Global Forum on Transparency
and Exchange of Information for Tax Purposes

SUPPLEMENTARY PEER REVIEW REPORT

Phase 1

Legal and Regulatory Framework

VANUATU

OECD

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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 is a supplementary report on the legal and regulatory framework for transparency and exchange of information in Vanuatu. It complements the Phase 1 peer review report on Vanuatu which was adopted and published by the Global Forum in October 2011 ("2011 Report").

2. The 2011 Report determined that four of the nine[1] essential elements were not in place. These were accounting records under element A.2, access to information under element B.1, exchange of information ("EOI") mechanisms under element C.1 and EOI network under element C.2. In addition, ownership information under element A.1 was determined as in place, but certain aspects of the legal implementation of the element needs improvement; and rights and safeguards under element B.2 was not evaluated because there was no basis upon which to make the determination. The remaining three essential elements (A.3, C.3 and C.4) were determined to be in place. Vanuatu was recommended not to move to a Phase 2 Review until it has acted on the factors highlighted in the 2011 Report.

3. In response to the letter from the Chair of the Global Forum on 28 November 2014 inviting all jurisdictions that were previously prevented from moving to Phase 2 to request a supplementary review, Vanuatu asked for a supplementary peer review report pursuant to paragraphs 58 and 60 of the Revised Methodology for Peer Reviews and Non-member Reviews. This supplementary report reviews the progress made by Vanuatu in improving its legal and regulatory framework and the exchange of information agreements signed by Vanuatu since October 2011 (the date at which the legal and regulatory framework was previously assessed) to address a number of the recommendations made in the 2011 Report.

4. The 2011 Report identified a deficiency under element A.1 in respect of the availability of ownership information for trusts. It was noted in the report that, although Vanuatu's AML laws cover most trustees and require a

1. The nine essential elements are A.1, A.2, A.3, B.1, B.2, C.1, C.2, C.3 and C.4. Element C.5 involves the evaluation of issues of EOI practice and will be reviewed in Phase 2.

trustee to know the identity of the "customer", there was no express requirement that the trustee know the settlor or beneficiaries of the trust. Since the 2011 report, Vanuatu passed the Anti-Money Laundering and Counter-Terrorism Financing Regulation Order No. 122 of 2014 which provides for the regulation of trust and company service providers and requires that they retain identity and ownership information for trusts, including information on the settlor or beneficiaries of the trust. The said Regulation is effective since 27 June 2014. In addition, Vanuatu introduced the Anti-Money Laundering and Counter-Terrorism Financing Regulation (Amendment) Order No. 153 of 2015 which provided penalties for non-compliance with the stated obligations. In view of these changes, element A.1 is upgraded to "in place" and the Phase 1 recommendation is removed.

5. The 2011 Report identified deficiencies under element A.2 and this element was determined to be not in place. The determination was on account of the fact that requirements to maintain accounting records to the international standard do not exist in Vanuatu for all entities. These requirements were specifically lacking in the case of partnerships, international companies and trusts, with the exception of unit trusts. In no case were underlying documents expressly required to be maintained and the requirement to maintain accounting records for a minimum of five years was only in place for companies doing business in Vanuatu and for foundations.

6. No change has been made since the 2011 Report to ensure that accounting information is available with respect to partnerships (general, limited and offshore limited partnerships), international companies or trusts that are not unit trusts. In this regard, the recommendations in the 2011 Report have been retained. On that basis, Element A.2 is determined to be "not in place".

7. The 2011 Report also identified deficiencies under element B.1 and this element was determined to be not in place. The determination was on account of the fact that Vanuatu's authorities did not have the power to obtain and provide information that is the subject of a request under an exchange of information agreement from any person. Since the 2011 Report, Vanuatu passed the International Tax Co-operation Act No. 7 of 2016 ("ITCA"), which provides Vanuatu's Competent Authority the power to obtain and provide information for EOI purposes. The said Act is effective from 7 July 2016. In view of this change, element B.1 is upgraded to "in place" and the Phase 1 recommendation is removed.

8. The 2011 Report explained that because there were no powers to access information pursuant to a tax treaty in Vanuatu's domestic laws (see details on element B.1 above), there were also no notification rules or rights and safeguards. Therefore, it was not possible to assess whether element B.2 was in place, as there was no basis upon which to make this determination.

With the recent enactment of the ITCA, access powers are granted to Vanuatu's Competent Authority. There are no explicit provisions in the ITCA that oblige the Vanuatu's Competent Authority to inform a person subject of an EOI request of the existence of such request or to notify this person prior contacting third parties to obtain information. In view of this change, element B. 2 is determined to be "in place".

9. Vanuatu had signed 14 tax information exchange agreements (TIEAs). 13[2] of its TIEAs are the same as the OECD Model TIEA in all relevant aspects. However, as at the 2011 Report, due to the absence of any powers necessary to give effect to the agreements, the TIEAs which Vanuatu had signed could not be considered to provide for effective exchange of information, and for this reason Vanuatu did not have any agreements to the international standard. Therefore the 2011 Report concluded that elements C.1 and C.2 were not in place. The introduction of the International Tax Co-operation Act No. 7 of 2016 allows Vanuatu to access information for the purposes of exchanging it with its treaty partners. Vanuatu authorities also confirmed that with the International Tax Co-operation Act in place, Vanuatu is in the process of finalising all TIEA procedures to ensure that they are in place and effective. Currently, two of the 14 TIEAs are in force. Vanuatu has ratified 8 TIEAs and is due to send the notification of completion of its ratification procedures to its treaty partners. Vanuatu has not yet ratified four TIEAs signed more than four years ago. In view of the above, element C.1 is determined to be "in place, but" with a recommendation for Vanuatu to ratify all its EOI arrangements and inform all its treaty partners of the completion of its ratification procedures expeditiously. Element C.2 is determined to be "in place" and the Phase 1 recommendation is removed.

10. There were no changes since the 2011 Report that affect elements A.3, C.3 and C.4 and the determination of "in place" for each of these elements remains the same.

11. The progress made by Vanuatu in addressing the gaps identified in its 2011 Report is promising in light of the particular challenges of the political crisis[3] and cyclone Pam which has afflicted Vanuatu in recent times. In light of the actions undertaken by Vanuatu to address the recommendations made in the 2011 Report, Vanuatu is in a position to move to the next round of peer review, which is scheduled to commence in the second half of 2018

2. Vanuatu updated that it was not able to provide the TIEA with Grenada for this review because records were destroyed during Tropical Cyclone Pam. The Vanuatu Department of Foreign Affairs is in the process of writing to Grenada through its diplomatic channels to obtain the records.

3. On 24 November 2015, President of Vanuatu dissolved the Vanuatu Parliament and elections were scheduled in January 2016.

for Vanuatu, in accordance with the PRG schedule of reviews for the next round. Any further developments in the legal and regulatory framework, as well as the application of the framework and practices in exchange of information (EOI) in Vanuatu will be reviewed in detail in the next round of review. Meanwhile, a follow-up report on the measures taken by Vanuatu to respond to the recommendations made in the present report will be provided to the Peer Review Group in June 2017 in accordance with the 2016 Methodology for the second round of peer reviews.

Introduction

Information and methodology used for the peer review of Vanuatu

12. The assessment of Vanuatu's legal and regulatory framework made through this supplementary peer review report was prepared pursuant to paragraph 60 of the Global Forum's *Methodology for Peer Reviews and Non-member Review*s, and considers recent changes to the legal and regulatory framework of Vanuatu based on the International Standard 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*. This supplementary report is based on information available to the assessment team including the laws, regulations, and exchange of information arrangements signed or in force as at 19 August 2016 and information supplied by Vanuatu. It follows the Phase 1 peer review report on Vanuatu which was adopted and published by the Global Forum in October 2011 ("the 2011 Report").

13. The *Terms of Reference* breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses Vanuatu's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that: *(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.

14. The assessment was conducted by an assessment team, which consisted of two expert assessors and representatives of the Global Forum Secretariat: Vandana Ramachandran Director (FT and TR-IV), Central Board of Direct Taxes, Ministry of Finance, Government of India; Nicola Russo, Italian Guardia di Finanza Officer, II Department, International Relations and Cooperation with Foreign Counterparts Office; and Elaine Leong from

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

15. An updated summary of determinations and factors underlying recommendations in respect of the 10 essential elements of the Terms of Reference, which takes into account the conclusions of this supplementary report, can be found in the table at the end of the report.

Recent developments

16. In May 2016, Vanuatu committed to share financial account information automatically with other countries in accordance with the Common Reporting Standard developed by the OECD and G20 countries and endorsed by the Global Forum in 2014. In addition, Vanuatu committed to begin such exchanges in September 2018.

Compliance with the Standards

A. Availability of information

Overview

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

18. The 2011 Report identified a deficiency under element A.1 in respect of the availability of ownership information for trusts. It was noted in the report that, although Vanuatu's AML laws cover most trustees and require a trustee to know the identity of the "customer", there was no express requirement that the trustee know the settlor or beneficiaries of the trust. Since the 2011 report, Vanuatu passed the Anti-Money Laundering and Counter-Terrorism Financing Regulation Order No. 122 of 2014 which provides for the regulation of trust and company service providers and requires that they retain identity information for all relevant entities including trusts. The said Regulation is effective from 27 June 2014. In addition, Vanuatu introduced the Anti-Money Laundering and Counter-Terrorism Financing Regulation (Amendment) Order No. 153 of 2015 which provided penalties

for non-compliance with the stated obligations. In view of these changes, element A.1 is upgraded to "in place" and the Phase 1 recommendation is removed.

19. The 2011 Report identified deficiencies under element A.2 and this element was determined to be not in place. The determination was on account of the fact that requirements to maintain accounting records to the international standard do not exist in Vanuatu for all entities. These requirements were specifically lacking in the case of partnerships, international companies and trusts, with the exception of unit trusts. In no case were underlying documents expressly required to be maintained and the requirement to maintain accounting records for a minimum of five years was only in place for companies doing business in Vanuatu and for foundations.

20. No change has been made since the 2011 Report to ensure that accounting information is available with respect to partnerships (general, limited and offshore limited partnerships), international companies or trusts that are not unit trusts. In this regard, the recommendations in the 2011 Report have been retained. On that basis, Element A.2 is determined to be not in place.

21. At the time of the 2011 Report, element A.3 (banking information) was determined to be in place without any recommendations. There have been no changes since the 2011 Report and the determination for element A.3 remain as in place.

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.

Companies (ToR 4 A.1.1)

22. The 2011 Report noted that comprehensive, up-to-date ownership and identity information is available in respect of all companies operating in Vanuatu. Such information is either filed with the Vanuatu Financial Services Commission (VFSC), kept at the licensed agent's registered office or retained by the companies. This is complemented by AML obligations on a wide range of financial institutions. No changes have been made since.

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

Bearer shares *(ToR A.1.2)*

23. In 2010, Vanuatu enacted an amendment to the International Companies Act (ICA) which provides the legal framework for the immobilisation of bearer shares and requires that bearer shares be held under custodial arrangements. A company having bearer shares on the date of commencement of the Act has until 31 December 2012 to place their bearer shares with a custodian and immobilise them. A bearer share in an International Company (IC) becomes disabled unless it is held by a custodian, and during the period in which it remains disabled, the share ceases to carry any of its entitlements and rights. The 2011 Report noted that the Minister of Finance issued Regulations (Order No. 64, Custody of Bearer Shares Regulations or CBS Regulations) to provide further guidance on bearer shares and to facilitate a smooth transition to the new regime. This Regulation specifically details the approval and recognition of custodians by the VFSC, and rules governing custodians. In addition, the 2011 Report stated that VFSC was conducting staff training on the implementation of this new regulation and had not yet approved any custodians.

24. In 2016, the ICA was further amended *(i)* to prohibit the issuance of new bearer shares; and *(ii)* for all existing bearer shares to be converted into registered shares. This change was provided for under the International Companies (Amendment) Act No. 4 of 2016 which came into effect on 7 July 2016. Section 26 of the International Companies (Amendment) Act No. 4 of 2016, states that: "(1) A share issued to bearer must be exchanged for registered shares on the commencement of this Act[5]. (2) Upon failure to comply with subsection (1), the shares issued to bearer is deemed to be beneficially owned by the custodian and the register of shares of the company must be rectified accordingly". This means that as of 7 July 2016, all bearer shares must either have been converted to registered shares or be deemed to be beneficially owned by the custodian (i.e. the current shareholder loses all rights to the shares if they not convert before the end of the conversion period, with the ownership automatically transferring to the custodian).

25. Further review of the implementation of the ICA and how it works in practice will be the subject of further analysis in the next peer review of Vanuatu during the second round of Exchange of Information on Request (EOIR) reviews.

5. The commencement date for the change is 7 July 2016.

Partnerships *(ToR A.1.3)*

26. The 2011 Report noted that comprehensive, up-to-date ownership and identity information is available in respect of all partnerships operating in Vanuatu. Such information is either filed with the VFSC or kept by the partnership (for Limited Partnerships and Offshore Limited Partnerships). No changes have been made since.

Trusts *(ToR A.1.4)*

27. Unit trusts must be registered with the VFSC, the manager of the scheme must be licensed under the Unit Trust Act and the trustee must be a licensed trust company under the Trust Companies Act (Sec. 2). There are currently no registered unit trusts in Vanuatu.

28. The 2011 Report identified a deficiency in respect of the availability of ownership information for trusts (other than unit trusts). It was noted in the report that although Vanuatu's AML laws cover most trustees and require a trustee to know the identity of the "customer", there was no express requirement that the trustee know the settlor or beneficiaries of the trust. Since the 2011 Report, Vanuatu passed the Anti-Money Laundering and Counter-Terrorism Financing Regulation Order No. 122 of 2014 which provides for the regulation of trust and company service providers and requires that they retain identity information for all relevant entities including trusts. The said Regulation is effective from 27 June 2014. Sub regulation 3(c) of the Anti-Money Laundering and Counter-Terrorism Financing Regulation Order provides that in relation to the customer being a legal arrangement (i.e. a customer who is a trustee of a trust) the reporting entity must collect the following information:

- The full name of the trust;
- The full business name (if any) of the trustee in respect of the trust;
- The type of the trust;
- The country in which the trust was established;
- If any of the trustees is an individual – in respect of any of those individuals, the information required to be collected from an individual under the reporting entity's customer identification programme in respect of individuals[6];

6. Identification information required in relation to a customer who is an individual, as specified under Schedule 2 of the Anti-Money Laundering and Counter-Terrorism Financing Regulation Order, include the customer's name, residential address, date of birth, country of residence, citizenship, occupation or business

- If any of the trustees is a company – in respect of any of those companies, the information required to be collected from a company under the reporting entity's customer identification programme in respect of companies[7];
- The full name and address of any trustee in respect of the trust;
- The full name of any beneficiary in respect of the trust;
- If the terms of the trust identify the beneficiaries by reference to membership of a class – details of the class;
- The date upon which the trust was established;
- The full name of the trust manager (if any) and settlor in respect of the trust.

29. In view of this change, the Phase 1 recommendation is removed.

Foundations *(ToR A.1.5)*

30. The 2011 Report concluded that the legal framework ensured the availability of ownership and identity information with respect to foundations registered in Vanuatu. According to Vanuatu, there are currently approximately 9 foundations registered in Vanuatu. A foundation is required to maintain and file with the VFSC information about the founders, councillors, guardian and secretary. In addition, pursuant to the Financial Transactions Reporting Act, the secretary is required to know the identity of the foundation's beneficiaries.

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activities, name of the customer's proposed relationship with the reporting entity including the purpose of the specific transactions or the expected nature and level of transaction behaviours, the income or assets available to the customer, the customer's source of funds including the origin of funds, the customer's financial position, the beneficial ownership of the funds used by the customer, the beneficiaries of the transactions being facilitated by the reporting entity on behalf of the customer including the destination of funds.

7. Identification information required in relation to a customer who is a company, as specified under Schedule 2 of the Anti-Money Laundering and Counter-Terrorism Financing Regulation Order, include the full name of the company as registered by VFSC, the address of the company's registered office, the address of the company's principal place of business, the VFSC Business License number issued to the company, the company structure, the name of every director in the company, the name of the company secretary, the nature of the business activities conducted by the company and the full name and address of each beneficial owner of the company.

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

31. The 2011 Report concluded that enforcement provisions are in place to ensure all relevant entities maintain information and/or provide it to government authorities as required under the various laws[8].

32. Since the 2011 Report, Vanuatu introduced enforcement provisions in respect of the AML obligations on all reporting entities[9] (including trust and company service providers) where they fail to comply with requirements to maintain and provide information on their customers (which will include the settlor or beneficiaries of the trust). Sections 12 (1), (2) and (3) of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 set out the prescribed customer due deligence requirements that reporting entities must carry out, and this is complimented by clause 3 of the Anti-Money Laundering and Counter-Terrorism Financing Regulation Order No. 122 of 2014, which sets out in detail the prescribed customer due deligence requirements[10]. Any non-compliance with these provisions will be penalised under Section 12 (4) of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 which states: "A reporting entity who contravenes subsection (1), (2) or (3), commits an offence and is liable on conviction: *(a)* in the case of an individual – to a fine not exceeding VT 2 500 000 (EUR 20 642)[11], or imprisonment for a term not exceeding 2 years or both; or *(b)* in the case of a body corporate – to a fine not exceeding VT 10 000 000 (EUR 82 570)."

33. In 2015, Vanuatu further amended its AML laws to provide for penalties for non-compliance. The Anti-Money Laundering and Counter-Terrorism

8. The relevant legislation are the Companies Act, International Companies Act, Financial Transactions Reporting Act, Partnership Act, Foundations Act, Financial Institutions Act and Stamp Duties Act.
9. Section 2 of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 states the list of "reporting entities" covered under the Act, and it includes a licensee within the meaning of the Company and Trust Service Provider Act No. 8 of 2010.
10. Clause 3(c)(ii) of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 states that Trusts and Company Service Providers must at a minimum collect the following information: "(A) the full name of the trust; (B) the full business name (if any) of the trustee in respect of the trust; (C) the type of the trust; (D) the country in which the trust was established; (E) the full name and address of each of the trustee; (F) the full name and address of the settlor and each beneficiaries of the trust; (G) the purpose and intended nature of the business relationship with the reporting entity.".
11. 1 euro (EUR) is equivalent to 121 Ni-Vanuatu Vatu (VT). Retrieved from XE.com, 17 August 2016.

Financing (Amendment) Act No. 2 of 2015 which came into effect on 23 October 2015 added a new section 50A on Penalty Notice, which provides for the Director of the Financial Intelligence Unit to serve a penalty notice if it appears to the Director that a reporting entity or a person had committed an offence under any provision of this Act or the Regulations (Section 50A(1)). Section 50A(7) further states that the "Regulations may: (a) specify the offence by referring to the provision creating the offence under this Act; and (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and (c) prescribe different amounts of penalties for different offences or classes of offences". Schedule 10 of the Anti-Money Laundering and Counter-Terrorism Financing Regulation (Amendment) Order No. 153 of 2015, which came into effect in October 2015, include a Penalty Notice Table, the extract of the penalties for non-compliance with Section 12(4) of the Anti-Money Laundering and Counter-Terrorism Financing Act is appended below:

Column 1 Items	Column 2 Provisions of the AML and CFT Act No. 13 of 2014	Column 3 Prescribed amount for first offence by individual	Column 4 Prescribed amount for second offence by individual	Column 5 Prescribed amount for first offence by body corporate	Column 6 Prescribed amount for first offence by body corporate
2	12(4) contravenes the customer identification obligation	VT 500 000 (EUR 4 129)	VT 830 000 (EUR 6 853)	VT 2 000 000 (EUR 16 514)	VT 3 300 000 (EUR 27 248)

34. The effectiveness of the enforcement provisions which are in place in Vanuatu will be considered as part of Vanuatu's next review in the second round of EOIR reviews.

Determination and factors underlying recommendations

Determination	
The element is in place~~, but certain aspects of the legal implementation of the element need improvement~~.	
Factors underlying recommendations	**Recommendations**
~~Although Vanuatu's AML laws cover most trustees and require a trustee to know the identity of the "customer", there is no express requirement that the trustee know the settlor or beneficiaries of the trust.~~	~~Vanuatu should ensure that information is available to their competent authority that identifies the settlor and beneficiaries of a trust.~~

A.2. Accounting records

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

General requirements (ToR A.2.1)

35. The 2011 Report found that clear accounting requirements do not exist in Vanuatu for all entities. Specifically, for trusts, partnerships and offshore limited partnerships these requirements are either non-existent or not to the standard.

36. No legislative change has been made since the 2011 Report to ensure that accounting information is available with respect to partnerships (general, limited and offshore limited partnerships), international companies or trusts that are not unit trusts. In this regard, the recommendations in the 2011 Report have been retained. On that basis, Element A.2 is determined to be not in place. Vanuatu updated the assessment team that it is working on implementing Regulations that would address the deficiencies in element A.2, and indicated that the Regulations would likely be in place by the end of 2016.

Companies

37. The Companies Act contains clear record keeping requirements for local, exempted, and overseas companies and clear requirements can be found in the Foundations Act as well. Companies doing business in Vanuatu are also subject to an annual independent audit. Although international companies are required to keep records of accounts, according to section 63 of the International Companies Act, international companies must keep *"such accounts and records as are necessary in order to reflect its financial position"*. It is thus not clear that these records would be sufficient to explain transactions of the company, in line with the international standard. In addition, the requirement to keep such accounts "as are necessary" is subject to interpretation and therefore it is not clear what category/type of records are required.

Regulated Entities

38. Regulated entities such as offshore banks, domestic banks and licensees under the Insurance Act are required under the various laws[12] to maintain accounting records to the standard.

12. International Banking Act, Financial Institutions Act and Insurance Act.

Partnerships

39. Section 28 of the Partnership Act provides that partnerships are bound to render true and full information of all things affecting the partnership to any partner or his/her legal representative. This applies to both general and limited partnerships. The Partnership Act does not specify where accounting records must be kept. There is also no requirement in the Offshore Limited Partnership Act (OLPA) for an offshore limited partnership to prepare or maintain accounting information.

Trusts

40. There are no accounting requirements for trustees in Vanuatu. While the FTRA applies to both trust companies and any person acting as a trustee in Vanuatu and would require that the person or entity retain records of all transactions involving the trust, this is not equivalent to an express requirement to retain records of accounts in line with the international standard.

41. Pursuant to the Unit Trust Act, a manager of a unit trust scheme must keep an up to date register of unit holders and publish the buying and selling prices of all units at least on a monthly basis (Sec. 13, Unit Trust Act). In addition, the manager of a unit trust must file an annual report with the VFSC within three months from the closing of accounts in every year. This report must include the manager's investment report, a statement of assets and liabilities, a statement of income and distribution, a copy of the audited accounts and the auditor's report, and details of the fees paid to the manager and trustee during the period covered by the report (Sec. 15). Therefore, from the annual reporting requirement we can conclude that a manager of a unit trust scheme is required to keep records of account in line with the international standard.

Foundations

42. Foundations are required under the Foundation Act to maintain accounting records to the standard.

Underlying documentation *(ToR A.2.2)*

43. There is no requirement in either the Companies Act or the ICA for companies to retain underlying documents such as invoices, contracts, etc. with regard to accounts. In the case of certain companies that are required to be audited, underlying documents would presumably be necessary to complete an audit, however there is no express provision that requires this.

44. As highlighted in the 2011 Report, neither the Partnership Act nor the OLPA specify the types of accounts that must be kept or whether they include underlying documents. No change had been made since the 2011 Report.

45. The Foundations Act does not require that foundations retain underlying documents with regard to accounts. A public foundation is required to be audited annually, and underlying documents would presumably be necessary to complete an audit; however there is no express requirement to retain underlying documents.

Document retention (ToR A.2.3)

46. The Companies Act requires companies to keep records for a period not less than five years from the date they were made. There is no requirement in the ICA to keep records for a minimum period of five years.

47. Neither the Partnership Act nor the OLPA specify a retention period for accounting records. There is no requirement in Vanuatu's laws for a trustee of a trust or a manager of a unit trust to maintain records for a minimum of five years.

48. The Foundations Act requires that accounting records be retained for seven years from the date on which they are made.

49. The situation with regard to document retention for all the relevant entities remains unchanged since the 2011 report.

Determination and factors underlying recommendations

Determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
There are no clear requirements in Vanuatu's laws that require partnerships (general, limited and offshore limited partnerships), international companies or trusts that are not unit trusts to maintain accounting records in line with the Terms of Reference.	Vanuatu should establish clear accounting requirements for all relevant entities in line with the Terms of Reference.

Determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
Obligations to maintain underlying documents are not consistently in place for all entities in Vanuatu.	Introduce consistent obligations on all types of entities to retain relevant accounting records, including underlying documentation for a minimum period of five years.
In the case of international companies, partnerships (general, limited and offshore) and trusts, there is no requirement to maintain documents for a minimum of five years in line with the Terms of Reference.	Vanuatu should establish clear requirements that all relevant entities maintain accounting records for a minimum of five years, in line with the Terms of Reference.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

50. The 2011 Report found that Vanuatu has a legal framework in place to ensure the availability of information on transactions and customers of banks. No relevant legislative changes have been made since the 2011 Report. Therefore the determination of element A.3 remains as in place without any recommendations.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B. Access to information

Overview

51. A variety of information may be needed in a tax inquiry 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 Vanuatu's legal and regulatory framework gives to the authorities access powers that cover relevant persons and information, and whether the rights and safeguards that are in place would be compatible with effective exchange of information.

52. The 2011 Report identified deficiencies under element B.1 and this element was determined to be not in place. The determination was on account of the fact that Vanuatu's authorities did not have the power to obtain and provide information that is the subject of a request under an exchange of information agreement from any person. Since the 2011 report, Vanuatu passed the International Tax Co-operation Act No. 7 of 2016, which provides Vanuatu's Competent Authority the power to obtain and provide information for EOI purposes. The said Act is effective from 7 July 2016. In view of this change, element B.1 is in place and the Phase 1 recommendation is removed.

53. Rights and safeguards under element B.2 was not evaluated in the 2011 Report because there was no basis upon which to make the determination. The International Tax Co-operation Act No. 7 of 2016 does not contain any special appeal rights or safeguards that could unreasonably delay effective EOI. Element B.2 is upgraded to in place with no recommendations.

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).

54. The competent authority to collect information and reply to an EOI agreement is the Tax Policy Department (TPD), within the Ministry of Finance and Economic Management of Vanuatu. Under Vanuatu's TIEAs the competent authority is the TPD. The TPD is the responsible body for tax administration in Vanuatu.

Bank, ownership and identity information *(ToR B.1.1)*

55. Since the 2011 report, Vanuatu passed the International Tax Co-operation Act (ITCA) No. 7 of 2016, which provides Vanuatu's Competent Authority the power to obtain and provide information for EOI purposes. The said Act is effective from 7 July 2016. As analysed in part A of this report, ownership information must be kept by the VFSC or by the legal entities themselves. Pursuant to Article 3 of the ITCA, Vanuatu's Competent Authority has the power to carry out EOI requests including but not limited to *(i)* taking statements from any person; *(ii)* providing information and articles of evidence to any person who requires access to that information for the purposes of the ITCA; *(iii)* serving of documents and *(iv)* executing searches and seizures. Pursuant to Article 4 of the ITCA, Vanuatu's Competent Authority has the power to require the production of information from any person. A notice issued under Article 4 of the ITCA requires the information holder to provide the requested information within a specified time. Article 4(6) of the ITCA, states that the time period for a reply to the notice "must not be more than 14 days, unless it appears to the (Vanuatu) Competent Authority that a longer or shorter period is appropriate". In addition, the information should be provided in such form as the TPD requires including original documents or copies of original documents; and the information should be verified or authenticated in such manner as the TPD requires.

56. Article 13 of the ITCA allows the Vanuatu's Competent Authority to obtain confidential information such as banking information. The said Article states that a person who *(i)* divulges any confidential information; or *(ii)* provides articles or documents; or *(iii)* gives any testimony in conformity with an order or notice issued pursuant to a request; or *(iv)* provides information pursuant to the Regulations to facilitate the automatic exchange of information; or *(v)* otherwise provides information, to the Vanuatu Competent Authority or any authorised recipient for tax purposes pursuant to a requirement of the ITCA, does not commit any offence under any other

law for the time being in force in Vanuatu. Furthermore, if a person provides information under the said Article of the ITCA, he or she is not in breach of any confidential relationship between him or her or any other person; and a civil or criminal liability action is not to be taken against him or her or his or her employer by reason of complying with the order or notice.

57. The types of information which can be provided to the Vanuatu Competent Authority are broad enough to allow effective exchange of information. There are no limitations on the ability of the competent authority to obtain information held by banks or other financial institutions in response to an EOI request and there are no special procedures (such as requirement of a court order) for accessing information held by banks in Vanuatu. The practical application of this provision will be further considered as part of Vanuatu's next review in the second round of EOIR reviews.

Accounting records (ToR B.1.2)

58. The ITCA allows the Vanuatu Competent Authority the power to access any category of information, including accounting records. However, as analysed in element A.2 above, clear accounting requirements do not exist in Vanuatu for all entities. Specifically, for trusts, partnerships and offshore limited partnerships these requirements are either non-existent or not to the standard. Therefore, although adequate access powers existed in Vanuatu pursuant to the ITCA, the availability of such records is not ensured (as analysed under element A.2). The practical application of the ITCA will be further considered as part of Vanuatu's next review in the second round of EOIR reviews.

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

59. The concept of "domestic tax interest" describes a situation where a contracting party can obtain and provide information to another contracting party only if it has an interest in the requested information for its own tax purposes. Vanuatu has no domestic tax interest with respect to its information gathering powers. Information gathering powers provided to the Vanuatu Competent Authority under the ITCA can be used to provide EOI assistance regardless of whether Vanuatu needs the information for its own domestic tax purposes.

60. Under Article 3 of the ITCA it is expressly stated that the powers granted to the Vanuatu Competent Authority may also be used for the fulfilment of Vanuatu's obligations under the international agreements. Article 3(2) reads as follows: *"The Competent Authority is to assist a requesting State in*

accordance with the terms of the Agreement[13] *with that State"*. The terms of all of the exchange of information agreements concluded by Vanuatu provide for information to be obtained and exchanged notwithstanding that it is not required for any domestic tax purpose.

Effective enforcement provisions (ToR B.1.4)

61. Jurisdictions should have in place effective enforcement provisions to compel the production of information. There are administrative and criminal sanctions available to the Vanuatu Competent Authority in case of non-compliance with obligation to provide information requested for EOI purposes.

62. Sanctions are clearly specified in Article 11 of the ITCA. The ITCA establishes that in the case a person who is required to report or produce any information which is in his or her possession or control and: *(i)* without lawful excuse fails to do so within such time as required by the Vanuatu Competent Authority; or *(ii)* alters, destroys, mutilates, defaces, hides, or removes any information or makes a wilful attempt to do so, commits an offence punishable on conviction by a fine of not more than VT 1 000 000 (EUR 8 257) or by a term of imprisonment not exceeding two years, or both. A person who knowingly makes a false declaration to the Vanuatu Competent Authority or an authorised officer is committing an offence punishable on conviction by a fine of not more than VT 1 000 000 (EUR 8 257), or by a term of imprisonment not exceeding two years, or both. A person who directly or indirectly discloses to any person any information in contravention of the ITCA or a TIEA, commits an offence punishable on conviction by a fine not exceeding VT 5 000 000 (EUR 41 285) or by a term of imprisonment not exceeding five years, or both.

63. The ITCA also provides for the Vanuatu Competent Authority to apply to the Supreme Court for the issue of a search warrant authorizing entry into a premise for the purposes of searching for and seizing, any article or document for EOI purpose (Article 8).

64. The effectiveness of the enforcement provisions provided under the ITCA in practice will be examined as part of Vanuatu's next review in the second round of EOIR reviews.

13. "Agreement" is defined under Article 2 of the ITCA to mean a treaty, convention or any international agreement that makes provision for the exchange of information with respect to tax matters including the automatic exchange of information between a foreign State and Vanuatu.

Secrecy provisions *(ToR B.1.5)*

Bank secrecy

65. Jurisdictions should not decline on the basis of their secrecy provisions (e.g. bank secrecy, corporate secrecy) to respond to a request for information made pursuant to an exchange of information mechanism. While Vanuatu's laws contain secrecy provisions to protect confidential information, with the passing of the ITCA giving effect to its TIEAs is in place, these secrecy provisions described below would not impede disclosure of information pursuant to a TIEA because they can be overridden by section 13 of the ITCA.

66. The International Banking Act (IBA), which governs offshore banks, prohibits the disclosure of "protected information" or any other information relating to the international banking business of a licensee or a depositor or other customer of the licensee (Sec. 39). "Protected information" is defined as: the fact of whether a person has an account with a licensee, the name in which the account of a depositor or other customer stands the balance of any such account or the amount of any individual transaction undertaken by any licensee for a depositor or other customer of the licensee. This prohibition does not apply if the disclosure is required or authorised by a court, if it is made to discharge a duty under the IBA, if it is part of a suspicious transaction report under the FTRA, or it is made to the Reserve Bank of Vanuatu (RBV) or a law enforcement authority in Vanuatu. In addition, the information can be disclosed if it is required under any law of Vanuatu, such as the ITCA.

67. A person who contravenes this provision (i.e. S39 of IBA) is guilty of an offense and punishable on conviction by a fine of up to USD 50 000 and/or imprisonment up to 2 years for an individual or a fine of up to USD 250 000 for a body corporate.

68. In addition, the Financial Institutions Act (FIA), which governs banks doing business in Vanuatu, contains a prohibition on disclosure wherein any statement, return or information provided by a licensee to the RBV must be regarded as confidential by the recipient (Sec. 55(1)). The RBV and its employees must not disclose any information acquired in the performance of its duties that is relevant to the affairs or conditions of the licensee or of any clients of a licensee without a court order, or if it is required by any law of Vanuatu or is required for performance of his or her duties. An employee would also be permitted to disclose such information if required under the Mutual Assistance in Criminal Matters Act (MACMA) or the Proceeds of Crime Act or if it is made to a supervisory authority in any country other than Vanuatu for the purpose of the exercise of functions by the supervisory authority corresponding to or similar to those conferred on the RBV by the Act.

69. The Trust Companies Act (TCA) also contains a confidentiality provision. It provides that no person shall disclose to any other person any information entrusted to him in confidence, or acquired by him in his capacity or in the course of his duties as a public officer, employee, agent, etc. or in a professional or similar fiduciary relationship, whether while employed or acting in such capacity or relationship or after he has ceased to be employed or to act in such capacity or relationship. Exceptions to this apply when lawfully required to do so by a court or under the provisions of a law in Vanuatu, or for the purpose of performance of a public officer's duties under the Act. Any person who contravenes this provision is guilty of an offence and liable on conviction to a fine not to exceed VT 100 000 (EUR 826) or to imprisonment for a term not exceeding six months or both. The recently passed ITCA (as provided for under section 13 of the ITCA) prevails over the secrecy provisions in the IBA, FIA and TCA.

Professional secrecy and attorney-client privilege

70. The international standard recognises that a requested State may decline to disclose information relating to confidential communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients to the extent that the communications are protected from disclosure under domestic law (Commentary 19.3 to the *OECD Model Tax Convention*). However, the scope of protection afforded to such confidential communications should be narrowly defined. Such protection does not attach to documents or record delivered to an attorney, solicitor or other admitted legal representative in an attempt to protect such documents or records from disclosure required by law. Also, information on the identity of a person such as a director or beneficial owner of a company is typically not protected as confidential communication.

71. The power to require production of information is limited by legal privilege under Articles 4(8) and 13(3) of the ITCA. The ITCA does not contain a definition of legal privilege. Legal privilege in Vanuatu is defined consistently with other common law jurisdictions. Vanuatu shared two local court cases[14] with the assessment team demonstrating which categories of documents were covered by legal privilege. Both cases concluded that the documents concerned would not be protected by legal privilege. In particular, *Bohn v Republic of Vanuatu* [*2009*] *VUSC 174; Civil Case 06-08 (5 August 2009)* quoted Rule 8.6 of the Civil Procedure Rules 2002 highlighting that in Vanuatu the legal professional privilege will not exist in a document which

14. The two cases on the scope of legal professional privilege are McCormack v Barrett & Sinclair [1995] VUSC 8; Civil Case 002 of 1995 (9 November 1995) and Bohn v Republic of Vanuatu [2009] VUSC 174; Civil Case 06-08 (5 August 2009).

demonstrates a prima facie dishonesty or iniquity as a matter of public policy considerations. Vanuatu further clarified that legal professional privilege only pertains to communications between the legal practitioner and his client in his capacity as legal representative for expected or current litigation. The legal professional privilege may be lost if the communication is made for criminal purpose. Vanuatu also expects that the legal privilege will be applied in the context of the law and agreement and would not be applied to defeat the operation of the relevant agreement. Finally, legal professional privilege has not been extended beyond the legal profession, therefore if a lawyer also acts as a nominee, trustee, registered agent the privilege would not apply. It is also noted that Article 14(2) of the ITCA states that the disclosure of an EOI request to a legal representative is only permitted if it is authorised by the Competent Authority. The provisions in the ITCA seem to be in line with the standard. It will be necessary to monitor the practical application of these provisions to ensure they are applied in line with the standard.

Conclusion

72. The Vanuatu Competent Authority has broad access powers to obtain and provide information requested for EOI held by persons within its territorial jurisdiction, including information held by third parties. All information gathering powers that exist for domestic purposes can be used for EOI purposes regardless whether there is a domestic tax interest. Vanuatu has in place enforcement provisions to compel the production of information, including criminal sanctions. Legal privilege in Vanuatu is provided under various articles in the ITCA. It will be necessary to monitor the practical application of these provisions to ensure they are applied in line with the standard.

Determination and factors underlying recommendations

Determination	
The element is ~~not~~ in place.	
Factors underlying recommendations	**Recommendations**
~~Vanuatu's authorities do not have the power to obtain and provide information that is the subject of a request under an exchange of information agreement from any person.~~	~~Vanuatu should enact legislation that would give the government powers to access information pursuant to a request from a treaty partner.~~

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)*

73. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from notification of the taxpayer concerned prior to the exchange of information requested (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).

74. There are no explicit provisions in the ITCA that oblige the Vanuatu Competent Authority to inform a person subject of an EOI request of the existence of such request or to notify this person prior contacting third parties to obtain information.

75. However, the Vanuatu authorities explained that taxpayers may seek to resist a request for information through the domestic court system under administrative law or argue the constitutional validity of the ITCA. According to Vanuatu authorities, these are fundamental rights in Vanuatu and available for all affected persons. Vanuatu's practice will be nonetheless followed-up in Vanuatu's next review in the second round of EOIR reviews.

Determination and factors underlying recommendations

Phase 1 determination
~~**The assessment team is not in a position to evaluate whether this element is in place, as there is no basis upon which to make this determination.**~~ **The element is in place.**

C. Exchanging information

Overview

76. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. This section of the report examines whether Vanuatu has a network of information exchange that would allow it to achieve effective exchange of information in practice.

77. Vanuatu committed to the international standards for exchange of information in 2003. It signed its first TIEA in late 2009[15], signed nine more TIEAs in 2010[16], three TIEAs in 2011[17] and one TIEA in 2012[18]. Vanuatu had ratified ten[19] of the TIEAs under the Tax Information Exchange Agreement (Ratification) Act No. 36 of 2010, which came into effect on 7 January 2011.

78. The current process of ratification of a TIEA in Vanuatu is for the Minister to enter the agreement by signing it. In accordance with section 26 of Vanuatu's Constitution the Agreement must be ratified by the Vanuatu Parliament. The Ratification Act becomes effective after the President signs the law and it is published in the Gazette. 10 of 14 TIEAs have been ratified. The remaining four TIEAs which have not been ratified by Vanuatu are with Ireland (signed on 7 April 2011), San Marino (signed on 19 May 2011), Grenada (signed on 31 May 2011) and Korea (signed on 14 March 2012).

79. Vanuatu's TIEAs are based on the OECD Model TIEA and, with few immaterial exceptions, are identical to it.

15. France.
16. These include TIEAs with Australia, Denmark, Faroe Islands, Finland, Greenland, Iceland, New Zealand, Norway and Sweden.
17. These include TIEAs with San Marino, Ireland and Korea.
18. The TIEA with Grenada.
19. These include TIEAs with Australia, Denmark, Faroe Islands, Finland, France, Greenland, Iceland, New Zealand, Norway and Sweden.

80. The 2011 Report pointed out that, as there was no law that provided Vanuatu's authorities powers to comply with its TIEAs, it was concluded that Vanuatu could not comply with the terms of its treaties. The introduction of the International Tax Co-operation Act No. 7 of 2016[20] allows Vanuatu to access information to give effect to its EOI instruments. However, it is noted that there are four TIEAs pending ratification by Vanuatu for more than four years. Moreover, in relation to eight TIEAs[21] signed by Vanuatu in 2010, Vanuatu has not sent a notification of completion of its ratification procedures to its treaty partners as at 19 August 2016 and those treaties are not yet in force. In view of the above, element C.1 is determined to be "in place, but" with a recommendation for Vanuatu to ratify all its EOI arrangements and inform all its treaty partners of the completion of its ratification procedures expeditiously. Element C.2 is determined to be "in place" and the Phase 1 recommendation is removed.

C.1. Exchange of information mechanisms

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

Foreseeably relevant standard *(ToR C.1.1)*

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

> The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and

20. The ITCA provides the Vanuatu Competent Authority with the necessary powers to comply with all of Vanuatu's EOI agreements as of the data of the agreement entering into effect, therefore, information relating to earlier taxable periods (e.g. before the law entered into effect) will not be covered by the powers under the ITCA.

21. The Vanuatu Parliament passed the Tax Information Exchange Agreement (Ratification) Act No. 36 of 2010 on 30 Dec 2010, which is an Act to ratify the TIEAs between Vanuatu and the following ten treaty partners: Australia, Denmark, Faroe Islands, Finland, France, Greenland, Iceland, New Zealand, Norway and Sweden. The Act commences on 7 Jan 2011. The 2011 Report highlighted that two of the ten TIEAS are in force, they are the TIEA with Finland and France.

> 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.

82. The 2011 Report concluded that twelve of Vanuatu's TIEAs contain provisions equivalent to Article 1 of the OECD Model TIEA. Vanuatu had since signed two new TIEAs with Korea and Grenada. The TIEA with Korea contain provisions equivalent to Article 1 of the OECD Model TIEA. As Vanuatu does not currently have records of the TIEA with Grenada due to damages from Cyclone Pam, no analysis is made for this agreement. It is recommended that Vanuatu expeditiously work with Grenada to re-confirm the terms of the TIEA signed and to ensure that the terms of the TIEA are in accordance with the standard. An analysis of Vanuatu's TIEA with Grenada should be followed-up in Vanuatu's next review in the second round of EOIR reviews. It is concluded however that 13 of the 14 TIEAs signed by Vanuatu allow for the exchange of information that is foreseeably relevant. No changes have since been made to the signed TIEAs.

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

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

84. The 2011 Report concluded that all of Vanuatu's TIEAs contain a provision identical to Article 2 of the OECD Model TIEA regarding jurisdictional scope. Vanuatu had signed two other TIEAs with Korea and Grenada since the 2011 Report. The TIEA with Korea contain a provision identical to Article 2 of the OECD Model TIEA on jurisdictional scope. As Vanuatu does not currently have records of the TIEA with Grenada due to damages from Cyclone Pam, no analysis is made for this agreement. It is recommended that Vanuatu expeditiously work with Grenada to re-confirm the terms of the TIEA signed and to ensure that the terms of the TIEA are in accordance with the standard. An analysis of Vanuatu's TIEA with Grenada should be followed-up in Vanuatu's next review in the second round of EOIR reviews. It is concluded however that 13 of the 14 TIEAs signed by Vanuatu meet the international standard in this regard. No changes have since been made to the signed TIEAs.

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

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

86. The 2011 Report concluded that Vanuatu's TIEAs all contain Article 5(4)(a) and (b) from the Model TIEA which provides that information held by banks, financial institutions, agents and fiduciaries must be exchanged as well as information regarding ownership. Vanuatu had signed two other TIEAs with Korea and Grenada since the 2011 Report. The TIEA with Korea contain Article 5(4)(a) and (b) from the Model TIEA. As Vanuatu does not currently have records of the TIEA with Grenada due to damages from Cyclone Pam, no analysis is made for this agreement. It is recommended that Vanuatu expeditiously work with Grenada to re-confirm the terms of the TIEA signed and to ensure that the terms of the TIEA are in accordance with the standard. An analysis of Vanuatu's TIEA with Grenada should be followed-up in Vanuatu's next review in the second round of EOIR reviews. It is concluded however that 13 of the 14 TIEAs signed by Vanuatu meet the international standard in this regard. No changes have since been made to the signed TIEAs.

Absence of domestic tax interest (ToR C.1.4)

87. 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.

88. The 2011 Report found that the terms of all of the exchange of information agreements concluded by Vanuatu provide for information to be obtained and exchanged notwithstanding that it is not required for any domestic tax purpose. However, the 2011 Report noted that Vanuatu's domestic laws did not provide for access to information pursuant to an exchange of information request.

89. Since the 2011 Report, Vanuatu had introduced the International Tax Co-operation Act No. 7 of 2016 which is the main legislation allowing the

Vanuatu Competent Authority to access information pursuant to an exchange of information request. There are no domestic tax interest restrictions on Vanuatu's powers to access information for EOI purposes (see Section B above).

Absence of dual criminality principles (ToR C.1.5)

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

91. The 2011 Report concluded that none of the twelve exchange of information agreements concluded by Vanuatu applies the dual criminality principle to restrict the exchange of information. Vanuatu had signed two other TIEAs with Korea and Grenada since the 2011 Report. The TIEA with Korea does not include the application of the dual criminality principle. As Vanuatu does not currently have records of the TIEA with Grenada due to damages from Cyclone Pam, no analysis is made for this agreement. It is recommended that Vanuatu expeditiously work with Grenada to re-confirm the terms of the TIEA signed and to ensure that the terms of the TIEA are in accordance with the standard. An analysis of Vanuatu's TIEA with Grenada should be followed-up in Vanuatu's next review in the second round of EOIR reviews.

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

92. 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").

93. The 2011 Report found that all of the exchange of information agreements concluded by Vanuatu provide for the exchange of information in both civil and criminal tax matters. Vanuatu had signed two other TIEAs with Korea and Grenada since the 2011 Report. The TIEA with Korea provide for the exchange of information in both civil and criminal tax matters. As Vanuatu does not currently have records of the TIEA with Grenada due to damages from Cyclone Pam, no analysis is made for this agreement. It is recommended that Vanuatu expeditiously work with Grenada to re-confirm the terms of the TIEA signed and to ensure that the terms of the TIEA are in

accordance with the standard. An analysis of Vanuatu's TIEA with Grenada should be followed-up in Vanuatu's next review in the second round of EOIR reviews. No changes have since been made to the other signed TIEAs.

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

94. The 2011 Report concluded that all of Vanuatu's TIEAs follow Article 5(3) of the Model, providing that the requested party, to the extent allowable under its domestic laws, shall provide information in the form of depositions of witnesses and authenticated copies of original documents, to the extent allowable under its domestic laws. Vanuatu had signed two other TIEAs with Korea and Grenada since the 2011 Report. The TIEA with Korea follow Article 5(3) of the Model. As Vanuatu does not currently have records of the TIEA with Grenada due to damages from Cyclone Pam, no analysis is made for this agreement. It is recommended that Vanuatu expeditiously work with Grenada to re-confirm the terms of the TIEA signed and to ensure that the terms of the TIEA are in accordance with the standard. An analysis of Vanuatu's TIEA with Grenada should be followed-up in Vanuatu's next review in the second round of EOIR reviews. No changes have since been made to the other signed TIEAs.

In force (ToR C.1.8), In effect (ToR C.1.9)

95. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. Where exchange of information agreements have been signed the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously. In addition, for information exchange to be effective the parties to an exchange of information arrangement need to enact any legislation necessary to comply with the terms of the arrangement.

96. The Vanuatu Parliament passed the Tax Information Exchange Agreement (Ratification) Act No. 36 of 2010 on 30 December 2010, which is an Act to ratify the TIEAs between Vanuatu and the following ten treaty partners: Australia, Denmark, Faroe Islands, Finland, France, Greenland, Iceland, New Zealand, Norway and Sweden. The Act commences on 7 January 2011. The 2011 Report highlighted that two of the ten TIEAS were in force, they were the TIEA with Finland and France. The situation remains unchanged in this review. Although Vanuatu has ratified the remaining eight TIEAs signed by Vanuatu in 2010, Vanuatu has not yet sent a notification of completion of its ratification procedures to its treaty partners as at 19 August 2016 and those treaties are not yet in force. Vanuatu reports that it is in the process of sending formal notice to these treaty partners that all domestic procedures for entry into force are completed and that the letters will be issued without

further delay. Finally, it is noted that Vanuatu has not yet ratified the four TIEAs (with Ireland, San Marino, Korea and Grenada) signed in 2011/2012.

97. The 2011 Report also highlighted that Vanuatu had not enacted legislation that would allow it to carry out its obligations under its TIEAs. Although the Mutual Assistance in Criminal Matters Act (MACM) did provide for some access powers, these powers are very limited and do not allow for exchange of information to the international standard. Therefore, Vanuatu's exchange of information agreements could not be considered to be in effect.

98. With regard to this supplementary review, three peers have provided feedback on the long time span between signature and ratification of the TIEAs which Vanuatu has with them. Vanuatu had explained that the delay to ratify and fully enforce the TIEAs with these peers was due to the fact that Vanuatu did not have in place a domestic TIEA legislation. Vanuatu acknowledged that the passing of the draft legislation had been delayed for many years. Vanuatu further explained that after receiving technical assistance in EOI matters, Vanuatu successfully drafted the International Tax Co-operation Act, which was gazetted on 7 July 2016. This has paved the way forward for Vanuatu to engage its treaty partners to bring the signed treaties into force. However, there remains the twin deficiencies of *(i)* the long time period taken to ratify four TIEAs and *(ii)* the long delay in completing ratification procedures to its eight[22] TIEAs which are not yet in force. In view of the above, element C.1 is determined to be "in place, but" with a recommendation for Vanuatu to ratify all its EOI arrangements and inform all its treaty partners of the completion of its ratification procedures expeditiously. In view of the above, element C.1 is determined to be "in place, but" with a recommendation for Vanuatu to ratify all its EOI arrangements and inform all its treaty partners of the completion of its ratification procedures expeditiously. Vanuatu's practice on whether new signed agreements are brought into force expeditiously will be nonetheless followed-up in Vanuatu's next review in the second round of EOIR reviews.

22. These TIEAs are with Australia, Denmark, Faroe Islands, Greenland, Iceland, New Zealand, Norway and Sweden.

Determination and factors underlying recommendations

Determination	
The element is ~~not~~ in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
~~Although Vanuatu's TIEAs are nearly identical to the Model TIEA, it has not enacted legislation necessary to comply with the terms of its TIEAs, in particular, it has no access powers, and therefore they do not provide for effective exchange of information.~~	~~Vanuatu should enact legislation that would make its TIEAs effective.~~
There are four TIEAs pending ratification by Vanuatu for more than four years. Moreover, in relation to eight TIEAs signed by Vanuatu in 2010, Vanuatu is in the process of sending notification of completion of its ratification procedures to its treaty partners and those treaties are not yet in force.	Vanuatu should ratify all its EOI arrangements and inform all its treaty partners of the completion of its ratification procedures expeditiously.

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

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

99. 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.

100. Vanuatu currently has 14 EOI agreements with Australia, Denmark, Faroe Islands, Finland, Greenland, Iceland, New Zealand, Norway, Sweden, France, Ireland, San Marino, Korea and Grenada. Vanuatu updated that all negotiations on TIEAs had effectively been suspended since the 2011 Report because Vanuatu lacked domestic legislation to implement the TIEA.

This barrier has been overcome with the passage of the International Tax Co-operation Act 2016. The Tax Policy Unit in the Ministry of Finance and Department of Foreign Affairs will be contacting all jurisdictions that negotiations have commenced with to ensure they proceed in an orderly way.

101. In the course of this supplementary review, comments were sought from the jurisdictions participating in the Global Forum, and no jurisdiction advised that Vanuatu had refused to negotiate or enter into an agreement.

102. The 2011 Report highlighted that as Vanuatu did not have the powers to access information, none of its TIEAs are effective (see sections B.1. and C.1.). Therefore, Vanuatu did not have a network of information exchange mechanisms covering all relevant partners.

103. With the International Tax Co-operation Act being gazetted on 7 July 2016, Vanuatu is in the process of brining its signed TIEAs into force and has in place a network of information exchange mechanisms covering 14 jurisdictions. Vanuatu has indicated that it plans to become a signatory to the Convention on Mutual Administrative Assistance in Tax Matters in the near future. Vanuatu is encouraged to continue to develop its network of exchange of information agreements. Element C.2 is now in place and the recommendation for Vanuatu to enact legislation that would make its TIEAs effective has been deleted.

Determination and factors underlying recommendations

Determination	
The element is ~~not~~ in place.	
Factors underlying recommendations	**Recommendations**
~~Because Vanuatu does not have the power to access information pursuant to an EOI request, none of its TIEAs are effective.~~	~~Vanuatu should enact legislation that would make its TIEAs effective.~~
	Vanuatu should continue to develop its EOI network with all relevant partners.

C.3. Confidentiality

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

Information received: disclosure, use and safeguards (ToR C.3.1) and all other information exchanged (ToR C.3.2)

104. The 2011 Report identified that Vanuatu's domestic law and EOI agreements had adequate provisions to ensure the confidentiality of the information received in the process of receiving an EOI request from its treaty partners. Section 12 of the ITCA also states that any information provided to or received by the Competent Authority of Vanuatu pursuant to an EOI agreement or the ITCA is confidential. Therefore, the determination of element C.3 remains in place.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

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

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

105. The 2011 Report found that the rights and safeguards applicable in Vanuatu did not unduly prevent or delay effective exchange of information. Each of Vanuatu's TIEAs contains a provision similar to Article 7 of the Model TIEA, providing that a jurisdiction can refuse to exchange information in certain instances. This includes the possibility of declining a request if it would reveal confidential communications between a client and an attorney. No legal changes have since been made, and element C.4 remains in place. A review of the rights and safeguards applicable in Vanuatu in practice will be conducted in its follow-up EOIR review.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

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), Organisational process and resources (ToR C.5.2), Absence of restrictive conditions on exchange of information (ToR C.5.3)

106. The 2011 Report did not identify any issues relating to Vanuatu's ability to respond to EOI requests within 90 days, organisational processes and resources, or any restrictive conditions on the exchange of information. 13 of the 14[23] arrangements signed by Vanuatu adopt wording foreshadowing the timeframes in Article 5(6) of the Model TIEA regarding request acknowledgements, status updates and provision of the requested information. No issues have been identified in the preparation of this supplementary report. With regards to the actual timeliness for responses to requests for information, the assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are not dealt with in the Phase 1 review. A review of Vanuatu's organisational processes and resources will also be conducted in the context of its next peer review.

Determination and factors underlying recommendations

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

23. Vanuatu updated that it was not able to provide the TIEA with Grenada for this review because records were destroyed during Tropical Cyclone Pam. The Vanuatu Department of Foreign Affairs is in the process of writing to Grenada through its diplomatic channels to obtain the records.

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 (A.1.)		
The element is in place~~, but certain aspects of the legal implementation of the element need improvement~~.	~~Although Vanuatu's AML laws cover most trustees and require a trustee to know the identity of the "customer", there is no express requirement that the trustee know the settlor or beneficiaries of the trust.~~	~~Vanuatu should ensure that information is available to their competent authority that identifies the settlor and beneficiaries of a trust.~~
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*.		
The element is not in place.	There are no clear requirements in Vanuatu's laws that require partnerships (general, limited and offshore limited partnerships), international companies or trusts that are not unit trusts to maintain accounting records in line with the Terms of Reference.	Vanuatu should establish clear accounting requirements for all relevant entities in line with the Terms of Reference.
	Obligations to maintain underlying documents are not consistently in place for all entities in Vanuatu.	Introduce consistent obligations on all types of entities to retain relevant accounting records, including underlying documentation for a minimum period of five years.

Determination	Factors underlying recommendations	Recommendations
The element is not in place. *(continued)*	In the case of international companies, partnerships (general, limited and offshore) and trusts, there is no requirement to maintain documents for a minimum of five years in line with the Terms of Reference.	Vanuatu should establish clear requirements that all relevant entities maintain accounting records for a minimum of five years, in line with the Terms of Reference.
Banking information should be available for all account-holders *(ToR A.3)*.		
The element is in place.		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*.		
The element is ~~not~~ in place.	~~Vanuatu's authorities do not have the power to obtain and provide information that is the subject of a request under an exchange of information agreement from any person.~~	~~Vanuatu should enact legislation that would give the government powers to access information pursuant to a request from a treaty partner.~~
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*.		
The element is in place. ~~The assessment team is not in a position to evaluate whether this element is in place, as there is no basis upon which to make this determination.~~		

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information *(ToR C.1)*.		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	~~Although Vanuatu's TIEAs are nearly identical to the Model TIEA, it has not enacted legislation necessary to comply with the terms of its TIEAs, in particular, it has not access powers, and therefore they do not provide for effective exchange of information.~~	~~Vanuatu should enact legislation that would make its TIEAs effective.~~
	There are four TIEAs pending ratification by Vanuatu for more than four years. Moreover, in relation to eight TIEAs signed by Vanuatu in 2010, Vanuatu is in the process of sending a notification of completion of its ratification procedures to its treaty partners and those treaties are not yet in force.	Vanuatu should ratify all its EOI arrangements and inform all its treaty partners of the completion of its ratification procedures expeditiously.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*.		
The element is ~~not~~ in place.	~~Because Vanuatu does not have the power to access information pursuant to an EOI request, none of its TIEAs are effective.~~	~~Vanuatu should enact legislation that would make its TIEAs effective.~~
		Vanuatu should continue to develop its EOI network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*.		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*.		
The element is in place.		
The jurisdiction should provide information under its network of agreements in a timely manner *(ToR C.5)*.		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction's response to the review report[24]

Vanuatu would like to thank the review team for their efforts in undertaking this supplementary review. We believe the report accurately reflects Vanuatu's current legal and regulatory framework in relation to exchange of information. We appreciate your patience and the professional way the review was undertaken.

Vanuatu has made significant progress in this area over the last 18 months and we expect that outstanding regulatory issues will be resolved over the short term. We are confident that our performance in this area will grow over time. Vanuatu has also committed to Automatic Exchange of Taxation Information and indicated that it aims to sign the multilateral convention.

Finally, Vanuatu is currently undertaking a review of its taxation and revenue system with a view to implementing personal and corporate income tax. This will require a fundamental re-write of Vanuatu revenue laws and will also require our systems and procedures to be re-developed. With OECD support, we intend to ensure that our new laws and procedures meet best practice standards that are expected by the Global Forum.

The challenges faced by Vanuatu in implementing the EOI standards should not be underestimated. However, with support of the OECD, mutual respect and goodwill, we are confident that Vanuatu will succeed in implementing all necessary reforms needed to ensure Vanuatu plays its proper role in minimising global tax evasion.

24 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

The table below contains the list of Tax Information Exchange Agreements signed by Vanuatu as of August 2016.

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
1	Australia	TIEA	21 April 2010	N/A
2	Denmark	TIEA	13 October 2010	N/A
3	Faroe Islands	TIEA	13 October 2010	N/A
4	Finland	TIEA	13 October 2010	8 March 2011
5	France	TIEA	31 December 2009	7 January 2011
6	Greenland	TIEA	13 October 2010	N/A
7	Grenada	TIEA	31 May 2011	N/A
8	Iceland	TIEA	13 October 2010	N/A
9	Ireland	TIEA	7 April 2011	N/A
10	Korea	TIEA	14 March 2012	N/A
11	New Zealand	TIEA	4 August 2010	N/A
12	Norway	TIEA	13 October 2010	N/A
13	San Marino	TIEA	19 May 2011	N/A
14	Sweden	TIEA	13 October 2010	N/A

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

Anti-Money Laundering and Counter-Terrorism Financing (Amendment) Act No. 2 of 2015 Anti-Money Laundering and Counter-Terrorism Financing Regulation Order No. 122 of 2014

Anti-Money Laundering and Counter-Terrorism Financing Regulation Order No. 153 of 2015

Business Licence Act No. 1 of 2006

Business Licence Rule (Published Gazette No. 26 of 2002)

Central Bank of Vanuatu Act No. 1 of 1988 (Revised Edition)

Companies Act No. 12 of 1986

Constitution of Vanuatu

Custody of Bearer Shares Regulation Order No. 64 of 2010

Financial Institutions Act (FIA) No. 21 of 2002 (Revised Edition)

Financial Transactions Reporting Act (FTRA)

Incorporated Cell Companies Act No. 25 of 2009

Insurance Act No. 54 of 2005

International Bank Act (IBA) No. 4 of 2002

International Companies Act (ICA) No. 11 of 2010 (as amended)

International Companies (Amendment) Act No. 4 of 2016

International Tax Co-operation Act No. 7 of 2016

Mutual Assistance in Criminal Matters Act No. 14 of 2002

Mutual Funds Act No. 38 of 2005

Official Secrets Act of 1988

Offshore Limited Partnership Act (OLPA)

Partnership Act

Protected Cell Companies Act No. 32 of 2009

Trust Companies Act No. 10 of 1988

Unit Trust Act No. 36 of 2005

VFSC Practice Note No. 1 of 2011 – Immobilisation of Bearer Shares

For more information

Global Forum on Transparency and Exchange of Information for Tax Purposes

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www.eoi-tax.org

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