GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

JAPAN

2018 (Second Round)

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Japan 2018 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

July 2018
(reflecting the legal and regulatory framework as at April 2018)

Please cite this publication as:
OECD (2018), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Japan 2018 (Second Round): Peer Review Report on the Exchange of Information on Request*, OECD Publishing, Paris.
https://doi.org/10.1787/9789264302778-en

ISBN 978-92-64-30276-1 (print)
ISBN 978-92-64-30277-8 (PDF)

Series: Global Forum on Transparency and Exchange of Information for Tax Purposes
ISSN 2219-4681 (print)
ISSN 2219-469X (online)

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Table of contents

Reader's guide 5

Abbreviations and acronyms 9

Executive summary 11

Overview of Japan 19

Part A: Availability of information 25

A.1. Legal and beneficial ownership and identity information 25
A.2. Accounting records 44
A.3. Banking information 48

Part B: Access to information 59

B.1. Competent authority's ability to obtain and provide information 59
B.2. Notification requirements, rights and safeguards 64

Part C: Exchanging information 67

C.1. Exchange of information mechanisms 67
C.2. Exchange of information mechanisms with all relevant partners 78
C.3. Confidentiality 80
C.4. Rights and safeguards of taxpayers and third parties. 83
C.5. Requesting and providing information in an effective manner 83

Annex 1: List of in-text recommendations 95

Annex 2: List of Japan's EOI mechanisms 97

Annex 3: Methodology for the review 103

Annex 4: Jurisdiction's response to the review report 107

Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 145 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. the implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. the implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

More information

All reports are published once adopted by the Global Forum. 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 reports, please refer to www.oecd.org/tax/transparency and http://dx.doi.org/10.1787/2219469x.

Abbreviations and acronyms

AML	Anti-Money Laundering
AML Act	Act on the Prevention of Transfer of Criminal Proceeds
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
APA	Advance Pricing Agreement
CDD	Customer Due Diligence
CIP	Customer Identification Programme
DTC	Double Tax Convention
EOI	Exchange of information
EOIR	Exchange of information on request
FATF	Financial Action Task Force
FSA	Financial Services Agency
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
JAFIC	Japanese Financial Intelligence Centre – Financial Intelligence Unit of Japan
LLC	Limited liability company
LLP	Limited Liability Partnership
LP	Limited partnership
METI	Ministry of Economy, Trade and Industry
MOJ	Ministry of Justice
NPA	National Police Agency
NPSC	National Public Safety Commission

NTA	National Tax Agency
multilateral Convention (MAAC)	The Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended
PRG	Peer Review Group of the Global Forum
PTCPA	Prevention of Transfer of Criminal Proceeds Act
SAR	Suspicious Activity Report
SSN	Social Security Number
TIEA	Tax Information Exchange Agreement
TIN	Taxpayer Identification Number
VAT	Value Added Tax
2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015.
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
2016 Terms of Reference (ToR)	Terms of Reference related to Exchange of Information on Request (EOIR), as approved by the Global Forum on 29-30 October 2015.

Executive summary

1. This second round report analyses the implementation by Japan of the standard of transparency and exchange of information on request for tax purposes, for both the legal implementation of the standard as well as its operation in practice in respect of EOI requests received during the period from 1 April 2014 to 31 March 2017, against the 2016 Terms of Reference. It concludes that Japan is overall Largely Compliant with the international standard. In 2011, the Global Forum had evaluated Japan for its implementation of the standard against the 2010 Terms of Reference, and concluded that Japan was rated Compliant overall.

2. The following table shows the comparison of results from the first and the second round reviews of Japan's implementation of the EOIR standard:

Comparison of ratings for First Round Report and Second Round Report

Element		First Round Report (2011)	Second Round Report (2018)
A.1	Availability of ownership and identity information	C	PC
A.2	Availability of accounting information	C	C
A.3	Availability of banking information	C	LC
B.1	Access to information	C	C
B.2	Rights and Safeguards	C	C
C.1	EOIR Mechanisms	C	C
C.2	Network of EOIR Mechanisms	C	C
C.3	Confidentiality	C	C
C.4	Rights and Safeguards	C	C
C.5	Quality and timeliness of responses	LC	C
	OVERALL RATING	**C**	**LC**

C = Compliant; **LC** = Largely Compliant; **PC** = Partially Compliant; **NC** = Non-Compliant

Progress made since previous review

3. In 2011, Japan was found to be Compliant with the international standard of transparency and exchange of information on request. In particular, the legal and regulatory framework was fully in place to ensure the availability and access to information on legal ownership of relevant entities, accounting information and banking information. The only issues identified in the 2011 Report related to the organisation and timeliness of exchanges of information (element C.5 which was rated Largely Compliant). It was recommended that Japan ensure that appropriate procedures are in place to ensure timely EOI and provide status updates to its EOI partners when it is not able to provide a response within 90 days.

4. Since the first round review Japan has implemented these recommendations.

Key recommendation(s)

5. The one key issue raised by this report relates to developments at the international level with the strengthening of the terms of reference of transparency the availability of beneficial ownership information.

6. As noted in the table above, in 2011 Japan was rated Compliant on the element of the standard related to the availability of ownership information (A.1), when the element covered mainly legal ownership. The 2016 Terms of Reference now contain additional requirements in respect of the availability of beneficial ownership information of relevant entities and account holders (elements A.1 and A.3).

7. The legal framework of Japan is in place but certain aspects of the legal implementation of element A.1 need improvement. As the definition of beneficial owner(s) of legal entities and arrangements is in line with the standard only with effect from 1 October 2016, it is also recommended that the practical implementation of the legal framework in elements A.1 and A.3 be monitored.

- In Japan, although some beneficial ownership information is available under the tax laws, the availability of beneficial ownership information is mainly based on the AML/CFT legislation, which obliges financial institutions to carry out customer due diligence (CDD) procedures to ensure that the beneficial ownership information on their customers is accurate and up-to-date. However, while stock companies and LLPs must have a bank account with a local bank or local branch of a foreign bank at the time of incorporation, they do not have the legal obligation to maintain that local

bank account during their lifetime. In addition, judicial scriveners certified public accountants and certified tax accountants, although AML-obligated, are exempt from the obligation of identifying and maintaining the beneficial ownership information on their clients. Accordingly, it is not ascertained that beneficial ownership information on companies and partnerships is required to be maintained in Japan in all cases. Japan should take further measures to ensure that beneficial owners of all companies and partnerships are identified in line with the standard.

- Prior to 1 October 2016, the definition of beneficial owner(s) of legal entities and arrangements under the CDD requirements allowed for a legal entity or arrangement to be a beneficial owner, which was not in line with the standard. With effect from 1 October 2016, amendments to the CDD obligations aligned the definition of beneficial owner(s) of legal entities and arrangements with the standard to a large extent. The Financial Services Agency (FSA) amended the Supervisory Guidelines in July 2016 in accordance with the amendments to the Prevention of Transfer of Criminal Proceeds Act. Due to the short period of time since the full application of the new rules, the adequacy of the oversight and enforcement in practice could not be fully assessed. Japan should monitor the effective implementation of the new CDD rules by AML-obligated persons, notably by ensuring that adequate oversight and enforcement activities are carried out.

Overall rating

8. Japan has addressed the recommendations in the 2011 Report on the organisation and timeliness of exchanges of information, leading to an upgrade of element C.5 from Largely Compliant to Compliant. Japan is a significant EOI partner, which sends almost three times the amount of EOI requests it receives. Over the period under review (1 April 2014 to 31 March 2017), Japan received a total of 523 requests for information. In turn, Japan sent 1 381 requests for information related to direct taxes. Peers are generally very satisfied with their EOI relationship with Japan, both regarding the quality of the EOI requests and the quality of Japan's responses to EOI requests.

9. Elements A.2, C.1, B.1, B.2, C.2, C.3, and C4 are also rated Compliant. However, the 2016 ToR broadened the standard requirements which now also include beneficial ownership information. As described above, the legal framework and the implementation of that framework in practice on the availability of beneficial ownership information show deficiencies which Japan must address. These deficiencies have an impact on the rating of element A.1 which is rated Partially Compliant and on element A.3 which is rated Largely Compliant.

10. In view of the above, the overall assigned rating for Japan is Largely Compliant.

11. The report was approved at the PRG meeting on 11-14 June 2018 and was adopted by the Global Forum on 13 July 2018. A follow up report on the steps undertaken by Japan to address the recommendations made in this report should be provided to the PRG no later than 30 June 2019 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place but needs improvement	In Japan, although some beneficial ownership information is available under the tax laws, the availability of beneficial ownership information is mainly based on the AML/CFT legislation, which obliges financial institutions to carry out customer due diligence (CDD) procedures to ensure that the beneficial ownership information on their customers is accurate and up-to-date. However, while stock companies and LLPs must have a bank account with a local bank or local branch of a foreign bank at the time of incorporation, they do not have the legal obligation to maintain that local bank account during their lifetime. In addition, judicial scriveners, certified public accountants and certified tax accountants, although AML-obligated, are exempt from the obligation of identifying and maintaining the beneficial ownership information on their clients. Accordingly, it is not ascertained that beneficial ownership information on companies and partnerships is required to be maintained in Japan in all cases.	Japan should take further measures to ensure that beneficial owners of all companies and partnerships are identified in line with the standard.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Partially Compliant	Prior to 1 October 2016, the definition of beneficial owner(s) of legal entities and arrangements under the Customer Due Diligence (CDD) requirements allowed for a legal entity or arrangement to be a beneficial owner, which was not in line with the standard. With effect from 1 October 2016, Japan introduced amendments to the CDD obligations, which introduced amongst other a definition of beneficial owner(s) of legal entities and arrangements in line with the standard to a large extent. The Financial Services Agency amended the Supervisory Guidelines in July 2016 in accordance with the amendments of the Prevention of Transfer of Criminal Proceeds Act. In addition, due to the short period of time since the full application of the new rules, the adequacy of the oversight and enforcement in practice could not be fully assessed.	Japan should monitor the effective implementation of the new CDD rules by AML-obligated persons, notably by ensuring that adequate oversight and enforcement activities are carried out.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place.		
Compliant		
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Largely Compliant	Prior to 1 October 2016, the definition of beneficial owner(s) of legal entities and arrangements under the Customer Due Diligence (CDD) requirements allowed for a legal entity or arrangement to be a beneficial owner, which was not in line with the standard. With effect from 1 October 2016, Japan amended the definition of beneficial owner(s) of legal entities and arrangements in line with the standard to a large extent. The Financial Services Agency amended the Supervisory Guidelines in July 2016 in accordance with the amendments of the Prevention of Transfer of Criminal Proceeds Act. In addition, due to the short period of time since the full application of the new rules, the adequacy of the oversight and enforcement in practice could not be fully assessed.	Japan should monitor the effective implementation of the new CDD rules by banks, notably by ensuring that adequate oversight and enforcement activities are carried out.
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 legal and regulatory framework is in place.		
Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place.		
Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The legal and regulatory framework is in place.		
Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place.		
Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place.		
Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place.		
Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework determination:	**This element involves issues of practice. Accordingly no determination on the legal and regulatory framework has been made.**	
Compliant		

Overview of Japan

1. This overview provides some basic information about Japan that serves as context for understanding the analysis in the main body of the report. This is not intended to be a comprehensive overview of Japan' legal, tax, commercial or regulatory systems.

Legal system

2. Japan is a constitutional monarchy with a parliamentary government led by a prime minister elected by the legislature (the Diet).

3. The executive branch is the Cabinet consisting of a prime minister and 19 ministers of state appointed by the prime minister. The legislative branch is the Diet with the House of Representatives and the House of Councillors. The judicial branch is comprised of 438 summary courts, 50 district courts and family courts, 8 high courts and a Supreme Court. All of these courts excluding family courts can hold proceedings of tax trials. Judicial decisions made by the Supreme Court have a legal binding power over lower instance courts.

4. The National Diet is the sole law-making body in Japan. The following is the hierarchy of laws in Japan: Constitution; treaties; Acts and laws; cabinet orders to implement the provisions of a law; ministry ordinances and ministry notifications to implement laws and Cabinet Orders. All these texts are considered in judicial matters.

5. Treaties with foreign jurisdictions are concluded by the Cabinet but require the approval of the Diet (Constitution Article 73(3)). Treaties are given the full force and effect of law in Japan and must be faithfully observed. International agreements, such as the multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC), double taxation conventions (DTCs) and tax information exchange agreements (TIEAs) override domestic laws in the case of conflict.

6. The Commissioner of Japan's National Tax Agency (NTA) issues rules and guidelines (*Tsuutatsu*) to officials of the National Tax Agency and

its local subordinate bureaus, providing a uniform interpretation and application of laws and ordinances. These rules and guidelines, unlike laws and regulations, do not bind judicial decisions, but provide guidelines for officials of the National Tax Agency in relation to the implementation of tax laws. Final interpretation of laws and ordinances lies with the courts.

Tax system

7. The NTA is responsible for administering Japan's tax laws and the assessment and collection of internal taxes. It supervises 12 Regional Taxation Bureaus and 524 Tax Offices throughout Japan. The Tax Offices, under the guidance and oversight of the NTA and Regional Taxation Bureaus, serve as the frontline enforcement organisations and are therefore involved in the gathering of information to answer EOI requests.

8. Domestic corporations are taxed on their worldwide income basically at a single rate. The corporation tax rate (effective tax rate of the aggregate of national and local taxes) is currently 29.97% (as of the administrative business year starting 1 April 2017).

9. A domestic corporation means a corporation that has its head office or principal office in Japan as well as any corporation established in accordance with the Japanese Companies Act.

10. A foreign corporation means a corporation that is not a domestic corporation. Foreign corporations are taxed only on their Japan source income at the same rate.

11. Regarding individuals, the Income Tax Act defines two types of tax residence:

- A resident is an individual who has a domicile or has been resident continuously for one year or more in Japan. A "domicile" is interpreted as the "principal place of life" in accordance with Article 22 of the Japanese Civil Code.
- A non-permanent resident is an individual who does not have Japanese nationality and who has had a domicile or a residence in Japan for not more than five years in total within the past ten years.
- A non-resident is an individual who is not a resident.

12. Under the Japanese Income Tax Act, residents are taxed (income tax) on their worldwide income at progressive tax rates of 5% to 45% on a calendar year basis. Non-permanent residents are taxed on their Japan source income and on foreign source income paid in Japan or remitted to Japan. Non-residents are taxed on their domestic source income and specific categories of domestic source income of non-residents such as interests and dividends are withheld.

13. Consumption tax is levied widely on consumption in general (its essence is basically similar to value added tax of other countries). In principle, sales and provision of all goods and services in Japan are subjected to consumption tax. The tax rate is 8%, 6.3% in national tax and 1.7% in local tax.

Financial services sector

14. Japan is one of the leading financial centres of the world, where numerous financial institutions do various types of financial business as shown in the table below. Japan's nominal GDP in calendar year 2015 amounted to USD 4 383.6 billion, of which finance and insurance business accounts for 4.5%.

Type of institution	Number of financial institutions as of March 2017	Total assets (in trillion Yen/in trillion EUR)
Commercial banks	193	1 384/12 (non-consolidated, as of March 2017)
Shinkin banks[a]	265	188/2 (non-consolidated, as of March 2017)
Labour banks	14	30/0.25 (non-consolidated, as of March 2017)
Credit co-operatives	152	31/0.26 (non-consolidated, as of March 2017)
Fishery co-operatives	111 (as of March 2016)	4/0.03 (non-consolidated, as of March 2016)
Agricultural co-operatives	699 (as of March 2016)	183/1 (non-consolidated, as of March 2016)
Norinchukin bank[b]	1	106/0.88 (non-consolidated, as of March 2017)
Shokochukin bank[c]	1	13/0.11 (non-consolidated, as of March 2017)
Insurance companies	92	407/3 (non-consolidated, as of March 2017)
Securities companies (Type I Financial Instruments Business Operators)	285	114.2/1 (non-consolidated, as of March 2017)
Trust companies	62 (43 of them are trust banks)	480/4(non-consolidated, as of March 2017) (Trust banks account for 479.643 of JPY 479.650 billion.)

Notes: a. *Shinkin* banks are deposit taking institutions defined by the *Shinkin* Bank Act, as co-operative organisations established to facilitate the smooth functioning of financial services and increase savings of local community members, who are primarily small and medium sized enterprises (SMEs) or individuals, as well as taking deposits from individuals and businesses.

b. The *Norinchukin* Bank is a deposit taking institution and is the top tier organisation of the network of JA banks and JF marine banks. JA banks and JF marine banks are defined by the Agricultural Co-operatives Act or the Fishery Co-operatives Act respectively, as deposit taking co-operative organisations established to increase the productivity of Japan's agricultural and fishery industries and improve economic and social position of farmers and fishers.

c. *Shoko Chukin* Bank is a deposit taking institution, which is partly owned by the Japanese government, defined by the *Shoko Chukin* Bank Limited Act, as a company with a nation-wide network established to facilitate financing for primarily SMEs and co-operatives members.

15. In Japan as of 31 July 2017, 986 companies were engaged in investment advisory and agency business under the Financial Instruments and Exchange Act, and 354 companies in investment management business under the same Act. Some companies were engaged in both categories of business above.

16. Japan has five securities exchanges, Tokyo Stock Exchange, Osaka Exchange, Nagoya Stock Exchange, Fukuoka Stock Exchange and Sapporo Securities Exchange.

17. Financial Institutions in Japan are licensed and regulated by the laws and regulations which have jurisdiction over each financial institution.

18. A person engaging in the trust business in Japan is licensed and regulated by the Trust Business Act and regulations. As of 30 June 2017, there are 43 financial institutions concurrently engaged in trust business in Japan, and 19 other trust companies. The FSA is responsible for the administration, inspection and supervision of persons who are engaged in banking, insurance, financial instruments business as well as trust business (Act for Establishment of the Financial Services Agency, Article 4).

AML-obligated persons relevant for the EOIR standard

19. Attorneys are among the specialists who can be consulted on the establishment of companies and branch offices in Japan or the related documents, together with another category of professionals, the judicial scriveners[1] and administrative scriveners (*gyoseishoshi* lawyers). These specialists can be asked to prepare various documents on a client's behalf (e.g. documentation related to the establishment of Japanese branch offices and Japanese corporations, transfers of location, changes of executives, changes of business purposes, increases in capital, organisational changes, mergers and dissolution). Commercial registration applications for submission to the Legal Affairs Bureau are the exclusive competence of judicial scriveners and attorneys.

1. In Japan, judicial scriveners (*shihō shoshi*) are authorised to represent their clients in real estate registrations, commercial registrations (e.g. the incorporation of companies), preparation of court documents and filings with legal affairs bureaus. Judicial scriveners may also represent clients in summary courts, arbitration and mediation proceedings, but are not allowed to represent clients in district courts or more advanced stages of litigation.

20. Certified public accountants and tax accountants are specialists providing accounting and/or tax support to companies operating in Japan. Both have qualifications recognised by law, and only persons with these qualifications may engage in legally defined monopoly businesses. Certified public accountants have a monopoly on the performance of audits under the Certified Public Accountants Act, while tax accountants (including certified public accountants which are also registered as certified public tax accountants) have a monopoly on tax agent services, preparation of tax documentation and tax consultations under the Certified Public Tax Accountants Act.

21. Certified public tax accountants (CPTAs) (*zeirishi*) are professional specialists on taxes from the private sector, whose roles are to help taxpayers properly file tax returns and pay taxes. "Based on their independent and fair standpoint, they shall respond to person with a tax obligation trust in line with the principles of the self-assessment system and achieve proper tax compliance as provided for in the Tax Law" (Article 1). As of January 2018, 77 094 persons are registered as CPTAs, and 3 706 professional tax firms are established. Japan's National Tax Agency is the supervisory authority for CPTAs.

FATF assessment

22. The Financial Action Task Force (FATF) and its regional bodies evaluate jurisdictions for compliance with anti-money laundering and combating the financing of terrorism (AML/CFT) standards. Its evaluations are based on a country's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

23. Japan was last assessed by the FATF in 2008. Japan was given several recommended actions, including some on customer due diligence (CDD) and beneficial ownership requirements. Japan was placed in the FATF follow-up process, but was then removed from the process in October 2016 by making necessary legislative amendments. The main progress related to the EOIR standard to align the Japanese law and its subsidiary legislation for CDD requirements with the FATF standard. In these amendments, the provisions on the definition of beneficial owner were also adjusted (see A.1.1 availability of beneficial ownership information).

Recent developments

24. As mentioned above, to answer the FATF recommendations on CDD procedures, the AML Act and its subordinate legislation were amended, containing the following contents, in November 2014, which entered into effect in October 2016.

- Enhanced verification at the time of concluding correspondence contracts
- Expansion of specified business operators' obligation to make efforts to develop necessary systems
- Conducting the verification at the time of transactions necessary to pay particular attention to, for the sake of CDD
- Conducting the verification at the time of transactions divided into ones lower than the threshold
- Improvement of the personal identification method relating to identity confirmation documents without face photographs
- Amendment to provisions pertaining to beneficial owners
- Improvement of the method for checking representative rights etc. of persons in charge of transactions
- Act on Special Provisions for the Enforcement of Income Tax Conventions (CRS Act).

25. By amendments of the Act on Special Provisions for the Enforcement of Income Tax Conventions and its subordinate legislations which were related to the CRS and were put into force in January 2017, reporting financial institutions are required to specify information such as names, addresses, jurisdictions of residence, etc. of those who perform specified transactions such as opening accounts with the reporting financial institutions, including their beneficial ownership information (limited to passive Non-Financial Entities), by obtaining self-certification when conducting the transactions. When the jurisdictions of residence of beneficial owners are changed, the reporting financial institutions are required to obtain the Self-certification on Change of Circumstances.

Part A: Availability of information

A.1. Legal and beneficial ownership and identity information

Jurisdictions should ensure that legal and beneficial ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

26. The 2011 Report concluded that the legal and regulatory framework of Japan and its implementation in practice ensured the availability of legal ownership information for companies, partnerships and trusts. Since then there has been no change in this respect in the relevant obligations.

27. The main business structures used in Japan are companies (stock companies and membership companies), partnerships (e.g. LLPs, investment LPSs) and business trusts. Japan relies primarily on a centralised system of registration, corporate record keeping requirements and statutory tax filing requirements to ensure the maintenance of information on the legal ownership of companies. Bearer shares cannot be issued in Japan.

28. Like the 2011 Report, this report concludes that the availability of legal ownership information is generally adequately ensured through the combination of supervisory and enforcement measures taken by the Legal Affairs Bureau through registration and by the NTA through tax filings and audits. This supervision is adequate and all EOI requests on legal ownership information were answered satisfactorily, as confirmed by peer input.

29. Under the 2016 ToR, beneficial ownership on relevant entities and arrangements should be available, which is not fully the case in Japan. The main requirements ensuring the availability of this type of information are contained in the AML/CFT law, which obliges AML-obligated persons (including banks) to carry out customer due diligence (CDD) procedures, and to ensure that the information on their customers is accurate and up-to-date. However, while stock companies and LLPs must have a bank account with a local bank or local branch of a foreign bank at the time of incorporation, they do not have the legal obligation to maintain that bank account during their lifetime. In addition, judicial scriveners, certified public accountants

and certified tax accountants, although AML-obligated persons are exempt from the obligation of identifying and maintaining the beneficial ownership information on their clients. Accordingly, it is not ascertained that beneficial ownership information on all companies and partnerships is required to be maintained in Japan in all cases. On the opposite, trusts must be managed by banks and other financial institutions, or non-financial institutions and general incorporated companies that are licensed to conduct a trust business under the Trust Business Act, such that their beneficial ownership information is available with these entities.

30. In addition, the adequacy of the oversight and enforcement in practice of the definition of beneficial ownership, which was recently amended, could not be fully assessed. Prior to 1 October 2016, the definition of beneficial owner(s) of legal entities and arrangements under the CDD requirements allowed for a legal entity or arrangement to be a beneficial owner, which was not in line with the standard. With effect from 1 October 2016, Japan introduced amendments to the definition of beneficial owner(s) of legal entities and arrangements in line with the standard to a large extent. The FSA amended the Supervisory Guidelines in July 2016 in accordance with the amendments of the PTCPA, which came into force on 1 October 2016. Japan should monitor the effective implementation of the new CDD rules by AML-obligated persons, notably by ensuring that adequate oversight and enforcement activities are carried out.

31. Overall the availability of ownership information was confirmed in the EOI practice of Japan. During the review period, Japan received 69 requests related to ownership information, which included 41 cases related to beneficial ownership information (from four partners). In all cases where information on beneficial owners was requested, the shareholders were individuals (i.e. there was no chain of ownership) or the concerned entities were listed companies. In the case of listed companies, Japan provided the identity of the large shareholders. These cases do not allow drawing definitive conclusions on the definition of beneficial ownership and its implementation in practice. Of these requests, 67 related to corporations and 2 to trusts. Peers confirmed that legal and beneficial ownership information was provided by Japan in all cases.

32. The new table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework:	In Japan, although some beneficial ownership information is available under the tax laws, the availability of beneficial ownership information is mainly based on the AML/CFT legislation, which obliges financial institutions to carry out customer due diligence (CDD) procedures to ensure that the beneficial ownership information on their customers is accurate and up-to-date. However, while stock companies and LLPs must have a bank account with a local bank or with a local branch of a foreign bank at the time of incorporation, they do not have the legal obligation to maintain that local bank account during their lifetime. In addition, judicial scriveners, certified public accountants and certified tax accountants, although AML-obligated, are exempt from the obligation of identifying and maintaining the beneficial ownership information on their clients. Accordingly, it is not ascertained that beneficial ownership information on companies and partnerships is required to be maintained in Japan in all cases.	Japan should take further measures to ensure that beneficial owners of all companies and partnerships are identified in line with the standard.
Determination: In place but certain aspects of the legal implementation of the element need improvement.		
Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice	Prior to 1 October 2016, the definition of beneficial owner(s) of legal entities and arrangements under the Customer Due Diligence (CDD) requirements allowed for a legal entity or arrangement to be a beneficial owner, which was not in line with the standard. With effect from 1 October 2016, Japan amended the definition of beneficial owner(s) of legal entities and arrangements in line with the standard to a large extent. The FSA amended the Supervisory Guidelines in July 2016 in accordance with the amendments of the Prevention of Transfer of Criminal Proceeds Act. In addition, due to the short period of time since the full application of the new rules, the adequacy of the oversight and enforcement in practice could not be fully assessed.	Japan should monitor the effective implementation of the new CDD rules by AML-obligated persons, notably by ensuring that adequate oversight and enforcement activities are carried out.
Rating: Partially Compliant		

A.1.1. Availability of legal and beneficial ownership information for companies

33. As described in the 2011 Report, the Companies Act (2005) provides for the following types of companies:

- stock companies (*kabushiki kaisha*) can be public or private companies. As of December 2016, there were approximately 1 806 000 stock companies registered with the Legal Affairs Bureau; and
- membership companies which include:
  - general partnership company (*gomei kaisha*) which has only unlimited partners,
  - limited partnership company (*goshi kaisha*) which must have both unlimited partner(s) and limited partner(s) and
  - limited liability company (*godo kaisha*) which has only limited partners.

34. Article 2 of the Companies Act defines "foreign company" as any legal person incorporated under the law of a foreign jurisdiction or such other foreign organisation that is of the same kind as, or similar to, a domestic company. As of 1 October 2017, there were 5 997 foreign companies registered in Japan. There were 410 new additional foreign companies registered with the Legal Affairs Bureau in 2016, 372 in 2015, and 353 in 2014.

35. The following table[2] shows a summary of the legal requirements to maintain legal and beneficial ownership information in respect of companies:

Type	Company law	Tax law	AML law
Stock companies	Legal – all Beneficial – some	Legal – all Beneficial – some	Legal – some Beneficial – most
Member companies	Legal – all Beneficial – none	Legal – all Beneficial – some	Legal – some Beneficial – most
Foreign corporation	Legal – all Beneficial – none	Legal – all Beneficial – some	Legal – some Beneficial – most

2. The table shows each type of company and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All" in this context means that every company of this type is required to maintain ownership information in line with the standard and that there are sanctions and appropriate retention periods. "Some" in this context means that a company will be required to maintain information if certain conditions are met.

Legal Ownership and Identity Information Requirements

36. The 2011 Report concluded that legal ownership information in respect of domestic and foreign corporations is required to be available in line with the standard. There are no changes in the relevant rules or practices since the first round review. The availability of information on the legal ownership of companies is ensured primarily by company law and tax obligations.

37. Japan's Legal Affairs Bureau, under the Ministry of Justice, is responsible for handling matters concerning the registration of companies. All Japanese companies and foreign corporations conducting continuous transactions in Japan (i.e. more than marketing or other representative office type activities) are obliged to register with the Legal Affairs Bureau. The registers contain information identifying the legal person's directors, senior managers and legal owners depending on types of companies. Information maintained by the Legal Affairs Bureau is often the subject of international EOI requests. Japan's NTA can effectively access information maintained by the Legal Affairs Bureau. Any change to the registered information with regard to the company must be completed with the Legal Affairs Bureau within two weeks (Article 915(1) of the Companies Act). In case of non-compliance, such director may be subject to non-penal fine up to JPY 1 million (Article 976(i) of the Companies Act).

38. As described in the 2011 Report, all corporations are also required under the Japanese laws to maintain records of all their shareholders.

39. Additionally, Japan's NTA maintains its own electronic information system, called the KSK system ("*Kokuzei Sogo Kanri*" or Comprehensive Tax Administrative System), which links all Regional Taxation Bureaus and Tax Offices. The KSK system accumulates data input about tax returns (which includes up-to-date information on legal owners of companies) and tax payment records; it also systematically combines the data, which enables the central management of national tax claims and liabilities. Japan's tax officials are able to access ownership and identity information regarding various types of legal entities and arrangements within the KSK system which is updated based on the registration data provided by the Legal Affairs Bureau. Japan's officials report to have no difficulties with respect to issues regarding the availability of legal ownership and identity information, both for domestic tax cases and for providing exchange of information assistance.

40. The rules described above also apply to foreign corporations carrying out business in Japan. As concluded in the 2011 Report, these obligations ensure that legal ownership information in respect of foreign companies with sufficient nexus with Japan is required to be available.

Ownership information held by nominees

41. Japanese law does not recognise the concept of nominee ownership found in many common law jurisdictions. Shareholders must register their own names in order to exercise voting rights or to receive dividends. While shareholders can transfer their economic benefits derived from the dividends on a contractual basis, companies are required to pay such dividends to legal owners.

Dormant companies

42. The Legal Affairs Bureau accounted 21 255 dormant companies as of 1 January 2018. A "Dormant Company" is defined as a stock company for which 12 years have elapsed from the day when a registration regarding such stock company was last effected (Article 472(1) of the Companies Act). Membership companies cannot constitute "dormant companies" within the definition set-out above. The company's registry should be normally updated at least once every ten years because the tenure of executives of the company is ten years maximum under the Companies Act. Therefore, a company which has not made any new registration for 12 years could be treated as non-active and thus Dormant Company. Failing to reply to the Legal Affairs Bureau, these dormant companies are liquidated following a specific judicial procedure. The NTA follows the same definition and status from the Legal Affairs Bureau and takes stock of the liquidation.

43. The number of deemed dissolution of dormant companies amounted to 87 773 from 1 April 2014 to 31 March 2015, 22 399 from 1 April 2015 to 31 March 2016 and 22 603 to 1 April 2016 until 31 March 2017. The decrease in the number of deemed liquidations stems from a campaign whereby the Legal Affairs Bureau cleaned up the register. The deemed dissolution entails that the companies ceased to exist. The MOJ publishes information regarding the reclassification of dormant companies on its website, displays posters and distributes brochures in order to ensure the fulfilment of the obligation to register. However, shareholders of dormant companies which are registered to be under deemed dissolution can decide to reinstate the stock company by resolution of shareholders' meetings within 3 years from the day of the deemed dissolution (Article 473 of the Companies Act). In this case, the registration of continuation must be completed within two weeks (Article 927 of the Companies Act).

Retention period and companies that ceased to exist

44. There are no provisions regarding the retention period of the articles of incorporation and the shareholder register maintained by a stock or a member company, but they must be retained as long as the company exists. In

the case of liquidation, the books and records (including the shareholder register) of these companies as well as critical documents regarding its business and the liquidation must be retained for ten years from the registration date of the conclusion of liquidation (Articles 508(1) and 672(1) of the Companies Act). The beneficial ownership information of struck off companies (liquidated or dissolved companies) must be maintained by AML-obligated persons for seven years after the last transaction, regardless of whether or not the companies are liquidated after the transaction. In addition, where the legal owners are the beneficial owners, beneficial ownership information is available in the shareholders' list which must be submitted at the time of registration of dissolution. This list is maintained at the registration office for five years after the registration of dissolution.

45. The juridical personality of a company ceases to exist, in principle, through the liquidation procedure. However, in case the grounds of dissolution (each item of Article 471 of the Companies Act) is either a (i) merger, or (ii) a ruling to commence bankruptcy procedures, the company will cease to exist without going through a liquidation procedure. If the ground for dissolution is a merger, the surviving or newly created company is obliged to keep the books and records from the company dissolved through the merger (Article 432 (2), 750 (1) and 754 (1) of the Companies Act). In case of a ruling to commence bankruptcy procedures, the bankruptcy procedure will take place instead of a liquidation procedure, and the juridical personality of the company will cease to exist in general as result of the bankruptcy procedure (Article 35 of the Bankruptcy Act). In that case, the bankruptcy court is required to retain the financial documents (including underlying records), etc. of the bankrupt company as a part of case records for five years (Article 3(1), 4(1), Appended table 1 of the Rules for Preservation of Case Records).

46. These retention requirements run irrespective whether the company ceased to exist or conduct business. It is the responsibility of the representatives of the taxpayer or if liquidated of the liquidator, to keep the information as required under the law (see also section A.2).

Implementation of obligations to keep legal ownership information in practice

47. The 2011 Report concluded that relevant legal requirements as they applied to companies were properly implemented in practice and consequently no recommendation was given. There have been no significant changes made in the supervisory and enforcement practice.

48. As set out in the statistics in element A.2, the percentage of compliance with respect to tax returns is above 90%. Tax returns are routinely selected for audit based on a system which flags returns with a higher

potential for adjustment in examination. Some tax audits focus on specific issues and not the entire return; however, there are also some cases where the entire return will be audited. The NTA does not keep statistics on the number of audits that focused on the availability of legal ownership information.

Beneficial ownership information

49. Under the 2016 ToR, beneficial ownership on companies should be available. The following sections of the report deal with the requirements to identify beneficial owners of companies and their implementation in practice.

50. The Prevention of Transfer of Criminal Proceeds Act (PTCPA no. 22 of 2007, revised by Act no. 117 of 2014) contains various provisions relating to customer identification (Arts. 4, 5), record keeping (Arts. 6, 7), the role and powers of Japan's Financial Intelligent Unit (Arts. 3, 11, 12, 14), and sanctions (Arts. 23 et seq.). The PTCPA is implemented by the Cabinet Order for Enforcement of the PTCPA ("the Order") and the Ordinance for enforcement of the PTCPA ("the Ordinance").

Scope of the AML legal framework and legal requirements to engage an AML-obligated person

51. Companies can have relationships with various AML-obligated persons. Article 2 of the PTCPA applies to all types of financial institutions, trust companies, lawyers (including a foreign lawyer registered in Japan) and legal profession corporations, judicial scrivener (individual or corporation), administrative scriveners (individual or corporation), certified public accountants including a registered foreign certified public accountant or audit firm, and certified tax accountants (individual or corporation). Japan indicated that domiciliation services do not exist in Japan.

52. The Companies Act provides that upon incorporation, all stock companies must open a bank account with a local bank or with a local branch of a foreign bank to place the funds constituting equity (Article 34(2) of the Companies Act, Article 7 of the Ordinance for Enforcement of the Companies Act). This obligation does not apply to member companies and foreign companies. A document evidencing the completion of contribution as prescribed in Article 34, paragraph (1) of the Companies Act must be attached to the written application for registration of incorporation of a company. Should the said document be invalid (for example, in case the completion of a contribution was paid into an account located overseas with a foreign bank), the registrar must dismiss the application for registration. This guarantees that at least at the time of incorporation of a company, beneficial ownership information will be available through the CDD obligations of the bank. However, if the companies close the account in Japan and open

a bank account in a foreign country during the lifetime of the company, the beneficial ownership information on companies would no longer be available. However, for any new equity contribution, the company must have a bank account with a local bank, such that in practice, it is most likely that the company retains a local bank account during the lifetime of the company.

53. Although large companies must have a financial auditor (CPA) and be subject to an annual financial audit conducted by that CPA (Articles 328, 436(2), 441(2), 444(4) of the Companies Act), this does not provide a source of beneficial ownership information as CPAs are not required to maintain the beneficial ownership information on their customers (see below). Japan should take measures to ensure that beneficial owners of all companies are identified in line with the standard.

Requirements to perform CDD and to identify the beneficial owners of companies

54. Article 4 of the PTCPA requires AML-obligated persons to carry out customer identification for natural and legal persons prior to establishing business relationships. AML-obligated persons are also obliged to perform customer due diligence on the representative agent acting on behalf of a legal person.

55. Upon conducting customer identification, AML-obligated persons are obligated to prepare records and maintain these for seven years from the day on which the business relationship was terminated (PTCPA Art. 6). The following records are required to be maintained (Ordinance Art. 10(1)):

- name and other matters sufficient for identifying the person for whom identification was conducted
- name of the person who conducted the customer identification and name of the person who prepared the customer identification records
- the date and time the customer identification document was presented in cases where the customer identification was conducted face-to-face
- the type of transaction for which customer identification was conducted
- the method by which customer identification was conducted
- the title of the customer identification documents, or copies thereof, the mark or number attached thereto, sufficient for identifying the document or copy thereof
- the account number for searching transaction records.

56. With respect to the customer identification, article 4(1) of the PTCPA provides that the following items should be maintained on customers and their beneficial owners:

i. Customer identification data (which means the full name, domicile and date of birth in case of natural persons, and the name and location of the head office or main office in the case of a legal person)

ii. Purpose and intended nature of the business relationship

iii. Occupation when the said customer, etc. is a natural person, and types of business when the said customer, etc. is a legal person

iv. The identification of the beneficial owner(s) of the customer (where it is a legal person or a legal arrangement)

57. The same article excludes judicial scriveners, CPAs, certified tax accountants from maintaining items (ii) to (iv). Accordingly, financial institutions and trust companies are required to identify and maintain the beneficial ownership information on their customers as part of their CDD requirements, whereas judicial scriveners, certified public accountants (CPAs) and certified tax accountants do not due to a specific exemption in the PTCPA. Hence the customer identification for them does not include the identification of the beneficial ownership of their clients. However, regarding the lawyers and legal profession corporations, the PTCPA stipulates that the measures equivalent to customer due diligence conducted by a lawyer and legal profession corporation shall be pursuant to the rules of the Japan Federation of Bar Associations ("the rules") and thereby delegates the details of the procedure and obligation of the customer due diligence to the rules (Article 12 of the PTCPA). The Japan Federation of Bar Associations indicates that a lawyer is, upon engaging in legal services, obliged to identify the beneficial owner of its client in the manner of tracking back to natural persons because the lawyer has to avoid a conflict of interest for clients under the rules.

58. Failure to conduct customer due diligence or maintain records as required by the PTCPA is an offence. The administrative authorities can order AML-obligated persons who commit the offence to take remedial actions (Art. 18). Where the AML-obligated persons commit an offence to the Order, they are subject to imprisonment with work for not more than two years and/or a fine of not more than JPY 3 million (EUR 26 086) (Art. 25).

Definition of beneficial owner under the AML Legislation

59. Where a company engages a financial institution covered by AML and CDD obligations, the financial institution is required to identify the beneficial owner of the company (article 4(1)(iv) of the PTCPA).

60. Prior to the 2014 amendments to the PTCPA, which entered into effect on 1 October 2016, the definition of beneficial owner was not in line with the EOI standard in that a legal entity or a legal arrangement could also be a beneficial owner.

61. With effect from 1 October 2016, the definition of beneficial owner, as amended, defines a "beneficial owner" of a legal person or a legal arrangement as "a person in a relationship that may allow such person to ultimately own or control the customer".

62. The definition of beneficial owner of legal entities is further defined in Article 11 of Ordinance for Enforcement of the Act on Prevention of Transfer of Criminal Proceeds (Ordinance No. 1 of 2008, as amended). This definition includes the cascading definition in line with the FATF standard. It distinguished the following situations:

i. For a legal person or legal arrangement whose voting rights are granted in proportion of shares held to the total number of such shares: the beneficial owner(s) is the natural person(s) who ultimately own or hold a controlling ownership interest (that is at least 25% of the voting rights).

ii. For a legal person or legal arrangement with a majority of voting right excluding that mentioned above, the beneficial owner(s) is the natural person(s) who ultimately owns or exercises effective control over its business activities through other means including investment, finance and transactional relationship.

iii. For other legal persons or legal arrangements, the beneficial owner(s) is:

    a. The natural person(s) who has the right to receive dividends or allotment exceeding 25% of the total profit or asset over the legal person or arrangement, excluding the case where it is obvious that the said natural person(s) is not able to be in the position to ultimately own or hold effective control over the said legal person or legal arrangement or where other natural persons have rights to receive dividends or allotment exceeding 50% of the total profits or assets; or

    b. The natural person(s) who ultimately owns or exercises effective control equivalent to or more than the natural person that falls under item (a) over the policy-making decisions on the finance and the management or operation of the legal entity or arrangement.

    c. Finally, where no natural person is identified under those listed in i), ii) and iii), the beneficial owner(s) shall be the relevant natural person(s) who holds the position of senior managing official(s) over the legal person or arrangement.

63. The definition of beneficial ownership under point (i) excludes the persons that hold at least 25% of the voting right but "where it is obvious that the said natural person is not concerned with substantial control on operation or management or where another person holds the voting rights exceeding 50% of the total voting rights". The same applies under point (ii). The Japanese authorities indicated that in case there is a natural person who owns voting rights in excess of 50%, if that person does not attend a shareholders meeting, the shareholders meeting will fail to meet the quorum, on the other hand, if that person attends the shareholders meeting, that person will be able to determine the outcome of the resolution. As a result, it is impossible for other shareholders to control the legal person through voting rights. Accordingly, in case there is a natural person who owns voting rights in excess of 50%, only that person will be deemed as the beneficial owner.

New CDD and ongoing CDD requirements applicable from 1 October 2016

64. Article 8(2) of the PTCPA and Article 27 item (ii) of the Ordinance explicitly provide that an AML-obligated person must conduct ongoing due diligence by scrutinising verification records, transaction records and other necessary documents on customers including existing customers according to the level of risk. In addition, Article 11 of the Act and Article 32((1)(ii) of the Ordinance explicitly provide that a specified business operator must collect, analyse and assess necessary information to conduct appropriate CDD measures for the customers including existing customers and keep the information collected up-to-date. The frequency of update depends on the risk level but no specific guidance is provided by the law or the Order.

65. In this respect, it shall be noted that the risk-based approach was only introduced by the amendment of the PTCPA in 2014, and the amendment came into effect on 1 October 2016.

66. AML-obligated entities are required to implement ongoing employee education training; to prepare a compliance programme for implementation of preventive measures; and to designate a senior compliance official who controls the implementation of AML/CFT policies, compliance, necessary audit, etc. within a financial institution, etc. to implement preventive measures.

Enforcement measures

67. Under Article 18 of the PTCPA, if a competent administrative authority recognises that an AML-obligated person breaches the obligation of CDD, it may issue a rectification order. A person who disobeys such order is punishable by imprisonment for not more than 2 years and/or a fine of not more than JPY 3 million (EUR 22 693) (Article 25).

68. If the Japan Financial Intelligence Centre (JAFIC) recognises that an AML-obligated person breaches the obligation of CDD, it may make a statement to a competent administrative authority to issue a rectification order etc., and to the extent necessary to make such statement, it may require the specified business operator to submit a report and/or document, or direct a prefectural police department to inspect the specified business operator (Article 19). If the specified business operator fails to submit reports or refuses the inspection, the specified business operator is punishable by imprisonment for not more than one year and/or a fine of not more than JPY 3 million (Article 26).

69. The competent administrative authorities which have jurisdiction over respective AML-obligated persons must monitor the status of the compliance with the obligation of CDD, and the JAFIC may make a statement to the competent administrative authorities to issue a rectification order.

Implementation of obligations to keep beneficial ownership information in practice

70. This section deals with the supervision of financial institutions and trust companies, which are the AML-obligated persons relevant for EOI purposes that have the obligation in Japan to identify and maintain beneficial ownership information on their customers as part of the ongoing CDD requirements.

71. The supervision of financial institutions and trust companies is carried out by the Financial Services Agency (FSA). In contrast, the JAFIC, which is the FIU of Japan, is the organisation responsible for processing administrative work related to the enforcement of the PTCPA. It is mainly tasked with a function to provide suspicious transaction records (STRs) to investigative authorities and foreign FIUs as well as a function to complement supervisory measures against AML-obligated persons.

72. These Administrative authorities supervise business operators on a daily basis based on the PTCPA. Adequate level of supervision such as collection of reports is being carried out in case a breach of duty by a specified business operator is recognised. Due to the short period of time since the full application of the new rules, the adequacy of the oversight and enforcement in practice could not be fully assessed. Japan should monitor the effective implementation of the new CDD rules by AML-obligated persons, notably by ensuring that adequate oversight and enforcement activities are carried out.

73. The supervision and enforcement activities carried out on banks are described in element A.3 *Supervision and enforcement activities*.

ToR A.1.2. Bearer shares

74. Japanese law does not allow for the issuance of bearer shares.

ToR A.1.3. Partnerships

75. Japanese law provides for the creation of four types of partnerships: civil code partnerships (*nin'i kumiai*, or "NK"); silent partnerships (*tokumei kumiai*, or "TK"); limited liability partnerships (*yugen-sekinin jigyo kumiai*, or "LLP"); and investment limited partnerships (*toushi jigyou yugen sekinin kumiai* or "investment LPS").

76. During the period from 1 January 2014 to 31 December 2016, 1 162 LLPs and 718 investment LPSs were registered with Japan's Legal Affairs Bureau. It is not known how many NKs and TKs exist in Japan due to their contractual nature. All types of partnerships in Japan are treated as pass-through arrangements for tax purposes as they do not have a legal personality distinct to that of their partners. Therefore, partners are taxed on the basis of the profits or losses allocated to them under the partnership agreement. Partners, except for partners of a NK or TK or general partners of an investment LPS, generally have limited liability for the partnership's liabilities.

Ownership and Identity Information Requirements

77. The 2011 Report concluded that ownership and identify information was available on all partnerships in Japan. The Legal Affairs Bureau maintains publicly available registers of LLPs and investment LPSs. LLPs and Investment LPS are obliged to notify the Legal Affairs Bureau of any change of partners within two weeks. The Legal Affairs Bureau maintains information in the registry of LLPs and investment LPSs for an indefinite duration and application documents for five years. When an LLP or investment LPS is liquidated, the Legal Affairs Bureau maintains registered information on the liquidated partnership for a period of twenty years.

78. There are no registration requirements for NKs or TKs, as these constitute contractual arrangements.

79. The only recommendation on element A.1.3 was made in the text and related to non-written partnerships (NKs). As it is not prescribed in the Civil Code that NK-partnership contracts must be in writing, it was recommended that the NTA monitors the availability of ownership and identity information for NKs, in particular any EOI requests that cannot be satisfied because the information is not maintained. NK may be used for condominium associations, small business associations, etc. The NK may not become the principal of a contract, and in order to execute a transaction, the transaction must be executed by every partner. Since the NK may not become the principal of

a transaction, the NK cannot open an account in the name of NK itself and must open an account in the name of the executive partner for NK. Further, the NK itself may not become the principal owner of its asset. The liability of each partner is unlimited, and must bear unrestricted debtor's liability. During the current period, the NTA has not encountered any issue with respect to the availability of identity and ownership information of NK partnerships. Accordingly, the recommendation contained in the 2011 Report is deleted. The above-mentioned developments also apply to TKs.

80. Implementation of the relevant obligations in practice is ensured in the same way as in the case of companies. With respect to foreign partnerships, they are subject to the same requirements as foreign companies (see A.1.1).

81. The 2011 Report did not identify an issue in respect of implementation of the relevant rules in practice and concluded that they are properly implemented to ensure availability of the relevant information. There has been no relevant change in Japan's practice in this respect.

82. Japan did not receive EOI requests regarding partnerships.

Beneficial ownership information

83. As in the case of companies, the main source of beneficial ownership information is requirements under the AML law. In Japan, the AML/CFT legislation obliges AML-obligated persons to carry out customer due diligence (CDD) procedures to ensure that the beneficial ownership information on these customers is accurate and up-to-date (see A.1.1 beneficial ownership of companies). However, unlike companies, partnerships except for LLPs are not required to engage a financial institution in Japan or a relevant AML-obligated person. LLPs must have a bank account with a local bank of Japanese or foreign bank upon incorporation. There is however no legal obligation to maintain a bank account in Japan during the lifetime of the LLPs. Accordingly, although in practice LLPs are most likely to have a bank account with a local bank, Japan should take further measures to ensure that all beneficial owners of partnerships (including LLPs without a bank account with a bank in Japan) are identified in line with the standard.

84. There is no specific definition of beneficial owner(s) of partnerships under the AML legislation and the JAFIC has explained that the definition included in Article 11 of the Ordinance for Enforcement of the PTCPA (Ordinance No. 1 of 2008, as amended) is applicable to partnerships (see A.1.1 Definition of beneficial owner of companies). The Japanese authorities indicated that each partner is considered as a beneficial owner of the partnership. To represent the interest of each partner, the partners elect a single executive partner as the representative of the partnership in opening a bank account. In the case where a partner is a legal person, a beneficial owner of the legal

person shall be verified in the manner of tracking back to natural persons pursuant to Article 11 of the Ordinance for Enforcement of the PTCPA and in that sense, the natural person is considered as a beneficial owner of a partnership.

85. The authorities further indicated that since partnerships do not possess juridical personality under the legal system of Japan, there are restricted from becoming the principal of a transaction in opening a bank account, so the bank account is supposed to be opened not in the name of partnership, but in the name of an executive partner with his/her title of the partnership (this account is considered as a partnership's account in practice). When the executive partner opens such a bank account for partnership, that partner undergoes customer identity verification in accordance with Article 4 of the PTCPA. And through this customer identity verification process, it is also verified whether this partner is an executive partner or not. The identification information must be verified by the official documents submitted by an executive partner (Article 6 of the Ordinance for Enforcement of the PTCPA). In this process, the executive partner's authority representing a partnership must be verified by supportive documents. These verification records must be updated to remain accurate and up-to-date.

86. The implementation of beneficial ownership requirements on partnerships in practice is the same as that applicable to companies (see A.1.1 *Implementation of obligations to keep beneficial ownership information in practice*). The FSA assures the compliance of banks with the obligations through on- and off-site monitoring (please refer to section A3 for details).

ToR A.1.4. Trusts

87. Trusts in Japan are primarily governed by the Trust Act, which sets out the basic private law rules. Japan's Ministry of Justice is the supervising authority of the Trust Act.

88. Trusts in Japan are typically formed by trust companies regulated under the Trust Business Act. Resident trustees and resident administrators of foreign trusts are subject to the Trust Business Act if they conduct a "trust business" in Japan. In contrast, a person who administers a foreign trust, but who is not a trustee, would normally do so as part of a trust business or as an income-earning activity. Trust business can be carried out by banks and other financial institutions,[3] or non-financial institutions and general incorporated companies that are licensed to conduct a trust business under the Trust Business Act. As of 30 June 2017, there were 43 financial

3. A bank and other financial institution may engage in trust business activities, if approved by the FSA, based on the Act of Engagement in Trust Business Activities by Financial Institutions.

institutions engaged in trust business in Japan, and 19 trust companies other than the aforementioned. Japan's FSA is the supervising authority of the Trust Business Act. Japanese trusts are generally vehicles for commercial dealings and are administered by trust companies.

Identity Information Requirements

89. The 2011 Report determined that identity information on trusts (i.e. identification of the settlor, trustee and all beneficiaries) is required to be available in line with the standard. There are no changes in the relevant rules since the first round review.

90. Trust companies and persons who form self-trusts[4] are both included as AML-obligated persons under Japan's PTCPA and are therefore subject to AML obligations, including customer due diligence and record-keeping (Article 4 of the PTCPA).

91. Finally, under the tax law, a trustee of a trust (excluding collective investment trusts, defined retirement and pension trusts, and trusts taxable as corporations) is obliged to submit a Statement of Trust to the tax authorities which includes the name and address of the beneficiaries, settlor, and trustee; when a beneficiary changes, the date of the change and its reason; the terms of the trust (trust deed); and the objectives of the trust; profit and loss accounts and balance sheet information regarding the financial status of the trust; and the amount of profit (if any) distributed to the beneficiary.

92. The 2011 Report concluded that relevant legal requirements as they applied to trusts were properly implemented in practice. There has been no change in practice since then.

Beneficial ownership information

93. Trust companies and persons who form self-trusts are both included as "specified business operators" under Japan's PTCPA and are therefore subject to AML obligations, including customer due diligence and record-keeping (Article 4 of the PTCPA). Trust companies must identify and maintain the beneficial ownership information on their customers. The FSA's AML/CFT Guidelines applies to trust companies, as they are licensed and

4. A self-trust means that a company or a person (a settler) administers or disposes own property as trustee (Article 3, item (iii) of the Trust Act). A settler who formed self-trust business is obliged to register with FSA under the Trust Business Act. Registered self-trust companies and persons are both included as AML/CFT obliged entities under the PTCPA and therefore are subject to a series of AML obligations.

supervised by the FSA including their AML/CFT risk management and practices based on the Trust Business Act and the Act on Engagement in Trust Business Activities by Financial Institutions.

94. The Order of Enforcement of the PTCPA clarifies that customer due diligence must be conducted on both the settlor and beneficiaries of a trust (Arts. 5 and 7(1)(i)(c)(d)(i)). Upon conducting CDD, trust companies and persons who form self-trusts are obliged to immediately prepare records and maintain these for seven years from the day on which the business relationship is terminated (Art. 6).

95. With respect to the definition of the beneficial owner(s) of a trust, the standard defines them as "the settlor, trustee(s), protector (if any), all of the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate control over the trust". From this definition, it is ascertained that the Japanese legislation requires all settlors and beneficiaries of a trust to be identified through an identification verification process as "customer, etc." (Article 4 of the PTCPA and Article 5 of the Order for Enforcement of the PTCPA). The Japanese authorities indicated that a trustee is considered as an AML-obligated person and must therefore perform the CDD under the PTCPA. In addition, the concept of protector does not exist in Japan. Although it appears that the Japanese legislation does not cover the remaining part of the definition, i.e. "any other natural person exercising ultimate control over the trust", the Japanese authorities clarified that under Japanese legal framework, those who exercise ultimate control over the trust are the settlors or beneficiaries of a trust to be identified and verified, and that in case there is a representative person carrying out a specified transaction with a specified business operator on behalf of the settlor or beneficiary who is a natural person, the identity of that representative person as well as the settlor or beneficiary would be verified by the specified business operator (Article 4(4) of the PTCPA). Further, in case the settlor or beneficiary is a legal person, the trust company must identify the beneficial owner (natural person) of the said legal person as per Article 11 of the Ordinance for Enforcement of the PTCPA. The "looking-through" approach should catch most of the situations of "any other natural person exercising ultimate control over the trust". The definition would also apply to a foreign trust administered by an AML-obligated Japanese resident trustee.

96. However, in the absence of clear guidance on how to apply the definition to trust, the identification of "any other natural person exercising ultimate effective control over the trust" as required under the standard may not be ensured in all cases. Japan should ensure that the definition of beneficial owner(s) of trusts under the AML/CFT legislation is fully in line with the standard.

97. In Japan, the FSA is responsible for the administration of inspection and supervision of persons who are engaged in trust business (Act for Establishment of the Financial Services Agency, Article 4).

98. The FSA may, to the extent necessary for the enforcement of obligations under the PTCPA, including the implementation of the requirement for customer identification, collect reports from and conduct on-site inspections of trust companies (Arts.13, 14). In Japan, trust banks under 3 mega bank groups and another large trust bank accounts for more than 70% of the market share (total assets entrusted by customers) of trust companies and financial institutions engaging in trust businesses. The Japanese authorities indicated that the supervision of trusts companies is that applicable for financial institutions (see A.3. *Oversight and enforcement activities*). In particular, the numbers of onsite visits to mega banks and regional banks include those conducted to trust banks (trust companies that hold banking licences). With respect to major trust banks, the total number of the trust banks under mega bank groups and regional banks is 25 and the FSA conducted on-site inspections and visits to the 24 banks of them from July 2016 to March 2018. In addition to the above, the total number of other trust banks and trust companies without banking licenses is 33 and the FSA conducted on-site inspections and visits to the 17 entities of them from July 2016 to June 2018. Finally, administrative orders, which are business improvement orders, business suspension orders, and rescission described in section A.3 *Oversight and enforcement activities* are equally applicable to trust companies and the FSA has an authority to issue orders any time if necessary. However, as far as the review period is concerned, the FSA has not issued the orders on trust companies.

99. Japan received two EOI requests concerning trusts. Japan provided the requested information.

ToR A.1.5. Foundations

100. As described in the 2011 Report (paragraphs 148-157), Japanese law requires the maintenance of information that identifies the founders and members of the foundation council and beneficiaries of foundations established under its laws. The General Incorporated Associations and General Incorporated Foundations Act (GIAGIF Act) requires foundations to register the names of the foundation councillors, directors, and auditors with the Legal Affairs Bureau. Japanese general incorporated foundations must be run in the public interest and do not constitute relevant entities for the 2016 ToR. The Japanese authorities confirmed that a general incorporated foundation is a non-profit organisation and any provision in its articles of incorporation which grants the founder the right to receive any surplus money or residual assets is null and void (Article 153(3)(2) of the Act on General Incorporated

Associations and General Incorporated Foundations). Thus, a general incorporated foundation is not supposed to be used for individuals' personal asset management purposes. Japan has not received any EOI request related to foundations during the period under review.

101. Public interest foundations do not fall within the scope of the evaluation if they meet the following criteria, which are met in the case of the Japanese general incorporated foundations:

- Object of the foundation: the foundation must have a non-profit activity/be in the public interest/have no commercial purpose
- Beneficiaries: the foundation has no identifiable beneficiaries
- Distribution: the foundation does no distribution to its members/founders. All of its assets and liabilities are transferred to a public body or the State upon dissolution
- Irreversibility: the transfer of assets is irreversible
- Tax exemption: the foundation may be exempt from tax if certain conditions are met
- Government oversight: the foundation's constitution is subject to government approval.

A.2. Accounting records

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

102. The 2011 Report concluded that the legal and regulatory framework and its implementation in practice generally ensure the availability of accounting information in line with the standard.

103. The tax law is the main source of obligations for companies, associations, and trusts taxable as corporations (e.g. trusts which are allowed to issue beneficiary rights in the form of securities) to keep accounting records. The Corporation Tax Act provides for the obligations for these entities and arrangements to prepare and retain accounting records and underlying accounting documents for a period of seven years (paragraph 1 of Article 150-2 of the Corporation Tax Act, Articles 66 and 67 of the Ordinance for Enforcement of the Corporation Tax Act). The Limited Liability Partnership Act and Limited Partnership Act for Investment respectively provide accounting record retention rules for LLPs and investment LPSs. Individual or corporate partners are also subject to the record-keeping requirements under the Income Tax Act and Corporation Tax Act, respectively.

104. The implementation of these accounting requirements in practice is ensured mainly through tax filing obligations and tax audits. First, accounting information has to be filed with the annual corporate and partnership income tax returns. Then, where accounting records are examined as part of the audit, the quality of these records is evaluated to determine the degree of reliance that can be placed on them in assessing tax compliance.

105. During the review period, Japan received 223 requests related to accounting information. Of these requests, all related to accounting information of companies except for two, which related to trusts. The requested information is in the majority of cases obtained from the company. Japan was able to respond to all the requests that it found valid. Peer input received confirms that the accounting information was available in all cases and no issues were raised in this respect, except for the 23 pending cases with two EOI partners. These cases are dealt with under element C.1.1. Application of the foreseeable relevance.

106. The table of determination and rating remains as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

ToR A.2.1. General requirements and A.2.2 underlying documentation

107. The 2011 Report concluded that Japan's legal and regulatory framework generally ensures the availability of accounting information in line with the standard.

108. As described in the 2011 Report, the Company, Partnership and Trust Acts provide for accounting requirements to the standard. However, the main source of accounting obligations in Japan is the tax law (the Corporation Tax Act and the Income Tax Act). The tax requirements have not been amended since the 2011 Report, which describes them in paragraphs 177 to 193.

109. Under the tax law, relevant legal entities (including foreign companies and partnerships) and arrangements carrying on business in Japan are obliged to maintain a full range of accounting records, including underlying documentation, for a minimum of seven years.

110. The same retention requirements of seven years also apply under the tax law in respect of entities or arrangements which cease to exist. In addition, under the Companies Act, a liquidator either appointed because of a liquidation or a bankruptcy must retain the books of the liquidating company

and any material data regarding the business and liquidation of the same for a period of ten years from the time of the registration of completion of the liquidation at the head office of the company in Japan. Books and material documents for the business and liquidation of the entities must be maintained by the liquidator with respect to companies and LLPs, by the partner(s) for LPS and by the trust company which serves as a trustee after the termination of a trust contract. In addition, the retention period for accounting books and such defined by tax laws are not affected by liquidation proceedings, and books must be kept for a period of seven years commencing from the day two months after the following day of the final date of the business year during which the account book was closed (paragraph 1 of Article 150-2 of the Corporation Tax Act, Articles 66 and 67 of the Ordinance for Enforcement of the Corporation Tax Act). If the company is not liquidated but merely dormant, the directors of the company still have an obligation to retain accounting records.

111. The Trust Act requires all trustees to prepare a balance sheet, profit and loss statement, trust account ledger and general ledger reflecting the financial status of trust assets and to report such matters to the beneficiaries. In addition, trusts that are taxable as corporations (e.g. trusts which are allowed to issue beneficiary rights in the form of securities) are subject to the record-keeping requirements under the Corporation Tax Act.

112. Failure to maintain accounting records is subject to a wide range of civil and tax penalties which provide for sufficient enforcement in cases of non-compliance as described in the 2011 Report (paragraphs 185, 186, 188 and 192).

Implementation of accounting requirements in practice

113. The 2011 Report concluded that the implementation of accounting requirements in practice was in compliance with the standard. As described below the supervision by the NTA is adequate to ensure the availability of accounting information (including the maintenance of underlying documentation).

114. This supervision is carried out mainly through tax audits and checking of tax filing obligations. Accounting information (i.e. balance sheet and profit-and-loss statement) has to be filed with the annual income tax returns of companies, partnership and trusts taxed as corporations. In addition to the above audits and supervision, the specific blue income tax return system may apply. Through this system, corporate entities and individuals who are operating as an individual proprietor must keep an account book, record daily transactions in an orderly and concise manner, and based on those records, accurately calculate their income for tax filing purposes. Taxpayers who

have been permitted to file via the blue return system must attach a specified form of books and documents on which record is taken, and the books and documents must be preserved (paragraph 1 of Article 126 of the Corporation Tax Act, paragraph 1 of Article 148 of the Income Tax Act). In certain cases (e.g. the taxpayers fail to preserve the concerned books and documents/the taxpayers file after due date 2 years in a row) the permission for the blue income tax return system will be revoked as a penalty. The compliance of taxpayers in Japan is very high: the tax filing compliance rates of corporate taxpayers are above 90% during the peer review period as illustrated by the statistics contained in the table below. The late filing of tax return entails a penalty and the penalty has been imposed in many cases, as illustrated in the table below.[5]

Statistics on annual tax returns

Administrative year	April 2014-March 2015	April 2015-March 2016	April 2016-March 2017
Number of tax return filed	2 794 000	2 825 000	2 861 000
Percentage of corporation filing	90.1%	90.5%	90.8%

115. The NTA carries out an extensive audit programme. The percentage of field audits in comparison with the total number of taxpayers in 2016 was 3.2%. The figures on all corporate taxpayers, as set out below, show the large audit efforts carried out by the NTA.

Statistics regarding tax audits

Administrative year	April 2014-March 2015	April 2015-March 2016	April 2016-March 2017
Number of tax audits	95 000	94 000	97 000

116. In addition to audits, the NTA applies penalties in case of record-keeping deficiencies. The penalties applied demonstrate the monitoring and enforcement activities from the NTA during the peer review period. To sum up, Japan's supervision and enforcement is adequate to ensure the availability of accounting information. The main supervisory and enforcement tools, i.e. filing of tax returns and tax audits, adequately ensure availability of accounting information in all cases.

5. This table does not include partnership income tax returns, because all types of partnerships in Japan are treated as pass-through arrangements for tax purposes. As such, income of partnerships is allocated to each partner.

Availability of accounting information in EOI practice

117. Japan received 223 EOI requests regarding accounting information, and was able to respond to all the requests that it found valid. The accounting information exchanged included contracts, invoices and receipts. Peer input received confirms that the accounting information was available in all cases and no issues were raised in this respect.

A.3. Banking information

Banking information and beneficial ownership information should be available for all account holders.

118. In terms of banking information, the 2011 Report concluded that record keeping obligations of banks and their implementation in practice were in line with the standard. There has been no change in the relevant provisions since then. However the 2011 Report did not analyse the quality of the supervision of the banks.

119. In Japan, the Financial Services Agency (FSA) serves as the regulatory authority for financial institutions and checks banks' compliance with their record keeping obligations.

120. The EOIR standard now requires that beneficial ownership information (in addition to legal ownership) be available in respect of accountholders and some material deficiencies are noted in relation to this new obligation. Under the AML/CFT legislation, banks are required to identify beneficial owners of their account holders in line with the standard. Japan is recommended to monitor the implementation of the amended definition of beneficial owner(s) of legal entities with took effect on 1 October 2016.

121. In the case of breach of these obligations, administrative and criminal sanctions apply. The FSA conducts rigorous risk-based supervision including AML/CFT with the appropriate combination of on-site and off-site monitoring.

122. The availability of banking information was confirmed in EOI practice. During the review period, Japan received 63 requests related to banking information. There was no case where the information was not provided because the information required to be kept was not available with the bank. No concerns in this respect were reported by peers either.

123. The new table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place.

Practical implementation of the standard		
Deficiencies identified in the implementation of EOIR in practice	Prior to 1 October 2016, the definition of beneficial owner(s) of legal entities and arrangements under the Customer Due Diligence (CDD) requirements allowed for a legal entity or arrangement to be a beneficial owner, which was not in line with the standard. With effect from 1 October 2016, Japan introduced amendments to the CDD obligations, which introduced a definition of beneficial owner(s) of legal entities in line with the standard to a large extent. The Financial Services Agency amended the Supervisory Guidelines in July 2016 in accordance with the amendments of the Prevention of Transfer of Criminal Proceeds Act, which came into force on 1 October 2016. In addition, due to the short period of time since the full application of the new rules, the adequacy of the oversight and enforcement in practice could not be fully assessed.	Japan should monitor the effective implementation of the new CDD rules by banks, notably by ensuring that adequate oversight and enforcement activities are carried out.
Rating: Largely Compliant		

ToR A.3.1. Record-keeping requirements

124. Banks are companies established in accordance with the Companies Act and having obtained a licence to conduct banking business in accordance with the Banking Act.

125. The 2011 Report concluded that banks' record keeping obligations and their implementation in practice are in line with the standard. There has been no change in the relevant provisions or practice since the first round review.

126. The Banking Act empowers the Commissioner of the FSA to demand reports and materials concerning the business or financial conditions of a bank (including its agencies), to conduct on-site inspections at bank premises, to order the improvement of operations, managements, financial conditions, or to penalise misconduct (business improvement, suspension of a bank's operations or revocation of its licence) and to order a bank to hold a part of its assets within Japan.

ToR A.3.1. Beneficial ownership information on account holders

127. The customer due diligence obligations of AML subjected entities under Article 4 of the PTCPA are the same as noted under sub-section A.1.1 on Requirements to perform CDD and to identify the beneficial owners of companies. Under the PTCPA, financial institutions must verify the identification of customers when opening an account, obtain records of the verification, and retain records for a period of 7 years after completion of the specific transaction or closure of the account.

128. In the case where the customer is an individual, the bank must identify the name, domicile, date of birth and occupation of that natural person. In addition, it must determine whether the customer is acting on behalf of another person, in which case the bank must verify the identity of that other person.

129. In the case where the customer is a legal person, the verification includes information related to its beneficial ownership (see A.1.1. Definition of beneficial owner under the AML Legislation). As required by the PTCPA, a specified business operator must conduct the verification at the time of transaction upon conducting a specified transaction with a customer, etc. (Article 4, paragraph (1) of the PTCPA). A specified business operator may, when a customer or representative person does not comply with the request for verification, refuse to perform the transaction until the customer or representative person complies with the request (Article 5 of the PTCPA).

130. To ensure accuracy of the verification at the time of transaction, the specified business operator must take measures to keep the information concerning the matters for which the verification has been conducted (including the information concerning the beneficial owner) up to date (Article 11). The frequency of update depends on the risk level but no specific guidance is provided by the law or the Order. The frequency of updates then depends on the practice of each bank. The FSA indicates that banks, in practice, conduct some measures of ongoing CDD. For example, sending periodic mailings to residential addresses of customers, doing on-site visits to business offices and including in the general conditions of the contract the provision that a customer is required to notify them of any change in the identification matters verified at the time of transaction. By these measures, banks confirm whether customers' businesses are operated in accordance with declaration by customers and there is any update of customer information. In addition, the implementation of ongoing CDD and scope thereof are clearly stipulated in the AML/CFT Guidelines and its responses to public consultation of the AML/CFT Guidelines both published in February 2018. Japan is recommended to continue the monitoring of the ongoing due diligence by banks with respect to the new beneficial ownership definition and CDD requirements.

131. Japan does not permit AML-obligated persons such as banks to rely on third parties to perform CDD or to rely on third party (introduced business). Therefore, the option of the FATF Recommendation 17 is not adopted in Japan's AML legislation.

132. As set out in A.1.1 Beneficial ownership information on companies, the definition of beneficial owner(s) of legal entities is in line with the standard to a great extent.

133. As set out in A.1.4. Beneficial ownership information on trusts, the standard defines the beneficial owners of a trust as "the settlor, trustee(s), protector (if any), all of the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate control over the trust". The Japanese legislation requires the trustee, as an AML-obligated person, to identify all settlors and beneficiaries of a trust through an identification verification process as "customer, etc." (Article 4 of the PTCPA and Article 5 of the Order for Enforcement of the PTCPA). Although it appears that the Japanese legislation does not cover the remaining part of the definition, i.e. "any other natural person exercising ultimate control over the trust", the Japanese authorities clarified that under the Japanese legal framework, those who exercise ultimate control over the trust are the settlors or beneficiaries of a trust to be identified and verified, and that in case there is a representative person carrying out a specified transaction with a specified business operator on behalf of the settlor or beneficiary who is a natural person, that representative person as well as the settlor or beneficiary shall be verified his/her identity by the specified business operator (Article 4(4) of the PTCPA). Further, in case the settlor or beneficiary is a legal person, the trust company must identify the beneficial owner (natural person) of the said legal person as per Article 11 of the Ordinance for Enforcement of the PTCPA. The "looking-through approach" should catch most of the situations of "any other natural person exercising ultimate control over the trust". The same steps and definition would be applied if the customer was a foreign trust.

134. In the absence of clear guidance on how to apply the definition of beneficial ownership to trust, the identification of "any other natural person exercising ultimate effective control over the trust" as required under the standard may not be ensured in all cases. Japan should ensure that the definition of beneficial owner(s) of trusts under the AML/CFT legislation is fully in line with the standard.

Implementation of obligations to keep beneficial ownership information in practice

135. In Japan, the FSA is responsible for the inspection and the supervision of persons engaged in banking, insurance and financial instruments business (Act for Establishment of the Financial Services Agency, Article 4). These activities take three forms: i) issuance of guidance and training activities, ii) supervision activities such as on-site visits and iii) enforcement activities.

Issuance of guidance and training activities

136. The FSA published a Frequently Asked Question document entitled "Appropriate implementation of verification at the time of transaction" in July 2016 which explains the method for identifying beneficial owners in accordance with the PTCPA. This guideline provides that "it is sufficient for a specified business operator to identify and verify the beneficial ownership information of a legal person or legal arrangement by customer's declaration. However, if the specified business operator finds a customer declares a beneficial owner who contradicts the operator's knowledge, experience, and database, the operators should require customers to declare beneficial ownership accurately". The bankers' association confirmed that the customer is required to notify the beneficial owner but is not legally required to submit relevant documents for verification. It was also confirmed that the banks generally perform verification of the beneficial owner based on a notice from customers and do not use documents, etc. for verification. However, if it is considered as necessary to take enhanced CDD, they verify the beneficial owner based on relevant documents, such as a shareholder register and a certified copy of corporate registration. Reliance on customers' self-declaration without "reasonable measures" being applied to verify that the information in the self-certification is adequate, accurate and up-to-date raises a concern in respect of the reliability of beneficial ownership information kept by financial institutions. The FSA's AML/CFT guideline and answers to public consultations of the guideline published in February 2018 address this issue and provides that the financial institutions are required to seek reliable evidence when surveying matters for verification or the purpose of transaction, including identity information of the customer and beneficial owner and other relevant information such as the occupation and business details, personal history, the state of assets and income, source of funds, country of residence.

137. The FSA indicated that in questionnaires used in the horizontal review 2017, the FSA monitored financial institutions' practices regarding identification and verification of beneficial owners under the amended PTCPA effective on October 2016. For example, the FSA asked whether or not banks explain the definition of beneficial owners and the chain of control/

ownership to clients by using easy-to-understand materials such as charts. To this question, 87% of regional banks and 77% of *Shinkin* banks answered that they used those materials.

138. In order to clarify its supervisory requirements and expectations, the FSA publishes Supervisory Guidelines in which AML/CFT is also referred to. AML/CFT-related parts of the Supervisory Guidelines were several times amended, for instance to reflect the amendment of the PTCPA that became effective in October 2016. In particular, the Supervisory Guidelines provide that each financial institution should establish integrated and appropriate frameworks to conduct risk assessments and to take required processes to identify beneficial owners. Other requirements include those related to CDD, STR filings, etc.

Supervision activities carried out by the FSA

139. The FSA conducts on-site and off-site monitoring over financial institutions on a risk sensitive basis. Taking into consideration the amendments to the AML Act regarding the introduction of the risk-based approach with effect from 2016, the FSA has amended its Supervisory Guidelines regarding the implementation of the risk-based approach. It should be noted that, in addition to the Supervisory Guidelines, the FSA published the AML/CFT Guideline on February 2018. The AML/CFT Guideline makes clear that financial institutions are required to improve their AML/CFT frameworks according to "required actions" and "expected actions". In case the FSA would identify an issue with a financial institution's ML/TF risk management, including its insufficient implementation of the "required actions" in the Guideline, it will make a financial institution improve its ML/TF risk management by taking necessary administrative actions based on applicable law. Risk mitigation measures, such as CDD including identification and verification of beneficial owner, are described in "II. Risk Based Approach".

140. The FSA indicated that its supervision combines off-site and on-site by using a risk-based approach as recommended by international bodies such as the FATF and Basel Committee. Notably, the FSA conducted on-site visits with 80% of banks (87/109 banks) from July 2016 to March 2018, and spent more than 5 000 days for the on-site monitoring in that period.

Onsite monitoring by the FSA

141. The onsite inspections are carried out in accordance with, and based on, all the laws, regulations, and supervisory documents including the above-mentioned FAQ, Supervisory Guidelines and Financial Inspection Manual (a guide for inspectors). The Japanese authorities indicate that specifically, the checklist for legal compliance under relevant supervisory documents states

as follows and the compliance with the obligation is strongly recommended to financial institutions:

- Development of Internal Rules/Operational Procedures Concerning Verification at the Time of Transaction
- Development of System for Verification at the Time of Transaction
- Guidance and Training Concerning Verification at the Time of Transaction
- Points of Attention Concerning the Methods of Verification at the Time of Transaction

142. During on-site inspections, the Inspection Manual details a compliance checklist, to identify financial institutions' weaknesses and to instruct them to improve their risk management. The FSA indicated that inevitably those inspections had a tendency to excessively focus on revealing minute flaws and internal procedures, but are less effective in encouraging financial institutions' self-efforts to examine their risk management framework, reconsider their governance structures, and enhance corporate cultures in a forward-looking manner, which is especially important in the area of AML/CFT. This is the reason why the FSA has adopted also a strong offsite monitoring policy with financial institutions.

143. The number of on-site visits FSA conducted to banks (mega banks and regional banks), is provided in the following table for the years 2016 and 2017.

Business year[a]	Type of bank	Total numbers of entities	On-site visits[b]		
			Number of entities visited	Ratio	Days
2016	Mega	3	3	100%	824
	Regional	106	71	67%	1 830
	Subtotal	109	74	68%	2 654
2017	Mega	3	3	100%	630
	Regional	106	57	54%	1 767
	Subtotal	109	60	55%	2 397
From 2016 onwards	Mega	3	3	100%	1 454
	Regional	106	84	79%	3 597
	Total	109	87	80%	5 051

Notes: a. The FSA operates supervision based on its "business year," starting from July and ending on June, and the above numbers are all based on the business year. Specifically, "2016" refers to the period from July 2016 to June 2017, while "2017" refers to from July 2017 to March 2018 (since it is in the middle of 2018 business year).

b. "On-site visits" includes statutory on-site inspection and non-statutory on-site visits.

144. In addition to the above-mentioned figures, the FSA conducted statutory on-site inspections related to AML/CFT as mentioned below. In 2014 the FSA conducted on-site inspections with all of 3 mega banks. These banks are in the dominant positions in the banking sector (more than 45% of the total assets), and hold larger number of customer relationships than others.

145. For the *Shinkin* banks and the credit co-operatives, the FSA carried out 43 on-site inspections in 2015, 13 on-site inspections in 2016, and 13 on-site inspections in 2017. As of March 2017, there were 265 *Shinkin* banks and 152 credit co-operatives in Japan.

146. As of 1 April 2018, there are 56 foreign banks with branches in Japan. With respect to foreign banks having a branch in Japan, the FSA carried out 4 on-site inspections in 2014, 1 on-site inspection in 2015, and 2 on-site inspections in 2016.

Offsite monitoring activities by the FSA

147. The FSA indicated it placed in the past importance on examining whether a financial institution was technically compliant with the minimum standards through periodic inspection. However, it has undergone a complete overhaul on its approach of financial supervision including AML/CFT supervision and now conducts seamless on- and off-site monitoring continuously.

148. Previously, the role of off-site monitoring was to follow up the issues which the FSA had examined or identified at on-site monitoring. However, under the current approach, the FSA puts emphasis on off-site dialogues with financial institutions and requests them to proactively identify issues based on their own characteristics and to develop and implement plans for improvement by their self-analysis of root causes and solutions fit for the causes. The dialogues include interviews with the senior management or staff of financial institutions, which takes place off-site (FSA or regional branches' office), as well as on-site (financial institutions' office).

149. Through the series of dialogues, the FSA identifies issues to be improved by financial institutions and requests them to clearly understand the issues and to develop effective improvement plans, and subsequently to follow up implementation of the improvement plans. Through such process, the FSA indicates it ensures effective risk management for AML/CFT of the financial institutions.

150. If significant and serious issues are revealed through off-site monitoring, or if the FSA deems that the financial institutions may fail to make the necessary improvement, the FSA indicates it issues a statutory order for improvement to such institution even without any on-site monitoring. The timeline, within which a financial institution is required to put in place the

improvements, depends on cases. To ensure the improvements have been effectively implemented, the FSA continues to follow-up improvement of financial institutions by off- and on-site monitoring.

151. In 2017, the FSA carried out a Horizontal Review, the purpose of which was to examine financial institutions' risk-based approach under the amended Act on Prevention of Transfer of Criminal Proceeds, which came into effect in October 2016. The Horizontal Review campaign covered all mega-bank groups, foreign banks, regional banks, *Shinkin* banks, *Shinkumi* banks, other banks, such as internet-based banks, life insurance companies, non-life insurance companies and money transfer service providers, trust companies, as well as money clearing-houses (776 financial institutions in total).

152. The FSA indicates it collected data on the practice of identification and verification of beneficial owner in order to monitor to what extent financial institutions adopted the new way of identifying and verifying beneficial owners under the amended AML Act. The FSA instructed financial institutions to improve practices based on the results of the review. The FSA also advised the management of financial institutions to upgrade their framework in accordance with the AML/CFT Guideline. Finally, the FSA indicates that following the issuance of the February 2018 Guideline, FSA visited and interviewed senior managements of 19 major financial institutions and industry organisations and advised that they personally be responsible to strengthen their respective AML/CFT framework.

Enforcement activities carried out by the FSA

153. The enforcement tools of the FSA are i) administrative orders; and ii) rescission. There are two types of administrative orders:

1. Under a business improvement order, the FSA may order a Bank to issue and submit an improvement plan for ensuring sound management of that bank. The FSA may also order revisions to the submitted improvement plan and set out a deadline for the implementation of the amendments. The FSA issued one business improvement order in 2014 and two in 2015 with respect to AML/CFT. No business improvement order was issued in 2016 and 2017 with respect to AML/CFT.
2. Under a business suspension order, the FSA may order a Bank to suspend the whole or part of the business within a certain deadline. The FSA can do so without specifying any time limit when a Bank (i) has violated any laws and regulations, its articles of incorporation or (ii) has not complied with a disposition by the FSA based on any laws and regulations or (iii) has committed an act that harms the public

interest. The FSA issued one business suspension order in 2014 and one in 2015 with respect to AML/CFT. No business suspension order was issued in 2016 and 2017 with respect to AML/CFT.

154. The FSA may also "order financial institutions to report or submit materials concerning their operations and assets", including quantitative and qualitative information including improvement plans to rectify less material problems than ones subject to aforementioned orders as appropriately. In case a financial institution wrongfully reports or does not report as required, this would lead to criminal sanctions or fines to the financial institution. This has not happened during the peer review period.

155. Under the rescission, the FSA may order a Bank to dismiss a director, an executive officer, an accounting advisor, or a company auditor, or rescind the banking licence when a Bank has violated any laws and regulations, its articles of incorporation or a disposition by the FSA based on any laws and regulations or has committed an act that harms the public interest. The FSA indicated that no instances occurred where the FSA ordered a Bank to dismiss a director, an executive officer, an accounting advisor, or a company auditor, or rescinded the banking licence from 2014 to March 2018. The FSA indicates that a bank would generally amends its governance by voluntarily dismissing a director or the director voluntarily resigns as part of responses to a business improvement order and its follow-up, rather than being ordered by the FSA.

Conclusion

156. The CDD rules were amended with effect from 1 October 2016, which substantially modified the definition of beneficial owner(s). Prior to 1 October 2016, it was possible for a legal entity or a legal arrangement to be considered a beneficial owner. The FSA amended the Supervisory Guidelines in July 2016 in accordance with the amendments of the PTCPA, which came into force on 1 October 2016.Due to the short period of time since the full application of the new rules, the adequacy of the oversight and enforcement in practice, and thus full implementation of the new definition by banks, could not be fully assessed. Japan should strengthen its oversight activities on banks, and monitor the effective implementation of the new CDD rules by banks, notably by ensuring that adequate oversight and enforcement activities are carried out.

Part B: Access to information

157. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information; and whether rights and safeguards are compatible with effective EOI.

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).

158. As concluded in the 2011 Report, the NTA has broad access powers to obtain all types of relevant information including ownership, accounting and banking information from any person both for domestic tax purposes and in order to comply with obligations under Japan's EOI agreements. There has been no change in the relevant rules of Japanese law since then. The tax authority's broad access powers can be used for EOI purposes, regardless of domestic tax interest. Although the procedure differs depending on whether the EOI request is of civil or criminal nature, access powers are available also in cases where information is requested for criminal tax purposes. In the case of failure to provide the requested information, the tax administration has adequate powers to compel the production of information.

159. Officials within the National Tax Agency have access to its database, which contains relevant tax return and information return information, as well as relevant information provided by the Legal Affairs Bureau. The NTA's access powers are also effectively used in practice.

160. No issue in respect of the scope of the tax administration's access powers arose during the period under review. Peers were satisfied by the timeliness of provision of the requested information as well as the scope of the NTA's access powers. In light of the above, element B.1 remains in place with a compliant rating.

161. The table of determination and rating remains as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

ToR B.1.1. Ownership, identity and bank information and ToR B.1.2 Accounting records

162. The tax administration has broad access powers to obtain all types of relevant information including ownership, accounting and banking information from any person, both for domestic tax purposes and in order to comply with obligations under Japan's EOI agreements.

163. The 2011 Report concluded that appropriate access powers are in place for EOI purposes. There has been no change in the relevant rules of Japanese law since then.

Access powers

164. The Japanese NTA may exercise the following access powers, which can also be used to access beneficial ownership information:

- For a standard access, the NTA may inquire information of persons specified in such request, inspect accounting books, etc., and request presentation or submission thereof under Article 9 of the Act on Special Provisions for the Enforcement of Income Tax Conventions. Where a request from a treaty partner is related to a criminal investigation on tax matters in the treaty partner, the NTA may also conduct inquiry of persons specified in the request and inspection and retention of accounting books, etc. (voluntary investigation) (Article 10-2 of the Act on Special Provisions for the Enforcement of Income Tax Conventions).
- For opening a criminal investigation on tax matters in Japan, a specific procedure applies. Upon prior approval from a Court's judge, the NTA may conduct inspection, search, or seizure (compulsory investigation) pursuant to Article 10-3 of the Act on Special Provisions for the Enforcement of Income Tax Conventions. The procedure for criminal investigations was not applied during the review period.

Access to ownership and accounting information in practice

165. EOI under Japan's treaty network is the responsibility of Japan's competent authority, being the Minister of Finance or an authorised representative of the Minister. The Director of the International Operations Division under the NTA and the Director (Exchange of Information) designated by the Director of International Operations Division are authorised to act as the delegated competent authority for EOI in tax matters and, in practice, are responsible for managing and responding to all EOI requests. The International Operations Division is a central office based in Tokyo.

166. The 2011 Report (paragraphs 217 to 222) describes the NTA's internal administrative guidelines for processing incoming EOI requests, which are based on the OECD Manual on Information Exchange (see element C.5). The NTA database contains information on officers and shareholders of corporations (the information does not cover all the corporations), summarised accounting information, such as financial statements, in addition to names and addresses of taxpayers. However, since the staff of the EOI unit is not directly in charge of collecting information, the access is restricted and not all the information contained in the database can be accessed. Information available to the EOI unit is simple information only, such as taxpayers' names and addresses. Therefore when more information is required, the EOI unit requests this information from the local tax authorities, which in turn has the requested information on file, or gather the requested information with the taxpayer or third parties.

167. The staff of the EOI unit does not have the authority to inquire and inspect taxpayers. The 12 Regional Taxation Bureaus and 524 tax offices are entitled to inquire and inspect taxpayers and third parties. Accordingly, if the requested information is in the possession or control of a taxpayer or third party, the request is forwarded to the territorially competent Regional Taxation Bureau or Tax Office. The EOI administrator at the competent Regional Taxation Bureau or Tax Office appoints a collecting information official.

168. In practice, upon request for information from a contracting state, the EOI unit verifies the conformity of the request with tax treaties and domestic laws. If the EOI unit cannot obtain the requested information from the databases, then the EOI unit translates the request and forwards it to the Regional Taxation Bureau or Tax Office through the related Division within the NTA headquarters, which is in charge of the information holders. If the requested information cannot be obtained from the files, the official in charge of collecting information is appointed. The official collects the requested information from information holders by exercising the authority to inquire and inspect. Once the information is gathered, the official forwards it to the EOI unit through the Regional Taxation Bureau and related Division in

Headquarters. The EOI unit translates it in English and sends to the requesting jurisdiction. There are no legal or procedural limitations on how a person may be audited or the number of times they may be audited that would limit the ability of the Japan's tax authorities to use their access powers for the purpose of exchange of information.

169. In practice, in most cases, the authority to inquire and inspect prescribed in Article 9 of the Act on Special Measures Concerning Taxation is applied. Many of the EOI requests were related to the big cities and dealt with by the Tokyo Regional Taxation Bureau or the Osaka Regional Taxation Bureau. In practice, there is no difference in the information gathering process depending on the kind of information such as ownership information or accounting information.

170. As confirmed by the peer input received, there was no case during the period under review where Japan failed to obtain ownership or accounting information for EOI purposes due to an inability to access such information.

Access to banking information in practice

171. The 2011 Report found that there are no limitations on the ability of Japan's tax authorities to obtain information held by a bank or other financial institution for either civil or criminal tax purposes in response to a specific exchange of information request. There are no special procedures used to access information held by banks or other financial institutions.

172. The NTA confirmed they have a good relationship with financial institutions and reported that banks are co-operative with regard to requests for information. There have been no cases where banks have refused to provide information to the tax authorities for exchange of information purposes.

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

173. 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.

174. The 2011 Report concluded that Japan has no domestic tax interest limitation with respect to its information gathering powers. Information gathering powers provided to Japan's tax authorities under the Tax Treaties Special Provisions Act can be used to provide EOI assistance regardless of whether Japan needs the information for its own domestic tax purposes. Japan's ability to provide information regardless of domestic tax interest was also confirmed in practice. The situation has not changed since then. For example, the NTA has provided information on foreign taxpayers having a Japanese bank account for whom no domestic tax interest existed.

ToR B.1.4. Effective enforcement provisions to compel the production of information

175. Jurisdictions should have in place effective enforcement provisions to compel the production of information.

176. As concluded in the 2011 Report, Japan has in place effective enforcement provisions to compel the production of information and these provisions are adequately applied in practice. Under the Tax Treaties Special Provisions Act, the NTA has powers to discover and inspect any documents deemed relevant to its examination from taxpayers and third party record keepers for purposes of responding to an EOI request. In addition, article 13 of that Act sets out criminal and civil penalties for failure to provide the information (see paragraph 234 of the 2011 Report). There has been no change in these provisions since then.

177. The tax authorities do not have the power to compel testimony from taxpayers and third parties. In practice, this limitation has not prevented Japan's competent authority to respond to an EOI request. Input from Japan's peers confirms this. In case the information holder refuses to co-operate, the NTA can conduct search and seizure with a warrant issued by a judge of the district court in response to the criminal investigation conducted by the requesting jurisdiction. This situation has not taken place during the peer review period.

178. The domestic law does not provide for a timeframe in respect of the response from the information holder. The sanctions applied to the uncooperative information holder are prescribed in domestic law and apply to civil and criminal cases (Article 13 of Act on Special Provisions for the Enforcement of Income Tax Conventions and the Penal Code; imprisonment for not more than 6 months of a fine of not more than JPY 500 000). In practice, there were no cases where a person failed to provide information requested during the peer review period. In cases where a person refuses to co-operate, the NTA confirmed that it would use its compulsory powers to ensure that the requested information is obtained and provided. No concerns in this respect were reported by peers.

ToR B.1.5. Secrecy provisions

179. The 2011 Report concluded that secrecy provisions contained in Japanese law are in line with the standard. The Protection of Personal Information Act, which prohibits the provision of personal data to third parties without prior consent of the customer, does not applies to Japan's competent authority when accessing information maintained by business operators, including banks and other financial institutions. There has been no change in these rules since the first round review.

180. Paragraphs 238 to 241 of the 2011 Report describe the application of the attorney-client privilege in the EOI context, and conclude that this application is in line with the standard. This application was confirmed in an Osaka High Court Decision and a subsequent 2002 Supreme Court decision,[6] whereby it was confirmed that the information protected by an attorney's obligation of confidentiality can be disclosed to tax officials who exercise the power of inquiry or inspection. The 2011 Report (see paragraphs 242 to 244) also confirmed that the confidentiality obligations of judicial scriveners, CPA, CTPAs and notaries do not prevent the disclosure of information to the tax authorities. During the onsite visit for this evaluation, these professions confirmed orally that their professional secrecy does not prevent the disclosure of information to the tax authorities.

181. In practice, information is routinely obtained from banks. There was no case during the period under review where banking secrecy or attorney-client privilege was an impediment to obtaining the requested information and the NTA. No concerns in this respect were reported by peers.

B.2. Notification requirements, 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.

182. The 2011 Report concluded that the application of rights and safeguards in Japan does not unduly prevent or delay effective exchange of information. The report noted that there is no provision requiring the tax authorities to notify a taxpayer who is the subject of a request for information.

183. The table of determination and rating remains as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information

184. As described in the 2011 Report, Japan's tax authorities are not statutorily obliged to inform the person concerned of the existence of an exchange of information request. Likewise, the tax authorities are not obliged to inform

6. Osaka High Court Decision, 19 December 2001, No. 13 and Supreme Court Decision, 25 June 2002, No. 65.

the taxpayer concerned prior to contacting third parties to obtain information. Japan does not have any post-notification procedure.

185. In practice, however, Japan's tax authorities disclose the fact that they are exercising their authority of inquiry and inspection under the Tax Treaties Special Provisions Act to the person in possession of the requested information. In particular, the following matters are explained as necessary to the source of information, except where the requesting jurisdiction indicates that such matters should not be disclosed (administrative guidelines):

- that authority of inquiry and inspection is being exercised to provide information to the Contracting Party under the Multilateral Convention, a DTC or TIEA
- the name of the Contracting Party (jurisdiction) that made the request
- that the source of information was specified in the request
- the information requested by the Contracting Party
- the request is not subject to grounds for non-providing information (see below).

186. Article 8-2 of the Tax Treaties Special Provisions Act provides several safeguards to ensure the proper exercise of the tax authority's power to conduct inquiries and inspections of taxpayers or third parties for purposes of responding to an exchange of information request. These are called "grounds for non-providing information" and merely reproduce the exceptions to provide information contained in Article 26 of the OECD Model Convention.

187. These exceptions include the following circumstances:

- the tax authorities of the Contracting Party are deemed unable to provide Japan with information corresponding to the information that would be provided by Japan (reciprocity). This part of the domestic law means that the NTA may refuse to provide information when there is a lack of reciprocity according to the OECD Model commentary. Japan did not decline any request during the review period due to this reason
- it is deemed that the confidentiality of the information that would be provided by Japan could not be guaranteed in the Contracting Party concerned
- there is deemed to be a risk that the information that would be provided by Japan might be used for purposes other than contributing to the performance of the duties of the tax authorities of the Contracting Party

- there is deemed to be a risk that providing such information might harm Japan's national interests
- the tax authorities of the Contracting Party are deemed not to have pursued regular means available in acquiring information requested (except where use of such means would be extremely difficult).

188. If any of the above grounds for non-providing information are judged to exist, Japan's competent authority will notify the requesting jurisdiction to this effect, with explanation of the reasons thereof.

189. Taxpayers have no special rights to intervene against the tax authorities' information-gathering powers under the Tax Treaties Special Provisions Act, nor do they have any appeals rights.

190. The Japanese authorities have indicated that, to date, there have been no cases where taxpayers or third party record keepers refused to provide requested information in response to the tax authorities' information-gathering powers under the Tax Treaties Special Provisions Act.

Part C: Exchanging information

191. Sections C.1 to C.5 evaluate the effectiveness of Japan's EOI in practice by reviewing its network of EOI mechanisms – whether these EOI mechanisms cover all its relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether it respects the rights and safeguards of taxpayers and third parties and whether Japan could provide the information requested in an effective manner.

C.1. Exchange of information mechanisms

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

192. Japan has a broad network of EOI agreements in line with the standard. Japan's EOI network covers jurisdictions through 72 bilateral EOI agreements and the Multilateral Convention.

193. Out of the 117 jurisdictions participating in the Multilateral Convention, Japan has an EOI bilateral instrument in force with 79 of them. Since the first round review in July 2011, Japan has signed and ratified 16 new DTCs and 4 Protocols to existing DTCs, 7 TIEAs and 1 Protocol to an existing TIEA.

194. No issue in respect of the interpretation of foreseeable relevance was identified in the first round review. In the current peer review period, all peers providing input, except for one (see C.1.1 interpretation of the foreseeable relevance standard), were satisfied with Japan's interpretation of the foreseeable relevance standard and the application of the EOI clause in the agreement more generally.

195. The table of determination and rating remains as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical implementation of the standard
Rating: Compliant

Other forms of exchange

196. In addition to exchanges on request, Japan continues to exchange information spontaneously and automatically. Japan undertook to apply the Common Reporting Standard in matters of automatic exchange of financial account information and first exchange is scheduled in September 2018 on the basis of the Multilateral Convention. Japan has already activated 78 exchange relationships. The first exchange of information on tax rulings and advance agreements on transfer pricing in the context of the BEPS project took place in June 2016. Japan is also committed to exchanging information on Country-by-Country Reports in 2018.

ToR C.1.1. Foreseeably relevant standard

197. Exchange of information mechanisms should allow for EOI on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. All of Japan's EOI agreements allow for EOI in line with the standard of foreseeable relevance as was concluded in the 2011 Report.

Foreseeable relevance standard in the EOI agreements of Japan

198. Japan's EOI agreements are generally patterned on the OECD Model Taxation Convention or the Model TIEA. However many treaties use alternative wordings to "foreseeably relevant"; as follows:

- The double tax treaties (DTCs) with the following jurisdictions use the term "necessary": Armenia, Azerbaijan, Bangladesh, Belarus, Brazil, Bulgaria, Canada, China, Czech Republic, Egypt, Fiji, Finland, Georgia, Hungary, Indonesia, Ireland, Israel, Italy, Korea, Kyrgyzstan Mexico, Moldova, Norway, Philippines, Poland, Romania, Slovak Republic, South Africa, Spain, Sri Lanka, Tajikistan, Thailand, Turkey, Turkmenistan, Ukraine, Uzbekistan, Vietnam and Zambia
- The DTCs with Bermuda and Pakistan use the term "relevant".

199. Japan confirms that although there are no law precedents, directives, or guidelines identifying that these alternative wordings are compliant with EOI standards, the NTA interprets these DTCs in compliance with the Commentary for Article 26 of the OECD Model Tax Convention which recognises that "is necessary" and "is relevant" have the same scope as "is foreseeably relevant".

200. In addition, many of the above-listed jurisdictions[7] are parties to the Multilateral Convention, which uses the terms "foreseeably relevant".

201. Paragraph 267 of the 2011 Report stated that the Protocol to Japan's DTC with Switzerland (2010) contained a requirement which was not fully in line with the international standard. It was stated that in order to be consistent with the standard it would be necessary for the protocol to rely on further mutual understanding of both States on the interpretation of these provisions. Since then, Japan and Switzerland concluded an exchange of notes in May 2012, such that it is compliant with the international standard. In addition, Japan and Switzerland can exchange information in line with the standard under the multilateral Convention.

Application of the foreseeable relevance standard in practice.

202. Concerning the practical application of the criteria of foreseeable relevance, the 2011 Report did not identify any issue as information required by Japan to be included in incoming requests does not go beyond what is required under Article 5(5) of the Model TIEA. All Japan's partners that provided peer input for this report, except one (see below), confirmed that Japan properly applied the foreseeable relevance standard during the current period under review.

General application by the NTA

203. The NTA indicates that there is no special information that it requires from the requesting jurisdiction in the application of the foreseeably relevant standard. Japan does not require its partner jurisdictions to complete a standardised template for the formulation of requests and instead receives and accepts requests in a wide variety of formats if they conform to the EOI agreements. The identification of the taxpayer can be done by providing a number of indicators (the name of the representative of the incorporated entity, addresses other than assumed head office, etc.). The NTA confirmed that this identification by other indicators has occurred in practice.

204. If the NTA determines that the request received does not satisfy the criteria for foreseeable relevance, it communicates any identified issues to the requesting jurisdiction and attempts to resolve them before declining the request. The NTA requests clarification from the requesting authority, including description of what is lacking in the case described in the request or in the

7. Azerbaijan, Bermuda, Brazil, Bulgaria, Canada, China, Czech Republic, Finland, Georgia, Hungary, Indonesia, Ireland, Israel, Italy, Korea, Mexico, Moldova, Norway, Pakistan, Philippines, Poland, Romania, Slovak Republic, South Africa, Spain, Turkey, Ukraine.

explanation given by the requesting jurisdiction in satisfying the criteria, in order to explore ways to fill the gap.

205. During the period under review, Japan requested clarifications on 105 cases from the requesting jurisdictions, 54 of which related to foreseeable relevance (of whom 22 concerned the requests made by one same peer). The 51 requests for clarification which were not linked to foreseeable relevance related to factual information which was required for Japan to process the requests. The NTA confirms that these clarifications were sought only when it is necessary to confirm that the EOI request conforms to the provisions of the DTC, or when deemed necessary for correctly understanding the details of the request and collecting accurate information as quickly as possible.

206. Ultimately, Japan indicated that the NTA declined one request during the peer review period due to a lack of foreseeable relevance, which represents less than 1% of all received requests. The NTA indicated that this case involved identifying the details of a news report on the taxation for a Japanese company in the same corporate group to which a company of requesting jurisdiction belonged. However, the reason for the request was not explained in the request.

207. One peer reported a case where the information was not provided but this was not due to the application of the foreseeable relevance standard, but rather to a policy practice from Japan regarding APAs (see below). One other peer commented that Japan's interpretation of foreseeable relevance seemed too restrictive in respect to 23 cases (see below).

Application of the foreseeable relevance standard

208. There are 23 requests from one EOI partner for which Japan requested clarification to establish the foreseeable relevance of the requests. Out of these 23 requests, 14 related to the same type of transactions (export transactions from the requesting peer to Japan) in a particular industry sector. The remaining 9 requests related to different kinds of transactions, such as transfer pricing, genuineness of expenses claimed, share investments, etc.

209. The peer indicated that it believed Japan was too restrictive in the application of the foreseeable relevance standard. The peer added that Japan often seeks a definite assessment of the pertinence of the information in an ongoing investigation and has made repeated requests for clarification on the foreseeable relevance of the EOI requests. Even after providing response to clarifications as sought by Japan on multiple occasions and after acceptance of the foreseeable relevance of the requests by Japan, information remains pending in all cases, except one (where partial information has been provided after a lapse of two years from the original request).

210. Japan indicated that the relevance of the information sought was not clear from the EOI requests received and this resulted in Japan having to seek clarifications repeatedly. Japan first sought to confirm the foreseeable relevance of the requested information and on being satisfied with the foreseeable relevance aspect of the request, Japan then sought to identify the transactions concerned by the requests in order to collect the related information. To this end, Japan generally requested two clarifications (in respect of 18 EOI requests), sometimes three clarifications (in respect of 2 EOI requests), and requested one clarification with respect to 2 EOI requests. These repeated requests for clarification led to delays, which may have been reduced had Japan sought the clarification requests together, where possible. Japan indicated, as confirmed by peer input, they do not generally make multiple requests for clarification. Japan indicates that out of the 23 EOI requests for which Japan requested clarification to the peer, Japan already provided information, including partial information, in respect of 7 cases. Japan is in the process of collecting information in respect of 15 cases. Japan is waiting for additional clarification from the peer in respect of one case.

211. No explanation is available on the discrepancy of the situation with respect to the status of the 23 EOI requests, as explained by the two partners.

212. The Commentary to Article 26(1) to the OECD Model Tax Convention states that: "The competent authorities should consult in situations in which the content of the request, the circumstances that led to the request, or the foreseeable relevance of requested information are not clear to the requested State. However, once the requesting State has provided an explanation as to the foreseeable relevance of the requested information, the requested State may not decline a request or withhold requested information because it believes that the information lacks relevance to the underlying investigation or examination". In addition, "where the requested State becomes aware of facts that call into question whether part of the information requested is foreseeably relevant, the competent authorities should consult and the requested State may ask the requesting State to clarify foreseeable relevance in the light of those facts".

213. With respect to the interpretation of the foreseeable relevance standard by Japan, while there may have been a need to seek clarifications on the foreseeable relevance aspect, Japan's threshold for such demonstration was too high at times. [8]

8. For example Japan sought to have clarified why the requesting jurisdiction assumed there was a suspicion that the funding involved constituted unreported income of the company established in the requesting jurisdiction that is hidden abroad, or what kind of information and documents the requesting jurisdiction found during the course of investigation to substantiate the above suspicion.

214. The Note of Assessment Criteria indicates that "the assessment team and the PRG should assess carefully complaints from a single peer to ensure that such cases are balanced with all relevant factors. The assessment team should identify whether the issue raised by the peer constitutes anomalous or one-off problems or a systemic issue. In other words, a single problem that arises in connection with one peer may be an isolated case or may be evidence of a more general problem." The above factual elements show that Japan may have been strict in its interpretation of the principle of foreseeable relevance in relation to these specific 23 EOI requests and delays were observed due to the numerous requests for clarification. On the other hand, a number of other questions for clarification did not appear disproportionate. In addition, Japan eventually recognised the foreseeable relevance of the requests once it received the clarifications. Japan also provided information in relation to 12 EOI requests from other peers regarding transfer pricing during the peer review period, to which it responded, and finally no peers indicated dissatisfaction with respect to their EOI relationship with Japan and the requests for clarification from Japan. On balance, no sufficient grounds were found to establish that there is a systemic issue.

215. In light of the above, it is recommended that Japan monitors its interpretation of the foreseeable relevance standard to ensure that it complies with the commentary to Article 26(1) of the OECD Model Convention in all cases and ensures appropriate timeliness of responses.

Group requests

216. Japan's EOI agreements and domestic law do not contain language prohibiting group requests. Japan interprets them as allowing providing information requested pursuant to group requests in line with Article 26 of the OECD Model Tax Convention and its commentaries. In most respects, the basic process and procedures for responding to group requests follow those applicable to ordinary, non-group requests. The NTA Administrative Guideline for Operation includes a specific statement concerning group requests, which follows the commentary to Article 26 of the OECD Model Convention.

217. During the review period, Japan did not receive group requests. The NTA confirmed that they would answer a group request, if the information provided mirrors the information required to be provided in Paragraph 5.2 of the Commentary to Article 26 of the 2012 Update to the OECD Model Tax Convention. In addition, the NTA confirmed that the NTA will use the JITSIC template[9] created after the Panama Papers.

9. The model template has been developed within the JITSIC umbrella as a more efficient mechanism for facilitating group EOI requests and is starting to be

ToR C.1.2. Provide for exchange of information in respect of all persons

218. The 2011 Report concluded that all of Japan's EOI relationships allow for EOI with respect to all persons, either due to the provisions of the DTC itself or due to the application of Japanese domestic law which applies to non-residents as well as residents. There is no change in this respect. All agreements concluded since the 2011 Report also apply to non-residents as well as residents. In addition to EOI under DTCs, Japan can exchange information in respect of all persons under all of its TIEAs and under the Multilateral Convention.

219. Japan has confirmed that they interpret the EOI provision to allow exchange with respect to all persons regardless of their residence if the respective treaty provides for EOI for the purposes of domestic tax laws. Japan's competent authority has advised that they have exchanged information regarding non-residents. No issue in this respect was raised by peers either.

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

220. The OECD Model Tax Convention Article 26(5) and the Model TIEA Article 5(4), which are authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

221. As concluded in the 2011 Report, Japan has access to bank information for tax purposes and is able to exchange this type of information when requested on a reciprocal basis irrespective of whether its agreements contain the equivalent of Article 26(5). All new agreements concluded since the 2011 Report include Article 26(5) or the Model TIEA Article 5(4).

222. Out of Japan's DTCs, 39 do not contain Model Article 26(5).[10] Fifteen jurisdictions out of the 39 jurisdictions with which Japan's DTCs do not contain Model Article 26(5) have not yet been reviewed by the Global Forum

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adopted in the EOI processes of some JITSIC members. The model is not meant to be a mandatory template but rather a tool to standardise such requests, ensure their quality (particularly with regard to foreseeable relevance) and make the process more efficient and predictable.

10. Armenia, Azerbaijan, Bangladesh, Belarus, Brazil, Bulgaria, Canada, China, Czech Republic, Egypt, Fiji, Finland, Georgia, Hungary, Indonesia, Ireland, Israel, Italy, Korea, Kyrgyzstan, Mexico, Moldova, Norway, Pakistan, Philippines, Poland, Romania, Slovak Republic, South Africa, Spain, Sri Lanka,

and may have restrictions in access to certain types of relevant information which would limit effective EOI under the respective DTCs.[11] Out of these fifteen jurisdictions, Azerbaijan and Moldova are a Party to the Multilateral Convention and Japan is able to exchange information in line with the standard with them on this basis. Nevertheless, restrictions in Japan's treaty partner's domestic laws may limit effective EOI under the remaining DTCs and Japan should therefore work with these partners to ensure that their EOI agreements are in line with the standard.

223. In practice, there have been no cases where the requested information was not provided because it was held by a bank, another financial institution, a nominee or person acting in an agency or a fiduciary capacity or because it related to ownership interests in a person. In particular, during the period under review, Japan dealt with 63 requests for banking information. No issue has been reported by peers in this respect (see further sections B.1 and C.5).

ToR C.1.4. Absence of domestic tax interest

224. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party. Such obligation is explicitly contained in the OECD Model Tax Convention Article 26(4) and the Model TIEA Article 5(2).

225. As concluded in section B.1.3 above, there is no limitation in Japan's domestic law that prevents EOI absent a domestic tax interest. Japan also does not require that its agreements contain the equivalent of Model Article 26(4) in order to provide information regardless of domestic tax interest if the treaty partner can exchange information regardless of the domestic tax interest as well. Further, all of Japan's TIEAs contain wording akin to Model TIEA Article 5(2). Since the 2011 Report, all the new agreements include Article 26(4) of the OECD Model Tax Convention or Article 5(2) of the Model TIEA.

226. Out of Japan's DTCs, 39 do not contain Model Article 26(4).[12] As mentioned in C.1.3 above, 15 jurisdictions out of the 39 with which Japan's DTCs do not contain Model Article 26(4) have not yet been reviewed by the Global Forum and may have restrictions in access to certain types of relevant information which would limit reciprocity and the effective EOI under the

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Tajikistan, Thailand, Turkey, Turkmenistan, Ukraine, Uzbekistan, Viet Nam and Zambia.

11. These fifteen jurisdictions are Armenia, Azerbaijan, Bangladesh, Belarus, Egypt, Fiji, Kyrgyzstan, Moldova, Sri Lanka, Tajikistan, Thailand, Turkmenistan, Uzbekistan, Viet Nam and Zambia.

12. See footnote 5.

respective DTCs. Out of these 15 jurisdictions, Azerbaijan and Moldova are a Party to the Multilateral Convention and Japan will be able to exchange information in line with the standard with them. Nevertheless restrictions in Japan's treaty partner's domestic laws may limit effective EOI under the remaining DTCs and Japan should therefore work with these partners to ensure that their EOI relations are in line with the standard.

227. In practice, 50 EOI requests related to a person that is not a Japanese taxpayer and in which Japan had no domestic tax interest in obtaining the requested information. Japan responds to all valid requests for information consistent with the international standard whether it has or does not have a domestic tax interest in obtaining the requested information. Accordingly, no concerns in this respect were reported by peers.

Administrative practice regarding the exchange of APAs

228. One peer reported a case, which related to two information holders, where an APA application and the connected application documents were not fully provided by Japan because of some domestic tax limitations. The background of the case is that the peer conducted a transfer pricing enquiry into its domestic company and, in computing the arm's length royalty rate of a related party transaction by that company, the peer intended to use information contained in an APA application for a "similar" related party transaction between other two related parties, both in the same MNE group.

229. The NTA declined to provide the information requested on the basis of Article 3-22(2) of the NTA Commissioner's Directive, which provides that "documents (except those as to facts) received from the corporation for the APA review may not be used for the examination unless the corporation gives consent to the use of such materials". The NTA indicated that under this Directive, they were not able to provide the requested APA application unless they received the consent of the taxpayer, except for the portion of the information which was only of a "factual" nature. The peer responded that they considered the information request was covered by "as to facts", being entirely factual in their view. Japan declined however to provide a large portion of the information requested, because they considered an APA application, which consists of information such as taxpayer's view/opinion on the selection of comparables, was not "factual in nature" as a whole. The peer disagrees with this qualification and subsequent discussions took place between Japan and the peer to determine what constituted factual information, but this was not conclusive.

230. Article 26(3)(a) of the OECD Model Convention provides that "in no case shall the provisions of Article 26(1) and (2) be construed so as to impose on a Contracting State the obligation: a) to carry out administrative measures

at variance with the laws and the administrative practice of that or of the other Contracting State". Accordingly, as mentioned by paragraph 14 of the commentary to Article 26(3), "a Contracting State is not bound to go beyond its own internal law and administrative practice in putting information at the disposal of the other Contracting State". However, this limitation should be applied taking into account the overarching purpose of Article 26 as noted in paragraph 16 of the Commentary to Article 26(3) is to permit information exchange "to the widest possible extent".

231. It is difficult to draw any general conclusions from this particular case as it seemed to be an isolated one involving complex circumstances. Nevertheless, Japan should monitor the application of its administrative practice on information connected to APA applications to ensure that it is in line with the international standard.

ToR C.1.5. Absence of dual criminality principles

232. None of Japan's EOI agreements contain restrictions limiting EOI in criminal matters or based on dual criminality principles. There has been no case during the reviewed period where Japan declined a request because of a dual criminality requirement, as has been confirmed by peers.

ToR C.1.6. Exchange information relating to both civil and criminal tax matters

233. All of Japan's EOI agreements provide for EOI in both civil and criminal tax matters. As concluded in the 2011 Report, Japan is able to exchange information in both civil and criminal matters pursuant to its agreements and in line with the standard.

234. Japan provides EOI assistance at the administrative level when the requested information relates to a criminal tax matter in the requesting jurisdiction. Where search and seizure is necessary, Tax Collectors (criminal investigators) must obtain a permit from a judge prior to exercising this authority. The Japanese authorities did not have to carry out the search and seizure procedure to answer an EOI request during the review period. ToR C.1.7 Provide information in specific form requested

235. As concluded in the 2011 Report, there are no restrictions in Japan's EOI agreements that would prevent Japan from providing information in a specific form, as long as this is consistent with Japan's law and its administrative practices. In addition, many of Japan's TIEAs include requirements that information be provided in specific enumerated forms (such as deposition of witnesses).

236. Input received from peers confirms that Japan is able to respond to requests in accordance with the standard and no issue in respect of the form of the provided information has been indicated.

ToR C.1.8. Signed agreements should be in force

237. Japan's EOI network covers 122 jurisdictions through 72 bilateral EOI agreements and the Multilateral Convention.

238. The following table summarises the outcomes of the analysis under element C.1 in respect of Japan' bilateral EOI mechanisms (i.e. regardless of whether Japan can exchange information with the particular treaty partner also under a multilateral instrument):

Bilateral EOI Mechanisms

A	Total number of DTCs/TIEAs (A= B+C)	72
B	Number of DTCs/TIEAs signed but not in force (B = D+E)	6
C	Number of DTCs/TIEAs signed and in force (C = F+G)	66
D	Number of DTCs/TIEAs signed (but not in force) and to the Standard	6
E	Number of DTCs/TIEAs signed (but not in force) and not to the Standard	0
F	Number of DTCs/TIEAs in force and to the Standard	37
G	Number of DTCs/TIEAs in force and not to the Standard	29

239. The list of tax conventions already signed but yet to be ratified and the status of progress in Japan for procedure necessary in ratification is reproduced below. The timeline for ratification is usually a Parliamentary session of six months, although it varies on a case-by-case basis. All the pending ratifications on the side of Japan relate to treaties signed less than a year ago.

Type of agreement	Jurisdiction	Signature date	Ratification by Japan
DTC (partial revision)	United States	24/01/2013	17/06/2013
DTC (full revision)	Austria	30/01/2017	17/05/2017
DTC (full revision)	Belgium	12/10/2016	17/05/2017
DTC (new)	Lithuania	13/07/2017	Pending
DTC (new)	Estonia	30/08/2017	Pending
DTC (full revision)	Russia	7/09/2017	Pending
DTC (full revision)	Denmark	11/10/2017	Pending
TIEA (partial revision)	Bahamas	09/02/2017	17/05/2017
DTC (new)	Iceland	15/01/2018	Pending

ToR C.1.9. Be given effect through domestic law

240. Japan has in place domestic legislation necessary to comply with the terms of its EOI agreements.

241. Effective implementation of EOI agreements in domestic law has been confirmed in practice as there was no case encountered where Japan was not able to obtain and provide the requested information due to unclear or limited effect of an EOI agreement in Japan's law. Also, no issue in this regard was reported by peers.

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

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

242. Japan has an extensive EOI network covering 122 jurisdictions through 57 DTCs, 11 TIEAs and the Multilateral Convention. Japan's EOI network encompasses a wide range of counterparties, including all of its major trading partners, all the G20 members and all OECD members. Japan is trying to expand its network of tax treaties.

243. The EOI network increased from 65 jurisdictions during the first round review to 122 jurisdictions through the significant increase in the number of participants to the Multilateral Convention, from about 30 in July 2011 to 115, and the broadening of the network of Japan's bilateral treaties: Since the cut-off date of the first round review in July 2011, Japan has signed and ratified 16 new DTCs and 4 Protocols to existing DTCs, 7 TIEAs and one Protocol to an existing TIEA.

244. The additional 23 bilateral EOI agreements and 5 Protocols to existing bilateral EOI agreements concluded since the 2011 Report are set out in chronological order in the table below.

Jurisdiction	Agreement type	Date signed	Date ratified	Date in force
Jersey	TIEA	02-12-2011	31-07-2013	30-08-2013
Guernsey	TIEA	06-12-2011	24-07-2013	23-08-2013
Portugal	DTC	19-12-2011	28-06-2013	28-07-2013
Liechtenstein	TIEA	05-07-2012	29-11-2012	29-12-2012
New Zealand	DTC	10-12-2012	25-09-2013	25-10-2013
United States of America	DTC Protocol	24-01-2013	not ratified	not in force
United Arab Emirates	DTC	02-05-2013	24-11-2014	24-12-2014
Samoa	TIEA	04-06-2013	06-06-2013	06-07-2013

Jurisdiction	Agreement type	Date signed	Date ratified	Date in force
Sweden	DTC Protocol	05-12-2013	12-09-2014	12-10-2014
United Kingdom	DTC Protocol	17-12-2013	12-11-2014	12-12-2014
Oman	DTC	09-01-2014	17-08-2014	01-09-2014
Macao	TIEA	13-03-2014	22-04-2014	22-05-2014
British Virgin Islands	TIEA	18-06-2014	11-09-2014	11-10-2014
Qatar	DTC	20-02-2015	30-11-2015	30-12-2015
India	DTC Protocol	11-12-2015	29-09-2016	29-10-2016
Germany	DTC	17-12-2015	28-09-2016	28-10-2016
Chile	DTC	21-01-2016	28-12-2016	28-12-2016
Panama	TIEA	25-08-2016	10-02-2017	12-03-2017
Slovenia	DTC	30-09-2016	24-07-2017	23-08-2017
Belgium	DTC	12-10-2016	not ratified	not in force
Latvia	DTC	18-01-2017	05-07-2017	05-07-2017
Austria	DTC	30-01-2017	not ratified	not in force
Bahamas	TIEA Protocol	09-02-2017	not ratified	not in force
Lithuania	DTC	13-07-2017	not ratified	not in force
Estonia	DTC	30-08-2017	not ratified	not in force
Russia	DTC	07-09-2017	not ratified	not in force
Denmark	DTC	11-10-2017	not ratified	not in force
Iceland	DTC	15-01-2018	not ratified	not in force

245. Japan has in place an active negotiation programme which includes the renegotiating of existing DTCs to ensure that that they are up to date and in line with international standards and expanding its network so that all relevant partners are covered. Negotiations or renegotiations of bilateral agreements are currently ongoing with several jurisdictions.

246. During the preparations for the current review none of the Global Forum members indicated that Japan had refused to negotiate or sign an EOI agreement. On this basis and given its vast EOI network, the recommendation made in 2011 to Japan to continue to develop its network can be removed. As the standard ultimately requires that jurisdictions establish an EOI relation up to the standard with all partners who are interested in entering into such relation Japan is recommended to maintain its negotiation programme so that its EOI network continues to cover all relevant partners.

247. The new table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

C.3. Confidentiality

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

248. The 2011 Report concluded that all of Japan's EOI agreements have confidentiality provisions in line with the standard. This is also the case for all of Japan's EOI agreements and Protocols signed since the first round review.

249. There are adequate confidentiality provisions protecting tax information in Japan's domestic tax laws, which have not been amended since 2011. These provisions also apply to information exchanged under Japan's EOI instruments unless the respective EOI instrument stipulates different rules.

250. The above confidentiality rules also cover incoming EOI request letters, which are classified as "confidential information obtained in the course of administration" under Article 126 of the Act on General Rules for National Taxes.

251. The applicable rules are properly implemented in practice to ensure confidentiality of the received information. The NTA has in place policies and procedures to ensure that confidential information is clearly labelled and stored. The information received is kept either physically in locked archives or stored electronically with access restricted to authorised officers. Adequate security and operational controls are deployed in an appropriate manner, with the exchanged information adequately protected. Accordingly, no case of breach of confidentiality has been encountered in the EOI context and no such case or concerns have been reported by peers either.

252. The table of determination and rating remains as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

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

253. The 2011 Report concluded that Japan's EOI instruments have confidentiality provisions in line with Article 26(2) of the OECD Model Tax Convention. All of Japan's agreements and protocols signed since the first round review contain wording akin to Article 26(2) of the Model DTC as well and therefore ensure confidentiality of exchanged information in line with the standard.

254. The 2016 Terms of Reference clarify that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI agreement provides for the authority supplying the information to authorise the use of information for purposes other than tax purposes and where tax information may be used for other purposes in accordance with their respective laws. Such an exception is in accordance with the amendment to Article 26 of the OECD Model Tax Convention. Many DTCs[13] and TIEAs[14] Japan has concluded provide for the provision in line with the last sentence of Article 26(2) of the OECD Model Tax Convention or the last sentence of Article 8 of the OECD Model TIEA. The Multilateral Convention provides also for this possibility. In practice, Japan has never requested or been requested to share information with other governmental authorities and/or use the information exchanged for non-tax purposes.

255. As concluded in the 2011 Report, there are adequate confidentiality provisions protecting tax information contained in Japan's domestic laws which are supported by administrative and criminal sanctions applicable in the case of breach of these obligations (see paragraphs 306 to 308 of the 2011 Report). In Japan, taxpayers do not have the right to access their files. This means they also cannot access EOI documents.

Practical measures to ensure confidentiality of the received information

256. As concluded in the 2011 Report, the tax administration has in place appropriate policies and procedures to ensure confidentiality of the information exchanged.

257. Information received under all EOI instruments is classified in accordance with procedures for document management, labelled as protected under the particular treaty and stored in archives.

13. Austria, Belgium, Chile, Denmark, Estonia, Germany, India, Iceland, Latvia, Lithuania, Qatar, Russia, Slovenia, Sweden and United Kingdom.
14. Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Liechtenstein, Macao, Panama and Samoa.

258. The NTA applies a "clean desk policy" to all data left out in work areas, on credenzas, desk tops, fax/copy machines, conference rooms, and in-out baskets. All information received electronically is saved in secure IT systems. The NTA has manned security as well as automatic access controls in its premises. Employees have been issued ID cards which are recognised at the gates for entry and exit accesses. Their entry and exit are monitored and logged. Entry of visitors into the NTA headquarters has to be notified by the officials inviting those visitors prior to the arrival.

259. When foreign data requested by the NTA is received by the Japanese Competent Authority, the information is submitted to the respective field office which requested the information through secured internal communication channels and the information is handled in accordance with the confidentiality rules described above.

260. All information is exchanged with EOI partners through trackable mail. As a matter of policy, the NTA never sends specific taxpayer information through electronic means.

261. No case of breach of the confidentiality obligation in respect of the information exchanged has been encountered by the Japanese authorities and no such case or concern in this respect has been indicated by peers.

ToR C.3.2. Confidentiality of other information

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

263. In practice, the EOI Unit maintains confidentiality with respect to all communications with other competent authorities. This confidentiality is observed without regard to whether the information is in written form or communicated orally, and it extends to the incoming EOI request letter.

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

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

ToR C.4.1. Exceptions to requirement to provide information

264. As concluded in the 2011 Report, all of Japan's EOI agreements contain provisions on the rights and safeguards of taxpayers and third parties in line with the standard. Each of Japan's EOI instruments, including those concluded since the 2011 Report, allow for exception from the obligation to provide the requested information akin to the exemption in Article 26(3) of the OECD Model Tax Convention.

265. As discussed in Part B, the scope of protection of information covered by this exception in Japan's domestic law is consistent with the international standard. During the period under review there was no case where a person refused to provide the requested information because of professional privilege.

266. Japan did not decline to provide the requested information during the period under review because it was covered by legal professional privilege or any other professional secret and no peer indicated any issue in this respect.

267. The table of determination and rating remains as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

268. In order for EOI to be effective, jurisdictions should request and provide information under its network of EOI mechanisms in an effective manner. In particular:

- *Responding to requests*: Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or provide an update on the status of the request.

- *Organisational processes and resources*: Jurisdictions should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.
- *Restrictive conditions*: EOI assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions

269. The 2011 Report noted that expedient response times appeared to be inhibited by Japan's domestic procedures for handling exchange of information requests, in particular the lack of internal timelines for responding to requests. It included a general recommendation under which Japan should ensure that its authorities have in place procedures, including appropriate internal deadlines, to be able to respond to EOI requests in a timely manner.

270. In addition, the 2011 Report concluded that in the many cases in which Japan does not respond within 90 days to international requests for information in tax matters, it does not provide requesting parties with status updates. Japan was recommended to provide a status update when it is unable to answer an EOI request within 90 days.

271. Since the 2011 Report, Japan has put in place procedures, including appropriate internal deadline, to be able to respond to EOI requests in a timely manner. Although the timeliness of responses could be further improved, it has improved since the last peer review period. There are incompressible delays for Japan to be taken into consideration in the timeliness of responses, i.e. the translation time from English to Japanese, which Japan is trying to reduce to a minimum. In addition, Japan has received complex transfer pricing requests, which in general take more time to process.

272. All 23 peers that provided input, except one, expressed their satisfaction with Japan's quality and timeliness of responses to EOI requests. In addition, peers were satisfied with the quality of communication with Japan's EOI units. Finally, the peers mentioned that the answers to their requests for clarification were timely and of good quality.

273. As mentioned in the 2016 Note on assessment criteria, a compliant rating "does not demand perfection, but there should not be material deficiencies identified". Although Japan is recommended to continue to improve the timeliness of EOI responses, a Compliant rating is awarded given the positive peer input and the fact that Japan has addressed to a substantial extent both recommendations from the 2011 Report.

274. The new table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: This element involves issues of practice that are dealt with in the implementation of EOIR in practice. Accordingly, no determination has been made.
Practical implementation of the standard
Rating: Compliant

ToR C.5.1. Timeliness of responses to requests for information

275. Over the period under review (1 April 2014 to 31 March 2017), Japan received a total of 523 requests for information. The 2011 Report concluded that Japan should examine how its competent authority could speed up its internal processes for obtaining and providing information to ensure more timely responses and provide a status update within 90 days in all cases. The Administrative Guideline for Operation of the NTA provides that "an international standard requires us to provide requested information to the requesting country, etc. or notify the progress thereof within 90 days after receiving a request from the requesting country, etc. With this in mind, we seek to respond promptly and appropriately".

276. Shorter deadlines have been set out for field officers to gather the requested information (typically 45 days). The Management Record (excel sheet) held by the EOI Unit keeps records from the day that the request letter is received through the day that the response is sent to the authority of the requesting EOI partner, automatically giving a reminder of the cases for which 60 days have passed since the last contact with the requesting EOI partner. The responsible staff prepare the list of such cases every week, sort out the status thereof, and regularly provide updates on the cases for which no response can be provided within 90 days after the last contact with the requesting EOI partner.

277. The following table relates to the requests received during the period under review and give an overview of response times needed by Japan to provide a final response to these requests together with a summary of other relevant factors impacting the effectiveness of Japan exchange of information practice during the reviewed period.

Timeliness statistics

		1/04/2014-31/03/2015		1/04/2015-31/03/2016		1/04/2016-31/03/2017		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	[A+B+C+D+E]	101	100.0	166	100.0	256	100.0	523	100.0
Full response: ≤ 90 days		51	50.5	37	22.3	45	17.6	133	25.4
(cumulative) ≤ 180 days	[A]	83	82.2	112	67.5	198	77.3	393	75.1
≤ 1 year (cumulative)	[B]	98	97.0	137	82.5	220	85.9	455	87.0
> 1 year		2	2.0	8	4.8	1	0.4	11	2.1
Declined for valid reasons		0	0.0	0	0	3	1.2	3	0.6
Status update provided within 90 days (for responses sent after 90 days)		45	91.8	127	100.0	209	100.0	381	99.0
Requests withdrawn by requesting jurisdiction	[C]	1	1.0	2	1.2	3	1.2	6	1.1
Failure to obtain and provide information requested	[D]	0	0.0	0	0.0	0	0.0	0	0.0
Requests still pending at date of review	[E]	0	0.0	19	13.6	29	11.3	48	9.2

Notes: Requests are counted by the number of sources of information (related individuals/entities who may possess the requested information in Japan. For example, when it receives a request from a foreign country for transaction information related to a foreign corporation A, and needs to obtain such information from two Japanese corporations (company B, company C), Japan counts two as the number of requests received.

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

278. Although the average time of responses within 90 days remains low with 25.4% (about 33% for the timeliness without specific requests based on a bilateral statement that requires exchange of information within a certain period of the receipt of a request), the average response time for answers made within 180 days has greatly improved since the first round review from 50.3% of requests responded to within 180 days to 75.1% in the current period under review for the timeliness. The Japanese authorities indicated that the improvement in timeliness is due to the improvements put in place in respect to the EOI procedure to gather information, training and awareness building activities on EOI to field auditors gathering the information and a closer monitoring of deadlines by the EOI Unit. However, during the peer review period itself, for requests answered within 90 days, the percentage decreased steeply from 50.5% during the first year to 22.3% and 17.6% during the second and third years, respectively.

279. The Japanese authorities explained that this drop in timeliness within 90 days is due to a temporary resource shortage due to an increase in the number of requests and an increase in new EOI operations such as automatic exchange of information under FATCA and the Common Reporting Standard (CRS), exchange of country-b-country reports (CbC), etc. Four officials were added to the EOI section in July 2017 to deal with EOI matters. One out of

four is a professional staff for EOIR. In addition to the increase in officials, some tasks such as FATCA and CbC were removed from the EOIR team to enable them to focus on EOIR tasks.

280. The 25.4% of the EOI requests which are responded to within 90 days are typically simple. Japan is faced with the issue of having to translate all the EOI requests received into Japanese so that it can be processed by the NTA. In addition, the response must also be translated from Japan into English. The translation of an incoming request takes approximately 20 days. The translation of the response may add an additional 20 days, depending on the case. The Japanese competent authorities have therefore explained that it is very difficult to respond to EOI requests within 90 days when the request is not a simple one (e.g. where only the address of the taxpayer is requested; in such a case, the content of the request letter is simple and Japanese translation is unnecessary; since the answer is very simple as well, its English translation can also be done in the EOI unit). To ensure good monitoring of translation timeliness, the NTA concludes an annual agreement with a third party which has enough experience in translation in the field of tax administration and laws, and provide the third party a list of definitive translation in order to prevent mistranslation. As a result, the NTA can reduce the time to re-check and correct errors by themselves. When the NTA requests for a translation to a third party, the NTA usually sets a due date.

281. Reasons for requests not responded to within 180 days do not relate to a particular type of information requested (e.g. ownership or accounting information) or to a particular type of investigative measures required to be used. It is however acknowledged that a significant portion of requests received by Japan can be classified as complex requests and therefore a quality response to these requests requires a longer period (including greater translation time). The Japanese authorities consider an EOI request to be complex where the background of the request is complicated, there are many related entities, and the requirements are diverse. In such a case, the request letter from the partner country may span several pages and it takes time to translate it into Japanese. Also, in collecting information, it may take a lot of time to contact parties who possess the requested information where they are numerous.

282. During the peer review period, some requests took more than a year to be processed due to the following reasons: the address written in the request letter was not updated, the requested information was related to fraudulent loan transactions against which a bank had brought an action; the other EOI partner took a long time to answer the requests for clarification; information holder lived abroad, additional information necessary for the identification of transactions concerned and explanation of foreseeable relevance. During the period under review, Japan requested clarifications on 105 cases (151 clarifications overall) representing 20% of the total cases

from the requesting jurisdictions. The NTA confirms that these clarifications were sought only when it is necessary to confirm that the EOI request conforms to the provisions of the DTC, or when deemed necessary for correctly understanding the details of the request and collecting accurate information as quickly as possible. Out of a total of 151 requests for clarification, 46 (i.e. 30%) were related to EOI requests received from one peer. In addition, for 54 requests only linked to clarification of the foreseeable relevance of the requests, about half related to EOI requests from that same peer (see section C.1.1 *Interpretation of the foreseeable standard*). No peers, except for that one mentioned above, raised concerns on the requests for clarification made by Japan.

283. Indeed, as pointed out in section C.1.1 Interpretation of the foreseeable standard, a bilateral issue with one peer considerably impaired timeliness during the period of review. If the EOI requests with the EOI partner which are subject to interpretation issues with respect to the application of the foreseeable relevance standard are removed from the timeliness table, the response time within 180 days improves to 78.6%, whereas the response time within one year improves to 91% (instead of 87% if these requests are included into the timeliness statistics). However, Japan is recommended to continue to improve the timeliness of its responses.

284. Nine percent of requests received during the reviewed period are currently in the process of being responded. These requests do not relate to a particular type of information (e.g. banking or ownership information). Most of these requests relate to one EOI Partner (see C.1.1 Interpretation of the foreseeable standard).

285. Out of the 523 EOI requests received during the peer review period, Japan declined three of them for valid reasons, representing 0.6% of all requests received during that period. One was declined because according to Japan, it did not meet the criteria of foreseeable relevance. The other two requests related to the issue of exchange of information on APA application as described under section C.1.4 *Administrative practice regarding the exchange of APAs*. Before declining a request, the EOI Unit makes efforts to remedy all issues that can be resolved by communicating the specific issues to the requesting jurisdiction and requesting additional information or clarifications as needed.

286. One peer indicated that Japan declined to provide parts of the requested information, which is linked to Japan's domestic policy regarding exchange of information on APAs, see C.1.1 on Interpretation of the foreseeable relevance.

287. The 2011 Report included a recommendation in the box regarding the lack of status updates. During the period under review Japan provided status

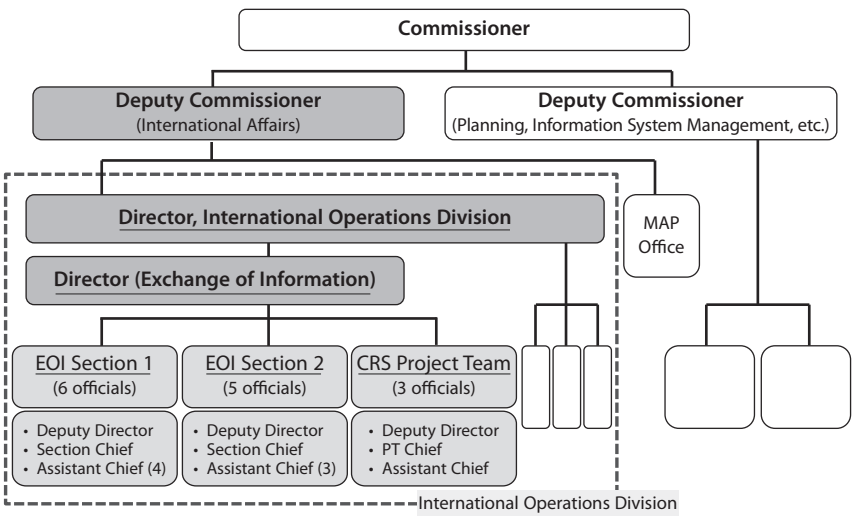
updates in 99% of cases where required under the standard. The percentage of status updates sent in line with the standard increased over the review period from 91.8% in the first year to 100% in the last two years. Status updates are provided by the EOI Unit officer handling the case typically by email where no protected data are required to be disclosed. The systematic provision of status updates within 90 days since receipt of the request is required in the NTA Administrative Guideline for Operation. Peers confirmed systematic provision of status updates by Japan. In light of the above, the recommendation on status updates set out in the 2011 Report is deleted, as it has been addressed by Japan.

ToR C.5.2. Organisational processes and resources

288. The National Tax Agency is organised with 3 levels: the headquarter, the regional taxation bureaus (12) and the (district) tax offices (524).

Organisation of the EOI Unit

289. There are 16 officials in charge of EOI within the International Operations Division, who all have experience as field examiners and collectors. The EOI section 1 is in charge of CRS, CBC and FATCA since July 2017, whereas the EOI Section 2 composed of 5 officials deals with other types of EOI including EOI on requests. The CRS project team was established in July 2017 and is in charge of system development of CRS and Country-by-Country reporting.



Incoming requests

290. The 2011 Report concluded that Japan's organisational processes and resources in respect of handling incoming requests were in line with the standard, apart from timeliness. Since the 2011 Report, the organisational process and the timeliness have improved.

291. When receiving EOI requests from an EOI partner, the EOI Unit checks their validity with the relevant EOI agreement. The EOI Unit studies the letter, using a checklist, divided into requirements under the domestic law and the requirements under the EOI agreement. A check sheet is also used to confirm whether the contents of the requests include any ambiguous points. If any problems are found within the request, the EOI Unit seeks clarifying, additional information or other action from the EOI partner. The EOI letter is then translated and passed on to the competent local authority.

292. The 2011 Report (paragraphs 217 to 222) describes the NTA's internal administrative guidelines for processing incoming EOI requests, which are based on the OECD Manual on Information Exchange. If the requested information is in the possession or control of a taxpayer or third party, the request is forwarded to the competent Regional Taxation Bureau or competent Tax Office where the taxpayer or third party resides. The EOI administrator at the Regional Taxation Bureau or the Tax Office appoints a collecting information official.

293. The translation of the EOI letter is done mainly by a third party, whose contract includes a confidentiality clause with penalties in case of breach. In addition, any identification element (name, etc.) is removed from the EOI letter to be translated. The third party must delete any copy of the EOI letter after translation.

294. Japan acknowledges the importance of the EOI Programme and continuously works on adjusting its workload and improving the efficiency of processes involved in obtaining and exchanging the requested information.

Outgoing requests

295. The 2016 ToR also cover requirements to ensure the quality of requests made by the assessed jurisdiction.

296. Japan has a vast and long experience with requesting information pursuant to EOI and has developed a robust EOI programme for that purpose. During the period under review Japan sent 1 381 requests for information related to direct taxes. The number of requests is counted by the number of sources of information (related individuals/entities who may possess the requested information) in requested jurisdiction. All the peers that provided peer input were generally satisfied with the quality of the EOI requests sent

by Japan and by the general communication with Japan. They confirmed that the EOI requests sent by Japan all met the foreseeable relevance standard.

297. The EOI Unit keeps an updated country-specific file on EOI which describes the practical information concerning EOI such as procedure for advance notice, procedure for requesting banking information, etc. In addition, the EOI Unit keeps updated documentation regarding the various kind of information which can be obtained without using EOI. This avoids unnecessary EOI requests (especially for simple information), and allows for the EOI requests made by Japan to be more precise. The EOI Unit also maintains an updated list of tax items that each EOI partner requests from Japan.

Processing outgoing requests

298. Examiners of Regional Taxation Bureaus or Tax Offices make EOI requests to the EOI Unit through the Regional Taxation Bureaus or National Tax Agency's division in charge. Subsequently, after verification by the EOI Unit, the EOI Unit sends the EOI requests to the requested jurisdiction.

299. The NTA Administrative Guideline for Operation sets out the procedure to follow to prepare and send an EOI request (including group requests), as follows:

- In an investigation or an audit by a tax office or a Regional Taxation Bureau (RTB), if it becomes necessary to make an EOI request (including group request), the RTB Manager (or Tax Office Manager through RTB Manager) will transmit such request to the NTA Division, which is in charge of that taxpayer, in a specific format. The NTA Division will confirm that matters which should be stated for making a request as provided for in the EOI agreement, etc. have been so stated in the form appended to the Guideline, and then pass the form so transmitted on to NTA International Operations Division.
- The NTA International Operations Division will consider whether or not the transmitted request conforms to the provisions of the applicable EOI agreement, translate it into English where appropriate, and then promptly send the EOI request.
- In such case, where the investigation is likely to be interfered with if the fact that Japan has made the request or the details of the request is disclosed to the parties about whom such information is collected, the NTA International Operations Division will explicitly state that Japan wishes the person concerned about the request to not be made aware or notified of the existence of the request.
- NTA International Operations Division, when finding that it is not appropriate to make an EOI request or if it is not a valid request,

will notify RTB (or Tax Office) Manager of that fact through NTA Division.

- Information provided by the partner country is received by the EOI unit. After that, it is circulated by the internal secured mail to the department in charge of the tax examination that requested the information. The department in charge of the tax examination verifies the received information.
- Japan sends a feedback by e-mail to the requested jurisdiction concerning cases where certain effects were obtained by utilising the information acquired through exchange of information.

Requests for clarification

300. The Japan's competent authority has sent 1 381 EOI requests during the review period and received a total of 223 requests for clarification, representing 16% of the total number of EOI requests.

301. The numbers of EOI requests and connected requests for clarification are set out below:

Period	1/04/2014-31/03/2015	1/04/2015-31/03/2016	1/04/2016-31/03/2017	Total
Total number of requests sent	499	463	419	1 381
Total number of requests for clarifications received	104	69	50	223
Total of acknowledgement of receipt for clarification sent	104	69	50	223

302. The competent authority explains it typically received requests for clarification because details of the investigation were complicated for the requested jurisdiction to understand. Japan also received additional inquiries on the acceptability of notification to taxpayers based on the other party's system. Upon receiving the request for clarification, the EOI Unit requests clarification to the examiner as necessary. Although there are no specific rules regarding timeliness, in practice the average timeliness to reply to a request for clarification is nine days. Peers have not flagged any issue in respect of the timeliness on answers to requests for clarification.

303. *Communication*

304. Japan accepts requests in English. If the request is not in English the requesting competent authority will be asked to translate the request. Japan also sends outgoing requests in English as agreed with the particular treaty partner.

305. Internal communication in which the EOI Unit communicates with other NTA offices is conducted via secured internal e-mail, by telephone, or sometimes in person to facilitate all aspects of processing EOI requests.

306. When sending a request, the EOI unit makes sure to use Express Mail Service with a mail tracking function. After sending an item using EMS, it confirms the delivery to the EOI partner via email and including the reference number. One peer indicated their preference to exchange with Japan via secured emails. However, under the security policy of the NTA, the use of email is not allowed as a means of external communication (with other competent authorities) where specific taxpayer information is contained. Accordingly, EOI requests and responses to EOI requests can only be sent via Express Mail Service.

ToR C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for EOI

307. There are no factors or issues identified that could unreasonably, disproportionately or unduly restrict effective EOI in Japan.

Annex 1: List of in-text recommendations

Issues may have arisen that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. However, in order to ensure that the Global Forum does not lose sight of these "in text" recommendations, they should be listed in an annex to the EOIR report for ease of reference.

- **Element A.1.4 and element A.3**: In the absence of clear guidance on how to apply the definition of beneficial owners to trust, the identification of "any other natural person exercising ultimate effective control over the trust" as required under the standard may not be ensured in all cases. Japan should ensure that the definition of beneficial owner(s) of trusts under the AML/CFT legislation is fully in line with the standard.
- **Element A.3**: The frequency of update depends on the risk level but no specific guidance is provided by the law or the Order. The frequency of updates then depends on the practice of each bank. It is unclear to which extent the ongoing due diligence by banks is carried out in practice. Japan is therefore recommended to continue the monitoring of the ongoing due diligence by banks.
- **Element C.1.1:** It is recommended that Japan monitors its interpretation of the foreseeable standard to ensure that it complies with the commentary to Article 26(1) of the OECD Model Convention in all cases and ensures appropriate timeliness of responses.
- **Element C.1.3:** Restrictions in Japan's treaty partner's domestic laws on access to banking information or other types of information may limit effective EOI under the DTCs which do not include the language of the Model OECD Convention Article 26(5) and Japan should therefore work with these partners to ensure that their EOI agreements are in line with the standard.

- **Element C.1.4**: As mentioned by paragraph 14 of the commentary to Article 26(3), "a Contracting State is not bound to go beyond its own internal law and administrative practice in putting information at the disposal of the other Contracting State". However, this exception should be applied within the constraints of the EOI standard. The overreaching purpose of Article 26, as noted in paragraph 16 of the Commentary to Article 26(3), is to permit information exchange "to the widest possible extent". It is difficult to draw any general conclusions from this particular case as it seemed to be an isolated one involving complex circumstances. Nevertheless, Japan should monitor the application of its administrative practice on information connected to APA applications to ensure that it is in line with the international standard.
- **Element C.1.4:** Restrictions in Japan's treaty partner's domestic laws may limit reciprocity and effective EOI under the DTCs of Japan that do not contain an equivalent text to Article 26(4). Japan should therefore work with these partners to ensure that their EOI relations are in line with the standard.
- **Element C.2**: Japan is recommended to maintain its negotiation programme so that its EOI network continues to cover all relevant partners.
- **Element C.5**: Japan is recommended to continue to improve the timeliness of its responses.

Annex 2: List of Japan's EOI mechanisms

1. Bilateral international agreements for the exchange of information

EOI partner	Type of agreement	Date signed	Date of ratification	Date entered into force
1. Armenia[a]	DTC	18 Jan 1986	28 Oct 1986	27 Nov 1986
2. Australia	DTC	31 Jan 2008	03 Nov 2008	03 Dec 2008
3. Austria	DTC	20 Dec 1961	04 Apr 1963	04 Apr 1963
	DTC	30 Jan 2017	Not yet ratified	Not yet in force
4. Azerbaijan[a]	DTC	18 Jan 1986	28 Oct 1986	27 Nov 1986
5. Bahamas	TIEA	27 Jan 2011	26 Jul 2011	25 Aug 2011
	Protocol	09 Feb 2017	Not yet ratified	Not yet in force
6. Bangladesh	DTC	28 Feb 1991	16 May 1991	15 Jun 1991
7. Belarus[a]	DTC	18 Jan 1986	28 Oct 1986	27 Nov 1986
8. Belgium	DTC	28 Mar 1968	17 Mar 1970	16 Apr 1970
	Protocol	09 Nov 1988	17 Oct 1990	16 Nov 1990
	Protocol	26 Jan 2010	18 Jun 2010	27 Dec 2013
	DTC	12 Oct 2016	Not yet ratified	Not yet in force
9. Bermuda	TIEA	01 Feb 2010	02 Jul 2010	01 Aug 2010
10. Brazil	DTC	24 Jan 1967	01 Dec 1967	31 Dec 1967
	Protocol	23 Mar 1976	29 Nov 1977	29 Dec 1977
11. British Virgin Islands	TIEA	18 Jun 2014	11 Sep 2014	11 Oct 2014
12. Brunei Darussalam	DTC	20 Jan 2009	19 Nov 2009	19 Dec 2009
13. Bulgaria	DTC	07 Mar 1991	10 Jul 1991	09 Aug 1991
14. Canada	DTC	07 May 1986	15 Oct 1987	14 Nov 1987
	Protocol	19 Feb 1999	14 Nov 2000	14 Dec 2000

EOI partner	Type of agreement	Date signed	Date of ratification	Date entered into force
15. Cayman Islands	TIEA	07 Feb 2011	14 Oct 2011	13 Nov 2011
16. Chile	DTC	21 Jan 2016	28 Dec 2016	28 Dec 2016
17. China (People's Republic of)	DTC	06 Sep 1983	28 May 1984	26 Jun1984
18. Czech Republic[b]	DTC	11 Oct 1977	26 Oct 1978	25 Nov 1978
19. Denmark	DTC	03 Feb 1968	26 Jun 1968	26 Jul 1968
	DTC	11 Oct 2017	Not yet ratified	Not yet in force
20. Egypt	DTC	03 Sep 1968	06 Aug 1969	06 Aug 1969
21. Estonia	DTC	30 Aug 2017	Not yet ratified	Not yet in force
22. Fiji[c]	DTC	04 Sep 1962	23 Apr 1963	23 Apr 1963
23. Finland	DTC	29 Feb 1972	30 Nov 1972	30 Dec 1972
	Protocol	04 Mar 1991	28 Nov 1991	28 Dec 1991
24. France	DTC	03 Mar 1995	23 Feb 1996	24 Mar 1996
	Protocol	11 Jan 2007	26 Oct 2007	01 Dec 2007
25. Georgia[a]	DTC	18 Jan 1986	28 Oct 1986	27 Nov 1986
26. Germany	DTC	17 Dec 2015	28 Sep 2016	28 Oct 2016
27. Guernsey	TIEA	06 Dec 2011	24 Jul 2013	23 Aug 2013
28. Hong Kong (China)	DTC	09 Nov 2010	15 Jul 2011	14 Aug 2011
29. Hungary	DTC	13 Feb 1980	25 Sep 1980	25 Oct 1980
30. Iceland	DTC	15 Jan 2018	Not yet ratified	Not yet in force
31. India	DTC	07 Mar 1989	29 Nov 1989	29 Dec 1989
	Protocol	24 Feb 2006	29 May 2006	28 Jun 2006
	Protocol	11 Dec 2015	29 Sep 2016	29 Oct 2016
32. Indonesia	DTC	03 Mar 1982	01 Dec 1982	31 Dec 1982
33. Ireland	DTC	18 Jan 1974	04 Nov 1974	04 Dec 1974
34. Isle of Man	TIEA	21 Jun 2011	02 Aug 2011	01 Sep 2011
35. Israel	DTC	08 Mar 1993	24 Nov 1993	24 Dec 1993
36. Italy	DTC	20 Mar 1969	15 Feb 1973	17 Mar 1973
	Protocol	14 Feb 1980	28 Jan 1982	28 Jan 1982
37. Jersey	TIEA	02 Dec 2011	31 Jul 2013	30 Aug 2013
38. Kazakhstan	DTC	19 Dec 2008	30 Nov 2009	30 Dec 2009
39. Korea	DTC	08 Oct 1998	23 Oct 1999	22 Nov 1999
40. Kuwait	DTC	17 Feb 2010	15 May 2013	14 Jun 2013

EOI partner	Type of agreement	Date signed	Date of ratification	Date entered into force
41. Kyrgyzstan[a]	DTC	18 Jan 1986	28 Oct 1986	27 Nov 1986
42. Latvia	DTC	18 Jan 2017	05 Jul 2017	05 Jul 2017
43. Liechtenstein	TIEA	05 Jul 2012	29 Nov 2012	29 Dec 2012
44. Lithuania	DTC	13 Jul 2017	Not yet ratified	Not yet in force
45. Luxembourg	DTC	05 Mar 1992	27 Nov 1992	27 Dec 1992
	Protocol	25 Jan 2010	30 Nov 2011	30 Dec 2011
46. Macao	TIEA	13 Mar 2014	22 Apr 2014	22 May 2014
47. Malaysia	DTC	19 Feb 1999	01 Dec 1999	31 Dec 1999
	Protocol	10 Feb 2010	01 Nov 2010	01 Dec 2010
48. Mexico	DTC	09 Apr 1996	07 Oct 1996	06 Nov 1996
49. Moldova[a]	DTC	18 Jan 1986	28 Oct 1986	27 Nov 1986
50. Netherlands	DTC	25 Aug 2010	29 Nov 2011	29 Dec 2011
51. New Zealand	DTC	10 Dec 2012	25 Sep 2013	25 Oct 2013
52. Norway	DTC	04 Mar 1992	16 Nov 1992	16 Dec 1992
53. Oman	DTC	09 Jan 2014	17 Aug 2014	01 Sep 2014
54. Pakistan	DTC	23 Jan 2008	10 Oct 2008	09 Nov 2008
55. Panama	TIEA	25 Aug 2016	10 Feb 2017	12 Mar 2017
56. Philippines	DTC	13 Feb 1980	20 Jun 1980	20 Jul 1980
	Protocol	09 Dec 2006	05 Nov 2008	05 Dec 2008
57. Poland	DTC	20 Feb 1980	23 Nov 1982	23 Dec 1982
58. Portugal	DTC	19 Dec 2011	28 Jun 2013	28 Jul 2013
59. Qatar	DTC	20 Feb 2015	30 Nov 2015	30 Dec 2015
60. Romania	DTC	12 Feb 1976	10 Mar 1978	09 Apr 1978
61. Russia	DTC	08 Jan 1986	28 Oct 1986	27 Nov 1986
	DTC	07 Sep 2017	Not yet ratified	Not yet in force
62. Samoa	TIEA	04 Jun 2013	06 Jun 2013	06 Jul 2013
63. Saudi Arabia	DTC	15 Nov 2010	16 Jul 2011	01 Sep 2011
64. Singapore	DTC	09 Apr 1994	29 Mar 1995	28 Apr 1995
	Protocol	04 Feb 2010	14 Jun 2010	14 July 2010
65. Slovak Republic[b]	DTC	11 Oct 1977	26 Oct 1978	25 Nov 1978
66. Slovenia	DTC	30 Sep 2016	24 Jul 2017	23 Aug 2017
67. South Africa	DTC	07 Mar 1997	06 Oct 1997	05 Nov 1997
68. Spain	DTC	13 Feb 1974	21 Oct 1974	20 Nov 1974

EOI partner	Type of agreement	Date signed	Date of ratification	Date entered into force
69. Sri Lanka	DTC	12 Dec 1967	23 Aug 1968	22 Sep 1968
70. Sweden	DTC	21 Jan 1983	19 Aug 1983	18 Sep 1983
	Protocol	19 Feb 1999	25 Nov 1999	25 Dec 1999
	Protocol	05 Dec 2013	12 Sep 2014	12 Oct 2014
71. Switzerland	DTC	19 Jan 1971	26 Nov 1971	26 Dec 1971
	Protocol	21 May 2010	30 Nov 2011	30 Dec 2011
72. Tajikistan[a]	DTC	18 Jan 1986	28 Oct 1986	27 Nov 1986
73. Thailand	DTC	07 Apr 1990	01 Aug 1990	31 Aug 1990
74. Turkey	DTC	08 Mar 1993	28 Nov 1994	28 Dec 1994
75. Turkmenistan[a]	DTC	18 Jan 1986	28 Oct 1986	27 Nov 1986
76. Ukraine[a]	DTC	18 Jan 1986	28 Oct 1986	27 Nov 1986
77. United Arab Emirates	DTC	02 May 2013	24 Nov 2014	24 Dec 2014
78. United Kingdom	DTC	02 Feb 2006	12 Sep 2006	12 Oct 2006
	Protocol	17 Dec 2013	12 Nov 2014	12 Dec 2014
79. United States	DTC	06 Nov 2003	30 Mar 2004	30 Mar 2004
	Protocol	24 Jan 2013	Not yet ratified	Not yet in force
80. Uzbekistan[a]	DTC	18 Jan 1986	28 Oct 1986	27 Nov 1986
81. Viet Nam	DTC	24 Oct 1995	01 Dec 1995	31 Dec 1995
82. Zambia	DTC	19 Feb 1970	24 Dec 1970	23 Jan 1971

Notes: a. Japan continues to apply the USSR treaty of 18 January 1986 in relations with Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan (11 jurisdictions).

b. Japan continues to apply the Czechoslovakia treaty of 11 October 1977 in relations with the Slovak Republic and the Czech Republic.

c. By Exchange of Notes of 25September 1970 between the Government of Japan and the Government of the United Kingdom, the Japan-UK treaty of 4 September 1962 was extended to Fiji. The current Japan-UK treaty is a new treaty, different from the Japan-UK treaty of 4 September 1962.

2. Convention on Mutual Administrative Assistance in Tax Matters (amended)

The Convention on Mutual Administrative Assistance in Tax Matters (the 1988 Convention) was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the amended Convention).[15] The Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The amended Convention was opened for signature on 1 June 2011.

Japan signed the amended Convention on 4 November 2011, and deposited to the OECD Secretary-General the instrument of acceptance of the said convention on 1 July 2013, which entered into force in respect of Japan on 1 October 2013.

As at 18 April 2018, the amended Convention is also in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curacao (extension by the Netherlands), Cyprus[16], Czech Republic, Denmark, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (exten-

15. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.

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

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United

sion by the United Kingdom), Greece, Greenland (extension by Denmark), Guatemala, Guernsey (extension by the United Kingdom), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Kingdom and Uruguay.

In addition, the following are the jurisdictions that have signed the amended Convention, but where it is not yet in force:[17] Armenia, Bahamas (entry into force on 1 August 2018), Bahrain (entry into force on 1 September 2018, Brunei Darussalam, Burkina Faso, Dominican Republic, El Salvador, Gabon, Grenada (signature on 18 May and instruments deposited on 31 May; entry into force on 1 September 2018), Hong Kong (China) (extension by China, entry into force on 1 September 2018), Jamaica, Kenya, Kuwait, Macau (China) (extension by China, entry into force on 1 September 2018), Morocco, Paraguay (signature on 29 May 2018), Peru (entry into force on 1 September 2018), Philippines, Qatar, Turkey (entry into force on 1 July 2018), United Arab Emirates (entry into force on 1 September 2018) and United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

17. Note that while the last date on which the changes to the legal and regulatory framework can be considered was 18 April 2018, changes to the treaty network that occur after that date are reflected in this Annex.

Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference, conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and the 2016-21 Schedule of Reviews.

The current evaluation provides the outcomes of the second peer review of Japan' implementation of the EOIR standard conducted by the Global Forum.

Laws, regulations and other material received

Commercial laws

Companies Act

Commercial Registration Act

Commercial Registration Rules

Limited Liability Partnership Act

Limited Partnership Act for Investment

Act on Authorisation of Public Interest Incorporated Associations and Public Interest Incorporated Foundations

General Incorporated Associations and General Incorporated Foundations Act

Act on Engagement in Trust Business by a Financial Institution

Trust Act

Trust Business Act

Ordinance for Enforcement of the Trust Business Act

Taxation laws

Corporation Tax Act

Ordinance for Enforcement of the Corporation Tax Act

Act on Special Measures Concerning Taxation

Income Tax Act

Ordinance for Enforcement of the Income Tax Ac

Inheritance Tax Act

Act on General Rules for National Taxes

Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act Incidental to Enforcement of Tax Treaties

Order for Enforcement of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act Incidental to Enforcement of Tax Treaties

Banking and financial laws

Financial Instruments and Exchange Act

Order for Enforcement of the Financial Instruments and Exchange Act

Insurance Business Act

Act on Investment Trusts and Investment Corporation

Act on Securitisation of Assets

Anti-money laundering laws, etc.

Act on Prevention of Transfer of Criminal Proceeds

Order for Enforcement of the Act on Prevention of Transfer of Criminal Proceeds

Ordinance for Enforcement of the Act on Prevention of Transfer of Criminal Proceeds

Frequently Asked Question document entitled "Appropriate implementation of verification at the time of transaction" issued in July 2016

Other laws

The Constitution of Japan

Civil Code

Penal Code

Act on the Protection of Personal Information

National Public Service Act

Attorney Act

Certified Public Accountants Act

Certified Public Tax Accountant Act

Administrations and organisations interviewed during the onsite visit

Ministry of Finance – Tax Bureau

National Tax Agency – International Operations Division

Financial Intelligent Unit – National Police Agency

Financial Services Agency

Ministry of Justice

Ministry of Economy, Trade and Industry

Japan Federation of Bar Associations

Japan Federation of Shiho-shoshi's Associations

Japan Federation of Certified Public Tax Accountants' Associations

Current and previous reviews

Japan previously underwent the EOIR peer review in 2011 conducted according to the ToR approved by the Global Forum in February 2010 (2010 ToR) and the Methodology used in the first round of reviews. The combined review covered Japan' EOIR practice in the period from 2007 to 2009 and its outcomes were adopted by the Global Forum in June 2011.

The evaluation was based on information available to the assessment team including the EOI arrangements signed, laws and regulations in force or effective as of 24 April 2017, Japan's EOIR practice in respect of EOI requests made and received during the three year period from 1 April 2014 to 31 March 2017, Japan's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Japan during the on-site visit that took place from 9 to 12 January 2018 in Tokyo, Japan.

Information on each of Japan' reviews is listed in the table below.

Review	Assessment team	Period under review	Legal framework as of (date)	Date of adoption by Global Forum
2011 Report	Ms Helen Ritchie of HM Revenue and Customs of the United Kingdom; Ms Elizabeth Gillam of HM Treasury of the United Kingdom; Ms Elizabeth Leite of the Secretariat of Federal Revenue of Brazil; and Mr Stewart Brant from the Global Forum Secretariat.	1 January 2007 to 31 December 2009	July 2011	October 2011
2018 Report	Ms Agathe Testori, Federal Department of Finance, Switzerland; Ms Jody Ulrich, Australian Taxation Office, Australia; and Ms Séverine Baranger from the Global Forum Secretariat	1 April 2014 to 31 March 2017	[27] April 2018	13 July 2018

Annex 4: Jurisdiction's response to the review report[18]

Japan would like to extend its sincere appreciation to the assessment team for their dedicated work and professionalism throughout the peer review process. Japan is also grateful to other members of the Peer Review Group for providing their valuable inputs and comments to Japan's peer review report.

Japan agrees with the contents of this peer review report. The report provides an objective representation of our legal and regulatory framework and the effectiveness of exchange of information in practice.

Japan will work on the implementation of the recommendations made in the report taking account of further contribution toward enhancing international tax transparency.

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

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

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(23 2018 22 1 P) ISBN 978-92-64-30276-1 – 2018

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request JAPAN 2018 (Second Round)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 150 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

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

This report contains the 2018 Peer Review Report on the Exchange of Information on Request of Japan.

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ISBN 978-92-64-30276-1
23 2018 22 1 P

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