, may not maintain proper books of accounts or underlying documentation etc., resulting in non-availability of accounting information in those cases. Nigerian authorities state that most of these non-complying companies are domestic companies and operate at very small scale. These companies remain outside the regulatory and administrative oversight of the Nigerian authorities due to lack of awareness and the limited size of their businesses and transactions. They added that the compliance rate among large taxpayers and companies that have foreign investment are very high because of several compliance requirements and are closely monitored. Although the compliance mechanism of CAC and the tax authorities is risk based and as such, the small scale enterprises pose low risk to revenue as well as EOI, it is pertinent to note that the regulatory and filing requirements under CAMA and the CITA apply equally to all companies registered with CAC regardless of their size. Therefore, in general, the compliance rate is a cause of concern and accounting information may not be available in some cases. Therefore, it is recommended that strict and effective monitoring and enforcement mechanisms are put in place to ensure that accounting information is maintained by all companies and regularly filed with relevant authorities in practice in line with statutory requirements. Moreover, Nigeria should monitor the adequacy of sanctions imposed under the relevant tax and commercial laws to ensure that they are effective in providing deterrence against non-compliance of the filing requirements.

261. In case of partnerships, if the partners do not have taxable income (from partnerships or from personal sources) or if the partners do not comply with the tax filing requirements, the accounting records may not be available with the tax authorities. The tax filing compliance levels of individuals and partners are not centrally available in Nigeria due to various reasons such as the difficulties in recording and monitoring paper filed returns, information scattered in 36 State Boards etc. The lack of information about compliance levels makes it difficult to ascertain the level of availability of accounting

information of partnerships in Nigeria in practice. Neither are there any other regulatory requirements in Nigeria for maintaining accounting information nor is any existence of a monitoring/supervisory agency to ensure availability of accounting information in practice except the tax authorities.

262. The position of accounting information in case of trusts is also similar to that of partnerships in Nigeria. If the trustees or other persons involved in a trust do not have taxable income in Nigeria or if they do not file tax returns, the accounting information may not be available with the tax authorities. The trustees may not maintain such information and the monitoring and enforcement actions in this regard are not adequate. Except investment trusts, which are regulated by SEC, none of the trusts are required to maintain or file accounting information with the regulatory authorities (registrars/courts etc.). Since the only compliance requirement is with the tax authorities, without a robust compliance and enforcement mechanism adopted by the tax authorities, the accounting information may not be adequately available in all cases. The tax filing compliance levels of trustees are not centrally available and this makes it difficult to ascertain the level of availability of accounting information of trusts in Nigeria in practice.

263. The Nigerian authorities state that in practice, partnerships and trusts maintain accounting information that the following regulatory agencies review from time to time: Financial Reporting Council, FIRS/SBIRs, CAC, SCUML, SEC etc. and these regulatory agencies carry out monitoring and enforcement to ensure high compliance level. Further, Sections 78-81 of CITA and Sections 69-73 of PITA provide for WHT deductions and filing of returns on WHT deducted. Where a company or partnership fail to comply with annual returns filing, such entity may be discovered through the WHT returns filed with the tax authorities by another entity that have made payments to them.

264. Further, the authorities added that the Financial Reporting Council Act requires entities in Nigeria (which includes partnership) to prepare Financial Statement in line with IFRS. In the IFRS conversion roadmap released in September 2010, the transition date by Small and Medium-Size Enterprises (SMEs) is 2012 while the reporting date is 2014. The Financial Reporting Council of Nigeria (FRCN) also conducts monitoring exercise to ensure compliance. Furthermore, FIRS/SBIRs monitor trusts like every other taxpayer registered in its database to ensure compliance with the tax laws. For example: 28 640 trusts are registered for TIN under the unified JTB TIN Project and 291 trusts are registered with the tax authority of Lagos State.

265. The Nigerian authorities state that although the statistics of registration, monitoring and enforcement carried out by FIRS/SBIRs are not centrally available, these records are available with each of the 37 tax authorities. The statistics provided by the tax authorities of Edo, Lagos, Kaduna and Benue States as well

as FIRS (for FCT) show that mechanism are in place to ensure that accounting information of partnerships and trusts are largely available in practice.

266. To conclude, it is noted that to the extent that partnerships and trusts are registered with the tax authorities, adequate monitoring mechanism exists with the tax authorities to ensure that proper accounting information is maintained by these entities. However, there is general lack of compliance levels among partnerships with CAC. Further, there is no adequate mechanism with the tax authorities to ensure that all partnerships and trusts in Nigeria are registered with the tax offices and therefore maintaining accounting information in practice. Therefore, from the discussion above, it is recommended that strict monitoring and enforcement mechanisms are put in place to ensure that accounting information is maintained by all partnerships and trusts in practice in line with statutory requirements.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Partially Compliant	
Factors underlying recommendations	**Recommendations**
While several monitoring and enforcement measures are pursued by various agencies in Nigeria, the compliance levels of relevant entities and arrangements in Nigeria on their reporting obligations are generally very low. As a result, availability of accounting information in all cases may not be ensured in practice.	Strict and more effective monitoring and enforcement mechanisms should be put in place to ensure that accounting information is maintained by all relevant entities and arrangements, and regularly filed with relevant authorities in practice in line with statutory requirements. Moreover, Nigeria should monitor the adequacy of sanctions imposed under the relevant tax and commercial laws to ensure that they are effective in providing deterrence against non-compliance of the filing requirements.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

267. In Nigeria, banks and other financial institutions are required to maintain all records pertaining to accounts as well as to related financial and transactional information. The financial system of Nigeria consists of 21 deposit money banks, 4 merchant banks, 3 non-interest banks (full-fledged banks, banks with windows to operate non-interest banking), 2 624 Bureau de change (BDC), 6 development finance institutions, 42 primary mortgage banks, 932 microfinance banks, 65 finance companies, 1 mortgage refinance company, 4 subsidiaries of foreign banks and 69 branches of foreign banks. All these banks and other financial institutions (non-banking) are subject to AML/CFT regulations and CBN is responsible for ensuring the implementation of AML/CFT regulations by these financial institutions.

268. Section 331 of CAMA provides general requirements for all companies (including banks) to keep proper accounting records which shall be sufficient to show and explain the transactions of the company (bank) as noted under Part A.2 on *Accounting Records*.

269. Financial institutions are expressly required to maintain all records pertaining to the accounts as well as to related financial and transactional information under section 24 of the Banks and other Financial Institutions Act (BOIFA). Section 24 further prescribes that banks ought to maintain such book and documents in compliance with the accounting standard as may be prescribed for banks.

270. If any person being a director, manager or officer of a bank fails to take all reasonable steps to secure compliance with any of the provisions of the section, or has by his wilful act been the cause of any default thereof by the bank, he is guilty of an offence and liable on conviction, in respect of paragraph (a) of Section 24(5) BOIFA, to a fine of NGN 100 000 and in respect of paragraph (b) of section 24(5) BOIFA to a fine of NGN 50 000 or to imprisonment for a term not exceeding ten years.

271. In addition, Section 7 of the Money Laundering Act, 2011 expressly provides "a financial institution and Designated Non-Financial Institution shall preserve and keep at the disposal of the authority specified in section 8 of this Act: (i) the record of a customer's identification for a period of at least 5 years after the closure of the account or the severance of relations with the customer; and (ii) the record and other related information of a transaction carried out by a customer and the report provided for in section 6 of this Act

shall be preserved for a period of at least 5 years after carrying out the transaction or making of the report as the case may be".

272. Banks must provide monthly reports on new customers to the tax administration (to the State administration concerning natural persons and to the FIRS concerning corporate customers) (section 61 CITA, section 49 PITA). The tax authorities therefore have at their disposal the full list of bank accounts opened in Nigeria.

Availability of banking information in practice

273. The Central Bank of Nigeria is mandated to ensure that all licensed banks and non-banking financial institutions adhere to the statutory and regulatory requirements and that these requirements are enforced in the course of a comprehensive system of oversight and supervision. Within the CBN, Strategic Business Unit, a dedicated department is responsible for ensuring that all licensed entities comply with their regulatory obligations. It regulates all types of banking businesses such as deposit money banks, money lending businesses, primary co-operatives involving in financial lending activities, mobile payment systems, non interest banking, development banks, mortgage companies etc. The financial monitoring and inspections are conducted by 300 examiners in the CBN.

274. CBN has harmonised regulations for all financial institutions under its purview. It had issued enhanced regulations in 2013 to include a new account opening package which aligns with the FATF AML requirements and align with the documentation of international banking system. Since February 2014, banks' identity verification has included biometric identification for their clients. TIN number is encouraged by banks for opening bank accounts. In case of trusts, details of all persons involved in the trust should be disclosed to banks to establish banking relationship. Record keeping requirements of banks are strictly monitored by CBN. For high risk accounts, senior management approval is needed before commencing operations. Ongoing monitoring by banks is risk based depending on the geographic location, system tag etc.

275. The banks undertake monitoring by using AML software application, which monitors accounts by set rule, viability and provide periodic reporting. Every 3 years or when a bank customer's identification (e.g. international passport, driver's licence, national ID card) expires, the banks will conduct fresh due diligence measures to update the records. If the due diligence is not satisfactory, the operation of those accounts will be suspended until required documents are provided and information is reported to NFIU. Also, if the suspected transactions involve criminal offences, CBN refers the case to EFCC for prosecution. Cases referred to EFCC on AML violations

by different supervisory agencies during the review period are provided in paragraph 231 of this report.

276. CBN conducts regular supervision over financial institutions. Banking Supervision Department (BSD) and Other Financial Institutions Department (OFID) within CBN are in-charge of conducting supervision over all banks and non-banking financial institutions respectively. The supervision includes both desktop and on-site inspections. Off-site monitoring is done on a day-to-day basis but on-site inspections are conducted once in a year. All 21 deposit money banks were examined in 2014. CBN has targeted to examine 552 micro finance banks in 2015. In regards to the on-site inspection programme this consisted of 789 on-site inspections in 2011, 788 on-site inspections in 2012, 794 on-site inspections in 2013, 813 in 2014. All the development banks were examined by CBN as at December 3, 2014. Penalty of NGN 122.5 million and NGN 36.8 million were imposed on non-complying banks in the years 2013 and 2014 respectively. Further, licence of 83 Microfinance banks and licence of 101 BDCs were cancelled during the period 2013-14. Out of the 101 affected BDCs, 97 were in breach of record keeping requirements.

277. In the years 2014 and 2015, 24 banks were examined under the Routine AML/CFT examination. Also, 23 banks (in 2014)/22 banks (in 2015) and 3 bank holding companies were examined under the Risk Based Examination framework. There was a pilot run for 12 other institutions using AML/CFT Risk Based Examination frame work as follows: Microfinance Banks; Finance Companies; Development Finance Institutions; BDCs; and Primary Mortgage Banks.

278. CBN officials reported that in the course of carrying out regular inspections, generally compliance is found to be very high. Over the review period, there have been instances of institutions that were found to have contravened various regulatory requirements prescribed by the Banking law and related regulations. As a result of audits/examinations in 2014, CBN imposed sanctions on financial institutions for various infractions as follows: 20 cases for false declaration or disclosure 1 case for gap in know-your-customer, 18 cases for non-approval, 8 for non-compliance and 19 for non-rendition. Similarly, sanctions were imposed in 2015 for following infractions: 1 case for false rendition, 2 cases for non-approval, 1 for non-compliance and 11 for non-rendition.

279. In addition to on-site inspections, CBN conducts other targeted examinations. 57 microfinance banks were inspected under special examination to ascertain their capital position and compliance to regulations. 552 microfinance banks were targeted in 2015 for normal routine examination. The examinations are still on-going with about 76% completion as of November, 2015. Licences have been revoked in a large number of cases of micro-finance companies (207 in the year 2010 and 83 in the year 2011).

280. Banks can also be required to prepare, upon demand, quarterly reports to the FIRS, pursuant to section 28(1) of the FIRS Establishment Act. Quarterly reports must specify in the case of individuals, all transactions involving the sum of NGN 5 million and above, or in the case of a body corporate, all transactions involving the sum of NGN 10 million and above, the names and addresses of all customers of the bank connected with the transaction. 19 Banks filed quarterly reports in 2012, 17 in 2013 and 20 in 2014.

281. Non-complying with these reporting obligations is an offence punishable, on conviction, to a fine not exceeding NGN 500 000 on corporate customers and not exceeding NGN 50 000 in the case of individual customers (section 28(3), FIRS Establishment Act).

Conclusion

282. The Central Bank of Nigeria actively undertakes monitoring of financial institutions' compliance with the requirements of customer identification obligations and record keeping obligations. Where deficiencies have been found, penalties are applied in practice. Over the review period, Nigeria received one request for banking information. Nigeria was able to provide banking information to its treaty partner.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

B. Access to information

Overview

283. 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 Nigeria's legal and regulatory framework gives the authorities access powers that cover all relevant persons and information and whether rights and safeguards are compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice.

284. Nigeria's competent authority, the Federal Inland Revenue Service (FIRS), has broad powers to obtain ownership, identity, accounting and bank information and has measures to compel the production of such information. These powers to access and provide information for exchange of information purposes are derived from the FIRS (Establishment) Act. There are no statutory bank secrecy provisions in place that would restrict effective exchange of information. In one out of the five requests wherein the information was provided to the competent authorities of the requesting States, the competent authority of Nigeria used compulsory powers on persons who were under the obligation to produce the information but failed to do so.

285. There are no rights or safeguards (e.g. notification, appeal rights) in Nigeria that appear to restrict the scope of information that the FIRS can obtain.

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).

286. The Nigerian competent authority for the gathering and exchange of information with regard to all Double Tax Conventions (DTCs) and the Multilateral Convention is the Federal Minister of Finance or his/her authorised representative, which is the Federal Inland Revenue Service (FIRS). Section 8 of the FIRS Establishment Act (FIRSEA) lists the functions of the FIRS, which include "collaborating and facilitating rapid exchange of information with relevant national or international agencies or bodies on tax matters" (section 1(i)).

287. The powers that are available to the FIRS to access information are available in the Companies Income Tax Act (CITA), Personal Income Tax Act (PITA) and the FIRSEA. While the FIRSEA provides the general power that is available to the FIRS to carry out the objectives of the Service, the CITA and the PITA have matching provisions that operationalise the powers under the FIRSEA, for the purposes of these specific enactments.

288. Sections 26 to 30 of the FIRSEA establish the powers of the FIRS to access information held by relevant entities, including banks and other financial institutions for tax purposes. (Access to bank information is discussed in section B.1.5 below.) These powers are applicable to exempted companies and companies in EPZs. NEPZA has also the powers to inspect the records of the entities operating in the EPZs, which are otherwise exempt from taxes, duties, foreign exchange regulations, import/export licences etc.

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

289. Some ownership information is already available with the Federal or State tax authorities when the taxpayer applies for a tax identification number (TIN). In addition, ownership and accounting information is available with such public authorities as the Corporate Affairs Commission (CAC) and with the entities themselves, as described in Part A of the report. The competent authority can access this information without any legal impediments.

290. The FIRS can obtain information under the CITA, the PITA and the FIRSEA, as set out below:

- FIRS is empowered to request, by notice, books, records, documents or information from any taxpayer, to be delivered at the place and

time stated in the notice, for the purpose of obtaining full information in respect of the profits or income of any person, body corporate or organisation (section 26 FIRSEA, section 60 CITA).

- FIRS is empowered to request fuller or further returns from any person (whether or not a taxpayer) as it considers necessary in respect of any matter relating to the functions of the Service (section 27 FIRSEA, section 58 CITA).
- FIRS is empowered to access any land, building, places, books and documents in the custody or under the control of a public officer, institution (e.g. CAC) or any other persons for the purpose of inspecting the books or documents, including those stored or maintained in any computer or device for the purpose of obtaining information. An authorised officer of the FIRS is empowered to remove books or documents from any premises for the purpose of obtaining information or use as evidence in court (sections 29, 30, 36 FIRSEA, section 64 CITA). This power is broad enough to cover any information that could be required for EOI purposes.

291. The FIRS has power to obtain information directly from individuals and entities who are residents of the Federal Capital Territory only. In other cases, it can obtain information from the relevant State Boards of Internal Revenue where the individual is resident (section 86 PITA) and which have similar powers.

292. The competent authority also has power to obtain ownership, identity and accounting information for tax purposes under section 8 of the VAT Act.

293. Sections 26 to 30 of the FIRSEA ensure that the FIRS has sufficient powers to obtain information from all kinds of entities, related to ownership and accounting information.

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

294. The Nigerian authorities assert that the FIRS can use its powers to access information for EOI purposes absent a domestic tax interest. While the FIRSEA does not specifically provide that the information gathering powers of the FIRS can be used for EOI purposes, Nigeria sees section 8 of the FIRSEA as empowering the FIRS to use its powers for EOI purposes. Section 8 of the FIRSEA that deals with the "functions of the Service" states at sub-section (1)(i) that: "The Service shall collaborate and facilitate rapid exchange of information with relevant national or international agencies or bodies on tax matters." In addition, section 8(1)(t) provides that the FIRS is empowered to carry out such other activities as are necessary or expedient

for the full discharge of any of its functions, which includes obtaining and exchanging information.

295. In addition, section 2 of the FIRSEA that deals with the "objects of the Service", states "The object of the Service shall be to control and administer the different taxes and laws specified in the First Schedule or other laws made or to be made, from time to time, by the National Assembly or other regulations made thereunder by the Government of the Federation and to account for all taxes collected." Section 25(1) of the FIRSEA on the administration of tax laws states that "*T*he Service shall have power to administer all the enactments listed in the First Schedule to this Act and any other enactment or law on taxation in respect of which the National Assembly may confer power on the Service." The First Schedule of the FIRSEA lists among 11 items: (i) Companies Income Tax Act, (ii) Petroleum Profits Tax Act, (iii) Personal Income Tax Act, (iv) Capital Gains Tax Act, (v) Value Added Tax Act. This list does not include DTCs, TIEAs or other international arrangements that may contain EOI provisions such as the Multilateral Convention or regional agreements. Such treaties signed before the change of Constitution in Nigeria in 1999 are incorporated into domestic laws and made effective through Ministerial orders that are subsidiary legislation to the CITA.

296. Nigeria explains that once a ministerial order is validly made under a tax law, it automatically becomes part of that law and not a separate law. All existing ministerial orders were issued pursuant to the Companies Income Tax Act, Petroleum Profits Tax Act and Personal Income Tax Act, Value Added Tax Act or any other tax laws, which are listed in schedule 1 to the FIRSEA.

297. For EOI instruments signed after the entry into force of the 1999 Constitution, their integration into domestic law is done through a Bill in Parliament if they have tax consequences (i.e. DTCs) and others can be ratified by the Federal Executive Council and conveyed by Ministerial order, which would be the case of TIEAs and the Multilateral Convention. The DTCs signed more recently are no longer the object of an order and are simply passed by the Parliament and considered as "*other laws made or to be made, from time to time, by the National Assembly"* under section 2 of the FIRSEA.

Compulsory powers *(ToR B.1.4)*

298. Section 64 of the CITA empowers the FIRS to enter and search any premises of any person (including those of banks) to obtain evidence, where it is satisfied that there is a reasonable ground for suspecting that an offence involving any form of total or partial non-disclosure of information relating to tax has been committed.

299. Sanctions are applicable for non-compliance with provisions to produce or furnish information requested by the FIRS. Section 26 of the

FIRSEA provides that a person that fails to deliver returns, books, documents and information is liable to a fine equivalent to 100% of the amount of the tax liability. This sanction may be difficult to apply if there is no tax liability at stake in Nigeria. Other sanctions apply to any person, whether or not liable to tax. Section 41 states that the penalty for obstructing any authorised officer from carrying out search, seizure, or removal of information is a fine not exceeding NGN 200 000 (EUR 961) or imprisonment for a term not exceeding 3 years or both fine and imprisonment.

300. In addition to this, any person who commits any offence for which no specific penalty is provided is liable on conviction to a fine not exceeding NGN 50 000 (EUR 240) or imprisonment for a term not exceeding 6 months or both fine and imprisonment, independently from any tax liability. Where the offence is committed by a body corporate, firm or association of individuals, every director, manager, secretary, partner, officer, management staff or representative is liable to the same penalty.

Use of information gathering powers in practice

301. Over the review period eight EOI requests were sent to Nigeria, from three treaty partners in total. The following procedures are those in place for FIRS for accessing ownership, banking and accounting information over the review period.

Access to ownership and accounting information

302. The FIRS in its capacity as the authorised competent authority and the tax authority for the Federal Government is the repository for information on corporate taxpayers and individuals resident in the Federal Capital Territory and officials of the Armed Forces. Hence, to the extent tax returns and other information filed by these taxpayers with FIRS, the information for exchange purposes in relation to these taxpayers under the purview of FIRS is readily available for access of the competent authority. Information on all type of ownership of businesses, accounting information, banking information, etc., is also readily available with other government agencies and regulatory authorities. This has led the FIRS to, over the years, develop close working relationships with such agencies and regulatory authorities. These include:

- State Boards of Internal revenue – tax records of individuals, partnerships, communities, families and trustees of estates in their jurisdictions;
- Corporate Affairs Commission – Ownership information on companies, business names and incorporated trustees

- Nigeria Financial Intelligence Unit – Banking and other financial transaction information;
- Central Bank of Nigeria – Ownership, directors and accounting information of banks and other financial institutions
- Nigeria Immigration Service – information on expatriates/foreign individuals and Nigerian residents' travel history, emigration and immigration records. Also, identity information on holders of Nigerian passports
- Securities and exchange commission – identity ownership on capital operators, ownership of shares and dividends information on companies registered with SEC
- Special Control Unit against Money Laundering – Ownership information on designated non-financial institutions, identity information of customers of DNFIs and details of transactions with DNFIs
- Joint Tax Board – Taxpayer information on the TIN database (ownership and identity)
- Directorate and registrars of co-operatives – Ownership and accounting information of co-operative societies.

303. To facilitate co-operation between the tax authorities and other government agencies for exchange of information for tax purposes in Nigeria, an Exchange of Information Inter-Agency Committee was set up in 2013 comprising senior officials of all the relevant agencies. This committee meets periodically to discuss the issues among the agencies in exchanging information and steps to be taken to strengthen the flow of information. This committee has expanded its activities to facilitate inter-agency flow of information for domestic purposes. Further, to ensure prompt and confidential handling of EOI matters, each agency has appointed a nodal officer to handle the EOI requests from FIRS. This nodal officer is one of the senior officials in the respective agencies and is the EOI focal point for FIRS in requesting and obtaining information. The 36 SBIRs have appointed a focal officer in all their respective States. Within FIRS, EOI focal officers have been appointed at 7 Large Taxpayer Units and Tax Investigation and Special Enforcement Department (TISED) of FIRS. The information exchange co-operation between the various agencies is for both domestic and cross-border EOI purposes. These focal officers meet periodically to deliberate on the practical ways to improve the inter-agency EOI system in Nigeria. For the system of exchange of tax information in Nigeria to function effectively, officials designated as EOI Focal officers are required to play specific roles which include:

- Acting as liaison between the Department/organisation and the FIRS on EOI matters – to work with office of Chief Executive.

- Ensuring prompt acknowledgement of correspondence on EOI from FIRS
- Expeditiously obtaining information from other Departments/unit within the organisation and providing information to Nigeria CA to meet requests from Nigeria's Tax Treaty partner.
- Creating awareness within the organisation on the benefits of collaboration in the area of exchange of information.
- Assisting to ensure that all responses to request for tax information and all outgoing request for information are done with the guidance of the templates and meets global agreed standards.
- Assisting to ensure the confidentiality of the process of EOI within the office/organisation (in accordance with the Article Nigeria 27(2) Nigeria Model DTA)
- Liaising with the audit team to develop a system to note and document any information obtained during tax audits (desk or field) which may be valuable to the CA of Nigeria's tax treaty partners and forwarding the same to the FIRS – for exchange as outgoing Spontaneous EOI
- Providing early feedback on specific challenges requiring intervention by the competent authority/FIRS

304. The FIRS has signed a Memorandum of Understanding with all the relevant agencies (CBN, NFIU, SCUML, CAC, JTB/SBIR, NIS and SEC) to formalise its relationship with these agencies and to regulate the relationship and functions legally in order to ensure compliance from agencies and third parties.

305. Regarding the procedures of accessing information, FIRS TIEU has a number of options available. For instance, in liaison with the Information and Communication Technology (ICT) dept. and the Joint Tax Board, the TIEU conducts a search of the ITAS database, the FIRS Web portal and the TIN database where details of tax and other related information are available. If some additional information on the taxpayer is required, a letter signed by the Executive Chairman is sent to the local tax office (FIRS or State BIR) where the Taxpayer is registered for tax purposes to provide the information. If the information is available with the other government agency, FIRS will request that agency to provide the information in 14 days from the receipt of letter. If the requested information is not readily available either in the FIRS or other agencies' database, a notice is issued by the tax auditor who has jurisdiction over the taxpayer to produce the necessary documents specified in the notice. A timeline of 30 days is generally applied where the Tax office has to request the taxpayer to furnish the information, before it transmits it to the EOI unit.

Nigerian authorities state that this timeline is generally respected by taxpayers in practice.

306. Where a notice has been issued to a taxpayer to provide information and the taxpayer fails to comply after the 7 days or extended time provided for in Section 26 of FIRSEA and reminders, the Tax office (FIRS or State BIR) is empowered to employ its enforcement powers to enter the person's premises to search, inspect and seize if need be, documents, books and computers suspected to contain the information required for EOI purposes. Nigerian authorities stated that these compulsory powers were used to obtain information from a taxpayer for EOI purposes and the information was forwarded to an EOI treaty partner in one case during the review period. The TISED of FIRS carried out enforcements on the request of other divisions/units of FIRS to obtain information for domestic and EOI purposes. The number of cases involving enforcement in 2103, 2014 and 2015 (until June) were 48, 146 and 82 respectively.

307. FIRS has direct access to the CAC online database which TIEU accesses to obtain information about identity and ownership information to the extent available online. If additional information is required from CAC, TIEU sends a written request to CAC. The requests from FIRS are received by the office of the Registrar general, which in turn is sent to the nodal officer. Information is gathered instantly if it is readily available at the central office or at the archives. The nodal officer checks for the accuracy and adequacy of information, seals and delivers it by hand. Similarly, when information is available with other agencies, a written request is sent by FIRS to the head of those agencies. The letter is subsequently sent by the head offices to the nodal officers for necessary action.

308. Where the information required to respond to an EOI request from an EOI partner is in possession or control of a third party or Service provider, in practice, the EOI unit could take a number of steps. For instance, the FIRS EOI unit requests the Tax office where the third party or Service provider is registered for tax purposes, to employ the information gathering powers vested with the Tax office as provided for in Sections 27, 29 and 30 FIRSEA 2007 as well as Sections 46 and 53 of Personal Income Tax Act. The local Tax office sends a notice to the third party or the service provider concerned to furnish the information within the time period specified in the notice. Once the information is received from the third party or Service provider, the local office will remit the same to the TIEU. In the case of service providers, the FIRS may also write to SCUML for information, if such information is readily available with the SCUML authorities. The request received at the office of the Director, SCUML is forwarded to a task force team. The team lead of the task force team is the focal officer for EOI. The task force team will respond immediately within two weeks if such information is available

within the SCUML. If the information required is not readily at SCUML's disposal, it will obtain the information from the DNFI under the supervisory powers vested with it.

Access to banking information

309. Where information required to respond to an EOI request from an EOI partner is in possession or control of a bank, in practice, TIEU has series of options to obtain this information. For taxpayer information available with FIRS database, TIEU sends an information requests internally. To obtain account holder information on Nigerian bank accounts, the TIEU writes to the Tax Audit, Processes and Programs Department (the FIRS department responsible for obtaining information required to be supplied by Banks under Section 28 of FIRSEA and Section 49 of PITA), which scans through its data bank and supplies such information to TIEU. For other banking information, TIEU will directly send notices to banks throughout Nigeria. All these notices to banks and financial institutions are signed by the Executive Chairman, FIRS. Where a Taxpayer is registered for tax purposes, TIEU sends requests to the local tax office. The tax office employs its information gathering powers as provided for in Section 27 and 28 of FIRSEA, to request for the information from the Bank, which holds the account of the taxpayer who is the subject of enquiry and remit same to the EOI unit.

310. The TIEU may also seek the information from NFIU through FIRS TISED authorised officer in charge of FIRS relations with NFIU to use its information gathering powers under the Anti Money Laundering (Prohibition) Act to obtain the required information from the Banks. The NFIU will engage this request under its relevant internal procedures using the SECURE GOAML PLATFORM (an automated online platform to obtain information from banks expeditiously).

311. Based on this arrangement, NFIU sends information regularly either proactively or reactively. For year 2011, NFIU disseminated information in 4 cases (based on requests from FIRS). Similarly, for years 2012, 2013 and 2014, information on 13 (3 proactive, 10 reactive), 28 (6 proactive, 18 reactive and 1 forwarded information) and 42 cases (6 proactive, 35 reactive and 1 forwarded information) were sent by NFIU to FIRS. The practical engagement with NFIU is very active and information is exchanged effectively in practice without any restrictions. All these information received by FIRS from NFIU so far, have been used for domestic tax enquiry or investigation purposes. The inter-agency co-operation mechanism has been working well in Nigeria. Since this mechanism was originally devised for EOI purposes, FIRS will utilise this co-operation to access information for EOI purposes also without any restriction.

Compulsory powers

312. The FIRS in pursuance of its role as the authorised competent authority has wide powers under Nigeria laws to address non-compliance. Where the information is required to be kept but the record keeper disputes the obligation to keep it, the FIRS uses its other information gathering powers to obtain all information wherever there is default. During the review period, the FIRS conducted search and seizure operations at premises where the information is suspected to have been kept. The steps followed in practice by Tax officials to conduct search and seizure are dealt with in the sections 29, 30 and 36 of FIRSEA 2007 and section 53 of Personal Income Tax Act. For individuals, the warrant to enter into any premise is signed by a judicial officer. For corporates, the warrant is signed by a judge of a Federal High Court. The requirements include a demonstration by the FIRS that it made efforts to obtain information. Further penalties are imposed on persons who contravene with the directions of the Tax Officer. Nigerian authorities stated that penalties are imposed for failure to provide information. The statistics of enforcement actions carried out by the FIRS during the review period to obtain information is as follows:

Year	No. of enforcement actions to obtain information
2011	42
2012	91
2013	74
2014	87

The FIRS takes all necessary measures to collect tax and penal liability through various proceedings, which include obtaining court orders for attaching/liquidating movable and immovable properties, deducting tax at source of some incomes accrued to the taxpayer or even directing garnishees to pay the outstanding debt towards the taxpayer to the FIRS directly. The FIRS may also approach the Tax Appeal Tribunal to resolve the dispute and where necessary, or escalate the matter to the Federal High Court to compel the person to produce the information.

313. Where the person required to keep the information asserts that he is not in possession or control of the information the FIRS may institute legal action to compel the person to make the information available. The process of instituting legal action against non-compliant persons is overseen by the Legal Department of the FIRS. The recourse to legal action is often after other administrative steps have been exhausted.

314. Where a third party who is not required to keep the information has or is able to obtain the information, the FIRS is empowered to request "any

person it considers necessary" whether in possession or suspected to be in possession of such tax information to furnish the FIRS within a specified time frame, irrespective of the legal obligation to keep such information. FIRS officials use same access powers on all persons who (or suspected to) possess information regardless of whether they are under obligation to keep such information or not. Where the retention period for keeping the record has expired but is believed to be available, the FIRS can demand for such information to be furnished if it involves a criminal case. In cases where none of the above measures apply or have not yielded any result, the FIRS resorts to its powers of enforcement and prosecution to compel compliance. Notwithstanding the type of information requested, the above information gathering measures apply.

Secrecy provisions *(ToR B.1.5)*

Bank secrecy

315. There are no constitutional or statutory provisions regarding banking secrecy. However, under the common law, which is part of Nigerian legal system, a banker has a duty to keep the transactions with its customers confidential. Accordingly, information in relation to the customer may not be disclosed to a third party. This duty of confidentiality which banks owe to their customers is subject to some exceptions, including: public interest; legal duty; and where the bank's interest requires disclosure. This will cover situations where the information is sought in the course of an EOI request.

316. Section 26 of the FIRSEA applies to banks as to any other person in Nigeria. Banks must provide monthly reports on new customers to the tax administration (to the State administration concerning natural persons and to the FIRS concerning corporate customers) (section 61 CITA, section 49 PITA). In addition, the FIRS may give notice to any person, including a person engaged in banking business in Nigeria, to provide in the time stipulated in the notice "information including the name and address of any person specified in the notice" (section 28(2) FIRSEA, section 61 CITA). That person is not required to disclose any additional information about the customer or the bank unless such disclosure is required by a notice signed by the Executive Chairman of the FIRS (section 61(2) CITA, section 49 PITA). Nigeria has reported that there is no special procedure provided for this. This is a routine process which is normally done within a couple of days.

317. Any bank that fails to provide information required by the FIRS in respect of any taxpayer, when such information is available with the bank, is liable to a fine not exceeding NGN 500 000 and NGN 50 000 (EUR 2400 and 240) in respect of corporate and individual customers respectively (section 28(2)(3), FIRSEA).

318. There are no statutory provisions as regards the level and amount of details to be provided by the requesting authority to the FIRS. Nigeria has reported that it is in a position to provide banking information where any identifying information is provided.

319. Nigeria operates an account numbering system called "*Nigeria Uniform Bank Account Number*" (NUBAN). Under this system, each account is allocated a unique number which is not duplicated by any other bank. Thus, Nigeria has the capacity to provide account details when only the account number is known. When the bank account number is not known, the competent authority can rely on other information to identify the bank account, such as:

- the identity of the person (name and any former names, including known alias);
- the address (private or office address including telephone/e-mail if known);
- the nature of business, trade or profession; and/or
- the name of the bank.

320. The Nigerian competent authority is therefore in a position to access bank information. In practice, none of the banks or other financial institutions raised any objections to the access of banking information by FIRS or SBIR for EOI purposes. Of those peers that provided input in the course of the review, no issue in obtaining banking information were reported.

Professional privileges

321. There is no express reference to legal professional privilege in Nigerian Law. However, common law attorney-client privilege exists in Nigeria. Nigeria states that at common law, the privilege attaches to confidential written or oral communications between a professional legal adviser and his client, or any person representing the client, in connection with and in contemplation of, and for the purposes of legal proceedings or in connection with the giving of legal advice. Thus, where an attorney acts in any other capacity other than as an attorney, the attorney-client privilege should not apply. As a result, other than with respect to advice between a lawyer and his/her client, attorney-client privilege will not be a barrier to effective exchange of information.

322. Rule 19 of Rules of Professional Conduct pursuant to Legal Practitioners Act 1975 applies to all legal practitioners in Nigeria. Under this, a lawyer is under an obligation not to disclose information received from his client in the course of his professional duties. The information may be oral or in writing. The client-attorney communication is confidential and it starts from

the moment a client enters the chambers of a lawyer. But this privilege is not absolute. Under certain circumstances, a legal practitioner can disclose information. This includes information disclosed with the consent of his client or if any other law of Nigeria permits him to do so or by a court order asks him to disclose so. Further, if there is any allegation, or for disputes of fee, the professional can disclose the relevant information. Furthermore, the legal professional should disclose information if the intention of a client is to commit an offence. Section 26 and 27 of CITA empowers tax authorities to seek and obtain information from legal professionals or any persons holding information in a fiduciary capacity.

323. The officials from the Ministry of Justice stated that where a specific law does not cover some situation, common law will step in. To date, professionals in Nigeria have not denied any confidential fiduciary information held by them on behalf of their clients when sought by FIRS or any other agencies in Nigeria. Further, they have not disputed the access of their client information by any of the agencies in Nigeria.

324. The Professional code of conduct for Chartered Accountants issued by the Institute of Chartered Accountants Society of Nigeria requires its members to keep the client information confidential and not to disclose such information in normal course. However, there are several exceptions, which include circumstances where Chartered Accountants are permitted or required by law to disclose information to the appropriate public authorities. In practice, during the review period, tax authorities have not faced any reservation from Chartered Accountants for disclosing their client information or for co-operating with enquiry/investigation conducted by the tax authorities.

325. The scope of attorney-client privilege as set out in the *Evidence Act* is provided in section 192 (Privileged communication). According to this section, no legal practitioner shall be permitted to disclose confidential communications produced between a client and their solicitor. However, this restriction is confined to for the purposes of providing legal advice or for use in contemplated legal proceedings. The privilege is not extended to matters beyond the court proceedings and is in line with the international standard.

326. Officials from the FIRS have reported that there has never been a case of attorney-client privilege claimed over information sought by the FIRS for domestic purposes. Nigerian authorities are of the view that this should be the case for EOI purposes also. Of those peers that provided input in the course of the review, no issues related to claims of attorney-client privilege were reported.

Conclusion

327. Concerning the review period, Nigeria received 5 requests from 3 different treaty partners. Nigeria processed these successfully and forwarded complete set of information to those treaty partners. The Nigerian competent authority had not faced any systemic delays or hindrances in accessing the information, which includes both ownership and accounting information of legal entities and individuals.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

B.2. Notification requirements and rights and safeguards

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

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

328. 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). The legal and regulatory framework in Nigeria does not provide for any right or safeguard which would unduly prevent or delay effective exchange of information. The procedure for accessing information is described under section B.1.

329. There is no specific right of appeal created under any of the laws related to the powers of the competent authority. However, a general right of appeal is available under Chapter IV of the Nigerian Constitution on Fundamental Rights. Article 36 of the Nigerian Constitution guarantees the right to a fair and impartial hearing in the matter of a person's civil rights and obligations. Article 46 allows a person who feels that his fundamental rights have been violated, to approach the High Court of the State for redress. As of June 2015, no appeal regarding the decision of FIRS to access information either for domestic or EOI purposes had ever been filed in Nigeria.

330. Nigeria's law does not require the tax authorities to notify taxpayers or third parties of an exchange of information request, or when the tax authority collects information from a third party to fulfil an exchange of information request. In practice, the tax authorities had neither notified third parties of the reason for a request for information nor notified taxpayers of a request for information.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

C. Exchanging information

Overview

331. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Nigeria, the legal authority to exchange information is primarily derived from double taxation conventions (DTCs), multilateral agreements as well as from domestic law. This section of the report examines whether Nigeria has a network of information exchange arrangements that would allow it to achieve effective exchange of information in practice.

332. Nigeria has signed 17 DTCs that provide for the exchange of information for tax purposes (see Annex 2). It is a signatory to the Multilateral Convention. Nigeria deposited the instrument of ratification of the Multilateral Convention with the OECD on 29 May 2015. The Multilateral Convention came into force in Nigeria on 1 September 2015. In all, Nigeria has 92 EOI relationships which include 12 DTCs in force. Some of Nigeria's DTCs which were signed more than five years ago are still not in force. Nigerian authorities stated that, in 2009, their Government decided to suspend all treaty negotiations and started revising Nigeria's treaty negotiation policy and drafting a new Model DTC. This exercise was completed in 2014 and Nigeria resumed negotiations with all its treaty partners with which negotiations were pending at various stages.

333. Out of the two countries requested for a TIEA, Nigeria preferred to have a DTC with one specific jurisdiction, which is a neighbour and an important trading partner of Nigeria. This jurisdiction's TIEA request was received by Nigeria in June 2013. This jurisdiction has not, so far, replied to the alternative proposal of Nigeria. Neither did it insist on a TIEA rather than a DTC. Nigeria stated that it would not oppose if the other jurisdiction prefers to have a TIEA instead. In respect of the TIEA request of the other jurisdiction, Nigeria replied that there is no need of a bilateral TIEA since both the countries are parties to the Multilateral Convention.

334. Post the recommendations of the Global Forum as a result of the Phase 1 review, Nigeria revisited its ratification procedures and ratified the Multilateral Convention in less than 2 years. The Government constituted an Inter-ministerial Committee to examine the ratification procedures and recommend ways to reduce delays in treaty ratification process. This Committee's recommendation has been approved by the Government recently and necessary steps are being taken to implement the suggestions. While the revision in ratification process to reduce delays is a welcome step, the procedures are new and therefore, Nigeria needs to monitor the implementation of this new policy and procedure to ensure that its concluded agreements are ratified as quickly as possible and all new agreements will be ratified within a reasonable timeframe.

335. All of Nigeria's EOI instruments, except for the DTCs with the Netherlands and the United Kingdom, incorporate provisions that allow Nigeria to exchange information according to the international standard. Nonetheless, Nigeria can exchange information to the standard with these countries since the Multilateral Convention is in force between Nigeria and these jurisdictions.

336. All of Nigeria's EOI arrangements contain confidentiality provisions which meet the international standard, and Nigeria's domestic legislation also contains relevant confidentiality provisions. In addition, Nigeria's EOI arrangements 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.

337. There are no legal restrictions on the ability of Nigeria'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. In practice, Nigeria did provide status update in the only case where its response time was more than 90 days.

338. Nigeria's competent authority for its tax treaties is the Minister of Finance or his authorised representative. In practice, the exchange of information responsibilities of the competent authority is performed by the FIRS as this function is delegated to the Executive Chairman FIRS, who authorised the Tax Policy and Legislation Department to administer the EOI functions on day-to-day basis. In the case that the information requested is directly accessible from the taxpayer and CAC database, this information is accessed immediately by the TIEU and forwarded to the requesting jurisdiction. However, in cases where the information requested was of a more complex nature, the TIEU forwarded the request to other government agencies where the subject of the request was registered for tax purposes.

339. Over the review period, there were issues in practice with Nigeria's receipt of requests due to not having consistently informed its treaty partners of the correct competent authority details and also due to difficulties encountered with the Nigerian postal service. Despite the issues with receiving the requests, peer feedback indicates that the responses provided by Nigeria were comprehensive and of good quality.

340. To date, Nigeria has not sent any requests due to it being relatively new to the EOI process. The rate of incoming requests has been constant over the review period but given the number of new EOI relationships as a result of its ratification of the Multilateral Convention, Nigerian authorities anticipate incoming requests will continue to increase in coming years.

C.1. Exchange of information mechanisms

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

341. To date, Nigeria has signed 17 Double Tax Conventions (DTCs), with Belgium, Canada, China, Czech Republic, France, Korea, Mauritius, the Netherlands, Pakistan, Philippines, Poland, Romania, Slovak Republic, South Africa, Spain, Sweden and the United Kingdom. 13 of these are in force as of August 2015. Nigeria signed a DTC with Czechoslovakia in 1989. In 2014, Nigeria extended its DTC with Czechoslovakia to each of the successor countries, namely Czech Republic and Slovak Republic from the date of entry into force of the original DTC, i.e. 2 December 1990.

342. Although both Philippines and Nigeria ratified the DTC between them, there had been a communication issue with the notification of the completion of internal procedures. This issue was resolved by Nigeria with Philippines in 2013 and thus the DTC with Philippines entered into force on 18 August 2013.

343. The DTCs with the Netherlands and the United Kingdom contain restrictive wording, and these agreements do not meet the standard (as also determined in both countries' Peer Review Reports). However, all these countries are parties to the Multilateral Convention, which allows them to exchange information in line with the international standard.

344. In addition to its bilateral agreements, Nigeria signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the 2010 Protocol to the Convention on 29 May 2013. On 29 May 2015, Nigeria deposited the instrument of ratification of the Convention as amended by the 2010 Protocol. The Multilateral Convention entered into force in Nigeria from 1st September 2015. Finally, Nigeria was one of the 22 countries that agreed the text of the African Tax Administrations Forum (ATAF) Multilateral Agreement on Mutual Assistance in Tax Matters (AMATAM). Nigeria has

ratified the AMATM but this agreement will enter into force only when 5 countries ratify it. As of October 2015, only 2 countries had ratified this agreement. These Conventions provide for administrative co-operation between parties in the assessment and collection of taxes in accordance with the standard.

Foreseeably relevant standard (ToR C.1.1)

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

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

346. Nigeria's DTCs are generally patterned on the Model Tax Convention as regards the scope of information that can be exchanged. Only Nigeria's DTCs with Korea (signed in November 2009) and Spain (signed in June 2009), both of which are not yet in force, use the term "foreseeably relevant". The majority of Nigeria's DTCs use the term "as is necessary". The Commentary to Article 26(1) of the Model Tax Convention refers to the standard of "foreseeable relevance" and states that the Contracting States may agree to an alternative formulation of this standard that is consistent with the scope of the Article, for instance by replacing "foreseeably relevant" with "necessary". The Nigerian authorities confirm that they adhere to this interpretation.

347. Nigeria's DTCs with the Netherlands and the United Kingdom limit the possibility of exchange of information to that which the authorities have at their disposal in the normal course of administration. However, the Nigerian authorities have advised that they use their access powers to obtain information requested by these countries. Whilst similar clarification is given by the authorities of the Netherlands, the UK interpreted this as not allowing them to use its access power. As Nigeria and the UK are parties of the Multilateral Convention, EOI to the standard is possible under the Multilateral Convention.

348. In the case of the DTC with the Netherlands, the scope of the exchange of information is limited to the provisions of the DTC. As no obligations arise to exchange information for the implementation of domestic laws, this agreement is not consistent with the international standard. However, as Nigeria and the Netherlands are parties of the Multilateral Convention, EOI to the standard is possible under the Multilateral Convention.

349. The Nigerian authorities have also stated that no EOI request has ever been declined for reasons of foreseeable relevance and this is consistent with the feedback received from peers. In one request, Nigeria sought a clarification from the treaty partner before processing the request as the request referred to an EOI instrument with another jurisdiction as the basis for the request.

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

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

351. Article 26(1) of the Model Tax Convention indicates that "[t]he exchange of information is not restricted by Article 1", which defines the personal scope of application of the Convention and indicates that it applies to persons who are residents of one or both of the Contracting States. All of Nigeria's DTCs contain this sentence, except for the DTC with the Netherlands. The DTC with the Netherlands limits the exchange of information to that necessary for carrying out the provisions of the convention. Therefore, under this DTC information concerning non-residents might not be exchanged, but, as noted above, EOI to the standard will take place as the Multilateral Convention is in Nigeria and the Netherlands.

352. Although Nigeria's EOI agreements vary in respect of explicitly stating that the agreement is "in respect of all persons", both discussions with Nigerian authorities and feedback from exchange partners indicates that in practice no difficulties have arisen with any of its exchange of information partners regarding an exchange request relating to residents of either of the contracting States or residents of third party jurisdictions.

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

353. 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. The OECD Model Tax Convention and the Model TIEA, which are 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.

354. Only two of Nigeria's DTCs (with Korea and Spain) and the Multilateral Convention include provisions akin to Article 26(5) of the Model Tax Convention, which provides that a contracting party may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

355. The majority of Nigeria's DTCs do not contain wording akin to Article 26(5) of the Model Tax Convention. Most of these were signed prior to the 2005 revision of the Model Tax Convention in which Article 26(5) was introduced. In any event, it is noted that the absence of this paragraph does not automatically create restrictions on exchange of bank information in Nigeria. The commentary on Article 26(5) indicates that whilst paragraph 5 represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information.

356. There are no constitutional or statutory provisions regarding banking secrecy in Nigeria. However, under the common law, which is part of the Nigerian legal system, a banker has a duty to keep the transactions between it and its customer confidential. The Federal Inland Revenue Service (FIRS) has statutory powers to obtain information held by banks or other financial institutions for tax purposes, and is empowered to exchange such information to collaborate with relevant national or international agencies or bodies (Section 8 (1)(i), FIRS (Establishment) Act). The Nigerian authorities have access to bank information and information held by fiduciaries for exchange purposes (see Part B above), and they are able to exchange this type of information when requested even in the absence of paragraph 5. The same applies to its treaty partners. Bank secrecy may nonetheless exist for some[6] of Nigeria's treaty partners, although no such treaty partners have currently been identified in other peer review reports of the Global Forum.

6. Pakistan and Romania, though Global Forum members, have not yet been reviewed.

357. As noted under section B.1.5 above on access to bank information, the Nigerian competent authority is able to exchange banking information even where the name of the account holder is not known, if any other identifying information is provided. In practice, Nigerian tax authorities had never faced any resistance or hindrances from banks or financial institutions for accessing banking information nor did any treaty partners expressed concerns in Nigeria's ability to obtain and exchange banking information.

Absence of domestic tax interest (ToR C.1.4)

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

359. Only three of Nigeria's DTCs (with Canada, Korea and Spain) contain provisions akin to Article 26(4) of the Model Tax Convention, obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest. The majority of Nigeria's DTCs do not contain such a provision. However, the absence of this provision does not automatically create restrictions on the exchange of information. The Commentary to Article 26(4) indicates that paragraph 4 was introduced to express an explicit obligation to exchange information also in situations where the requested information is not needed by the requested State for domestic tax purposes.

360. The Nigerian authorities consider that the FIRS is empowered under the domestic framework to obtain information from any person (including government agencies) for the purposes of responding to specific requests for exchange of information in tax matters absent a domestic tax interest, as noted under section B.1.3 of the report. A domestic tax interest requirement may nonetheless exist for some of Nigeria's treaty partners, although no such treaty partners have currently been identified in other peer review reports of the Global Forum.

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

Absence of dual criminality principles (ToR C.1.5)

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

363. None of the DTCs concluded by Nigeria, nor the Multilateral Convention, apply the dual criminality principle to restrict the exchange of information. Nigerian authorities have reported and peer input confirms that no request has been turned down on this basis during the period under review.

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

364. 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").

365. All of the DTCs and the Multilateral Convention concluded by Nigeria explicitly or implicitly provide for the exchange of information in both civil and criminal matters. During the three-year review period, Nigeria provided information requested to EOI partners equally for both criminal and civil tax matters. Further, the process of exchanging information related to criminal matters is the same as that for civil matters.

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

366. In some cases, a contracting party may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such formats may include depositions of witnesses and authenticated copies of original records. Contracting parties should endeavour as far as possible to accommodate such requests. The requested party 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 administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

367. There are no restrictions in the exchange of information provisions in Nigeria's DTCs or the Multilateral Convention that would prevent Nigeria from providing information in a specific form, as long as this is consistent with its own administrative practices.

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

In force (ToR C.1.8)

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

370. Nigeria has concluded DTCs with 17 jurisdictions, of which 13 DTCs have been brought into force as of October 2015.[7] The Federal Ministry of Finance is responsible for negotiating international tax agreements. During the negotiation process, the Federal Inland Revenue Service provides technical assistance to the Federal Ministry of Finance. Once negotiation is completed and the text is agreed at an official level, the agreement is sent to the Federal Executive Council, which is chaired by the President of Nigeria. Once approved by the Federal Executive Council, the agreement is signed by the President or the Foreign Minister. Other Ministers or officials can sign the agreements with the approval of the President. After signature, the agreement is sent to the Ministry of Justice, which in turn prepares for the ratification process. The agreement is placed before the National Assembly for consideration and ratification.

371. In many cases the time between the signature of the DTC and its coming into force is relatively long. Only 4 DTCs were brought into force within 18 months, and for the others it generally took more than 5 years. In addition, the ratification of DTC with Poland which was signed in 1999 is still pending. The Nigerian authorities indicated that all steps necessary to bring the DTC with the Philippines into force had been taken, but the letter of notification sent via diplomatic channels was lost before it was received by the Philippines side. The date of entry into force of the agreement, according to Philippines, is 18 August 2013 or 30 days after the notification by Nigeria of the completion of its constitutional requirements. Nigeria successfully notified its completion of internal procedures to Philippines on 18 July 2013 and therefore the DTC with Philippines came into force on 18 August 2013.

7. Belgium; Canada; China; France; the Netherlands; Pakistan; Romania; South Africa, Sweden and the United Kingdom.

372. The DTC with Poland was blocked for translation reasons and the ratification process is no longer being pursued by either signatory. Since both the countries are Parties to the Multilateral Convention, the pending DTC does not affect their EOI relationship. The DTC with Mauritius signed in 2012 was renegotiated to bring the Article on Exchange of Information in line with the International Standard. The Protocol amending the signed DTC with Mauritius was signed in 2013. The ratification process is under progress. Nigeria encountered domestic delays in the process of bringing the three other DTCs into force (with Korea and Spain and Sweden signed more than 6 years ago), but the parliamentary process is now progressing. Draft bills have been prepared by the Ministry of Justice for the submission of signed DTCs with Spain and Republic of Korea to the National Assembly for enactment into law. Further, Nigeria signed the Multilateral Convention on 29 May 2013 and ratified it within 2 years. On 29 May 2015, Nigeria deposited the instrument of ratification of the Multilateral Convention to the OECD. The Multilateral Convention entered into force in Nigeria from 1 September 2015. Finally, Nigeria was one of the 22 countries that agreed the text of the African Tax Administrations Forum (ATAF) Multilateral Agreement on Mutual Assistance in Tax Matters (AMATAM) in July 2012. Nigeria has taken measures to ratify the AMATAM but this agreement will enter into force once and only when 5 countries ratify it. As of December 2015, South Africa is the only jurisdiction that has ratified the AMATAM (July 2014).

373. Post its Phase 1 review, Nigeria ratified the Multilateral Convention in less than 2 years and thereby provided an alternative EOI instrument for all those jurisdictions with which the DTCs signed by Nigeria were pending for ratification. None of the peers provided a negative input during the Phase 2 review on the delay in ratification of the EOI instruments. The steps taken by Nigeria to expedite the ratification process are explained in the following paragraphs (C.1.9). While it is recognised that Nigeria has taken sufficient measures in recent times to reduce the time duration between signature of the agreement and its coming into force, it is recommended that Nigeria ensure that it pursue the necessary measures to bring its exchange of information agreements into force expeditiously, in consultation with the relevant partners.

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

374. For exchange of information to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement.

375. In Nigeria, EOI agreements are given effect through different procedures depending on the date of signature (before or after the 1999 Constitution) and

depending on their nature (DTC or other agreements). Pre-1999 DTCs have been given effect through Ministerial Orders taken in application of the CITA, PITA and Petroleum Profits Tax Act. Section 45(1) of the Companies Income Tax Act states that arrangements declared in Ministerial orders have effect notwithstanding anything in the Act. Section 38(1) of the Personal Income Tax Act and section 61(1) of the Petroleum Profits Tax Act have similar provisions. Six agreements which are in force have been subject to a Ministerial order.[8] The DTCs with the Czech Republic and Slovak Republic as well as with Pakistan are not listed as subsidiary legislation under the CITA and no Ministerial orders have apparently been passed. For quite a long time, there had been internal discussions in Nigeria on the issue of extension of the DTC with Czechoslovakia to its successor countries: Czech Republic and Slovak Republic. In 2014, the Ministry of Foreign Affairs and the Ministry of Justice advised Ministry of Finance that the DTC with Czechoslovakia is extendable to Czech Republic and Slovak Republic from the date of entry into force of the original DTC, i.e. 2 December 1990.

376. EOI agreements signed after 1999 are given effect differently. First, all DTCs must be enacted into law by the National Assembly in order to enter into force in Nigeria, pursuant to section 12 of the Constitution, as they cover taxation and tax relief which pertain to the exclusive list of competence of the National Assembly.[9] The Nigerian authorities indicate that a Ministerial order may no longer be relevant in these cases. The DTCs with China and South Africa have been ratified through the National Assembly. The other agreements (i.e. TIEAs and the Multilateral Convention) can simply be the subject of a Ministerial order as they do not fall in the list of exclusive powers of the Parliament. The Multilateral Convention was signed by the Minister but faced difficulties in convincing the Government on issues such as Tax Examination Abroad. A Committee was constituted to examine the issues and then the Convention was ratified by the President.

377. Under the Treaties (Making Procedure, etc.) Act, all treaties to be negotiated and entered into for and on behalf of the Federation by any Ministry, governmental agency, body or person, must be made in accordance with the procedure specified in this Act. Section 3(1)(a) and 3(2)(a) of the Act requires tax treaties to be enacted into law. The Nigerian authorities indicate that ten such laws have been passed and published in Nigeria as of August 2013. Section 3(1)(b) and 3(2)(b) requires other EOI instruments to be otherwise

8. Belgium; Canada; France; the Netherlands, Romania and the United Kingdom.
9. "(1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly. (2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.".

"ratified", which the Nigerian authorities explain means ratified by the Federal Executive Council and conveyed by Ministerial Order.

378. The Nigerian authorities explain that after a negotiation is completed, the "draft agreement" is presented to the Federal Executive Council (Council of Ministers) for approval. If approved, the Council directs that the draft agreement be signed by a designated person and the Attorney-General of the Federation or the Minister of Justice forwards the signed DTCs to the National Assembly for enactment into law. Thereafter, the enactment is published in the Official Gazette and the treaty partner is notified. The treaty comes into force in accordance with the relevant article of the treaty.

Signature and ratification in practice

379. In practice, requests to enter into a DTC/EOI agreement are usually received at the Ministry of Finance which will then consult with the FIRS before proceeding with the initiation of negotiation process. Nigeria has a model DTC, which is the starting point for Nigeria in its negotiations. Nigeria has never refused to enter into an exchange of information agreement but preferred a DTC with one jurisdiction, which is a neighbour and an important trading partner when Nigeria received a request from that jurisdiction for a TIEA. The referred jurisdiction has not provided any peer input during the Phase 2 review of Nigeria.

380. Upon signature, an agreement will be tabled in Parliament for ratification. Notice of ratification of exchange of information agreements is conveyed via diplomatic channels to the treaty partner. The EOI agreement is then published on the FIRS website. Nigerian officials advised that all the ongoing treaty negotiations were put on hold in 2011 when Nigeria started updating its Model DTC. The new Model DTC was framed in 2014 and all the pending negotiations were reinitiated by Nigeria. This shift in DTC policy was also a reason for delay in all the signed agreements from being ratified. As of October 2015, there are 10 agreements in various stages of negotiation.

381. In 2014, the Government formed an Inter-Ministerial Committee to provide inputs in improving the ratification process and reducing the duration of this process. The Committee provided its recommendations recently and the same was accepted by the Government for implementation. According to the new policy and procedures, the domestication process of all inter-governmental agreements will take 18 months from conclusion of negotiation to the ratification of the President.

382. According to the new policy, once a treaty is signed, the Ministry of Justice will prepare a bill for domestication of the Agreement for consideration of the President and onward transmission to the National Assembly for passage into law. The bill will go through the various legislative processes

in the National Assembly for enactment, which includes consideration of the Standing Committee of the Assembly. This is expected to take 6 months contingent upon other factors such as the schedule and workload of the Assembly, competing bills depending upon the pressing issues at hand, and the continuity of the Assembly (all bills expire and go back to the Government by the end of the tenure of the Assembly).

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

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

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

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

384. Nigeria's network of EOI agreements does not cover some of its key trading partners; the United States, India Brazil and Italy. Nigeria has advised that it started negotiations with all the jurisdictions willing to establish an EOI relationship with Nigeria. Nigeria has also indicated that 4 other jurisdictions are awaiting signature of an agreement with Nigeria (as soon as a state visit or international even occurs which is convenient for both parties). Most importantly, Nigeria is a Party to the Multilateral Convention on Mutual Administrative Assistance, from 1 September 2015, and it will cover all the significant partners including Brazil, India, Italy and the United States.

385. Ultimately, the international standard requires jurisdictions to exchange information with their relevant partners, meaning those partners who are interested in entering into an exchange of information agreement. During the course of the Phase 1 assessment, one jurisdiction advised that negotiations had been

delayed as Nigeria had not answered the request from the jurisdiction. Nigeria acknowledged this situation. Post Phase 1 review, Nigeria renewed its treaty negotiations with all jurisdictions with which negotiations had been pending. Moreover, by being Party to the Multilateral Convention with effect from 1 September 2015, Nigeria has an established EOI relationship with that jurisdiction as with the other 85 jurisdictions.

386. Whereas Nigeria has never declined treaty negotiation, and affirms that tax treaty negotiations are taken very seriously, it is noted that Nigeria put tax treaty negotiations on hold for a few years in order to review and update their tax treaty model to take into account domestic law changes as well as changes in the international models. A dozen treaty negotiations, which were then ongoing, were frozen and most of them are considered void by the partner. During that time, Nigeria continued to receive propositions of negotiation that were not answered. To date, Nigeria has received 11 proposals to negotiate treaties from countries in Asia, the Middle East, Africa, and Europe. Since most of the jurisdictions with which Nigeria is undergoing negotiations for a DTC are also signatories to the Multilateral Convention, Nigeria has an extensive EOI network with almost all its relevant partners. Despite this, Nigeria has re-engaged with its prospective treaty partners since 2015 and many of these negotiations for DTCs are in various stages of progress.

387. Nigeria itself proposed DTC negotiations (prior to 2006) to 10 other countries, mainly in Africa. The review of the Nigerian model DTC was concluded in May 2013 and Nigeria has begun to schedule proposals received into a workable timetable. It may take some time for Nigeria to reduce the congestion and the Nigerian authorities should clearly explain the situation to all interested jurisdictions.

388. Nigeria has also received two recent requests for TIEA. On one of these proposals, Nigeria responded that a TIEA was not necessary considering that both the countries are Parties to the Multilateral Convention. The other TIEA request was from a neighbour and an important trading partner. To this, Nigeria responded that its preference was for full Avoidance of Double Taxation Agreement given the volume of trade between them. The jurisdiction concerned has not provided any peer input on this issue. Nigeria pointed out that had this jurisdiction insisted to negotiate a TIEA rather than a DTC, Nigeria would have not objected to negotiate the TIEA. However, given the close economic ties between these jurisdictions, it is recommended that Nigeria take efforts to pursue its negotiations with that jurisdiction to establish an EOI relationship in any form agreeable to that other jurisdiction as soon as possible.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	Nigeria should continue to develop its network of EOI mechanisms 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)*

389. 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.

Exchange of information mechanisms

390. All of Nigeria's EOI mechanisms have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the agreements. While wording of the respective articles might slightly vary, they contain all of the essential aspects of Article 26(2) of the Model Tax Convention:

> Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies)

> concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

391. EOI partners may wish to allow the sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities on certain high priority matters (e.g. to combat money laundering, corruption, terrorism financing). They may do so by adding a specific provision to this effect, in accordance with Commentary 12.3 to the 2008 Model Tax Convention. The Multilateral Convention contains a provision allowing use of information also for non-tax purposes. The additional language states that "information received by a Requesting Party may be used for other purposes when such information may be used for such other purposes under the laws of both Parties, and the Competent Authority of the Requested Party authorises such use". Such provision is in line with the standard.

Nigeria legislation

392. The maintenance of secrecy in the jurisdictions receiving information is a matter of domestic laws, whether it is the requested or the requesting jurisdiction. In Nigeria, treaty obligations are complemented by domestic laws. Sanctions for the violation of such secrecy in these jurisdictions are governed by the domestic administrative and penal legislation.

Confidentiality obligations of tax officials

393. In the FIRS, secrecy and confidentiality of official information is covered by the Common Law, Oaths Act, Official Secrets Act, FIRS Establishment Act and FIRS' Human Resources Policy.

394. First, under the common law applicable in Nigeria, information obtained in one's official capacity should be kept confidential. This obligation extends to tax officers, and any person who provides administrative or secretarial support to the tax authority.

395. Second, the oath of secrecy is administered on every officer of the FIRS under the Oaths Act. The administration of this oath makes any action taken contrary to the words of the oath an offence punishable under the law. Sanctions for breaking the official of secrecy are (a) imprisonment for a term not exceeding 14 years if convicted on indictment; (b) imprisonment for a term not exceeding 2 years or a fine of an amount not exceeding N200 or to both such imprisonment and fine if summarily convicted (S.7, Official Secrecy Act).

396. Third, the following acts are offences punishable under the Official Secrets Act: a) transmission of any classified matter to an unauthorised person (i.e. any information or thing which is not to be disclosed to the public); b) Obtaining, reproducing or retention of any classified matter by an unauthorised person; c) Failure by public officers to comply with instructions given to them on behalf of the government to safeguard any classified matter which they obtain by virtue of their official position (section 1). Unlawful disclosure of information obtained in an official capacity will attract imprisonment for a term not exceeding 14 years, and failure to safeguard information obtained in an official capacity is liable to a term of imprisonment not exceeding 14 years (section 7, Official Secrets Act). Information received under EOI is treated as a "classified matter".

397. Fourth, section 50(1) of FIRS Establishment Act provides that: "Every person in an official duty or being employed in the administration of this Act shall regard and deal with all documents, information, returns, assessment list and copies of such list relating to the profits or items of profits of any company, as secret and confidential." Any person who breaches this confidentiality provision commits an offence and is liable to a fine not exceeding NGN 50 000 (EUR 240) or imprisonment for a term not exceeding six months or to both a fine and imprisonment (sections 49 and 50 of FIRS (Establishment) Act). Section 50(2), FIRSEA extends this provision to "any person".

398. Finally, FIRS' Human Resources Policy classifies improper disclosure of information as Serious Misconduct that can lead to termination of appointment.

Exceptions

399. Section 50 of FIRS (Establishment) Act explicitly suspends those restrictions for the purpose of any Act or enactment in Nigeria imposing tax on the income of persons, and when disclosure is necessary in order to institute prosecution, or in the course of a prosecution for any offence committed in relation to any tax in Nigeria.

400. The FIRS (Establishment) Act also contains explicit exceptions for EOI purposes: disclosure is authorised to the authorised officer of a DTC counterpart (i) of such facts as may be necessary to enable the proper relief to be given in cases where tax relief is claimed in Nigeria or in the other party (section 50(4)) and (ii) of information for preventing avoidance of tax (section 50(5)). However, the Multilateral Convention is not a DTC, so there is no "DTC counterpart" in this case. Therefore it is unclear how Nigerian officials can exchange information on this basis without committing an offence. Nigeria has advised that the concept of the Multilateral Convention was not recognised at the time of FIRSEA. There is however no legal impediment in

Nigeria since the Multilateral Convention is in the same category as a DTC under the Nigerian legal system. In practice, as far as exchange of information under a DTC is concerned, the competent authority received information from FIRS officials and exchanged with the DTC counterparts. The legal ambiguity in responding to a request pursuant to Multilateral Convention has not been tested in practice. Therefore, it is not clear how FIRS or SBIR officials will provide information if requested by the competent authority under the Multilateral Convention. Nigerian officials state that the legal interpretation in Nigeria does not create any hurdle in obtaining and exchanging information with Multilateral Convention counterparts. This should be followed up to see how Nigeria responds to a request received from a Multilateral Convention partner.

401. Similarly, section 48(2) of the Personal Income Tax Act provides that a member of the relevant tax authority, its secretary and any person employed in the offices of the relevant tax authority cannot disclose any information relating to the income, tax or personal circumstances of any person which has come into their possession in the course of their duties except as may be expedient (a) in any legal proceeding arising from this Act; or (b) to any tax authority; or (c) in accordance with any provision of an arrangement, with respect to taxes, made with any other country. Breach of this will trigger the general penalty of NGN 200.

402. Common law contains some other exceptions: information obtained in one's official capacity can be disclosed to a third party: a) in the course of discharging the official duties of the recipient; b) for the purposes of prosecuting a case before a Court of competent jurisdiction; c) the information is required to be disclosed in public interest e.g. matters of state security; d) if authorised to be disclosed by an Act. The Income Tax (Authorised Communications) Act also provides for some exceptions to the confidentiality duty of tax officials in cases of an investigation or enquiry of the Inspector General of Police or any other police officer authorised by the President of Nigeria (section 1). These exceptions are broader than the ones allowed in the EOI mechanisms of Nigeria.

403. However, once an EOI agreement is enacted into law, the agreements will have effect notwithstanding anything in the law (section 45(1) of Companies Income Tax Act, section 38(1) of the Personal Income Tax Act) if incorporated in a Ministerial order to this effect. In addition, in case of potential conflict between EOI agreements and domestic laws, the Supreme Court of Nigeria[10] has set forth a principle whereby international treaties override domestic tax legisla-

10. Supreme Court case of General Sanni Abacha, Attorney-General of the Federation, State Security Service and Inspector-General of Police Vs Chief Gani Fawehinmi (S.C.45/1997 of 2000).

tion. Therefore, if an EOI agreement establishes confidentiality requirements which are stricter than those set forth under Nigerian domestic legislation, this EOI agreement will take precedence over domestic tax law.

404. Finally, disclosure of information to the public under the Freedom of Information Act does not apply to information obtained under tax treaties. Specifically, the Act exempts the disclosure of: a) information that may jeopardise foreign affairs, unless public interest outweighs whatever injury that disclosure would cause to the conduct of international affairs; b) information that would unavoidably disclose the identity of confidential source; c) information required of any taxpayer in connection with the assessment or collection of any tax (sections 11, 12(1) (a) and 14(1) (d) respectively).

405. In practice, in order to achieve the level of confidentiality demanded for information received from other jurisdictions, a separate work-group was set up to handle EOI matters. This work-group was replaced by a well-structured unit, set-up with the Tax Policy and Legislation Division in 2012. This new unit for handling EOI matters was established to formalise relationships within the FIRS and in order to improve the level of confidentiality and efficiency while dealing with other jurisdictions. The EOI unit operates with a separate filing system that is not accessible to other work-groups.

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

406. 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.

407. The confidentiality provisions in Nigeria's EOI instruments and 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 information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

408.Ensuring confidentiality in practice

408. In practice, the following measures have been adopted by FIRS to ensure the confidentiality of information exchanged pursuant to an EOI request.

Handling and storage of EOI requests and related information

409. Peer input indicates that eight requests were sent to Nigeria over the review period. However, six of these were not received in Nigeria due to issues with communication channels discussed under C.5 of this report. While the missing requests could foreseeably cause a potential breach of confidentiality if these requests fall into the hands of unauthorised persons in Nigeria, the reasons for non-receipt and whereabouts of these requests are not clearly deducible. When the Nigerian authorities were made aware of these missing requests, they conducted enquiries to locate these requests but have been unsuccessful. There is no evidence that these requests have been received in Nigeria. Therefore, this issue has been attributed to deficiencies in the timely communication of the updated contact details of the competent authority to its EOI partners as discussed further in the report (see C 5.2 *Organisational process and resources*). After it has been brought to the attention of Nigeria on the missing requests, Nigeria made efforts to communicate and liaise with the competent authority of the requesting jurisdictions in order to attempt locate and successfully receive the six missing requests but since these requests were sent through ordinary mails by the treaty partners, the Nigerian competent authority could not locate these mails in Nigeria. Nigeria has now updated its competent authority contact details on the website of the FIRS as well as the Global Forum's competent authority database in addition to its new secure email communication channels. Out of these six requests, two requests were subsequently received via encrypted emails by Nigeria in June-July 2015. Nigerian authorities state that with the secure and systematic communication channels established with its treaty partners, the problems faced on account of gaps in communication will not occur in future.

410. For those requests that were successfully received by Nigeria, requested information was provided by the competent authority. No peers of Nigeria had ever raised any issue of confidentiality of requests received by Nigeria or of information sent to them. All the requests have been processed by the TIEU of FIRS from its own secure office within one of the main buildings of FIRS. Access to this building is strictly monitored. All external visitors must obtain a visitor pass from security in order to enter this building which must be displayed at all times. The visitor pass is issued only after the visitor establishes his identity.

411. Over the review period when a request for information was received at the office of the director, TPL, it will be opened by the director himself and he will hand over the EOI request to the head of the TEIU by hand. The head of the TIEU registers the request, examines it and decides how to process with the request. Throughout all processing of the request, the request and any related information is stored in lockable filing cabinets within the TIEU which is completely partitioned and locked outside of regular work hours. As

per the document management policy, the documents are treaty stamped and a confidentiality classification marking on the documents and file folders.

412. The IT resources (computers and dedicated EOI email account) used for EOI purposes are password protected to deny access to unauthorised staff. During the processing of an EOI request, when communicating with other competent authorities, this is generally carried out via email in which no confidential details of the request were shared. Internal email communications between the officials of the FIRS is not encrypted and password protected as the Government's email network is internal (intranet network).

413. Requested information has been normally sent through a registered international post/courier mail but to ensure faster communication, the TIEU revised its policy and started sending information through secure email in the later part of the review period. The information is encrypted and zipped before it is transmitted to the competent authority of the requesting State. Upon confirmation of receipt, the password is sent separately to same or different email ID depending on the practice of the requesting jurisdiction. All documentation (for example, internal documentation to retrieve the information) that is no longer required after the request has been processed is shredded properly to ensure that none can reconstruct the information. Similarly, electronic media containing EOI information is safely disposed of when no longer in use.

414. Over the review period, officials from the TIEU approached financial institutions and other third parties in order to access information. In this case, officials have advised that where information is requested from another government agency or from a third party institution or individual they do not provide any details of the request in the notice unless in cases where it is necessary in order to identify the requested information (name of the taxpayer). The Freedom of Information Act prohibits disclosure of tax related information. The FIRS officials asserted that they had not received any application from public under the Freedom of Information Act seeking information related to EOI requests.

415. The MOU with government agencies has a confidentiality clause, which restricts the use and disclosure of information related to EOI requests. Further on delivery of an EOI request to a government agency or a third party, the EOI request letter will explain the nature of the request and highlight the sensitivity and confidentiality of all aspects related to the request and in particular to the information requested. When the competent authority sends a request, it only sends the questions list in the letter of EOI. As per the EOI Manual, the CA letter from the requesting jurisdiction is not attached. Normally, the sealed letters (with confidentiality stamp on the cover) are sent by Courier with acknowledgement. If the information holder is within Abuja,

the letter is handed over physically. No country information is mentioned in these letters.

416. The FIRS has advised that trainings and workshops have been regularly for the EOI focal officers in other government agencies in order to highlight, amongst other things, the confidential nature of EOI requests. The updates on confidentiality requirements are provided to the inter-agency committee of various agencies headed by the Executive Chairman, FIRS.

Personnel

417. For those requests processed by the FIRS, the FISREA sets out strict confidentiality obligations for all employees in regards to maintaining all information secret and this obligation extends to EOI request or information received by any official of FIRS and in his procession. The FIRS Code of Ethics and FIRS Human Resources Policy strictly requires all employees to adhere to confidentiality requirements. Background checks are conducted before inducting an employee to the FIRS. References, conduct certificate and qualification checks are conducted as part of the employment process. All employees of the FIRS must swear an oath of secrecy at the commencement off their employment with the FIRS which extends even after the termination of the work with the FIRS. Sanctions are employed regularly for various breaches.

418. The officers responsible for EOI within the FIRS have also previously worked in other divisions of the FIRS and are professionally fully aware of their obligations of confidentiality. Nigeria also adheres to the joint Global Forum/OECD publication *Keeping it safe: Guide On The Protection Of Confidentiality Of Information Exchanged For Tax Purposes* and, where relevant, it indicated that it will use it as a guide for best practices related to confidentiality. Further, the officers that have dealt with EOI requests within the Nigeria over the review period have attended Global Forum/African Tax Administration Forum regional training of which confidentiality in practice in the ambit of EOI, formed a substantive part of this training.

Conclusion

419. Nigeria has a comprehensive system of measures in place to assure confidentiality when processing EOI requests. There are clear handling and storage security measures and all personnel are bound by strict confidentiality rules against any disclosure of information concerning EOI requests. Nigeria does not disclose any details of the request in the notice to produce as issued to the holder of the information. Over the review period, no peer raised any issue regarding confidentiality measures in Nigeria.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

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

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

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

420. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise. 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.

421. However, communications between a client and an attorney or other admitted legal representative are generally deemed confidential only to the extent that the attorney or admitted legal representative is acting in that capacity. When the definition of attorney privilege in domestic legislation of the requested jurisdiction is broader, this does not constitute valid grounds for refusing a request for information exchange. Consequently, when a lawyer is acting as nominee shareholder, trustee, settlor, company director or under a power of attorney to represent a company in its business affairs, a request for exchange of information flowing from and related to such activities cannot be refused on grounds of attorney privilege.

422. Nigeria has not received any objection or claims of infringement of rights from any professionals or third parties. Further, it has not experienced any systematic delays in obtaining information for EOI purposes in this respect.

423. All of Nigeria's DTCs except for the DTC with the UK, ensure that the Contracting Parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret, information which is subject to attorney-client privilege, or information the disclosure of which would be contrary to public policy. These provisions conform to Article 26(3) of the OECD Model Tax Convention.

424. Nigeria's DTC with the UK does not contain express safeguards that allow the contracting parties to decline to supply information the disclosure of which would be contrary to public policy. This is not consistent with the international standard but the entry into force of the multilateral Convention will solve this issue.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

425. 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.

426. There are no provisions in Nigeria's laws or DTCs pertaining to the timeliness of responses or the timeframe within which responses should be provided. As such, there appear to be no legal restrictions on the ability of the Nigerian tax authorities to respond to EOI requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

Practice

427. Nigeria's competent authority stated that Nigeria received 2 requests for information in the three year period ending 30 June 2014. However, Nigeria's peers report having sent eight requests during this time. It appears that six requests (sent between 2011 and 2012) were sent to a postal address that was no longer used by the Nigerian competent authority at that time.

428. After it has been brought to the notice of Nigeria on pending requests, Nigeria made efforts to communicate and liaise with the competent authority of the requesting jurisdictions in order to attempt locate and successfully receive the six missing requests. Out of these six requests, two requests were subsequently resent via encrypted email and were successfully received by Nigeria in June-July 2015. The information sought was accessed by the competent authority from government databases and responses for these requests were provided to the requesting jurisdiction within 90 days.

429. One treaty partner, which sent three requests to Nigeria, later indicated that although it never received the information, the problem was solely one of communication. As the investigator in the requesting State has since closed the enquiries, the information requested was no longer required by the treaty partner and therefore that treaty partner had not regarded two of these requests as outstanding. The third request was indeed sent by the treaty partner in June 2014 (received by Nigeria in July 2014) and complete information was provided to the treaty partner in December 2014 (received by the treaty partner in January 2015).

430. The other treaty partner, which earlier reported that it sent four requests to Nigeria was also contacted by Nigeria to resolve the differences in the number of cases referred. This treaty partner indicated that the outstanding cases with Nigeria have since been resolved. Nigeria later stated that out of the four requests, three requests have been replied by Nigeria and one request was closed by that treaty partner on its own.

431. The exact reason for the failure of the six requests to reach the competent authority of Nigeria could not be deduced. However, the Nigerian authorities provided a possible explanation. First, the address to which few of those letters were sent was an old address no longer used by FIRS. Second, the Nigerian competent authorities had changed during the review period and this information was not conveyed to its treaty partners in time. Therefore, there was a possibility that these requests, which were addressed to the competent authorities (the heads of the FIRS) who had retired by then, could not have been received by the office of the executive chairman and therefore never reached the delegated competent authority's office within the FIRS. On its part, Nigeria revisited its internal procedures and processes for receiving mails and strengthened them to remove any possibility of missing requests in future if the requests are received into their mail system.

432. In total, out of five requests which were received by Nigeria and responded in turn, in three cases requested information was provided within 90 days and the other two cases, the requested information was provided within 180 days. The competent authority of Nigeria calculates its response time to received requests from the date it receives the request to the date the requested information is transmitted to the Requesting Party. Nigeria

clarified that in those cases where responses were provided later than 90 days, the subjects of enquiry were taxpayers under the jurisdiction of any of the SBIR. Since it involved a number of channels and levels of communication with SBIRs, general and postal delays accounted for more number of days than expected to be.

433. In two cases where requested information was sent beyond 90 days, the competent authority provided a status update in one case but did not send a status update to the requesting jurisdiction in the other case. In this case, the requesting jurisdiction sent the request in June 2014 but it was received by Nigeria in July 2014, which is outside the review period. Though Nigeria treats this request as one not to be considered for this review, the fact that a status update was not provided in this case is recorded. It is recommended that Nigeria provide status updates consistently in all cases to its treaty partners where information could not be provided within 90 days.

434. The following table shows the time taken to send the final response to incoming EOI requests including the time taken by the requesting jurisdiction to provide clarification (if asked) over the three year period from 1 July 2011 to 31 June 2014.

Response times for requests sent to Nigeria during the three-year review period

		2011-12		2012-13		2013-14		Total	Average
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests sent (a+b+c+d)		5	100%	2	100%	1*	100%	8	100%
Full response: ≤90 days		2	40%	1	50%	0	0%	3	37.5%
≤180 days (cumulative)		2	40%	2	100%	1	100%	5	62.5%
≤1 year (cumulative)	(a)	2	40%	2	100%	1	100%	5	62.5%
1 year+	(b)	0	0%	0	0%	0	0%	0	0%
Requests still pending	(c)	0	0%	0	0%	0	0%	0	0%
Total number of requests withdrawn	(d)	3	60%	0	0%	0	0%	3	37.5%

* This request was sent by a treaty partner in June 2014 (end of the review period) but received by Nigeria in July 2014 (after the review period).

435. During the period under review or any other time, Nigeria has neither declined to provide information requested by its treaty partners nor has it been restrained or restricted by courts or appellate bodies from accessing or providing information to treaty partners.

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

436. Nigeria's competent authority for its tax treaties is the Minister of Finance or his authorised representative. In practice, the exchange of information responsibilities is delegated to the Executive Chairman FIRS. Within the FIRS, the administration of the EOI with treaty partners is carried out within the Tax Policy and Legislation Department in accordance with the allocation of responsibilities. The Director, Tax Policy and Legislation Department acts as the authorised representative of the competent authority for EOI matters.

437. The day to day administration of the EOI process is carried out by the TIEU, which is the exclusive unit within FIRS to handle all the incoming and outgoing EOI requests. This unit was established in 2012 and dedicated for EOI purposes with adequate technical, financial and personnel resources, to meet treaty obligations. The Assistant Director of the TIEU reports to the Director, Tax Policy and Legislation Department and is in-charge of the administration of the unit and its personnel. The TIEU has five staff.

Organisation process by the TIEU

438. The organisational process, templates and guidelines to be followed to obtain and provide information following a request from an information exchange partner is described in the EOI Business Process Manual developed in 2013 by the FIRS, based on the OECD manual. The Manual provides for a checklist for processing incoming and outgoing requests. The State BIRs have also developed a manual for processing incoming requests at the State Tax Authority level.

439. If a request is addressed to the Director with confidential mark on the letter, either received through post or courier, the request letter will only be opened by the director himself. No one in his office is authorised or permitted to open confidential letters. Similarly, if a letter is addressed to the Director by name, then too, it will only be opened by the director concerned. This is in accordance with office manual and general office procedures adopted by all the Government departments in general.

440. If an EOI letter is erroneously addressed to the Executive Chairman, FIRS (by name), the letter were not to be opened by anyone other than the Executive Chairman himself. If the Executive Chairman opens an EOI request letter, he will call the Director, Tax Policy and Legislation (TPL) to collect the EOI letter by hand. If an EOI letter is addressed to the Executive Chairman, FIRS (not by name) and the letter is not marked as confidential, then the Executive Chairman's secretary should place the letter for the Executive Chairman's attention. The Executive Chairman, upon recognising the letter as an EOI request letter, calls the director, TPL to collect the letter in person.

441. Under the procedure established in the EOI Business Process manual, the Director, TPL hands over the EOI request letter to the head of the TIEU personally on the same day. The head of the TIEU is responsible for marking the request with date and confidentiality stamp. Then, the request is preliminarily reviewed to check if the request is a new request or follow-up to an existing request. Accordingly, the case management register is updated and a unique reference number is assigned in case register if it is a new request. A new file is then created and all relevant documents are placed in the corresponding file. The basic information about the request (date of receipt, requesting country, taxable person/subject matter, requesting country's reference number, FIRS reference number, competent authority information of the requesting country, status etc.) are recorded in the case management register.

442. The EOI manual prescribes the procedures to validate a request. This validation process (valid EOI instrument, taxes covered, scope of the requested information, etc.) is in line with the international standard. If a request is found not to be valid, a letter specifying reasons for rejection is sent to the requesting jurisdiction within 5 days of the receipt of the request. If a request is determined as a valid request, the details of the request are recorded in a hard copy master ledger with details of all requests such as the requesting jurisdiction, the date of receipt, a description of the information requested, and the names of the taxpayer and holder of the information if they have been provided. Similar information is recorded in a Microsoft. Excel sheet in the desktop of the Head of the EOI unit for control purposes. A hard copy file is then opened for each request and these are stored in a locked cabinet for which only the EOI unit official has access. An acknowledgement is then sent to the requesting jurisdiction within 3 days. The SBIRs have an EOI manual, which standardises the EOI processes in each State.

443. As described in B.1.1, the competent authority has the power to obtain information from any person. For each valid information exchange request handled by the TIEU, the authorised officer first determines how to best gather the requested information. Depending on the situations, the FIRS may already have the information in its databases and it can be accessed readily. Information on individual taxpayers living outside the National Capital Territory is accessed from the State BIRs. Nigeria gets greater co-operation from other government agencies for the reason that all the Chief Executive Officers of CBN, CAC, Federal Board of Customs, Secretaries of the Ministry of Finance and Ministry of Justice are on the FIRS board as members. So the EOI functions are known to all those authorities and it is easy for FIRS to liaise with these agencies. Every agency internally has created systematic awareness programmes and appointed focal officers to deal with EOI requests from FIRS.

444. If the information is available within the online database of either the FIRS (ITAS database) or the Joint Tax Board (TIN database) or the CAC database, TIEU has to obtain this information within 5 days. If the information is with the local office of FIRS or of State BIR, where the information forms part of the regular tax returns and other relevant documents filed by the taxpayer, the timeline for response will be 14 days, while a timeline of 30 days will apply where a tax office has to request the taxpayer to furnish the information, before it transmits it to the EOI unit. If some delay is encountered, the focal officer of the regional office, being one of the senior-most officials in the tax office, reminds the local office of the response delays. In cases where information is to be obtained from service providers, the timelines average between 30 days of receipt of letter where the Tax office is within Abuja and 45 days where the Tax office is outside Abuja.

445. If TIEU requests a government agency to furnish the required information, the timeline is 14 days from the date of receipt of letter. If the TIEU encounters any delay in the response of SBIR, after 15 days, the Executive Chairman, FIRS will call the Chairman of the respective State Board of Internal Revenue to remind him of the timeliness and delay in responses. When the information is ready, it is transmitted to the Director, TPL by courier post, scanned and emailed or hand delivered through the authorised officer. Once the request has been satisfied at the local unit, all information is placed in a sealed envelope and sent back to the EOI Unit via internal mail. Once a request has been received from the local unit or State BIR, all the information is reviewed by the competent authority to check the completeness of the information and provided to the requesting jurisdiction in the form of a letter with documents attached where relevant. The letter and any accompanying documents are placed in a sealed envelope and dispatched to the requesting jurisdiction via registered mail. A receipt of postage is maintained by the EOI Unit and placed on the hard copy file for the request. Recently, information is forwarded to the requesting competent authorities through encrypted emails.

446. To improve co-ordination between different agencies, Nigeria established an Inter-Agency Committee to systematise and strengthen the flow of EOI information within Nigeria. The Committee consists of FIRS, 36 State Tax authorities and other statutory/regulatory agencies that are primary or secondary sources of taxpayer information. Further to this, since 2013, one senior official in each department or regulatory agency relevant for EOI purposes has been designated as EOI focal officer and has been made primarily responsible for providing information to the competent authority in a timely manner.

447. In general, Nigeria's treaty partners faced problems in communication with Nigeria's competent authority on account of frequent changes in the

competent authority information of Nigeria but such changes are not properly updated to the treaty partners. Although Nigeria informed that the full competent authority details have been communicated from time to time to its treaty partners through diplomatic channels and directly to the individual email addresses of the competent authorities, peers indicated that they are not updated regularly by Nigeria. To avoid future communication issues, Nigeria updated its competent authority contact details on the website of the FIRS as well as the Global Forum's competent authority database in addition to its regular communication channels.

Resources

448. With 5 EOI staff members in the TIEU, well budgeted financial resources and dedicated technical resources (computers, printers, scanners, shredders, internet access, email accounts for EOI, direct access to all tax, JTB and CAC databases and indirect access to information from NFIU, CBN, NSE and NIS databases), Nigeria's current resource levels are sufficiently adequate to deal with the information exchange requests received. One of the TIEU staff is equipped with French language skills as France and Francophone countries in Africa are important EOI partners for Nigeria. Further, Nigeria indicated that it will increase its resources as appropriate, should the numbers of requests increase over time.

449. The EOI unit operates a separate filing system that is not accessible to other work-groups and its EOI related documents are stored in dedicated burglar-proof safe. IT resources are password protected to deny access to unauthorised staff. The staff of the EOI unit have been assigned key performance indicators by the FIRS and are guided by the EOI business process manual to ensure that job performance meets the requirements of the international standard.

450. The staff of the EOI unit have undergone series of local and international training during the review period. Also, trainings were provided to EOI focal officers from the SBIRs and other relevant agencies in June 2014 and March 2015. Moreover, training workshops were organised around the same time to 65 officials from various agencies to increase their awareness on current global EOI matters.

Absence of unreasonable, disproportionate or unduly restrictive conditions on Exchange of Information *(ToR C.5.3)*

451. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. Other than those matters identified earlier in this report, there are no conditions in Nigeria that appear to restrict effective exchange of information. In practice, Nigeria has not faced any unreasonable, disproportionate, or unduly restrictive conditions while accessing information in Nigeria with respect to EOI requests.

Determination and factors underlying recommendations

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

Phase 2 rating	
Largely Compliant	
During the review period, Nigeria received only 2 out of 8 requests sent by its treaty partners. The non-receipt of requests could be attributed to delays in providing updates on the changes to the competent authority information and addresses, which resulted in treaty partners sending requests to old addresses no longer used by FIRS and to persons retired from their positions as competent authority of FIRS. Nigeria's treaty partners faced problems in communication with the competent authority of Nigeria in the absence of updated competent authority details. Despite Nigeria's efforts to update the competent authority information, the lack of a systematic approach to improve communication channels resulted in most of the requests having not been received by Nigeria.	Nigeria should communicate regularly and systematically with all treaty partners and monitor its newly implemented EOI processes to ensure that all requests are successfully received by the EOI Unit.

Summary of determinations and factors underlying recommendations

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	More than 400 000 companies registered with CAC are dormant in Nigeria. Those companies do not comply with filing obligations. The enforcement actions undertaken by CAC to strike off the dormant companies from its register and sanctions imposed against non-compliance have been ineffective and insufficient in providing effective deterrence against the continuing existence of dormant companies during the review period.	Nigeria should take adequate and more effective enforcement measures to strike off the dormant companies from the CAC register.

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Partially Compliant *(continued)*	Although the regulatory and tax authorities monitor and enforce actions against companies and partnerships that do not comply with information filing requirements, the compliance levels of these entities are very low.	Nigeria should take adequate and more effective regulatory and enforcement measures to ensure that companies and partnerships maintain and report their identity and ownership information to the Nigerian authorities regularly in accordance with the statutory requirements. Moreover, Nigeria should monitor the adequacy of sanctions imposed under the relevant tax and commercial laws to ensure that they are effective in providing deterrence against non-compliance of the filing requirements.
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.		
Phase 2 rating: Partially Compliant	While several monitoring and enforcement measures are pursued by various agencies in Nigeria, the compliance levels of relevant entities and arrangements in Nigeria on their reporting obligations are generally very low. As a result, availability of accounting information in all cases may not be ensured in practice.	Strict and more effective monitoring and enforcement mechanisms should be put in place to ensure that accounting information is maintained by all relevant entities and arrangements, and regularly filed with relevant authorities in practice in line with statutory requirements. Moreover, Nigeria should monitor the adequacy of sanctions imposed under the relevant tax and commercial laws to ensure that they are effective in providing deterrence against non-compliance of the filing requirements.

Determination	Factors underlying recommendations	Recommendations
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		
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.		Nigeria should continue to develop its network of EOI mechanisms 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		

Determination	Factors underlying recommendations	Recommendations
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		
The jurisdiction should provide information under its network of agreements in a timely manner *(ToR C.5)*		
Phase 1 determination: This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		
Phase 2 rating: Largely Compliant	During the review period, Nigeria received only 2 out of 8 requests sent by its treaty partners. The non-receipt of requests could be attributed to delays in providing updates on the changes to the competent authority information and addresses, which resulted in treaty partners sending requests to old addresses no longer used by FIRS and to persons retired from their positions as competent authority of FIRS. Nigeria's treaty partners faced problems in communication with the competent authority of Nigeria in the absence of updated competent authority details. Despite Nigeria's efforts to update the competent authority information, the lack of a systematic approach to improve communication channels resulted in most of the requests having not been received by Nigeria.	Nigeria should communicate regularly and systematically with all treaty partners and monitor its newly implemented EOI processes to ensure that all requests are successfully received by the EOI Unit.

Annex 1: Jurisdiction's response to the review report[11]

Nigeria is indeed grateful to the Global Forum, Peer Review Group, the Secretariat and the highly competent and professional assessment team for their strong commitment and hard work throughout the review period and during the preparation of the Report for presentation at this meeting.

Nigeria expresses her belief in the Peer Review Process as an extremely useful tool to institutionalize our systems for exchange of information in accordance with the international standard. Nigeria affirms her commitment to upholding and maintaining this standard for effective exchange of information, transparency and confidentiality.

To underscore this commitment, Nigeria has set up an inter-agency committee, comprising the major Agencies in the EOI system for the purpose of maintaining EOI relationship between agencies of government and ensure the effectiveness of the exchange of information process in accordance with the international standard.

While we agree to the report and ratings of Nigeria, we undertake to introduce further measures and initiatives to address the recommendations issued on Elements A1, A2 and C5 of the report.

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

Annex 2: List of exchange of information mechanisms

Multilateral agreements

Nigeria is a Party to the Convention on Mutual Administrative Assistance in Tax Matters, as amended (MAC). The status of the MAC as at 7 January 2016 is set out in the table below.[12] For multilateral instruments, the date of the entry into force in the table is the latest date, among the two dates of entry into force in the two partners.

Bilateral agreements

The table below contains the list of Double Tax Conventions (DTCs) signed by Nigeria as of December 2015.

For jurisdictions with which Nigeria has several agreements, a reference to all those EOI agreements is made.

No.	Jurisdiction	Type of EOI agreement	Signature	Date In force
1	Albania	MAC	signed	01-Sept-2015
2	Andorra	MAC	Signed	Not yet in force in Andorra
3	Anguilla[c]	MAC	extended	01-Sept-2015
4	Argentina	MAC	signed	01-Sept-2015
5	Aruba[a]	MAC	extended	01-Sept-2015
6	Australia	MAC	signed	01-Sept-2015
7	Austria	MAC	signed	01-Sept-2015
8	Azerbaijan	MAC	signed	01-Sept-2015

12. The chart of signatures and ratification of the multilateral convention is available at www.oecd.org/ctp/eoi/mutual.

No.	Jurisdiction	Type of EOI agreement	Signature	Date In force
9	Barbados	MAC	signed	Not yet in force in Barbados
10	Belgium	DTC	20-Nov-1989	27-Oct-1994
		MAC	signed	01-Sept-2015
11	Belize	MAC	signed	01-Sept-2015
12	Bermuda[c]	MAC	extended	01-Sept-2015
13	Brazil	MAC	signed	Not yet in force in Brazil
14	British Virgin Islands[c]	MAC	extended	01-Sept-2015
15	Bulgaria	MAC	Signed	Not yet in force in Bulgaria
16	Cameroon	MAC	signed	01-Oct-2015
17	Canada	DTC	4-Aug-1992	16-Nov-1999
		MAC	signed	01-Sept-2015
18	Cayman Islands[c]	MAC	extended	01-Sept-2015
19	Chile	MAC	signed	Not yet in force in Chile
20	China (People's Republic of)	DTC	15-Apr-2002	21-Mar-2009
		MAC	signed	Not yet in force in China[d]
21	Colombia	MAC	signed	01-Sept-2015
22	Costa Rica	MAC	signed	01-Sept-2015
23	Croatia	MAC	signed	01-Sept-2015
24	Curaçao[a]	MAC	extended	01-Sept-2015
25	Cyprus[e]	MAC	signed	01-Sept-2015
26	Czech Republic	DTC	31-Aug-1989	2-Dec-1990
		MAC	signed	01-Sept-2015
27	Denmark	MAC	signed	01-Sept-2015
28	El Salvador	MAC	Signed	Not yet in force in El Salvador
29	Estonia	MAC	signed	01-Sept-2015
30	Faroe Islands[b]	MAC	extended	01-Sept-2015
31	Finland	MAC	signed	01-Sept-2015
32	France	DTC	27-Mar-1990	2-May-1991
		MAC	signed	01-Sept-2015
33	Gabon	MAC	Signed	Not yet in force in Gabon
34	Georgia	MAC	signed	01-Sept-2015
35	Germany	MAC	signed	01-Dec-2015

No.	Jurisdiction	Type of EOI agreement	Signature	Date In force
36	Ghana	MAC	signed	01-Sept-2015
37	Gibraltar[c]	MAC	extended	01-Sept-2015
38	Greece	MAC	signed	01-Sept-2015
39	Greenland[b]	MAC	extended	01-Sept-2015
40	Guatemala	MAC	signed	Not yet in force in Guatemala
41	Guernsey[c]	MAC	extended	01-Sept-2015
42	Hungary	MAC	signed	01-Sept-2015
43	Iceland	MAC	signed	01-Sept-2015
44	India	MAC	signed	01-Sept-2015
45	Indonesia	MAC	signed	01-Sept-2015
46	Ireland	MAC	signed	01-Sept-2015
47	Isle of Man[c]	MAC	extended	01-Sept-2015
48	Israel	MAC	signed	Not yet in force in Israel
49	Italy	MAC	signed	01-Sept-2015
50	Japan	MAC	signed	01-Sept-2015
51	Jersey[c]	MAC	extended	01-Sept-2015
52	Kazakhstan	MAC	signed	01-Sept-2015
53	Korea	DTC	6-Nov-2006	Not-in-force
		MAC	signed	01-Sept-2015
54	Latvia	MAC	signed	01-Sept-2015
55	Liechtenstein	MAC	signed	Not yet in force in Liechtenstein
56	Lithuania	MAC	signed	01-Sept-2015
57	Luxembourg	MAC	signed	01-Sept-2015
58	Malta	MAC	signed	01-Sept-2015
59	Mauritius	DTC	10-Aug-2012	Not-in-force
		MAC	signed	01-Dec-2015
60	Mexico	MAC	signed	01-Sept-2015
61	Moldova	MAC	signed	01-Sept-2015
62	Monaco	MAC	signed	Not yet in force in Monaco
63	Montserrat[c]	MAC	extended	01-Sept-2015
64	Morocco	MAC	signed	Not yet in force in Morocco
65	Netherlands	DTC	11-Dec-1991	9-Dec-1992
		MAC	signed	01-Sept-2015

No.	Jurisdiction	Type of EOI agreement	Signature	Date In force
66	New Zealand	MAC	signed	01-Sept-2015
67	Niue	MAC	Signed	Not yet in force in Niue
68	Norway	MAC	signed	01-Sept-2015
69	Pakistan	DTC	10-Oct-1985	8-Mar-1990
70	Philippines	MAC	signed	Not yet in force in Philippines
		DTC	30-Sep-1997	18-Aug-2013
71	Poland	DTC	12-Feb-1999	Not-in-force
		MAC	signed	01-Sept-2015
72	Portugal	MAC	signed	01-Sept-2015
73	Romania	DTC	21-Jul-1992	1-Jan-1995
		MAC	signed	01-Sept-2015
74	Russian Federation	MAC	signed	01-Sept-2015
75	San Marino	MAC	signed	01-Dec-2015
76	Saudi Arabia	MAC	signed	Not yet in force in Saudi Arabia[f]
77	Seychelles	MAC	signed	01-Oct-2015
78	Singapore	MAC	signed	Not yet in force in Singapore
79	Sint Maarten[a]	MAC	extended	01-Sept-2015
80	Slovak Republic	MAC	signed	01-Sept-2015
		DTC	31-Aug-1989	2-Dec-1990
81	Slovenia	MAC	signed	01-Sept-2015
82	South Africa	DTC	29-Apr-2000	5-Jul-2008
		MAC	signed	01-Sept-2015
83	Spain	DTC	23-Jun-2009	Not-in-force
		MAC	signed	01-Sept-2015
84	Sweden	DTC	18-Nov-2004	31-Dec-2014
		MAC	signed	01-Sept-2015
85	Switzerland	MAC	signed	Not yet in force in Switzerland
86	Tunisia	MAC	signed	01-Sept-2015
87	Turkey	MAC	signed	Not yet in force in Turkey
88	Turks and Caicos Islands[c]	MAC	extended	01-Sept-2015
89	Uganda	MAC	signed	Not yet in force in Uganda
90	Ukraine	MAC	signed	01-Sept-2015

No.	Jurisdiction	Type of EOI agreement	Signature	Date In force
91	United Kingdom	DTC	9-Jun-1987	27-Dec-1987
		MAC	signed	01-Sept-2015
92	United States	MAC	signed	Not yet in force in United States

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

b. Extension by the Kingdom of Denmark.

c. Extension by the United Kingdom.

d. On 16 October 2015, China (People's Republic of) deposited its instrument of ratification of the Multilateral Convention. In accordance with article 28, the Convention shall enter into force for China on 1 February 2016.

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

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

f. On 17 December 2015, Saudi Arabia deposited its instrument of ratification of the Multilateral Convention. In accordance with article 28, the Convention shall enter into force for Saudi Arabia on 1 April 2016.

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

Company Laws

Companies and Allied Matters Act (CAMA)
United Kingdom's Partnership Act, 1890
Lagos State Partnership Law, 2009 (LSPL)
Limited Liability Partnership (LLP) (Lagos)
Nigerian Cooperative Societies Act
Financial Reporting Council Act

Taxation Laws

FIRS Establishment Act (FIRSEA)
Companies Income Tax Act (CITA)
Personal Income Tax Act (PITA)
Capital Gains Tax Act
Value Added Tax Act
Petroleum Profits Tax Act
Income Tax (Authorised Communications) Act
Export Processing Zone Act
FIRS Regulations
FIRS' Human Resources Policy
Income Tax (Transfer Pricing) Regulations

Banking and Financial Laws

Central Bank of Nigeria Act (CBN Act)

Banks and Other Financial Institutions Act (BOFIA)

Insurance Act

Investments and Securities Act

Anti-Money Laundering Laws

Money Laundering (Prohibition) Act

Money Laundering (Prevention) Act, 2003 (MLPA)

Special Control Unit Against Money Laundering (SCUML) of the Federal Ministry of Trade and Investment Operational Guidelines

Other Laws

Constitution

Treaties (Making Procedure, etc.) Act

Freedom of Information Act

Interpretation Act

Land Use Act

Lands Registration Act (FCT)

Lands Instrument Registration Laws of respective States

Oaths Act

Official Secrets Act

Annex 4: People interviewed during the on-site visit

Officials from the Federal Inland Revenue Service

Officials from the Central Bank of Nigeria

Officials from the Nigerian Ministry of Finance

Officials from the Nigerian Ministry of Justice

Officials from the Nigerian Financial Intelligence Unit

Officials from the Corporate Affairs Commission

Officials from the State Boards of Internal Revenue

Registrar of Cooperatives

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: NIGERIA

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 130 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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