

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information
on Request

SAINT KITTS AND NEVIS

2018 (Second Round)



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

PEER REVIEW REPORT ON THE EXCHANGE
OF INFORMATION ON REQUEST

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as at July 2018)

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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 150 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/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
AMLR	Anti-Money Laundering Regulations No. 46 of 2011
ATR	Anti-Terrorism (Prevention of Terrorist Financing) Regulations, No. 47 of 2011
CDD	Customer Due Diligence
CFATF	Caribbean Financial Action Task Force
DTC	Double Tax Convention
ECCB	Eastern Caribbean Central Bank
EOI	Exchange of information
EOIR	Exchange of information on request
FATF	Financial Action Task Force
FSRC	Financial Services Regulatory Commission
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
IRD	Inland Revenue Department
IBC	Nevis Business Corporation incorporated under the Nevis Business Corporation Ordinance, Cap. 7.01, as amended
LLC	Limited liability company formed under the Nevis Limited Liability Corporation Ordinance, Cap. 7.06
LP	Limited partnership
MOU	Memorandum of Understanding

Multilateral Convention (MAAC)	The Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended
PRG	Peer Review Group of the Global Forum
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 implementation by the Federation of Saint Kitts and Nevis (Saint Kitts and Nevis) of the standard of transparency and EOIR for tax purposes against the 2016 ToR. This includes an assessment of its legal framework, as well as its operation in practice as it concerns the handling of EOI requests received during the period from 1 July 2014 to 30 June 2017. This second round report concludes that Saint Kitts and Nevis is rated Largely Compliant overall. In 2014, the Global Forum similarly evaluated Saint Kitts and Nevis against the 2010 ToR and reached an overall rating of Largely Compliant.

2. The following table shows the comparison of results from the first and the second round review of Saint Kitts and Nevis' implementation of the EOIR standard:

Comparison of ratings for First Round Report and Second Round Report

Element	First Round Report (2014)	Second Round Report (2018)
A.1 Availability of ownership and identity information	LC	LC
A.2 Availability of accounting information	LC	LC
A.3 Availability of banking information	C	C
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	LC	LC

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

Progress made since previous review

3. The issues identified in the Phase 2 report published August 2014 related to: ensuring effective monitoring of legal obligations on licensed service providers to maintain ownership and identity information (element A.1); monitoring the new accounting record obligations imposed on all partnerships (element A.2); ensuring effective monitoring of legal obligations on exempt companies, IBCs, LLCs, exempt LPs and trusts to maintain accounting records (element A.2); continuing to develop its EOI network with all relevant partners (element C.2); and monitoring the handling of incoming EOI requests to ensure that comprehensive replies are provided in a timely manner (element C.5). All other elements were rated Compliant with the EOIR standard.
4. Since the last review, Saint Kitts and Nevis has addressed these recommendations by: increasing the monitoring activities of the IRD and FSRC; signing a DTC and a TIEA; ratifying three TIEAs; signing and ratifying the MAAC; and increasing the number of staff in the EOI Unit.

Key recommendation(s)

5. Five key issues where improvement is recommended relate to: ensuring the availability of information on all beneficial owners of a partnership; taking further measures to ensure the availability of legal and beneficial ownership information in respect of ordinary and domestic companies and information identifying the partners in, and the beneficial owners of, partnerships; taking further supervisory measures and enforcement measures to ensure the availability of accounting information in all cases; ensuring banks identify all beneficial owners of a LP; and ensuring that Saint Kitts and Nevis' access powers are used effectively so that the requested information can be provided in a timely manner.
6. Improvements are also recommended in respect of: the availability of ownership information with regards to newly registered companies in Saint Kitts; monitoring non-professional trustees' obligations to maintain ownership information; reliance on third parties for performance of CDD; continuing to develop an EOI network with all relevant partners; and updating the EOI Manual.

EOI Practice

7. During the review period, Saint Kitts and Nevis received 23 requests from eight treaty partners. Saint Kitts and Nevis did not send any EOI requests during the review period. Status updates were provided in all cases

that did not receive a complete response within 90 days. Saint Kitts and Nevis fully responded to 78% of requests within 90 days and 87% of requests within 180 days. There are three pending EOI requests, two of which Saint Kitts and Nevis is waiting for a response to its request for clarification. The third request is pending because Saint Kitts and Nevis needs to obtain a court order seeking to compel the information holders to provide the requested information.

Overall rating

8. Saint Kitts and Nevis has achieved a rating of Compliant for eight elements (A.3, B.1, B.2, C.1 C.2, C.3, C.4 and C.5) and Largely Compliant for two elements (A.1, A.2). Saint Kitts and Nevis' overall rating is Largely Compliant based on a global consideration of Saint Kitts and Nevis' compliance with the individual elements.

9. This report was approved at the PRG meeting on 10-13 September 2018 and was adopted by the Global Forum on 12 October 2018. A follow up report on the steps undertaken by Saint Kitts and Nevis 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 (<i>ToR A.1</i>)		
The legal and regulatory framework is in place.	A partnership, that is not a regulated business or has not engaged a licensed service provider, must provide ownership information to the tax administration and/or the Registrar; however, a natural or legal person may be identified as a general partner and there is no obligation to identify a limited partner. Also, there is no requirement under the AML/CFT laws to verify the identity of a limited partner of a partnership that is a regulated business or has engaged a licensed service provider. Therefore, the ownership information available may not necessarily identify all beneficial owners of a partnership in line with the standard.	Saint Kitts and Nevis should ensure that information on all beneficial owners of a partnership is available in line with the standard in all cases.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Largely Compliant	Legal and beneficial ownership information in respect of ordinary and domestic companies, as well as information identifying the general partners (natural persons) of partnerships, is available if the entity is a regulated business or the entity engages a licensed service provider. Legal and beneficial ownership information on ordinary and domestic companies and information identifying the general partners (natural or legal persons) of LPs should also be available with the Registrars; however, not all companies comply with the obligation to file annual returns. In addition, the low compliance rate with tax filing obligations for companies and the small proportion of partnerships audited by the tax administration do not ensure that ownership information is available as required under the law in all cases.	Saint Kitts and Nevis should take further measures to ensure that legal and beneficial ownership information in respect of ordinary and domestic companies and information identifying the partners in, and the beneficial owners of, partnerships is practically available as required under the standard.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
The legal and regulatory framework is in place.		
Largely Compliant	Although Saint Kitts and Nevis authorities carry out supervisory measures focused on the availability of accounting information, these do not result in sufficient levels of compliance to ensure that the relevant accounting information (including underlying documentation) is available in all cases. Further, while enforcement measures have been taken against licensed service providers, no penalties have been directly applied to relevant legal entities or arrangements to ensure the availability of accounting information in all cases.	Saint Kitts and Nevis should take further supervisory measures and exercise enforcement measures, including against relevant legal entities and arrangements, to ensure the availability of accounting information in all cases as required under the standard.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Banking information and beneficial ownership information should be available for all account-holders (<i>ToR A.3</i>)		
The legal and regulatory framework is in place.	While banks are required to verify the identity of general partners of a LP in line with the standard; there is no requirement to verify the identity of limited partners. Limited partners may be relevant for the identification of beneficial owners as defined under the standard.	Saint Kitts and Nevis should ensure that banks are required to identify all of the beneficial owners of a LP as required under the standard.
Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1</i>)		
The legal and regulatory framework is in place.		
Compliant	Saint Kitts and Nevis has powers in place to obtain all types of information but did not effectively exercise these powers in the one case where it was necessary in order to obtain information from an information holder.	Saint Kitts and Nevis should ensure that its powers to obtain information are used effectively so that the requested information can be provided in a timely manner.
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 (<i>ToR B.2</i>)		
The legal and regulatory framework is in place.		
Compliant		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Exchange of information mechanisms should provide for effective exchange of information (<i>ToR C.1</i>)		
The legal and regulatory framework is in place.		
Compliant		
The jurisdiction's network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
The legal and regulatory framework is in place.		
Compliant		
The jurisdiction's mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
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 (<i>ToR C.4</i>)		
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 (<i>ToR C.5</i>)		
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 Saint Kitts and Nevis

10. This overview provides some basic information about Saint Kitts and Nevis 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 Saint Kitts and Nevis’ legal, commercial or regulatory systems.

Legal system

11. Saint Kitts and Nevis is a common law jurisdiction with a democratic system of government. It became an independent nation in 1983. The legal system of Saint Kitts and Nevis is based on English common law. The Constitution is the supreme law and all other laws must conform to it or will be void to the extent of any contradiction or inconsistency. The hierarchy of laws in the Federation are as follows: Constitution of Saint Kitts and Nevis; Acts passed in the Federal Legislature (National Assembly), including international (tax) treaties, which are given effect through legislation; Ordinances passed by the Nevis Island Legislature (Nevis Island Assembly); and subsidiary legislation which includes regulations, statutory rules and orders.

12. Saint Kitts and Nevis has a Westminster-style parliamentary system. The Queen of England, represented by the Governor General on the island, is the titular Head of State. The Constitution provides for the separation of powers under the Parliament, the Executive, and the Judiciary. Although Saint Kitts and Nevis is constitutionally a single state, the Constitution grants significant autonomy to Nevis, which has a semi-autonomous Island Assembly, an Island Administration, and a Premier.¹

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1. Schedule 5 to the Constitution enumerates those matters with respect to which the Nevis Island Legislature has exclusive powers to make laws, including economic planning and development other than national planning and development, industries, trades and businesses, and any matter that is incidental and supplementary including but not limited to offences, jurisdiction, powers, practice and procedure of courts of law, fees and charges in respect of services provided, the issue of licenses, permits and certificates. Hence the ability for the Nevis Island

13. Due to the specific characteristics of Saint Kitts and Nevis, the responsibility for law-making is shared between the National Assembly in Saint Kitts and the Nevis Island Assembly, depending on the scope and nature of the law. The unicameral National Assembly has exclusive authority to enact laws of federal concern, including on defence or foreign relations, while the Nevis Island Assembly is empowered to enact ordinances related to a range of specified matters. For the purposes of the financial services and domestic corporate and commercial sectors, the constitutional framework provides for each island to develop legislative and administrative structures and procedures to govern those sectors. Hence, in Saint Kitts there are acts governing companies, partnerships, trusts and foundations that are registered in Saint Kitts, whilst in Nevis there are ordinances to govern similar legal entities and arrangements.

Tax system

14. The administration of income tax is governed by the Income Tax Act, the Unincorporated Business Tax Act, the Tax Administration and Procedures Act, and the Nevis Tax Administration and Procedures Ordinance. All resident corporations (incorporated or with the place of management and control in Saint Kitts and Nevis) are taxed on their worldwide income at the rate of 33% regardless of the amount. External (foreign) companies which operate in Saint Kitts and Nevis must be registered with the Registrar of Companies and must pay corporation tax on locally sourced income, as well as a tax on branch profits remittance.

15. Domestic trusts, partnerships and estates are taxed at the same rate as companies. In the international financial sector, exempt companies, IBCs, LLCs, LPs, international trusts, qualified foreign trusts, and multiform foundations are not required to pay taxes as long as these legal entities or arrangements are not carrying on business in Saint Kitts and Nevis.

Financial services sector

16. Saint Kitts and Nevis' financial services sector is comprised of the following entities: commercial banks, mutual funds, captive, international and domestic insurance companies, and ship registration. As of June 2017, there was one development bank (established under an Act of Parliament) and 35 licensed financial institutions operating in Saint Kitts (four domestic banks, one finance company, 15 domestic insurance companies, 11 money services businesses, and four credit unions); and 30 licensed financial institutions

Administration to enact laws governing legal persons and legal arrangements to be registered and carrying on business in Nevis.

operating in Nevis (five domestic banks, three of which are branches of the Saint Kitts domestic banks, one international bank, five money services business, one credit union, and 18 insurance managers)

17. The commercial banks are supervised by the ECCB, which serves as the prudential regulator. The non-bank financial sector is regulated by the FSRC. The FSRC is also responsible for supervising all regulated businesses listed in the Proceeds of Crime Act, to determine compliance with AML/CFT laws, comprising of the AMLR, the ATR, and the Financial Services (Implementation of Industry Standards) Regulations (herein referred to as the “Guidance Notes”). Regulated businesses listed in the Proceeds of Crime Act include commercial banks and non-bank financial entities (which include IBCs and LLCs incorporated under the Nevis Business Corporation Ordinance and the Nevis LLC Ordinance). The regulations prescribe the identification procedures, the record-keeping procedures, and the internal reporting procedures which are to be maintained by any person carrying on regulated business.

18. Authorised persons who are licensed to conduct corporate or trust business must be licensed and are regulated by the FSRC. As of February 2017, there were 53 licensed service providers in Saint Kitts and 56 licensed service providers in Nevis. All regulated businesses are required to comply with the AML/CFT laws where obtaining customer identification and maintaining records are concerned.

FATF assessment

19. 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.

20. The Third Round of Mutual Evaluation of Saint Kitts and Nevis’ compliance with the Forty Recommendations 2003 and the Nine Special Recommendations on the Terrorist Financing 2001 was conducted by the CFATF and adopted in June 2009. This report evaluated the AML/CFT measures in place in Saint Kitts and Nevis as of the on-site visit on 22 September to 3 October 2008. According to the evaluation, the growth of the Saint Kitts and Nevis’ offshore banking sector and financial supervision in the Federation was problematic due to the Federation allowing the creation of anonymous accounts, strong bank secrecy laws, the overall lack of transparency of beneficial ownership of legal entities, and the FSRC Act not giving powers to the FSRC for the supervision and regulation of non-financial services. Thirteen of the 16 core recommendations were rated as Partially

or Non-Compliant, including Recommendations 5 (customer due diligence) and 24 (regulation and monitoring of designated non-financial businesses and professions). Recommendations 33 (legal persons – access to beneficial ownership and control information) and 34 (legal arrangements – access to beneficial ownership and control information) were found to be Largely Compliant, but it was recommended that the legal framework be amended to include measures that would provide for information on beneficial ownership and control of legal persons, as well as provisions to facilitate obtaining relevant information with regards to private domestic trusts.

21. Follow-up reports were published in 2013 and 2014. The 2014 report concluded that Saint Kitts and Nevis had addressed the deficiencies noted in the Core and Key Recommendations (including Recommendation 5) to a level that was comparable to at least a Largely Compliant. Recommendation 24 was found to be at a substantial level of compliance. The CFATF acknowledged the significant progress made by Saint Kitts and Nevis in improving its AML/CFT regime and noted that the Federation had established a legal and regulatory framework to meet its commitments in its agreed Action Plan and was therefore no longer subject to the CFATF monitoring process.

22. Saint Kitts and Nevis' next review under the 2013 FATF Methodology is scheduled to be in 2020.

Recent developments

23. In Saint Kitts, amendments were made to the Companies Act (applicable to companies registered in Saint Kitts) in 2016 to clarify the type of information that must be provided upon registration with the Registrar of Companies. This is further discussed in element A.1.

24. In Nevis, the Nevis Business Corporation Ordinance 2017 (repealing the Nevis Business Corporation Ordinance, Cap 7.01) and the Nevis Limited Liability Company Ordinance 2017 (repealing the Nevis Limited Liability Company Ordinance, Cap 7.04), were enacted on 2 November 2017 and 31 August 2017, respectively. These ordinances continue to regulate the establishment of IBCs and LLCs in Nevis. Further information on this legislation is discussed in elements A.1 and A.2.

25. A number of amendments were also made to the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act since the 2014 Report. These amendments expand the Competent Authority's powers to request information from an information holder; clarify that the confidentiality requirements of the Banking Act do not apply to this Act; and increase the penalties for non-compliance. These amendments are further explained in elements B and C.

26. In 2014, Saint Kitts and Nevis committed to implement the Common Reporting Standards (“CRS”) for the sharing of financial account information with other CRS participating jurisdictions. The Common Reporting Standard (Automatic Exchange of Financial Account Information) Act, No. 13 of 2016 and Common Reporting Standard (Automatic Exchange of Financial Account Information) Regulations, No. 32 of 2016 were passed in 2016. Saint Kitts and Nevis committed to begin exchanges under the CRS by September 2018.

27. In 2015, Saint Kitts and Nevis signed an intergovernmental agreement with the United States to implement exchange of financial account information under the United States’ Foreign Account Tax Compliance Act (FATCA).

Part A: Availability of information

28. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of bank 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.

29. The 2014 Report concluded that the rules requiring availability of legal ownership information in respect of all relevant entities and arrangements in Saint Kitts and Nevis were in place and in line with the standard. Amendments were made to the Companies Act (applicable to companies registered in Saint Kitts) in 2016 to clarify that ordinary companies were required to provide beneficial owner information to the Registrar. Also, the Nevis Business Corporation Ordinance 2017 (repealing the Nevis Business Corporation Ordinance, Cap 7.01) and the Nevis Limited Liability Company Ordinance 2017 (repealing the Nevis Limited Liability Company Ordinance, Cap 7.04) were enacted. These ordinances were updated to address issues that have emerged in the international financial market place and to ensure that Nevis' international financial sector is in line with international standards. However, these ordinances have not changed any of the relevant provisions regarding the obligation to maintain ownership information.

30. The 2014 Report concluded that, in relation to the implementation of the laws in Saint Kitts and Nevis, practice was generally in line with the standard. However, the report concluded that only a limited portion of the licensed service providers were subject to inspection during the review period. Accordingly, it was recommended that Saint Kitts and Nevis ensure that there was effective oversight.

31. In order to address this recommendation, the FSRC conducted, during the review period, 98 on-site inspections of which 66 involved licensed service providers (24 reviews in Saint Kitts and 42 in Nevis). The

FSRC has also taken significant action against those service providers that failed to comply with their obligations. Therefore, this recommendation has been removed.

32. Under the 2016 ToR, beneficial ownership information on relevant entities and arrangements should be available. The requirements ensuring availability of beneficial ownership information are contained in the legislation under which entities or arrangements are incorporated, established or registered, the tax law, and the AML/CFT laws. Generally, beneficial ownership information on all entities and arrangements is required to be available in Saint Kitts and Nevis. However, legal gaps have been identified with regards to the availability of beneficial ownership information of partnerships. As such, Saint Kitts and Nevis should ensure that information on all beneficial owners of a partnership is available as required under the standard.

33. Supervision of AML/CFT and tax obligations by the FSRC and IRD, respectively, generally ensures the availability of legal and beneficial ownership information in practice. The responsible authorities take supervisory measures including risk-based off-site and on-site inspections, as well as tax audits. Legal and beneficial ownership information is verified during an on-site inspection and an audit.

34. Licensed service providers play an important role in establishing legal entities and arrangements and providing legal and corporate services. These providers are licensed by the FSRC and are an important source of beneficial ownership information. The proportion of service providers subject to AML/CFT inspections is high in comparison to the other types of regulated businesses that are reviewed. The FSRC Saint Kitts and Nevis branches carried out 66 on-site inspections of service providers, during the review period. In Saint Kitts, these inspections covered service providers that were responsible for 90% of the exempt companies and all of the trusts, foundations and LPs registered with the Registrar of Companies in Saint Kitts. In regard to Nevis, these inspections covered service providers that were responsible for 97% of the IBCs and LLCs, 98% of the foundations and all of the trust registered with the Nevis Registrar. Where deficiencies were identified, enforcement measures were applied to ensure that the deficiencies were addressed.

35. There are concerns regarding the practical availability of ownership information for ordinary and domestic companies and partnerships. Generally, these entities are not required to engage a licensed service provider, although 65% of ordinary companies and 80% of domestic companies do engage a service provider. In cases where a service provider is not engaged, the IRD mainly carries out the supervisory measures to ensure that the required ownership information is available. However, compliance with annual tax filings is low (15% in both Saint Kitts and Nevis in 2016). The

portion of partnerships subject to tax audits, during the review period, is low (less than 1%). In addition to tax filing obligations, ordinary and domestic companies have an obligation to file annual returns with the Registrars and provide updated ownership information, but not all companies comply with this obligation. Therefore, although the IRD carries out supervisory and enforcement measures, these do not result in sufficient levels of compliance to ensure that the relevant ownership information is in all cases available in practice. It is recommended that Saint Kitts and Nevis take further measures to ensure that ownership information in respect of ordinary and domestic companies and partnerships is practically available as required under the standard.

36. Overall, availability of ownership information was also confirmed in Saint Kitts and Nevis' EOI practice. During the review period, Saint Kitts and Nevis received 11 requests related to ownership information and fully responded to eight requests. Of these 11 requests, seven related to companies, three to trusts, one regarding a foundation which was operated by a trust company in Saint Kitts and Nevis. Saint Kitts and Nevis was asked to provide beneficial ownership information in eight cases. Saint Kitts and Nevis also received requests for identity information in relation to 20 individuals.² There are three pending requests. Please see element C.5 for further information.

37. 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:	A partnership that is not a regulated business or has not engaged a licensed service provider must provide ownership information to the tax administration and/or the Registrar; however, a natural or legal person may be identified as a general partner and there is no obligation to identify a limited partner. Also, there is no requirement under the AML/CFT laws to verify the identity of a limited partner of a partnership that is a regulated business or has engaged a licensed service provider. Therefore, the ownership information available may not necessarily identify all beneficial owners of a partnership in line with the standard.	Saint Kitts and Nevis should ensure that information on all beneficial owners of a partnership is available in line with the standard in all cases.

2. Please note that some requests entailed more than one information category and some requests entailed more than one individual or entity type.

Determination: The element is in place.		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice	Legal and beneficial ownership information in respect of ordinary and domestic companies, as well as information identifying the general partners (natural persons) of partnerships, is available if the entity is a regulated business or the entity engages a licensed service provider. Legal and beneficial ownership information on ordinary and domestic companies and information identifying the general partners (natural or legal persons) of LPs should also be available with the Registrars; however, not all companies comply with the obligation to file annual returns. In addition, the low compliance rate with tax filing obligations for companies and the small proportion of partnerships audited by the tax administration do not ensure that the information is available as required under the law in all cases.	Saint Kitts and Nevis should take further measures to ensure that legal and beneficial ownership information in respect of ordinary and domestic companies and information identifying the partners in, and the beneficial owners of, partnerships is practically available as required under the standard.
Rating: Largely Compliant		

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

38. The 2014 Report concluded that legal ownership information in respect of companies in Saint Kitts and Nevis is required to be available in line with the standard. As described in the 2014 Report, Saint Kitts and Nevis' constitutional framework provides for each island to develop legislative and administrative structures and procedures to govern the financial, corporate, and commercial sectors. Accordingly, there are acts governing companies, partnerships, trusts, and foundations registered in Saint Kitts; and there are ordinances govern similar entities registered in Nevis.

Companies in Saint Kitts

39. The Companies Act allows for the registration, in Saint Kitts, of companies limited by guarantee, limited by shares or limited by both shares and guarantee. Such companies may be either private or public. In addition, they may be classified as ordinary (domestic), exempt, or external (foreign). As of June 2017, there were 1 149 ordinary companies, 945 exempt companies, 19 public companies, and 55 external companies registered in Saint Kitts.

40. Ordinary companies carry on business in the Federation and are subject to tax. Exempt companies are exempt from tax in the Federation, are primarily formed to conduct business outside the Federation, and are not allowed to conduct business with residents. Failure to adhere to this requirement results in a loss of the company’s tax exemption status. Exempt companies must engage an authorised person.³ An external company is incorporated outside the Federation and carries on business in the Federation or has an address in the Federation which is used regularly for the purposes of its business.

41. The following table⁴ shows a summary of the legal requirements to maintain legal and beneficial ownership information in respect of companies incorporated in Saint Kitts:

Type	Company law	Tax law	AML/CFT laws
Ordinary company	Legal – all	Legal – all	Legal – all
	Beneficial – all	Beneficial – all	Beneficial – all
Exempt company	Legal – all	Legal – none	Legal – all
	Beneficial – none	Beneficial – none	Beneficial – all
External company	Legal – all	Legal – all	Legal – all
	Beneficial – all	Beneficial – all	Beneficial – all

42. Every company incorporated under the Companies Act is required to be registered with the Registrar (overseen by the Ministry of Finance and hosted by the FSRC Saint Kitts branch) (s.4(3), Companies Act). Also, a body corporate incorporated outside the Federation must be registered with the Registrar in order to “carry on business in the Federation or to have an address in the Federation which it uses regularly for the purpose of its business” (s.196(1), Companies Act). A company that fails to register with the Registrar is not considered to be a legal entity. In order to register, a memorandum of association, setting out identity information on all initial owners (both natural and legal persons), the directors and the secretary (who must

3. An “authorised person” is a person granted authorisation to carry on finance business pursuant to the Financial Services (Regulations) Order. As such, an authorised person is a regulated business and subject to comply with the AML/CTF obligations.
4. 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.

be resident in the Federation), must be provided to the Registrar (ss. 8 and 196, Companies Act). Also, in the case of external companies, the Registrar must be provided with copies of registration documents and a certified letter of good standing from the Registrar in the jurisdiction where the company is incorporated.

43. The Companies Act was amended in 2016 to clarify that: (i) in the case of a public company or a private ordinary company, the identifying information with respect to any person who is a natural person who ultimately has a controlling ownership interest in that company or who otherwise exercises control of the company through other means be provided upon registration with the Registrar; and (ii) in the case of an exempt company, identifying information with respect to the authorised person⁵ must be provided upon registration with the Registrar (s. 8, Companies Act). There were no amendments made to this provision in regard to external companies. Saint Kitts officials maintain that this amendment was clarifying and that such ownership information had always been collected by the Registrar.

44. The Registrar checks the identity of the initial owner presented in the registration form. To register a company, the applicant must go to the office of the Registry in person and provide two pieces of photo identification, which must be notarised or certified. If the company is being registered by a licensed service provider, copies of the initial owner's identification documents are required to be maintained at the office of the service provider. Compliance with this obligation is monitored by the FSRC as part of the on-site inspection of the service provider (see AML/CFT laws discussion below). The Registrar also checks that all information required to be filed upon incorporation is received before issuing a unique identification number to the company. The information received at the time of registration is copied into the Registrar's database and the company is issued a certificate of incorporation (s. 9, Companies Act). Any changes in ownership or directorship must be reported to the Registrar within 21 days of the change (s. 101, Companies Act). Any information filed with the Registrar must be kept for 30 years from incorporation; however, in practice, the Registrar does not destroy any of its records.

45. In addition to the registration requirements, all companies are required to maintain a registered office in the Federation and file annual returns with the Registrar. The annual return contains current identity information on the directors, the secretary and, except for exempt companies, the members/shareholders (ss. 68(1) and 72(2), Companies Act). Registration and filing of annual returns are paper based but the information is copied into the Registrar's database. The files kept by the Registrar are available

5. *Supra* footnote 3.

for search by the public. If a company fails to keep ownership information in the form of a register of members, the company and every officer of it who is in default commits an offence and is liable to a fine not exceeding XCD 2 500 (USD 925) and a further fine not exceeding XCD 250 (USD 93) for each day on which the offence continues. Also, failing to file an annual return on time may result in a fine not exceeding one half of the prescribed filing fee (i.e. USD 100 for ordinary private companies; USD 200 for exempt private companies; USD 400 for ordinary private companies; and USD 600 for exempt public companies) for each day the offence continues.

46. A company may be re-domiciled to Saint Kitts by providing certified copies of all incorporation documents to the Registrar and, after the company has been re-domiciled, it must submit annual returns with updated ownership information (s. 72, Companies Act). This process must be done via a regulated business in the Federation. Regulated businesses are required to maintain ownership information pursuant to the AML/CFT laws (see discussion below). Saint Kitts authorities confirmed that during the review period no companies were re-domiciled in Saint Kitts.

47. In addition to registering with the Registrar, companies doing business within the Federation must obtain a business licence (s. 3, Licences on Businesses and Occupations Act). Approval to do business in the Federation is granted by the Ministry of Finance. In order to apply for a business licence, identification information on all shareholders and “the actual owners and not merely the nominal owners of either the business or any participation or share therein” must be provided on the application form (s. 4, Licences on Businesses and Occupations Act). The term “actual owner” is not defined in the law. According to Saint Kitts and Nevis officials, the actual owner refers to the ultimate beneficial owner while the nominee owners are nominees (i.e. in name only). In addition to the application form, a copy of the incorporation certificate and two pieces of government issued identification documents for each director and owner must be provided to the Ministry. If the Ministry approves the application, an approval letter is issued to the company which must be provided to the IRD. The Ministry forwards the application information to the IRD. The IRD then issues the business license. The IRD receives monthly reports from the Registrar regarding newly registered companies. The IRD uses this information to ensure these companies are comply with their licensing obligations.

48. A business license must be displayed in the business place of operation, where it can be viewed by the general public. The Ministry and the IRD must be informed of any changes to ownership information. Licenses must be renewed annually with the IRD and the renewal form requires updated ownership information to be disclosed. Late renewal is subject to a penalty. Also, a license may be suspended or revoked if a company fails to comply with its

obligations under the Licences on Businesses and Occupations Act. Further, any person carrying on a business occupation, profession or trade in the Federation without the appropriate license commits an offence and is liable, on summary conviction, to a fine not exceeding XCD 1 000 (USD 370), imprisonment for a term not exceeding three months, or both (s. 13, Licences on Businesses and Occupations Act). Saint Kitts authorities stated that compliance with the registration and licensing obligations is generally found to be high and no sanctions were applied during the review period.

49. A company will be considered resident for tax purposes in the Federation if it meets one of these five indicative factors: (i) the company is incorporated under the laws of the Federation; (ii) the directors or individuals acting in their capacity as directors or management, control the company in the Federation (irrespective of whether decision making is restricted to the Federation or not); (iii) the company has its place of effective management and control in the Federation; (iv) the company is operational in the Federation for six months or more, or (v) the physical place of administration and management where the company's business is directed and carried out is within the Federation. Various government departments, statutory bodies and private sector agencies (including the Ministry of Finance, the Registrars and the IRD) regularly share information in order to facilitate the identification of entities with a nexus to the Federation.

50. Companies are required to register with the IRD for tax purposes. In order to register, the company must provide a copy of the incorporation certificate and two pieces of government issued identification documents for each director and owner. This information is kept on the company's taxpayer file. The IRD must be informed of any changes to this information, including ownership information. Such ownership information will also be updated when the company files an annual tax return and upon annual renewal of its business license.

51. All ordinary companies are subject to tax and must file an annual tax return with the IRD (ss. 31 and 48, Income Tax Act; s. 10, Tax Administration and Procedures Act). Information included on a tax return includes information on a company's directors and shareholders. In the case of an external company, this company is required to file an annual tax return which includes information regarding the majority shareholders, which is interpreted to mean a shareholder with at least 5% ownership interest. Tax returns are paper based but the information is copied into the IRD's database. In practice, information filed with the IRD is kept indefinitely.

52. In circumstances where a person is not resident in the Federation, but is liable to pay tax therein, that person must nominate an agent, who resides in the Federation, for the purpose of complying with the income tax laws (s. 9(3), Tax Administration and Procedures Act).

53. Taxpayers are required to retain any records prepared for purposes of complying with the tax law for six years, following the date on which the tax liability for the year of assessment in which the records were established, was first assessed (s. 7, Tax Administration and Procedures Act). The records are not specifically required to be physically held in the Federation; however, the records must be available upon the IRD's request (s. 55, Tax Administration and Procedures Act).

54. Exempt companies established in Saint Kitts are exempt from all income, capital gains, and withholding taxes, as well as stamp duties, provided they do not conduct business with residents of Saint Kitts and Nevis (ss. 207(1) and 208, Companies Act). Exempt companies are not required to register with the IRD or file an annual tax returns.

55. In addition to the obligations described above, every company is required to keep a register of members containing their particulars (i.e. names and addresses for an individual; or name, place of incorporation and address of registered or principal office for a body corporate), the dates they became and ceased to be members, and the amount of shares or guarantee, as the case may be (ss. 25, 41(1) and 50(3)(c), Companies Act). A transfer of shares may only be recorded in the register of members upon delivery to the company of a written instrument of transfer (s. 42(1), Companies Act). Further, the Registrar does not approve any share transfer unless the stamp duty has been paid or exempted under any other law, as certified by the Comptroller of IRD. Accordingly, IRD is informed when there are any changes in shareholding.

56. Ownership information on each member must be kept in the register of members for at least 10 years from the date on which he/she ceased to be a member (s. 41(3), Companies Act). The register of members must be kept at the company's registered office or elsewhere within the Federation and the company must give notice to the Registrar of the place where its register of members is kept, and of any changes of that place (s. 44, Companies Act).

57. Pursuant to the Companies Act, there are a number of ways for a company to cease to exist. A company can be (i) voluntarily dissolved by the decision of its owners; (ii) forcibly liquidated based on application of its creditors; (iii) wound up by the Court based on an application made by the company, a creditor, a director or member; or (iv) struck off the register and dissolved (see further explanation below). A company's records must be kept for at least ten years by a director, the liquidator (if one has been appointed), or a person to whom custody of the records has been committed, after the company's dissolution or liquidation (s. 195(2), Companies Act). Sanctions may be imposed on the person who, without reasonable cause, contravenes these obligations (ss. 108 and 195, Companies Act). Also, in cases where the company is represented by a licensed service provider, the service provider is

obligated to maintain records for a period of at least five years commencing from the date on which the business relationship ends (s. 8, AMLR and ATR).

58. With respect to companies being struck off the register and dissolved, if the Registrar has reason to believe that a company is not carrying on business or is not in operation (which may result from a company failing to fulfil its filing requirements with the Registrar), the Registrar will send a letter to the company inquiring whether the company is carrying on business or is in operation (s. 223, Companies Act). If, within a month, the Registrar does not receive a response or receives an answer to the effect that the company is not carrying on business or is not in operation, the Registrar will send a notice to the company that at the end of three months from the date of that notice, the company will be struck from the register and the company will be dissolved. The liability, if any, of every director and member of the company continues and may be enforced as if the company had not been dissolved (s. 223(5), Companies Act).

59. As concluded in the 2014 Report, the Companies Act contains adequate enforcement provisions applicable in cases of failure to keep ownership information as required under the law. No changes have been made to this law since the 2014 Report. Applicable sanctions span from monetary fines and administrative measures such as prohibition of activity and termination of the legal entity. The Registrar applied sanctions during the review period (see discussion below).

Companies in Nevis

60. In Nevis, three types of companies may be incorporated: (i) domestic (local) companies formed under the Companies Ordinance; (ii) corporations limited by shares (IBCs) formed under the Nevis Business Corporation Ordinance; and (iii) LLCs formed under the Nevis Limited Liability Companies Ordinance. Domestic companies may either be private, public or external. An external company carries on business within Nevis: (i) if business of the company is regularly transacted from an office in Nevis established or used for the purpose; (ii) if the company establishes or uses a share transfer or share registration office in Nevis; or (iii) if the company owns, possesses or uses assets situated in Nevis for the purpose of carrying on or pursuing its business, if it obtains or seeks to obtain from those assets, directly or indirectly, profit or gain whether realised in Nevis or not (s. 338, Companies Ordinance). IBCs and LLCs are formed primarily for the carrying on of business outside of Saint Kitts and Nevis and are exempt from tax provided that they do not do business therein. As of June 2017, there were 1 010 domestic companies (908 profit; 70 non-profit and 32 external), 11 630 IBCs and 4 546 LLCs registered in Nevis.

61. The following table⁶ shows a summary of the legal requirements to maintain legal and beneficial ownership information in respect of companies incorporated in Nevis:

Type	Company law	Tax law	AML/CFT laws
Domestic company	Legal – all	Legal – all	Legal – all
	Beneficial – all	Beneficial – all	Beneficial – all
IBC	Legal – all	Legal – none	Legal – all
	Beneficial – none	Beneficial – none	Beneficial – all
LLC	Legal – all	Legal – none	Legal – all
	Beneficial – none	Beneficial – none	Beneficial – all

62. Domestic companies (including external companies) are required to be registered with the Registry of Companies (Legal Department, Nevis Island Administration) (ss. 4 and 340, Companies Ordinance) and maintain a registered office in Nevis. In order to register, the articles of incorporation along with identity information on the incorporators and directors, as well as the address of the registered office must be provided to the Registrar (ss. 7, 175 and 334(1), Companies Ordinance). An allotment of shares showing the names and addresses of all shareholders must be filed with the Registrar within one month of registration (s. 18(2), Companies Ordinance). Also, an external company must provide a certified letter of good standing from the Registrar in the jurisdiction where the company is incorporated.

63. The Company Ordinance makes provisions for the mandatory registration of all external companies carrying on business in Nevis. However, the provisions are subject to exemption which may be granted to an external company by an Order of the Minister. Nevis authorities confirmed that the Minister has never granted such an exemption. An external company that does not register with the Registrar may be liable to a fine of XCD 300 (USD 111) for each day that the company is in default. The Registrar verifies with the Ministry of Finance, Nevis Island Administration and the IRD, Nevis branch to ensure that an external company registered with those departments is also registered with the Registrar.

64. The Registrar checks the identity of the initial owner presented in the registration form. To register a company, the applicant must go to the office of the Registry in person and must provide two pieces of photo identification, which must be notarised or certified. The Registrar also checks that all information required to be filed upon incorporation is received before issuing a unique identification number to the company. The information received at the time of registration is copied into the Registrar’s database and the company

6. *Supra* footnote 4.

is issued a certificate of incorporation (s. 8, Companies Ordinance). The files maintained on the company by the Registrar are available to members of the public. Any information filed with the Registrar must be kept for six years from the date of receipt (s. 507, Companies Ordinance); however, in practice, the Registrar does not destroy any of its records.

65. Any changes in ownership or directorship filed with the Registrar must be reported to the Registrar within 15 days (for private or public domestic companies) or 30 days for (external companies) of the change (ss. 77 and 355(1), Companies Ordinance). Failure to do so may result in a fine of XCD 5 000 (USD 1 850).

66. All domestic companies are required to file annual returns to the Registrar with current identity information on the directors and members/shareholders (s. 194, Companies Ordinance). In addition, an external company is required to provide the extent, if any, to which the liability of the shareholders or members of the company is limited (ss. 344(1) and 356, Companies Ordinance). The filing of annual returns is paper based but the information is copied into the computer files by the Registrar. Failure to file annual returns on time may result in a fine of XCD 5 000 (USD 1 850) or imprisonment for a term of six months, or both.

67. The Registrar has powers to inspect and investigate companies if it suspects that the company is not complying with obligations to maintain records and registers of members or shareholders. However, this power has never been used.

68. All domestic companies are required to obtain a business license and register with the IRD for tax purposes. The procedures and tax filing obligations are the same as those described above for companies incorporated in Saint Kitts.

69. All domestic companies are required to maintain records and registers of members showing: (i) the name and the latest known address of each person who is a member; (ii) a statement of the shares held by each member; and (iii) the date on which each person became and ceased to be a member (ss. 4(1) and 177(2), Companies Ordinance). In addition, public domestic companies must prepare and maintain a register of substantial shareholding (ss. 177(4), 181-185, Companies Ordinance), including shares held by a person or by a nominee, which entitle the holder to exercise at least 10% of the unrestricted voting rights at any general meeting of shareholders. A substantial shareholder must give notice in writing to the company stating his/her name and address and giving full particulars of the shares held by him/her or by a nominee (naming the nominee), within 14 days after becoming aware that he/she became or ceased to be a substantial shareholder. The register of substantial shareholders is available for inspection by members of the public

upon request and payment of the applicable fee. A director may be liable to a fine of XCD 5 000 (USD 1 850) for failure to maintain records and registers.

70. A transfer of shares may only be recorded on the register of members upon delivery to the company of a written instrument of transfer signed by the transferor and the transferee (ss. 195(1) and 199(1), Companies Ordinance). Ownership of the shares of a company passes to the transferee: (i) on the delivery to him/her of the instrument of transfer signed by the transferor and approved by the Registrar; or (ii) on the delivery to him/her of an instrument of transfer signed by the transferor that has been certified by or on behalf of the company, or by or on behalf of a recognised Stock Exchange. The Registrar does not approve any share transfer unless the stamp duty has been paid or exempted under any other law, as certified by the Comptroller of IRD. Accordingly, IRD is informed when there are any changes in shareholding.

71. Similar to Saint Kitts, there are a number of ways for a company to cease to exist. A company can be (i) voluntarily dissolved by the decision of its owners; (ii) wound up by the Court; or (iii) struck off the register and dissolved (see further description below) (ss. 370, 377, 430, Companies Ordinance). In all cases, a company's records must be kept for at least five years, by a director, the liquidator (if one has been appointed), or to any person to whom the custody of the records have been committed, after the company's dissolution (s.477, Companies Ordinance). Sanctions may be imposed on the person who, without reasonable cause, contravenes these obligations (s. 189, Companies Ordinance).

72. With respect to companies being struck off the register and dissolved, if the Registrar has reason to believe that a company is not carrying on business or is not in operation (which may result from a company failing to fulfil its filing requirements with the Registrar), the Registrar will send a letter to the company inquiring whether the company is carrying on business or is in operation (s. 483, Companies Ordinance). If within a month, the Registrar does not receive a response, a second letter will be sent providing an additional month to the company to reply. If after this second month, the Registrar does not receive a response or receives an answer to the effect that the company is not carrying on business or is not in operation, the Registrar will send a notice to the company that at the end of three months from the date of that notice, the company will be struck from the register and the company will be dissolved.

73. With regards to IBCs and LLCs, the Nevis Business Corporation Ordinance 2017 (repealing the Nevis Business Corporation Ordinance, Cap 7.01) and the Nevis Limited Liability Company Ordinance 2017 (repealing the Nevis Limited Liability Company Ordinance, Cap 7.04), were enacted on 2 November 2017 and 31 August 2017, respectively. These ordinances

continue to regulate the establishment of IBCs and LLCs in Nevis. These ordinances were enacted to: (i) address inconsistencies and errors that arose following the law revision exercise; (ii) consolidate the principal ordinances and subsequent amendments; (iii) ensure that streamlined processes were established in accordance with industry best practices and to render the ordinances more practical and user friendly; and (iv) provide for new provisions dealing with procedural matters in relation to the filing of corporate documents, change of service providers and registered addresses of corporations and companies, registration of charges and the payment of taxes in Nevis. Also, references to “non-residents” in the provisions relating to tax exemptions were removed. These ordinances have not changed any of the relevant provisions regarding the obligation to maintain ownership information.

74. IBCs and LLCs are required to register with the Registrar of Corporations, Companies, Foundations and Trusts (overseen by the Ministry of Finance, Nevis Island Administration and hosted by the FSRC Nevis Branch). IBCs are required to file articles of incorporation containing information on the identity and address of the initial legal owners and the address of the service provider as part of the registration process (ss. 4, 24 and 27, Nevis Business Corporation Ordinance). Similarly, LLCs are required to file upon registration the articles of organisation containing information on the identity of the initial legal owners and the service provider in Nevis (ss. 4, 17, 22 and 23, Nevis LLC Ordinance). In practice, upon registration the Registrar checks whether the required information has been provided and the applicable fee has been paid.

75. All IBCs and LLCs incorporated in Nevis must, at all times, have a service provider in Nevis and must use the service provider’s physical place of business as its registered office (s. 14, Nevis Business Corporation Ordinance and s. 12, Nevis LLC Ordinance). Service providers are required to be licensed by the FSRC (see further discussion below). The Registrar must be notified of any change or resignation of a service provider (ss. 15 and 16, Nevis Business Corporation Ordinance and ss. 13 and 14, Nevis LLC Ordinance). To change service providers, the company or service provider must notify the Registrar, who will contact both the former and the new service providers to verify the change. The applicable fee has to be paid before the change is accepted by the Registrar. Failure by the IBC or LLC to engage and designate a new service provider within 30 days following the resignation of the former service provider may result in a fine of XCD 1 350 or USD 500.

76. There are no legal restrictions on who can register an IBC or LLC with the Registrar, but, in practice, registration is always done by a service provider. When registering an IBC or LLC, the service provider must go to the office of the Registry in person. Application to register an IBC or LLC is paper based but all information is copied into the Registrar’s database. There

is no record retention requirement for the Registrar set out in the Ordinances, however, in practice, documents are never destroyed.

77. Any changes to the articles of the company must be filed with the Registrar (s.37, Nevis Business Corporation Ordinance and s.28 Nevis LLC Ordinance). IBCs and LLCs are not required to file annual returns with the Registrar. Since the Registrar does not keep records of ownership information, changes in shareholders are not reported to the Registrar. However, an obligation to maintain ownership information is imposed on IBCs, LLCs and the service providers. IBCs are required to keep a record containing the names and addresses of all registered shareholders (s.101(2), Nevis Business Corporation Ordinance), including a record of the number and class of shares held by each shareholder. LLCs are required to keep a record containing the names and address of all members (s.55(2), Nevis LLC Ordinance). Such records must be kept for five years from the date on which they were prepared (s.103(3), Nevis Business Corporation Ordinance and s.67(3), Nevis LLC Ordinance). Failure to comply with these obligations may result in a fine not exceeding XCD 10 000 (USD 3 700). Further, ownership information must be maintained by service providers for at least five years commencing from the date on which the business relationship ends (s.8, AMLR and ATR). There are penalties for failure to comply with these obligations (further details are provided under the section on *AML/CFT laws in Saint Kitts and Nevis* below.

78. A foreign corporation (s.122, Nevis Business Corporation Ordinance) or a foreign LLC (s.81, Nevis LLC Ordinance) may transfer its domicile to Nevis by filing with the Registrar an application to transfer domicile containing, among other things, the name and address of the foreign company's service provider in Nevis. Service providers are required to maintain ownership information pursuant to the AML/CFT laws. Nevis authorities confirmed that during the review period three companies were re-domiciled in Nevis.

79. Similar to domestic companies, there are a number of ways for IBCs and LLCs to cease to exist, including: (i) voluntary wind-up by the decision of its owners; (ii) wound up by the Court; or (iii) struck off the register (including for failure to pay the annual fee for one year, failure to maintain a service provider for a period of 60 days (for IBCs) or one year (for LLCs) or if the Registrar has reasonable grounds to believe that an IBC is engaged in any criminal activity) and dissolved (ss. 117-119, Nevis Business Corporations Ordinance and ss.73-75, Nevis LLC Ordinance). In all cases, a director of a dissolved IBC or LLC is required to keep records for five years from the date on which they were prepared (s.103(3), Nevis Business Corporation Ordinance and s.67(3), Nevis LLC Ordinance).

80. The Companies Ordinance, Nevis Business Corporation Ordinance and the Nevis LLC Ordinance contain adequate enforcement provisions

applicable in cases of failure to keep ownership information as required under the law. Applicable sanctions span from monetary fines and administrative measures such as prohibition of activity and termination of the legal entity.

AML/CFT Laws in Saint Kitts and Nevis

81. Under the Proceeds of Crime Act, all persons carrying on regulated business activity must adhere to the provisions of the AMLR, ATR, and the Guidance Notes (which have the force of law) issued by the FSRC. The provisions of the AMLR, ATR, and Guidance Notes are equally applicable in Saint Kitts and Nevis.

82. Persons carrying on regulated business activity include professionals that may be relevant for the establishment or administration of an entity or legal arrangement such as lawyers, accountants, auditors and trust and company service providers are subject to the AML/CFT laws. Regulated business activity includes: (i) banking business engaged in pursuant to the Banking Act; (ii) offshore banking carried on under the Nevis Offshore Banking Ordinance (now Nevis International Banking Ordinance); (iii) trust business carried on under the Trust Act and the Nevis International Trust Ordinance; (iv) IBCs under the Nevis Business Corporation Ordinance; (v) finance business carried on under the Financial Services (Regulations) Order; and (vi) company business carried on under the Companies Act and the Nevis LLCs Ordinance.

83. “Finance business” is defined as any (i) deposit-taking business; (ii) investment business; (iii) insurance business; (iv) assurance business; (v) trust business; or (vi) corporate business, carried on for profit or reward in or from within the Federation. As of June 2017, there was one development bank (established under an Act of Parliament) and 35 licensed financial institutions operating in Saint Kitts (four domestic banks, one finance company, 15 domestic insurance companies, 11 money services business, and four credit unions); and 30 licensed financial institutions operating in Nevis (five domestic banks, three of which are branches of the Saint Kitts domestic banks, one international bank, five money services business, one credit union, and 18 insurance managers).

84. In turn, “trust business” means (i) undertaking or executing trusts; (ii) providing trustees or protectors for trusts; (iii) maintaining the office for service of trusts; or (iv) managing or administering trusts. “Corporate business” is defined as the carrying on of, and the provision of services in relation to, the business of (a) incorporating or establishing, as may be appropriate, companies or partnerships; (b) providing nominee shareholders, directors, chief executives or managers, as may be appropriate, for companies or partnerships; (c) maintaining the registered office or the office for service, as may

be appropriate, for companies or partnerships; or (d) managing or administering, as may be appropriate, companies or partnerships.

85. Regulated businesses⁷ are prohibited from opening or operating financial services products held in fictitious names, as well as operating anonymous accounts (s.69, Guidance Notes). Regulated businesses must apply identification procedures before the establishment of a business relationship, before carrying out a one-off transaction or where there are doubts about the veracity or adequacy of the documents or data previously obtained, as well as on-going identification procedures during a business relationship (s.4, AMLR and ATR). These identification procedures include procedures for identifying and verifying the customer and third parties on behalf of whom the customer is acting and establishing the true identity of that person, including that person's name and legal status. A regulated business is also required to obtain information on the purpose and intended nature of the business relationship or one-off transaction. While there is no express obligation for the regulated business to understand the purpose and intended nature of the business relationship or one-off transaction, a regulated business is to obtain from a company a signed director's statement as to the nature of the company's business (s. 86, Guidance Notes). Further, a regulated business is expected to know enough about a customer's business to recognise whether a transaction or a series of transactions are unusual.

86. When applying the CDD procedures, in cases where the customer or the third party is not an individual, the procedures include understanding the ownership and control structure of that customer or third party and identifying each individual who is that customer or third party's beneficial owner or controller (s.4(2), AMLR and ATR). To verify identity, a regulated business must obtain evidence that: (i) is reasonably capable of verifying the identity of the customer, third party or beneficial owner; (ii) satisfies the regulated business through the use of documents, data or other information that the evidence of identification is conclusive; and (iii) is supported by independent documentation that is derived from a reliable source (s. 4(4), AMLR and ATR).

87. According to the AMLR and ATR, "beneficial owner or controller"

- a. means a natural person who ultimately owns or controls a customer or other person on whose behalf a transaction is being conducted; or a natural person who exercises ultimate, effective control over the management of a legal person or other entity
- b. includes ultimate ownership or control whether it is direct or indirect (s. 2, AMLR and ATR).

7. Regulated businesses are those entities carrying on regulated business activities.

88. The Guidance Notes provide additional explanations as to how the term “beneficial owner of controller” is to be interpreted. Based on section 45 of the Guidance Notes, a regulated business shall take steps to verify a company’s “underlying beneficial owner(s) – namely those who ultimately own or control the company. The “underlying beneficial owner(s)” is an individual who satisfies any one element, or any combination of the three elements of the following test:

- a. individual(s) who own more than 5% of the company
- b. individual(s) who exercise effective control (consider also those individual(s) who exercise responsibility for senior management decisions, or similar)
- c. business transactions or activities that are being conducted on that person’s behalf.

89. The Guidance Notes specify the type of information required for identification and the documentation required for verification, including the following documents in order to establish the identity of individuals and companies, including:

- a current valid passport
- national identity card
- a driving license which bears a photograph
- a certificate of incorporation
- the name(s) and address(es) of the beneficial owner(s) and/or the person(s) on whose instructions the signatories on the account are empowered to act
- memorandum and articles of association and statutory statement
- resolution, bank mandate, signed application form or any valid account-opening authority, including full names of all directors and their specimen signatures and signed by no fewer than the number of directors required to make up a quorum
- copies of powers of attorney or other authorities given by the directors in relation to the company
- a signed director’s statement as to the nature of the company’s business (ss. 77, 78, 82 and 83, Guidance Notes).

90. Providing false or incorrect information to a regulated business for purposes of CDD is an offence and is punishable under the Perjury Act (s. 8, Perjury Act).

91. Regulation 4(9) of the AMLR and ATR outline the actions that regulated businesses should take when they are unable to apply the identification and verification procedures, including the refusal to establish the business relationship or carry out the one-off transaction. Where the relationship has been established, but verification cannot be completed, the relationship or transaction should be suspended.

92. Section 6 of the AMLR and ATR set out the instances where simplified CDD is permitted. There is no requirement for the identification of the identity of a beneficial owner of a customer if the customer is: (i) a public authority and is acting in that capacity; or (ii) a regulated business. Simplified CDD is also allowed in instances when the business relationship or one-off transaction relates to: (i) a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deductions from wages and the rules of the scheme do not permit the assignment of a member's interest under the scheme; (ii) insurance policies for pension schemes if there is no early surrender option and the policy cannot be used as collateral; and (iii) life insurance policies where the single premium is less than XCD 5 000 (USD 1 850) or the annual premium is less than XCD 2 500 (USD 925). These simplified CDD rules are in line with the standard.

93. A regulated business may enter into business with a third party (e.g. business introducer) provided that the regulated business is satisfied that the third party has appropriate CDD processes in place. A regulated business may rely on CDD measures applied by the third party, subject to certain conditions. Further, the regulated business remains ultimately responsible for: (i) ensuring that the third party is bound by FATF Recommendations; and (ii) any failure by the third party for applying the necessary CDD measures (s. 7, AMLR and ATR).

94. The conditions for relying on a third party to apply the CDD measures are that the relying business obtains adequate assurances in writing from the third party that the third party has applied the identification measures set out under the AMLR and ATR and that the third party keeps such information on file. Also, the relying business must obtain, in writing, from the third party sufficient information about each customer, any beneficial owner or controller of the customer, any third party for whom the customer is acting, any beneficial owner or control of the third party for whom the customer is acting, or any person purporting to act on behalf of a customer to enable the relying business to assess the risk of money laundering or terrorist financing involving that customer.

95. The relying business is also required to immediately obtain from the third party the necessary information concerning the third party's CDD processes including specific details on: (i) identification procedures of

customers; (ii) verification procedures where a customer is acting for a third party or in the case of a legal person, verifying the legal status or arrangement of that legal person; and (iii) verifying whether any person is properly authorised to act on behalf of a customer. The third party is required, upon written request by the relying business, to make available without delay information recorded for the purpose of the identification and verification of identity of the customer or the beneficial owner (s. 7, AMLR and ATR).

96. This third party reliance rule poses a concern because the requirement for the regulated business is to obtain sufficient information about the customer (including beneficial ownership information) to assess the risk associated with that customer. However, there is no guidance as to what “sufficient information” means, therefore, it is not clear whether this requirement is consistent with the international standard. Also, as the obligation to provide CDD documentation is on the third party, who may be outside of Saint Kitts and Nevis’ jurisdiction, it may, therefore, be difficult to enforce this obligation in practice. As such, Saint Kitts and Nevis should ensure that its third party reliance rules are in line with the international standard.

97. A regulated business is required to keep updated beneficial owner information. The regulated business must conduct on-going CDD during a business relationship and scrutinise transactions throughout the course of that relationship to ensure that the transactions being conducted are consistent with the regulated business’ knowledge of the customer and its business and risk profiles (s. 4, AMLR and ATR). In addition, regulated businesses are required to ensure that documents, data or information under identification procedures are kept up to date and relevant by conducting reviews of existing records, including cases where inconsistencies are discovered.

98. The identification records relating to each transaction carried out in the course of any business relationship or one-off transaction must be kept by the regulated business for at least five years commencing with the date on which the business relationship ends or the date that the one-off transaction was completed (s. 8, AMLR and ATR). The FSRC may notify a regulated business to keep ownership information for a longer period of time.

99. A person who fails to comply with the AMLR, ATR, or the Guidance Notes commits an offence and is liable on summary conviction to a fine not exceeding XCD 25 000 (USD 9 250). If the contravention continues after the conviction, the person commits a further offence and is liable to an additional fine of XCD 100 (USD 37) for each day on which the contravention continues (s. 14, AMLR and ATR). In addition, a regulated business, its affiliate, or any director, officer, employee or significant shareholder of the regulated business who fails to comply with any requirement under the Guidance Notes commits an offence and is liable, on summary conviction to a fine of XCD 100 000 (USD 37 000) (in the case of a body corporate) or XCD 25 000 (USD 9 250)

(in the case of an individual) (s. 4, Guidance Notes). In the case of a continuing offence, a further penalty may be imposed.

100. In conclusion, the AML/CFT laws require identification of beneficial owners of companies in line with the standard. Also, the scope of persons or entities covered by these laws is broad and is in line with the standard.

Implementation of obligations to keep legal and beneficial ownership information in practice in Saint Kitts and Nevis

101. The sections below examine the supervisory and enforcement measures undertaken by Saint Kitts and Nevis authorities to ensure that companies are compliant with the obligations to keep legal and beneficial ownership information.

Ownership information with the registrars in Saint Kitts and Nevis

102. All companies incorporated in Saint Kitts and Nevis must be registered with the Registrar. All companies incorporated in Saint Kitts and domestic companies (including external companies) incorporated in Nevis are required to provide legal ownership information and, in some cases, beneficial ownership information to the Registrar. These companies must also file annual returns. IBCs and LLCs are not required to provide ownership information to the Registrar or file annual returns.

103. Companies incorporated in Saint Kitts and domestic companies (including external companies) incorporated in Nevis must notify the Registrar of any changes to ownership information within 21 days of the change. If the annual return indicates a change in directorship or secretaries, and in some cases, changes in shareholders, the Registrar checks that the change was also reflected in the form required to be filed with the Registrar when the change occurred and that this form was filed on time. The accuracy of the information provided in the annual return on shareholders may be checked by the FSRC during an on-site inspection of the licensed service provider, if any, and by the IRD when conducting a tax audit (see below for further information).

104. In practice, the Registrars send notices to the company's directors or the service provider at least 30 days prior to the statutory filing date to encourage timely compliance. The compliance rate for filing annual returns is generally high in Saint Kitts; however, compliance in Nevis is low. In 2017, the compliance rate for filing annual returns in Saint Kitts was: 71% for ordinary companies; 60% for exempt companies; and 100% for public companies and external companies. In Nevis, 30% of domestic companies filed annual returns in 2016.

105. The Registrars impose fines on companies for late filing of annual returns. Statistics on the number of cases where sanctions were applied for late filing are not readily available, but the total amount of late filing fees imposed on ordinary companies registered in Saint Kitts during the period under review amounts to XCD 750 000 (USD 277 500) and the total amount of penalties imposed on entities and arrangements registered in Nevis during the review period amounts to over XCD 4.5 million (USD 1.7 million).

106. Further, if a company fails to file the annual return on time, fails to pay the annual fee, or fails to maintain a service provider for a period of 60 days (for IBCs) or one year (for LLCs), it may be liable to be struck from the register. During the review period, 422 companies were struck off the register in Saint Kitts and 114 domestic companies, 3 688 IBCs and 2 266 LLCs were struck from the Nevis' registers.

Ownership information with the tax administration in Saint Kitts and Nevis

107. A company carrying on business in the Federation is obligated to obtain a business license. The application for a license is received and reviewed by the Ministry of Finance and the license is issued by the IRD. Information, including ownership information, filed with the Ministry is forwarded to the IRD and is maintained in the company's taxpayer file.

108. Companies resident for tax purposes in the Federation are required to register with the IRD and file annual tax returns. Tax returns are paper-based and are kept by the IRD indefinitely. In addition, information received as part of the annual return is entered into the IRD's database and is kept indefinitely.

109. A unit at the IRD verifies that taxpayers are filing their returns. This unit also conducts spot checks to ensure that taxpayers are filing the correct information. Best judgement assessments are done in cases of non-filing by taxpayers. Penalties are applied for late filing or failing to file a return.

110. The Taxpayer Services Division within the IRD conducts compliance checks, including tax audits. Audits are launched on a risk-based analysis and may consist of field examinations as well as desk audits. Some audits may focus on specific issues, such as ensuring a taxpayer is in compliance with their obligations to maintain books and records. According to IRD officials, all tax audits include a verification of the legal and beneficial ownership information of the company under audit.

111. The compliance rate of all obliged corporate income tax taxpayers with the obligation to file tax returns was 18% in Saint Kitts and 14% in

Nevis in 2014; 18% in Saint Kitts and 15% in Nevis in 2015; and 15% in both Saint Kitts and Nevis in 2016.

112. From 1 July 2014 to 30 June 2015, 81 companies (76 in Saint Kitts and 5 in Nevis) were subject to tax audits. From 1 July 2015 to 30 June 2016, 119 companies (81 in Saint Kitts and 38 in Nevis) were audited. From 1 July 2016 to 30 June 2017, 292 companies (171 in Saint Kitts and 121 in Nevis) were audited. The number of companies audited, in 2016-17, represents approximately 15% (in Saint Kitts) and 12% (in Nevis) of companies registered for tax purposes.

113. The table below sets out the total amount of penalties and interest the IRD applied to those taxpayers that were audited, during the review period, for late filing and late payment of taxes due.

Amount of penalties and interest applied by the IRD (in XCD)

Period	Amount of penalty applied		Amount of interest applied	
	Saint Kitts	Nevis	Saint Kitts	Nevis
1 July 2014-30 June 2015	542 444	280 549	2 126 605	0
1 July 2015-30 June 2016	2 329 175	680 909	6 059 804	0
1 July 2016-30 June 2017	1 414 281	803 428	5 284 169	0

Ownership information with companies registered in Saint Kitts and Nevis

114. All companies registered in Saint Kitts and Nevis are obligated to maintain ownership information. The directors, shareholders and members have the right to inspect the register of shareholders/members and may request copies of the section which pertains to them from the management board, or its representative, with which the keeper of register of shareholders/members must comply (s.45, Companies Act, s.124, Companies Ordinance, s.104, Nevis Business Corporation Ordinance and s.68, Nevis LLC Ordinance). This provides some form of indirect supervision as the inspection of the register may lead to the discovery of non-maintenance of updated ownership information.

Ownership information with regulated businesses in Saint Kitts and Nevis

115. The FSRC is the main regulator and supervisory authority for non-bank financial services and regulated businesses in Saint Kitts and Nevis. The FSRC issues licences and supervises all service providers (i.e. regulated businesses) operating from or within Saint Kitts and Nevis. In addition to the supervision measures undertaken, the FSRC takes an active approach in educating and raising awareness for the entities that it supervises. For the period under review, the FSRC Saint Kitts branch hosted 12 and the FSRC

Nevis branch hosted three annual AML/CFT awareness seminars for the regulated businesses. The FSRC also sends the supervised entities an electronic monthly newsletter covering various AML/CFT issues to serve as a continuous training tool.

116. The FSRC Saint Kitts branch is currently staffed with 16 people, 10 of whom work in the Regulatory Division. The FSRC Nevis Branch is currently staffed with 20 people, 13 of whom work in the Compliance, Insurance and Banking Division.

117. The majority of companies registered in Saint Kitts and Nevis are represented by a licensed service provider. All IBCs, LLCs, and exempt and external companies must be represented by a licensed service provider. Ordinary and domestic companies do not have such requirements; however, in practice most of them are represented by a service provider. In 2014 and 2015, 12% of ordinary companies in Saint Kitts were not engaged with a service provider. This increased to 22% in 2016 and 35% in 2017. In Nevis, as of June 2017, 80% of the domestic companies incorporated in Nevis engage an attorney who is also duly licensed as a service provider.

118. Service providers who conduct corporate or trust business are licensed and regulated by the FSRC, and must comply with the AML/CFT laws. As of June 2017, there were 109 licensed service providers in the Federation (53 in Saint Kitts and 56 in Nevis).

119. When processing an application for a license, the FSRC will carry out a background check to determine whether the person is fit and proper to conduct such business. Also, the FSRC will review the applicant's qualifications, police records, certified copies of picture identification and reference letters. The applicant's experience, integrity, character and professional conduct are also assessed. Once a licence is issued, the licensee will be under the supervision and guidance of the FSRC.

120. Licences are issued for one year. To renew a licence, the licensee must provide a renewal form, certificate of good standing, a copy of its audited financial statements and certificate of compliance, certificate of solvency, a copy of its annual return (including information about the shareholders/owners, the physical address, the organisational structure of the business conducted by the licensee and pay the prescribed renewal fee. The FSRC will also check the compliance history of the licensee and request additional information if necessary. The FSRC's determination of whether or not to renew a license will also take into account its experience with the service provider from prior years and local knowledge of the business conducted.

121. The FSRC conducts off-site inspections, which include examinations of audited financial statements, company incorporation statistics, and other information, of all licensed service providers on an annual basis. Based on

the off-site inspections, the FSRC does a risk assessment to determine which entities should be subjected to an on-site inspection.

122. On-site inspections are conducted to determine compliance with record keeping requirements under the AML/CFT, company, trust and foundation laws. The FSRC uses an on-site inspection manual and checklists when conducting an on-site inspection to ensure a thorough inspection. Each inspection team consists of four people and the average time needed to conduct an on-site inspection is estimated to be one week. On-site visits are generally scheduled in advance. Normally a pre-examination questionnaire is sent to the regulated business at least two weeks prior to the intended visit to obtain information about the organisational structure, administration and operation of the regulated business. On-site visits include examination of a selection of the business's client's files. If a business has less than 100 clients, the FSRC will review all of the clients' files; however, those businesses with more than 100 clients, the FSRC will randomly select approximately 80% of the clients' files for review (although, examiners may take other factors into account when determining which files to review. These factors include: file type; incorporation date of an entity; compliance history of the service provider; and whether the service provider received any requests for information from the Competent Authority, Financial Intelligence Unit, law enforcement agency, etc.).

123. When reviewing files, the FSRC examiners will verify that legal and beneficial ownership information is being maintained as required under the law. Also, the examiners will ensure that the means of verifying identity and the place of residence are also included in the file. Further, if the file being examined belongs to an IBC or LLC that is a regulated business or an IBC acting as a trustee of a trust, the FSRC examiner will verify that the IBC or LLC is complying with its obligations under the various laws that the FSRC enforces.

124. The table below sets out the total of AML/CFT on-site inspections carried out by both FSRC branches during the period under review.

AML/CFT on-site inspections conducted by Saint Kitts and Nevis FSRC

Sector	Number of on-site inspections				
	July-December 2014	2015	2016	January- June 2017	Total
Bank (includes commercial bank, development bank, credit union, international bank, and finance company)	4	5	2	2	13
insurance company/Manager	1	4	5	1	11
Money services business	2	3	2	1	8
Licensed service provider	14	19	22	11	66

125. Licensed service providers play an important role in establishing legal entities and arrangements and providing legal and corporate services in the Federation. These service providers, therefore, are an important source of legal and beneficial ownership information in Saint Kitts and Nevis. As shown in the table, during the period under review, the FSRC conducted 98 on-site inspections of which 66 (24 reviews in Saint Kitts and the remaining reviews in Nevis) involved service providers. The remaining on-site inspections included investigations of commercial banks, credit unions, insurance companies, money services businesses, the sole international bank, and the development bank.

126. The proportion of service providers subject to AML/CFT inspections is high in comparison to the other types of regulated businesses that are reviewed. On average, 20 service providers are reviewed each year, which means that each service provider in the Federation should be examined at least once every five years. Those service providers reviewed by the FSRC, during the review period, are responsible for 90% of the exempt companies registered with the Registrar of Companies in Saint Kitts and 97% of the IBC⁸ and LLCs registered with the Registrar in Nevis.

127. At the end of each on-site inspection, a compliance examination report is issued by the FSRC examiners and approved by the FSRC Board of Directors. This report outlines the areas of deficiencies and makes recommendations for corrective action. A time period, generally three to six months, is given for the regulated business to implement the corrective measures. A follow-up inspection is conducted by the FSRC to ensure that the corrective measures have been implemented. Where deficiencies continue to exist, the FSRC may grant the regulated business additional time to implement the corrective action and a second follow-up inspection is conducted, or the FSRC may take enforcement action, including restricting the operations of a license or revoking the license (s. 40, FSRC Act).

128. During the review period, 29 follow-up on-site inspections were conducted to ensure that corrective measures were implemented. FSRC officials reported that generally, they find that the regulated businesses respect their recommendations and comply with their obligations. According to the FSRC, the most common deficiencies identified during an on-site inspection were lack of up-to-date client identification and lack of proper customer due diligence.

8. The FSRC Nevis branch inspected 4 941 IBC's files during the review period (555 files in the second half of 2014; 1 702 files in 2015, 1 553 files in 2016, and 1 131 files in the first half of 2017).

129. The table below outlines the number of times, during the review period, that the FSRC took action against licensees.

Enforcement measures taken by Saint Kitts and Nevis FSRC against licensees

Year	Enforcement measure				
	Warning letter issued	Revocation of license	Suspension of license	License not renewed	Restricted license issued
Last 6 months of 2014	3	3	1	0	0
2015	10	14	1	1	1
2016	7	6	0	1	1
First 6 months of 2017	7	15	0	4	2

Conclusion on the practical implementation of obligations to keep legal and beneficial ownership information

130. The 2014 Report included a recommendation regarding the practical implementation of the obligations to keep legal ownership information. The report concluded that the regulatory authorities only monitored a limited proportion of the licensed service providers in Saint Kitts and Nevis. It was therefore recommended that there be effective oversight of the legal obligations imposed on relevant entities to ensure the availability of ownership information in all cases.

131. As described above, the FSRC has substantially increased its monitoring activities, including an increase in the number of on-site visits conducted on regulated businesses from 30 (as reported in the 2014 Report) to 98 visits, to ensure the availability of ownership information. The frequency of these on-site visits seems to be adequate to ensure compliance with legal obligations as required under the standard. Also, the FSRC has taken significant action against those licensees that fail to comply with their obligations. These measures should ensure that the required ownership information is available with those entities, connected to the AML/CFT, laws in line with the standard. Therefore the recommendation from the 2014 Report is removed.

132. Two concerns regarding the availability of ownership information in respect of companies have been identified. The first relates to companies that do not have a connection to the AML/CFT laws (i.e. are not regulated businesses or have not engaged a service provider), in particular ordinary and domestic companies. In these cases, the IRD mainly carries out the supervisory measures to ensure that the required ownership information is available. However, compliance with annual tax filings is low (15% in 2016 in Saint Kitts and Nevis). It is acknowledged that approximately 65% of ordinary and 80% of domestic companies engage a licensed service provider and that these

companies have an obligation to file annual returns with the Registrars which provides updated ownership information. However, not all companies comply with the obligation to file annual returns. Therefore, although the IRD carries out supervisory and enforcement measures, these do not result in sufficient levels of compliance to ensure that the relevant ownership information is in all cases available in practice. It is recommended that Saint Kitts and Nevis take further measures to ensure that ownership information in respect of ordinary and domestic companies is practically available as required under the standard.

133. A second concern relates to the availability of ownership information of newly registered companies in Saint Kitts. During the review period, 458 companies were newly registered in Saint Kitts. Saint Kitts officials advise that in the event a newly registered company does not file an annual return after its first year of operation, the company is not immediately struck off the register. Rather the Registrar grants the company a “three-year grace period” to allow the company to get its business in an operational state before the Registrar takes action.⁹ This “three-year grace period” does not remove the company’s obligation to report any changes of ownership information to the Registrar or to the company’s service provider (if one has been engaged). Further, when renewing its business license, ownership information is to be provided to the IRD, and these companies have an obligation to file annual tax returns.

134. Even though newly registered companies have such obligations, these measures do not ensure that ownership information is available in practice in all cases. It is not clear how many of these newly registered companies engage a service provider or comply with the obligation to inform the Registrar of any changes to ownership information. Saint Kitts officials advise that there is a high level of compliance with respect to business license obligations; however, it is not clear whether all newly registered companies comply. Additionally, compliance with tax filings is low. Therefore, although the number of newly registered companies is small, Saint Kitts should monitor the “three-year grace period” policy in order to ensure the availability of ownership information in respect of all newly companies registered in Saint Kitts.

135. During the review period, Saint Kitts and Nevis received 11 EOI requests relating to legal and beneficial ownership and identity information, seven of which were in regard to companies (three related to ordinary companies, one related to a LLC and three related to IBCs). Saint Kitts and Nevis fully responded to five requests. Please see the discussion under element C.5 for further information.

9. The Registrar in Nevis does not apply a similar “three-year grace period” policy.

Nominees in Saint Kitts and Nevis

136. In Saint Kitts and Nevis, any person who provides the service of acting as nominee shareholders and/or directors must be a licensed service provider and, therefore, subject to the AML/CFT laws (s.4, Financial Services (Regulations) Order). Service providers acting as nominees are required to identify customers, shareholders, directors, beneficial owners and other relevant persons, such as agents.

137. Licensed service providers acting as nominees are under the supervision of the FSRC. There are no records of companies with nominee shareholdings in Saint Kitts. In Nevis, the act of providing nominee shareholders, directors, chief executives or managers for companies or partnerships is deemed to be the carrying on of fiduciary services and subject to the AML/CFT laws (s. 171, Guidance Notes).

138. Saint Kitts and Nevis did not receive any requests for information involving nominee arrangements during the review period.

ToR A.1.2. Bearer shares

139. As noted in the 2014 Report, exempt companies in Saint Kitts are allowed to issue bearer shares (s.51, Companies Act). There has been no change to the relevant legislation since the 2014 Report.

140. Bearer certificates issued by an exempt company must be kept in Saint Kitts, at the offices of a person authorised to carry on finance business (s.52, Companies Act). This authorised person must maintain a record of each bearer certificate deposited in its custody containing: (i) the name of the company issuing the certificate; (ii) the identification number of the certificate, number of shares and the class of shares in the company contained in the bearer certificate; (iii) the identity of the bearer of the certificate, that is to say, the name, address, date of birth and details of identification; and (iv) where applicable, its beneficial owner.¹⁰ If the custody of the bearer certificate is transferred to another custodian, the Registrar must be informed within seven days of the transfer and the notice shall include the particulars of the new custodian. As of June 2017, there were no records at the Registrar indicating any bearer shares issued in Saint Kitts.

141. In respect of Nevis, domestic companies incorporated in Nevis and LLCs are not authorised to issue bearer shares or bearer share certificates.

10. Where the persons on whose behalf the authorised person holds the certificates are themselves acting on behalf of other persons (i.e. the beneficial owners), these persons' identity information must also be recorded by the authorised person.

IBCs, however, are allowed to issue bearer shares. There has been no change in the relevant legislation since the 2014 Report.

142. All bearer share certificates issued by an IBC must be held by a service provider (s.48, Nevis Business Corporation Ordinance). The service provider is required to keep and maintain a record of each bearer share certificate issued by any IBC for which it acts as agent containing information including the identity of the beneficial owner of the shares (ss. 48 and 102, Nevis Business Corporation Ordinance). Where the custody of the bearer share certificate is transferred to another custodian or agent, the service provider must notify the Registrar within seven days of such transfer and inform the particulars of the new custodian or agent (s.102, Nevis Business Corporation Ordinance). Furthermore, IBCs must maintain a record of all certificates issued in bearer form including the number, class and dates of issuance of such certificates (s.101, Nevis Business Corporation Ordinance). The information to be recorded with respect to bearer shares must include: (i) the name of the company issuing the shares; (ii) the class and number of shares contained in the certificate; and (iii) the identification of the beneficial owner of the shares contained in the bearer share certificate (e.g. name, address, date of birth, nationality). As of June 2017, there were 1 222 216 bearer shares in existence, issued by a total of 41 IBCs in Nevis.

143. Also, in Saint Kitts and Nevis, the custodian would, in all cases, be subject to the AML/CFT laws and the CDD requirements described in section A.1.1. Pursuant to section 86 of the Guidance Notes, bearer shares are discouraged and a regulated business should ensure that bearer shares are retained permanently by service providers and kept on file for the company which issued such shares.

144. All licensed service providers are authorised to act as custodians for bearer shares in Nevis. Currently, only five of the licensees are actively acting as such. Of these, one service provider holds the majority of bearer share certificates. In 2016 and 2017, the FSRC Nevis branch conducted on-site inspections of all five service providers and found that the custodians met all of their obligations under the Nevis Business Corporation Ordinance and AML/CFT laws.

145. The obligations imposed on service providers of exempt companies in Saint Kitts and IBCs in Nevis have the effect of immobilising bearer shares, as well as providing for adequate mechanisms to identify owners of bearer shares.

146. During the period under review, Saint Kitts and Nevis did not receive any requests for information about bearer shares.

ToR A.1.3. Partnerships

147. Two types of partnerships may be formed in Saint Kitts and Nevis: (i) general partnerships; and (ii) LPs, which may be exempt or ordinary (domestic) LPs. As of June 2017, there were 1 607 general partnerships registered in Saint Kitts and Nevis, and one ordinary LP and one exempt LP registered in Saint Kitts.

Ownership information requirements in Saint Kitts and Nevis

148. The 2014 Report concluded that the rules in Saint Kitts and Nevis regarding the availability of ownership information in respect of partnerships were in compliance with the standard. There has been no change in the legal framework since the first round review.

General partnerships in Saint Kitts and Nevis

149. General partnerships (domestic and foreign) carrying on a business in Saint Kitts and Nevis must obtain a business licence (s.2, Licences on Businesses and Occupations Act). The process for obtaining a license is the same as it is for companies to obtain a license. When applying for a business licence to the Ministry of Finance, a partnership is required to provide information on the names and addresses of all general partners, including “the actual owners and not merely the nominal owners of either the business or any participation or share therein” (s. 4, Licences on Businesses and Occupations Act). The term “actual owner” is not defined in the law. According to Saint Kitts and Nevis officials, the actual owner refers to the ultimate beneficial owner while the nominee owners are nominees (i.e. in name only). Information filed with the Ministry is forwarded to the IRD (who issues the license) and forms part of the information kept in the partnership’s taxpayer files.

150. A business license must be renewed annually and the renewal form requires updated ownership information to be disclosed. Further, if a general partner changes during the year, the partnership must apply for a new business license. This application is submitted to the Ministry of Finance and the “new” approved partnership is then registered with the IRD. The “new” partnership is separate and apart from the “old” partnership and the “old” partnership’s registration with the IRD is cancelled. Therefore, updated ownership information as regards to the general partners will be maintained and disclosed to the Ministry of Finance and IRD.

151. A general partnership (domestic and foreign) carrying on a business in Saint Kitts and Nevis is also required to register with the IRD. Information provided to the IRD when registering includes identity information of all general partners (natural or legal person). General partnerships are required

to pay taxes and to file quarterly returns under the Unincorporated Business Tax Act. In order to comply with the tax obligations, partners may designate one partner to file the returns and pay the tax on their behalf (s. 6(2), Unincorporated Business Tax Act). In such a case, the general partner responsible for complying with the partnership's tax obligations would have to know the identity of all other partners.

152. Under the VAT Act, taxable persons (including general partnerships) which make taxable supplies of goods or services exceeding XCD 150 000 (USD 55 500) per year (or XCD 96 000 (USD 35 520) in the case of professional services) are required to be registered and to provide updated information on the general partners to the IRD. As of 30 June 2017, there were 82 general partnerships (59 in Saint Kitts and 23 in Nevis) registered for VAT with the IRD.

153. As indicated in section A.1.1, taxpayers are required to retain any records prepared for purposes of complying with the tax law for six years, following the date on which the tax liability for the year of assessment, in which the records were established, was first assessed.

154. Finally, a general partnership that is a regulated business or a licensed service provider that is engaged by a general partnership is required to comply with the AML/CFT laws. Statistics are not available on the number of general partnerships that engage a licensed service provider.

155. The AMLR and ATR sets out the definition of “beneficial owner” which is in line with the standard (see discussion in section A.1.1). Pursuant to section 44 of the Guidance Notes, the identity of all general partners (natural persons) of a partnership must be verified.

156. As described in section A.1.1, a regulated business is required to keep updated beneficial owner information. The regulated business must conduct on-going CDD during a business relationship and scrutinise transactions throughout the course of that relationship to ensure that the transactions being conducted are consistent with the regulated business' knowledge of the customer and its business and risk profiles (s.4, AMLR and ATR). In addition, regulated businesses are required to ensure that documents, data or information under identification procedures are kept up to date and relevant by conducting reviews of existing records, including cases where inconsistencies are discovered.

157. The identification records relating to each transaction carried out in the course of any business relationship or one-off transaction must be kept by the regulated business for at least five years commencing with the date on which the business relationship ends or the date that the one-off transaction was completed (s. 8, AMLR and ATR). The FSRC may notify a regulated business to keep ownership information for a longer period of time.

158. Unless a general partnership is a regulated business or has engaged a licensed service provider, the only source of ownership information will be the IRD. Natural persons and entities may be identified as the general partners to the IRD and it is not clear whether the term “actual owner” under the Licences on Businesses and Occupations Act is in line with the standard. Consequently, there appears to be a gap in the legal framework with regards to the identification of the beneficial owners of a general partnership. It is recommended that Saint Kitts and Nevis ensure that information on all beneficial owners of a general partnership is available in all cases.

Limited partnerships in Saint Kitts and Nevis

159. All LPs (ordinary and exempt) are required to: (i) maintain a registered office in the Federation; (ii) file a declaration with the Registrar containing the identity information (including name and address) of each general partner (natural or legal person); and (iii) file annual statements with the Registrar, containing current identity information (including name and address) of each general partner (natural or legal person) (ss. 5, 21 and 22, LPs Act). Information filed with the Registrar must be kept updated. A general partner is required to file an amendment of the declaration with the Registrar at least 21 days after it is passed or made (s. 8, LPs Act). The Registrar may destroy any records comprised in, or annexed to, the accounts or annual statements of a LP after 30 years of the records being delivered to the Registrar. Also, with regards to a LP that has been dissolved, the Registrar may destroy any records in its possession after 30 years from the date of dissolution (s. 60, LPs Act).

160. The general partners of a LP are required to keep, at its office for service, a register showing the particulars (including name and address) of each limited partner (natural or legal person), in alphabetical order (s. 21, LPs Act). The information on the register must be current and amended within 21 days of a change. This information must be maintained and kept available for other partners to inspect. The LPs Act does not expressly set out how long such information must be maintained. Every general partner who fails to comply with their obligations regarding the register commits an offence and is liable to a fine not exceeding XCD 250 000 (USD 92 500) and in the case of a continuing offence to a further fine not exceeding XCD 250 (USD 93) for each day of non-compliance (s. 21, LPs Act).

161. Ordinary LPs (i.e. LPs incorporated under the laws of Saint Kitts and Nevis to do business within the Federation and which are not exempt from taxation) are required to obtain a business license, register with the IRD, and pay taxes. The application for a business license and tax registration procedures are the same as those for companies and general partnerships. There is no obligation for limited partners to be identified for business license or tax purposes.

162. Exempt LPs do not carry on business within the Federation and are exempt from taxation. Exempt LPs are not required to file with the IRD or file annual tax returns. However, an exempt LP is required to engage a service provider.

163. A LP that is a regulated business or a service provider that is engaged by a LP is required to comply with the AML/CFT laws. As discussed in section A.1.1, the AMLR and ATR set out the definition of “beneficial owner”, which is in line with the standard. According to section 44 of the Guidance Notes, in the case of a LP, the general partner(s) should be treated as the verification subjects and limited partners do not need to be verified.

164. As such, there is a gap in the legal framework regarding the identification of the beneficial owners of a LP. First, natural persons and entities may be identified, to the Registrar or the IRD, as the general partners and there is no obligation to identify the limited partners. Second, a general partner of the LP must maintain a register containing information on the limited partners; however, natural persons and entities may be listed as limited partners. There is also no requirement set out in the LPs Act as to how long information on the register must be maintained. Finally, under the AML/CFT laws, limited partners do not need to be verified. It is acknowledged that the materiality of this gap is very limited as there are only two LPs registered in Saint Kitts and Nevis; however, it is recommended that Saint Kitts and Nevis ensure that information on all beneficial owners of a LP is available.

Implementation of obligations to keep ownership information in practice in Saint Kitts and Nevis

165. Implementation of the relevant obligations in practice is ensured in the same manner as for companies, described in section A.1.1.

166. When issuing a business licence, the IRD sets up a tax file for the partnership containing information that is forwarded from the Ministry of Finance as well as information that is provided by the partnership when registering with the IRD. This information identifies all of the general partners of a partnership. Tax files are kept on the partnership and not the partners. However, updated information on the general partners is kept in the partnership’s tax file.

167. All partnerships conducting business in the Federation may be subjected to tax audits as well as books and records audits. As described in section A.1.1, audits are launched on a risk-based analysis. As part of a tax audit, the IRD verifies that the ownership (including beneficial ownership) information kept in the taxpayer files is correct and up to date. In regard to books and records audits, the IRD verifies the existence and availability of accounting records (see element A.2 for further explanation). During the

period of 1 July 2016 to 30 June 2017, nine general partnerships in Saint Kitts and one general partnership in Nevis were subject to tax audits by the IRD (representing approximately 0.6% of all partnerships registered with the IRD). No other tax audits of partnerships were carried out during the review period.

168. Where a partnership is a regulated business or has engaged a licensed service provider, the FSRC would monitor the partnership or the service provider's compliance with AML/CFT laws (including verification that ownership information, including beneficial ownership information, is being kept as required). The obligation of a general partner to maintain a register of limited partners is also monitored by the FSRC if the LP is a regulated business or engages a service provider. During the review period, the FSRC carried 98 out off-site and on-site inspections (the same as those described in section A.1.1). These inspections covered the service providers that were responsible for all of the LPs registered in Saint Kitts (there were no LPs registered in Nevis).

169. All LPs must file an annual return with the Registrar. If the annual return reflects any changes in the general partners of the LP, the Registrar checks that the changes were reflected in the form required to be filed when the change occurred and that the documentation required was sent to the Registrar on time. In a similar way as for companies, the accuracy of the information provided to the Registrar is checked by the FSRC if a service provider has been engaged by the LP. During the review period, all LPs filed annual returns with the Registrar.

170. To conclude, there are concerns regarding the practical availability of ownership information for partnerships (in particular general partnerships) as a result of the low proportion (less than 1%) of partnerships subject to tax audits. Monitoring partnerships' compliance with ownership requirements is mainly carried out by the IRD, in cases where the partnership is itself not a regulated business or has not engaged a service provider. It is therefore recommended that Saint Kitts and Nevis take further measures to ensure that ownership information in respect of partnerships is practically available as required under the standard.

171. During the three-year review period, Saint Kitts and Nevis did not receive any requests for ownership information on partnerships.

ToR A.1.4. Trusts

172. As described in the 2014 Report, ordinary (domestic) or exempt (international) trusts may be registered in Saint Kitts; international trusts and qualified foreign trusts may be registered in Nevis. As of June 2017, there were 14 ordinary trusts, 10 exempt trusts, 708 international trusts and 15 qualified foreign trusts registered in Saint Kitts and Nevis.

Ownership information requirements in Saint Kitts and Nevis

173. The 2014 Report concluded that the rules regarding the availability of ownership information in respect of trusts were in compliance with the standard. There has been no change in the legal framework since the first round review.

Trusts in Saint Kitts

174. Ordinary (domestic) and exempt (international) trusts can be classified as charitable trusts, spendthrift or protective trusts, unit trusts and common trusts. A trust will not be recognised by law in Saint Kitts unless it is provided with a certificate of registration by the Registrar (s. 4(4), Trusts Act). Any of the trustees of a trust (or a person acting on their behalf) may apply for the registration of the attestation of existence of the trust containing, among other things, the particulars (including name and address) of each trustee (natural or legal person) (s. 5, Trusts Act). All amendments to the attestation must be submitted to the Registrar within 21 days of the change (s. 8, Trusts Act). Every trust must have an office for service in the Federation and at least one resident trustee (ss. 4(2) and 59, Trusts Act). The terms of the trust may provide for the appointment of a protector.¹¹ Except in the case of common trusts, the protector must be a lawyer, auditor or member in good standing of another professional body as designated by the Minister (s. 25, Trusts Act). Resident trustees carrying on a trust business and protectors (other than those appointed for common trusts) are subject to the AML/CFT laws (see discussion below). Finally, trustees are required to file an annual statement, containing current information on the trust, with the Registrar (s. 60, Trusts Act). Information in the annual statement includes the trust's name and address of its office for service; the type of trust; and identity information of each trustee. Sanctions are applicable to trustees that fail to comply with their obligations. Also, new legislation enacted in May 2017 provides that a trust may be struck from the register if a trustee fails to submit an annual statement and has been delinquent in filing a statement in excess of three years (s. 60(5), Trusts Act).

175. Additional disclosure requirements apply to unit trusts. The trustees must keep, at the office of service, the particulars (including name and address) of each beneficiary (natural or legal person) and a copy of the written terms of the trust (if any) and amendments thereto, which may identify the settlors, protector (if any) and other trustees (s. 59(4), Trusts Act). This

11. "Protector" means a person who is the holder of a power which when invoked is capable of directing a trustee in matters relating to the trust and in respect of which matters the trustee has discretion and includes a person who is the holder of a power of appointment or dismissal of trustees (s. 2, Trusts Act).

information must be available for inspection by a trustee or the protector. As of June 2017, no unit trusts were registered in Saint Kitts.

176. Any person who is not a minor, or an interdict or a bankrupt, may act as a trustee of a trust in Saint Kitts. Nevertheless, according to Saint Kitts officials, all of the trustees registering trusts in Saint Kitts are licenced service providers. As described in section A.1.1, a trust business is a regulated business under the AML/CFT laws and may only be conducted by a licensed service provider (also see additional discussion below).

177. There is no stipulated time set out in the Trusts Act as to how long information should be maintained. According to Saint Kitts and Nevis' authorities, in practice, this information should be maintained indefinitely since the information must be also kept on past beneficiaries. The Registrar is also required to maintain any records filed for 30 years from the date of termination of a trust, but in practice records are never destroyed (s.94, Trusts Act).

178. A trust itself is not subject to any tax in the Federation and the beneficiaries of a trust are exempt from all taxes which may arise out of their interest in the trust if the trustees of the trust are effecting transactions exclusively with persons who are not resident in the Federation.

Trusts in Nevis

179. International trusts are exempt from taxes and duties in the Federation, but they must be registered with the Registrar and receive a certificate of registration (s.36, Nevis International Exempt Trust Ordinance). The application for registration contains, among other things, the name and registered office of the trust, which must be the office of the trust company or corporation acting as the trustee (ss. 36 and 41, Nevis International Exempt Trust Ordinance). A certificate of registration is valid for one year and the annual renewal application for registration must be made no later than 90 days after the expiry of the last certificate of registration (s.37, Nevis International Exempt Trust Ordinance).

180. Only IBCs or regulated businesses can act as trustees for an international trust. IBCs are not required to be licensed by the FSRC to act as a trustee; however, all IBCs are required to have, at all times, a service provider in the Federation. IBCs are considered to be carrying on regulated business activities under the AML/CFT laws and are therefore required to comply with AML/CFT obligations (see below).

181. A trust company, barrister or solicitor licensed as a service provider may register a qualified foreign trust (i.e. a trust registered in Nevis but governed by foreign law) in Nevis. The application for registration contains,

among other things, the name of the trustee, the registered office of the qualified foreign trust, and the law under which the trust was settled (s. 36(6), Nevis International Exempt Trust Ordinance). Each qualified foreign trust must have at least one trustee resident in Nevis. The trustee may either be a trust company doing business in Nevis or an IBC. Such a trustee is considered a regulated business under the AML/CFT laws and is therefore required to comply with AML/CFT obligations. The trust is required to file a declaration with the Registrar stating that the trust is not under investigation in another jurisdiction or involved in any illegal activity or has any pending litigation against the trust. A qualified foreign trust must receive a certificate of registration from the Registrar. The certificate is valid for one year and the annual renewal application must be made no later than 90 days after the expiry of the last certificate of registration (s. 37, Nevis International Exempt Trust Ordinance).

182. The terms of an international trust or a qualified foreign trust may provide for the appointment of a protector.¹²

Common law requirements in Saint Kitts and Nevis

183. All trustees in Saint Kitts and Nevis are also governed by common law requirements. As concluded in the 2014 Report, the fiduciary obligations placed on trustees pursuant to the common law should ensure that a trustee know the identity of any other trustee, settlor(s), all beneficiaries, and any other person who exercises control over the trust.

AML/CFT laws in Saint Kitts and Nevis

184. Pursuant to the AML/CFT laws, carrying on a trust business means (i) undertaking or executing trusts; (ii) providing trustees or protectors for trusts; (iii) maintaining the office for service of trusts; or (iv) managing or administering trusts. Carrying on a trust business is a regulated business under the Proceeds of Crime Act (s.4, Financial Services (Regulations) Order). Accordingly, authorised persons who conduct a trust business must: (i) be licensed, (ii) are subject to the trust law and AML/CFT obligations; and (iii) are regulated by the FSRC.

185. Trustees, other than those conducting trust businesses, are not required to obtain a licence from the FSRC to act as a trustee. Further, an IBC carrying on a trust business is not required to be licensed by the FSRC in order to act as a trustee because the IBC would not be carrying on business in Saint Kitts and Nevis.¹³ However, as described in section A.1.1, IBCs are consid-

12. Ibid, s. 2, Nevis International Exempt Trust Ordinance.

13. As explained in section A.1.1, IBCs are formed primarily for the carrying on of business outside of Saint Kitts and Nevis.

ered regulated businesses under the Proceeds of Crime Act, which means that IBCs are subject to the same CDD procedures as other regulated businesses. All IBCs are also required to have a service provider in Nevis and IBCs must use the service provider’s physical place of business in Nevis as its registered office.

186. As described in section A.1.1, regulated businesses are subject to the AML/CFT laws and are required to apply the CDD procedures set out in the AMLR and ATR. The definition “beneficial owner” as set out in the AMLR and ATR required the identification of the settlor, trustee(s), protector, all of the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust. As such, this definition is in line with the standard. Further, a regulated business is required to ensure that documents, data or information under identification procedures are kept up to date and relevant by conducting reviews of existing records, including cases where inconsistencies are discovered (s. 4, AMLR and ATR).

187. This information must be retained by the regulated business for a period of at least five years after the business relation has ended (s. 8, AMLR and ATR). In the case of breach of AML/CFT obligations, sanctions apply (s. 14, AMLR and ATR).

Implementation of obligations to keep ownership information in practice in Saint Kitts and Nevis

188. Upon registration, the Registrar checks the identity of the trustee and that the required documents and information have been disclosed. If the trustee is a regulated business (which, according to Saint Kitts and Nevis officials, is normally the case), the Registrar checks the trustee’s identification papers kept on file and ensures that they are up to date. If the trustee is not a regulated business, the Registrar requires that the trustee disclose at least two forms of government-issued identification. Copies of these identification papers and all other documents required to be filed are kept on paper files by the Registrar and the information is entered into the Registrar’s database.

189. In terms of verifying the information contained on an annual statement, the Registrar checks whether this information corresponds with any filings received relating to amendments made to the attestation of the trust. During the review period, six exempt trusts and one ordinary trust were compliant with the obligation to file annual statements with the Registrar in Saint Kitts. In Nevis, annual statements are not required to be filed, but, 76% of international trusts were compliant with their registration renewal obligation (i.e. payment of the annual fee).

190. Although the compliance rate for filing annual returns or annual renewal obligations is low, information filed with the Registrar is not the primary source used by the Competent Authority for obtaining ownership information on trusts. Ownership information is generally obtained from the regulated business engaged by the trust.

191. The FSRC supervises and monitors regulated businesses' compliance with AML/CFT obligations. Off-site and on-site inspections are conducted to ensure compliance. A specific check list for on-site inspections is available for staff in the FSRC when monitoring compliance.

192. As described in section A.1.1, when conducting on-site inspections, the FSRC will examine a selection of the business's client's files. If a service provider has less than 100 clients, the FSRC will review all of the clients' files; however, those service providers with more than 100 clients, the FSRC will randomly select approximately 80% of the clients' files for review. When reviewing the files, the FSRC examiners will verify that ownership information (including beneficial ownership information) is being maintained as required under the law. Also, the examiners will ensure that the means of verifying identity and the place of residence are also included in the file. Further, if the file being examined belongs to an entity that is an IBC acting as a trustee of a trust, the FSRC examiner will verify that the IBC is complying with its obligations under AML/CFT and trust laws.

193. During the review period, the FSRC conducted 66 on-site inspections of licensed service providers (24 reviews in Saint Kitts and 42 reviews in Nevis), which is a tenfold increase from the number reported in the 2014 Report. Further, the service providers reviewed by the FSRC Saint Kitts and Nevis branches are responsible for all of the trusts registered in the Federation. Where deficiencies were found during the on-site inspections, the FSRC took enforcement measures, including issuing warning letters and suspending and revoking licenses (see discussion in section A.1.1). Such monitoring activities should ensure the availability of ownership information in respect of trusts registered in Saint Kitts and Nevis.

194. It is important to note that all trusts in Saint Kitts and Nevis are required to be registered with the Registrars. Also, all resident trustees carrying on a trust business in Saint Kitts and all trustees for international trusts and qualified foreign trusts in Nevis are subject to the AML/CFT laws. There are 24 trusts registered in Saint Kitts and eight of these trusts have engaged a professional trustee. Therefore, 16 trusts registered in Saint Kitts are not subject to the AML/CFT laws and are not monitored by the FSRC. However, the trust law and common law should ensure the non-professional trustees of these 16 trusts are complying with their obligations to know any other trustee, settlor(s), all beneficiaries, and any other person who exercises control over the trust, as well as their ongoing record-keeping requirements. These

obligations do not require the trustee to identify any other natural person exercising ultimate effective control over the trust including through a chain of control/ownership, i.e. there is no obligation for the trustee to identify the natural person behind an entity or arrangement (which can be a settlor or beneficiary in relation to the trust) exercising ultimate effective control over the trust. The 2014 Report included an in-text recommendation that Saint Kitts and Nevis ensure that there is an effective oversight of the legal obligations imposed on trustees to ensure the availability of ownership information in all cases. This recommendation continues to apply, although modified to provide that it is recommended that Saint Kitts and Nevis ensure that there is an effective oversight of the legal obligations imposed on trustees to ensure that all beneficial owners of a trust are required to be identified, in line with the standard. In terms of recent developments, according to Saint Kitts officials, based on the new legislation enacted in May 2017, the Registrar will proceed to remove these 16 trusts from the register as a result of the trustees not complying with their obligations to file annual statements.

195. During the review period, Saint Kitts and Nevis received three requests for ownership information in regard to trusts. Saint Kitts and Nevis fully responded to two requests. Please see the discussion under element C.5 for further information.

ToR A.1.5. Foundations

196. As described in the 2014 Report, ordinary and exempt foundations may be established in Saint Kitts. In Nevis, multiform foundations (registered as ordinary foundations, company foundations, partnership foundations or trust foundations) may be established. As of June 2017, there were 23 ordinary and 296 exempt foundations registered in Saint Kitts and 92 multiform foundations registered in Nevis.

Legal and beneficial ownership information requirements and implementation of obligations to keep such information in practice in Saint Kitts and Nevis

197. The 2014 Report concluded that the ownership information in respect of foundations in Saint Kitts and Nevis is available in line with the standard. There has been no change in the relevant rules or their implementation since that Report.

Foundations in Saint Kitts

198. All foundations are required to register with the Registrar, maintain a registered office in the Federation, and file annual returns (ss. 3 and 66, Foundations Act). Only the founder or a person (who must be a licensed service provider) acting on behalf of the founder may register the foundation. On registration, the articles of the foundation setting out, among other things, the particulars (including name and address) of the founder (natural or legal person), the registered address of the foundation and current identity information of the councillors, but not beneficiaries, must be provided to the Registrar (ss. 61 and 66, Foundations Act). The foundation is required to file an amendment of the articles with the Registrar within 14 days of any amendment to the articles coming into effect (s. 62, Foundations Act). There are penalties for the failure to file an annual return or to file an amendment of the articles with the Registrar within 14 days (s. 66, Foundations Act).

199. Upon registration, the Registrar checks that the articles of the foundation and the other information required have been received. In addition, the Registrar checks that the person registering the foundation is licensed to do so. Copies of the documents are kept on paper files and the information is added in the Registrar's database. Annual statements are checked by the Registrar to ensure that they correspond with information received about changes occurring during the year, which should be reported to the Registrar within 14 days of the amendment. The Saint Kitts' authorities advised that, during the review period, on average 71% of the exempt foundations and 67% of the ordinary foundations filed annual returns with the Registrar. Penalties for late filing were applied. The Registrar may also dissolve a foundation if the foundation fails to file its annual return, or fails to pay the annual fees, on time (s. 49, Foundations Act). If a foundation is dissolved, the Registrar and the service provider maintain ownership information. During the review period, 98 foundations were dissolved.

200. All foundations must have a secretary who is a licensed service provider (s. 13, Foundations Act) and required to adhere to the AML/CFT laws. The AMLR and ATR set out the definition of "beneficial owner" which requires the identification of natural persons who are beneficiaries, benefit from the foundation, or have control over the management of the foundation. In addition, section 47 of the Guidance Notes provides that "all signatories who customarily operate [an] account shall be treated as verification subjects." The ownership information must be maintained by the secretary for at least five years from the end of the business relationship (s. 8, AMLR and ATR).

201. Therefore, under the Foundations Act and AML/CFT laws, the founders, councillors, guardian, beneficiaries, and any person with the authority to represent the foundation need to be identified. This is in line with the standard.

202. Pursuant to section 18 of the Foundations Act, a foundation is required to keep, at its registered office, a register of its councillors (natural or legal person), guardian (natural or legal person) and secretary. The register must be open to inspection by the Registrar, founder, councillor, guardian and secretary. There are penalties for failing to maintain and keep the register and open for inspection.

203. Monitoring of the regulated businesses' compliance with the identification procedures and AML/CFT obligations is conducted by the FSRC. In practice, one regulated business represents the majority of all foundations registered in Saint Kitts. This regulated business was reviewed during the review period and a moderate level of AML/CFT compliance was determined. Regulated businesses were given strict deadlines to address the deficiencies and a follow-up examination on each business was conducted to ensure that remedial actions were performed.

Foundations in Nevis

204. The Multiform Foundations Ordinance allows for the establishment of multiform foundations in Nevis. "Multiform foundation" means that the constitution of the foundation will state how the foundation is to be treated, whether as a company, a partnership a trust, or an ordinary foundation. In addition to the requirements to maintain ownership and identity information under the relevant governing laws (i.e. company law, partnership law or trust law), multiform foundations are subject to specific obligations under the Multiform Foundations Ordinance. According to the Ordinance, a multiform foundation must have, at all times, a licensed service provider in Nevis and a registered office therein (ss. 19 and 20, Multiform Foundations Ordinance). The service provider must adhere to the CDD procedures and the record retention requirement set out in the AMLR and ATR. As described above, the AMLR and ATR set out the definition of "beneficial owner" and require the identification of the founders, councillors, guardian and beneficiaries. This is in line with the standard.

205. A service provider acting on behalf of a founder must register a multiform foundation with the Registrar. Registration is done in person and the following documents must be provided to the Registrar: a memorandum of establishment, a statement in the prescribed form and by-laws, if any, and, where no by-laws are filed, the standard by-laws as prescribed by the Ordinance (ss. 3, 4 and 6, Multiform Foundations Ordinance). Registration must also be accompanied by a statement setting out, among other things, the particulars of the service provider and the particulars of any person in the first management board, first supervisory board and first secretary.

206. The memorandum of establishment must state: (i) the particulars (including name and address) of the subscriber or promoter (natural or legal person); (ii) the situation of the registered office in Nevis; and (iii) whether or not the foundation is revocable or irrevocable and, if revocable, the identity of the person who holds the power of revocation (s. 7, Multiform Foundations Ordinance). Any amendment to the memorandum or by-laws must be filed with the Registrar within 14 days of the amendment coming into effect (s. 8, Multiform Foundations Ordinance). There is no requirement for a multiform foundation to have a beneficiary (s. 11(3), Multiform Foundations Ordinance).

207. Upon registration, the Registrar checks that the required information has been submitted. Registration is completed once the Registrar has received copies of all required documents and the registration fee has been paid. Copies of documents are kept in paper files and the information is added to the Registrar's database.

208. Each multiform foundation is required to file an annual return with the Registrar (s. 95, Multiform Foundations Ordinance). The annual return provides, among other things, the particulars of the service provider and the particulars of each member of the management board and the secretary. A late filing penalty may apply. Also, the Registrar may dissolve a multiform foundation if the foundation fails to file its annual return, or fails to pay the annual fees, on time (s. 81, Multiform Foundations Ordinance). If a multiform foundation is dissolved, the Registrar and the service provider maintain ownership information. During the review period, five multiform foundations were dissolved.

209. Each multiform foundation must keep at its registered office a register open to inspection of past and present members of its management board, supervisory board (if any) and secretary, their respective particulars (including name and address) and their interests with respect to the multiform foundation, whether as subscriber or beneficiary (s. 30, Multiform Foundations Ordinance). A record of all subscribers and subscriptions is to be made and a register of all beneficiaries and their respective beneficial entitlements to be kept and maintained at its registered office in Nevis (s. 9, Multiform Foundations Ordinance). According to section 2 of the Ordinance, a beneficiary means: (i) a beneficiary or potential beneficiary, or class of beneficiaries or potential beneficiaries, of that trust or ordinary foundation, and (ii) a shareholder, guarantor or member of that company foundation, and (iii) a partner, whether limited or unlimited in liability, of the partnership foundation. The record of subscribers and register of beneficiaries must be kept confidential; however, these confidentiality provisions are overridden in connection with an EOI request in tax matters.

210. Monitoring of service providers is conducted by the FSRC. As discussed in section A.1.1, off-site and on-site inspections are conducted

according to risk evaluated by the FSRC on a regular basis. During the period under review, the FSRC conducted on-site inspections of all of the service providers responsible for 98% of the multiform foundations registered in Nevis. Deficiencies were noted in some cases (including lack of independent AML/CFT audit, lack or register of enquiries and no risk profiling of customers). Service providers were given strict deadlines to address the deficiencies and a follow-up examination on each service provider was conducted to ensure that remedial actions were performed.

211. Multiform foundations and the beneficiaries of the foundation are not liable for any tax in Nevis, unless the foundation elects to be tax resident in Nevis. A multiform foundation may lose its tax exemption if the foundation effects transactions with persons resident in Nevis (ss. 2 and 93, Multiform Foundations Ordinance).

212. During the three-year review period, Saint Kitts and Nevis did receive a request in regard to a foundation which was operated by a trust company in Saint Kitts and Nevis. Saint Kitts and Nevis was able to provide the requested information.

A.2. Accounting records

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

213. The 2014 Report concluded that Saint Kitts and Nevis' legal and regulatory framework requires availability of accounting information in line with the standard. Since then there has been no change in the relevant obligations.

214. Accounting obligations fall under the companies, LPs, trusts, foundations, tax and AML/CFT laws. The accounting obligations contained in these laws require that accounting records kept by all relevant entities and arrangements correctly explain all transactions, enable the financial position to be determined with reasonable accuracy at any time and allow financial statements to be prepared. These records are required to be kept for at least five years from the date on which they were made and sanctions apply in the case of breach of these obligations. Adequate retention requirements apply also in cases where an entity or arrangement cease to exist.

215. The 2014 Report concluded that there was no experience with the implementation of accounting obligations, for tax purposes, of partnerships as these obligations were introduced in 2012. It was recommended that Saint Kitts and Nevis monitor the implementation of such obligations.

216. In order to address this recommendation, in 2016 and 2017 the IRD conducted books and record audits, in addition to its tax audit activity (which also verifies accounting records), specifically on 28 partnerships to assess compliance with accounting record keeping requirements. The IRD found that 25 of the 28 partnerships were compliant with their obligation to maintain accounting records.

217. The 2014 Report also concluded that there were no enforcement programmes in place to monitor compliance with the obligation for exempt companies, IBCs, LLCs, exempt LPs or trusts in Saint Kitts and Nevis to maintain accounting records.

218. To address this recommendation, the FSRC Saint Kitts branch increased the number of on-site inspections conducted on service providers during the review period. These inspections covered the service providers that were responsible for 90% of the exempt companies and all of the trusts, foundations and LPs registered in Saint Kitts. Also, in 2016, the FSRC Saint Kitts branch specifically reviewed the files of foundations and companies maintained by service providers and found that only a small number of the service providers maintained, or provided on request, the accounting records in respect of companies and no accounting records for foundations were found, or provided on request.

219. Where the FSRC finds that a service provider does not have accounting records on file or fails to provide such records upon requested, it lists this as a deficiency in the service provider's examination report. A follow-up inspection is conducted by the FSRC to ensure that the service provider has taken measures to address the deficiencies. If deficiencies continue to exist, the FSRC will take enforcement action against the service provider. Between July 2017 and June 2018, the licenses of five service providers were not renewed due to non-compliance (including the absence of accounting records or failure to provide upon request). This has implications for those entities and arrangements that have engaged that service provider, as the Registrar may begin strike off procedures against them.

220. In Nevis, the FSRC implemented new inspection procedures to examine accounting records for regulated businesses. The FSRC also conducted 49 full-scope examinations. These examinations covered those service providers that were responsible for 97% of the IBCs and LLCs, 98% of the foundations and all of the trusts registered in Nevis. In 28 of the cases, the FSRC examiners found the accounting records and underlying documentation on file at the registered office of the IBCs, LLCs, trusts or multiform foundations. In the remaining 21 cases, the FSRC asked the service providers to provide accounting information, and in some instances the information was provided.

221. Similar to Saint Kitts, where the FSRC Nevis branch finds a service provider does not have accounting records on file and fails to provide such records when requested, it lists this as a deficiency in the service provider’s examination report. Service providers are given time to implement measures to address the identified deficiencies and follow-up inspections are conducted to assess the service provider’s progress. During the review period, 29 follow-up inspections were conducted. If a service provider fails to implement the recommended actions within the timeframe the FSRC may take various action against the service provider, including suspending the provider’s license. The revocation or suspension of a service provider’s license has consequences for entities or arrangements engaged by that service provider, since an IBC or a LLC may be struck from the register for failure to maintain a service provider for a certain period.

222. Although the IRD and the FSRC carry out supervisory measures and have increased the number of inspections to address the recommendation made in the 2014 Report, there are concerns regarding the practical availability of accounting records. These concerns are a result of the low tax filing compliance rate for companies (in particular for ordinary and domestic companies); the small proportion of partnerships subject to audit by the IRD; and the number of service providers that were found by the FSRC not to be compliant with their accounting records obligations. Further, although the FSRC has taken enforcement action against service providers, enforcement actions have not been directly applied to non-compliant legal entities or arrangements. As such, the monitoring programmes of the IRD and the FSRC may not ensure that companies, IBCs, LLCs, partnerships, trusts, and foundations are compliant with accounting record obligations in all cases. Accordingly, Saint Kitts and Nevis is recommended to take further supervisory measures and exercise enforcement measures, including against relevant legal entities and arrangements, to ensure the availability of accounting information in all cases.

223. During the review period Saint Kitts and Nevis received nine requests related to accounting information. Seven of these requests related to individuals and two requests related to companies. Saint Kitts and Nevis provided the requested accounting information in seven cases. With regards to the pending requests, please see element C.5 for further information.

224. The new table of determination and rating remains as follows:

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

Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice	Although Saint Kitts and Nevis authorities carry out supervisory measures focused on the availability of accounting information, these do not result in sufficient levels of compliance to ensure that the relevant accounting information (including underlying documentation) is available in all cases. Further, while enforcement measures have been taken against licensed service providers, no penalties have been directly applied to relevant legal entities or arrangements to ensure the availability of accounting information in all cases.	Saint Kitts and Nevis should take further supervisory measures and exercise enforcement measures, including against relevant legal entities and arrangements, to ensure the availability of accounting information in all cases as required under the standard.
Rating: Largely Compliant		

ToR A.2.1. General requirements

225. The 2014 Report concluded that Saint Kitts and Nevis' legal and regulatory framework requires availability of accounting information in line with the standard.

Companies in Saint Kitts and Nevis

226. In respect of companies incorporated in Saint Kitts, the laws governing accounting information are the same regardless as to whether the company is owned by residents or non-residents, or whether or not the activities are carried on in the Federation. Section 103 of the Companies Act require every company to keep accounting records which are sufficient to explain all transactions, enable the financial position to be determined with reasonable accuracy at any time, enable the directors to ensure that any accounts prepared by the company comply with obligations under this Act and allow financial statements to be prepared. Further, a company's accounting records shall be kept at such place as the directors think fit and must at all times be open to inspection by the company's officers and the secretary. If accounting records of a public company are kept at a place outside the Federation, returns with respect to the business dealt with in the accounting records so kept shall be sent to, and kept in, the Federation, and shall at all times be open to such inspection (s. 103, Companies Act). Accounting records are to be kept by a company, at such a place as the directors think fit, for 12 years from the date on which they were made or 10 years after the

date of dissolution by the company, liquidator (if one has been appointed), or a person to whom the custody of the records has been committed (ss. 103 and 195, Companies Act). Sanctions may be imposed on the person who fails to comply with the record-keeping requirements (ss. 108 and 195, Companies Act). In the case of a public company, sanctions may be imposed on every officer of the company who is in default. Also, a director or auditor of a company may be sanctioned for providing false, misleading or deceptive information to the Registrar.

227. Domestic companies in Nevis must prepare and maintain adequate accounting records and proper books of account, defined as necessary to exhibit and explain the transactions and financial position of the trade or business of the company with reasonable accuracy (s. 187(1), 468(1) and (2), Companies Ordinance). Such records must be kept at the registered office of the company or at some other place in Nevis designated by the directors. Public companies in Nevis are also required to submit accounts to the Registrar. Accounting records are to be kept, at the registered office of the company or at some other place in Nevis designated by the directors, for five years from the date on which they were made or after the date of dissolution. Accounting records are to be kept by the company, the liquidator (if one has been appointed), or any person to whom the custody of the records has been committed. Sanctions may be imposed on the person who, without reasonable cause, contravenes these obligations (s. 189, Companies Ordinance).

228. IBCs and LLCs are required to keep correct and complete books and account, which should (i) correctly explain all transactions, (ii) enable the financial position of the IBC or LLC to be determined with reasonable accuracy at any time, and (iii) allow financial statements to be prepared (s. 103, Nevis Business Corporation Ordinance and s. 67, Nevis LLC Ordinance). The books and records of account must be kept at the address of the service provider of the IBC or LLC or at such other place or places as the directors (in the case of IBCs) or the members or managers (in the case of LLCs) think fit. Shareholders, directors and managers have the right to inspect such books and records (s. 104, Nevis Business Corporation Ordinance and s. 68, Nevis LLC Ordinance). Accounting records must be retained by the IBC or LLC for at least five years from the date on which they were prepared. Also, a director of a dissolved IBC or LLC is required to keep records for five years from the date on which they were prepared (s. 103(3), Nevis Business Corporation Ordinance and s. 67(3), Nevis LLC Ordinance). Sanctions apply for an IBC or LLC that knowingly and wilfully contravenes these obligations (s. 149, Nevis Business Corporation Ordinance and s. 109, Nevis LLC Ordinance). In addition, all IBCs and LLCs are deemed regulated businesses by virtue of the Proceeds of Crime Act and are, therefore, subject to record-keeping requirements and sanction for non-compliance under the AML/CFT laws. IBCs and LLCs are also required to have a service provider in the Federation. However,

the service provider is not obliged to keep accounting records pertaining to its clients, but is required to obtain such records if requested by the FSRC (see additional discussion below).

Partnerships in Saint Kitts and Nevis

229. Partners of a general partnership are required to keep accounting records in order to comply with their tax obligations (see discussion below).

230. Pursuant to section 26 of the LPs Act, the general partners of a LP must keep accounting records which (i) sufficiently show and explain their transactions in respect of the LP, (ii) disclose with reasonable accuracy, at any time, the financial position of the LP, and (iii) allow for the preparation of financial statements. There is no specific requirement for exempt LPs to keep accounting records in the Federation; however, ordinary LPs are specifically required to keep proper records and books of account, including an annual inventory at the registered offices in the Federation (s.21(1), LPs Act and ss.17 and 20, Income Tax Act). Accounting records are to be kept for a period of at least five years. Sanctions may be applied on every general partner for non-compliance (s. 26, LPs Act). The LP Act does not explicitly provide who is required to keep accounting records when a LP is dissolved; however, the general partners of the dissolved LP are required to keep accounting records in order to comply with their tax obligations (see discussion below).

Trusts in Saint Kitts and Nevis

231. Under section 64 of the Trusts Act, every trustee in Saint Kitts must keep accounting records which are sufficient to show and explain their transactions in respect of the trust and are such as to disclose with reasonable accuracy, at any time, the financial position of the trust. Records must be maintained for at least five years. Sanctions may be imposed on a trustee who is non-compliant with such obligations.

232. Pursuant to section 36 of Nevis International Exempt Trust Ordinance, trustees must keep proper books of account in respect of the trust which should correctly explain all transactions, enable the financial position of the trust to be determined with reasonable accuracy at any time and allow financial statements to be prepared. The books of account must be kept at the registered office of the trustee or at such other place or places as the trustee(s) think fit. Accounting records are to be maintained for at least five years. Sanctions may be imposed on a trustee who is non-compliant with these obligations.

233. In addition, the AML/CFT laws apply to a regulated business (including an IBC) acting as a trustee (see discussion below).

Foundations in Saint Kitts and Nevis

234. Pursuant to section 22 of the Foundations Act, a foundation is required to keep proper books of account which are sufficient to enable the foundation's financial position to be determined with accuracy at any time and to allow financial statements to be prepared. Such accounting records must be kept at its registered office or at such other place as the councillors think fit, and must at all times be open to inspection by the councillors, the guardian and the auditor. Accounting records must be kept for at least 12 years from the date on which they were made. Saint Kitts authorities interpret this to include an obligation to keep accounting records for dissolved foundations. Sanctions may be applied against a councillor for non-compliance with the obligation to maintain accounting records.

235. According to section 44 of the Multiform Foundations Ordinance, foundations are required to keep proper books of account with respect to their business and affairs, assets and property. Such accounting records must be kept at the registered office of the multiform foundation or at such other place as the management board determines by ordinary resolution, and must be open at all times to inspection by the management board, the supervisory board and the auditor (if any), if the constitution so permits. Accounting records must be kept for at least six years from the date on which they were made. Nevis authorities interpret this to include an obligation to keep accounting records for dissolved foundations. Sanctions may be applied against a member of the management board for non-compliance with the obligation to maintain accounting records.

Tax laws in Saint Kitts and Nevis

236. A taxpayer (including the partners of a general partnership) who is engaged in a business or independent professional activity, and is not otherwise required by law to keep records listing all receipts and expenditures relating to that taxpayer's business or professional activity, must keep records and accounts that relate to that taxpayer's business or professional activity (s. 6, Tax Administration and Procedures Act and Nevis Tax Administration and Procedures Ordinance). A partnership, or other body of persons, which is subject to any tax law, must nominate a member or officer in the partnership or body, whose duty it will be to comply with the tax law requirements (s. 9, Tax Administration and Procedures Act and Nevis Tax Administration and Procedures Ordinance). A person required to prepare records (which would include the records of a general partnership) must retain the documents for a period of six years following the date on which the tax liability was first assessed (s. 7, Tax Administration and Procedures Act and Nevis Tax Administration and Procedures Ordinance). Saint Kitts and Nevis authorities interpret this to include an obligation to keep accounting records for dissolved

entities. The records are not specifically required to be physically held in the Federation; however, the records must be available upon the IRD's request. Any person that fails to maintain adequate records in compliance with the provisions of tax law, commit an offence and are liable to a fine not exceeding XCD 25 000 (USD 9 250) in the case of an individual or XCD 50 000 (USD 18 500) in the case of a legal entity, partnership or other body corporate (s. 9, Tax Administration and Procedures Act and Nevis Tax Administration and Procedures Ordinance).

AML/CFT laws in Saint Kitts and Nevis

237. Under section 8 of the AMLR and ATR, all regulated businesses must ensure that a record is made “containing details relating to each transaction carried out by the relevant person in the course of any business relationship or one-off transaction”. These records must “in any event include sufficient information to enable the reconstruction of individual transactions” and must be kept for at least five years from the date the business relationship ended or the one-off transaction was completed.

238. Pursuant to section 121 of the Guidance Notes, records relating to “transactions” will generally comprise of details including: (i) the nature of such securities/investments/financial services product; (ii) valuation(s) and price(s); (iii) memoranda of purchase and sale; (iv) source(s) and volume of funds and bearer securities; (v) destination(s) of funds and bearer securities; (vi) memoranda of instruction(s) and authority(ies); (vii) book entries; (viii) custody of title documentation; (ix) the nature of the transaction; (x) the date of the transaction; and (xi) the form in which funds are offered and paid out.

239. The 2014 Report concluded that the AML/CFT law did not capture all of the relevant accounting records, including underlying documentation, as required under the standard. The report found that the scope of the AMLR was limited to records relating to “transactions”, including: “(i) opening of a joint account where the purpose of the account is to facilitate a transaction between the holders of that account; (ii) a transaction between the holders of a joint account relating to the joint account; and (iii) the making of a gift” (s.2(1), Proceeds of Crime Act). “Transaction record” is further defined as including: “(i) the identification records of a person who is a party to a transaction; (ii) a description of the transaction sufficient to identify its date, purpose, and method of execution; (iii) the details of any account used for a transaction including the name of the financial institution, address, and sort code; (iv) the total value of the transaction; and (v) the name and address of the employee in the financial institution who prepared the transaction record”. The report also concluded that where an entity or arrangement was required to engage a licensed service provider, there was no obligation that

it conduct all transactions through that service provider. As indicated in the 2014 Report, in order to address these limitations, Saint Kitts and Nevis enacted several amendments to the legislation under which legal entities and arrangements were incorporated, established or registered to ensure that adequate accounting records, as well as underlying documents, were available when necessary. These amendments are described in the 2014 Report, as well as above.

Implementation of general accounting requirements in practice in Saint Kitts and Nevis

240. In practice, compliance with the obligations to maintain accounting records is monitored by the IRD and the FSRC.

Monitoring by the IRD

241. The IRD has the power to inspect the accuracy of the declarations made by all taxpayers within Saint Kitts and Nevis. The powers to inspect a taxpayer may be exercised via examination of taxpayer records from fieldwork, requests for information to substantiate tax returns, and requests for information for any other authorised purpose. The Comptroller has the power to require a taxpayer to make a tax return or provide any information that is relevant for the determination of the taxpayer's tax liability, enter any business premises open to the public for authorised purposes, and to request any person to furnish information or produce documents or evidence in that person's control for an authorised purpose (ss. 37 and 55, Tax Administration and Procedures Act). The Comptroller also has the power to summon any person for examination for authorised purposes. Any person who obstructs the administration of the Tax Administration and Procedures Act commits an offence and may be liable on summary conviction to a fine not exceeding XCD 15 000 (USD 5 550), imprisonment for a term not exceeding one year, or both.

242. Tax audits are conducted in accordance with the National Audit Plan which is prepared annually. The main goal when conducting a tax audit is to obtain reasonable assurance about the accuracy of the tax return and the financial statements to ensure that they are free of any material misstatement by testing the areas where risks and other irregularities are identified, the evidence supporting the amounts disclosed in the financial statements as well as assessing the accounting principles and significant estimates used in the preparation and presentation of the financial statements. Cases selected for tax audit are based on the risk assessment conducted when preparing the audit plan. Risk criteria include, but are not limited to, local knowledge; industry classification; taxpayer size; filing, payment and registration, including compliance information from prior audit cases, when appropriate;

and tips from other persons. The risk assessment also takes into account business economic factors (such as the performance ratio of the company in comparison with prior years and other similar ratios for taxpayers in the same industry).

243. The average time to complete an audit depends on the type of audit. For instance, a comprehensive tax audit may take between 250 to 400 hours; a desk audit generally takes 30 hours; and a books and records audit takes, on average, 10 hours.

244. The IRD's initial contact with the taxpayer, during an audit, is by letter. An interview of the taxpayer is conducted and examination of records, including the financial statements and the underlying documents, is carried out before all results are documented. An audit is completed by an audit interview with the taxpayer to disclose the audit results and, if necessary, application of applicable penalties. All steps are carefully documented in the audit case file.

245. The table below outlines the number of tax audits conducted by the IRD during the review period:

Number of tax audits conducted by the IRD in 2014-17

Entity type	1 July 2014-30 June 2015		1 July 2015-30 June 2016		1 July 2016-30 June 2017	
	Saint Kitts	Nevis	Saint Kitts	Nevis	Saint Kitts	Nevis
Corporation	76	5	81	38	171	121
Partnership	0	0	0	0	9	1
Trust companies	0	0	0	0	0	5

246. As seen from the table, the proportion of companies subject to tax audits in 2016-17 is approximately 15% in Saint Kitts and 12% in Nevis. During this same period, less than 1% of the partnerships registered with the IRD were audited and five trust companies registered in Nevis were audited.

247. In addition to the tax audits carried out during the review period, the IRD, in 2016-17, conducted book and record audits on 28 partnerships in Saint Kitts. Book and record audits are conducted to assess the taxpayer's compliance with the accounting record keeping requirements, to ensure that the books and records are kept in the relevant language and currency, and to verify that the books and records are available to the IRD. The IRD found that 25 of the 28 partnerships were compliant with their accounting records obligations. Of the three partnerships that did not have accounting records, two of the three never commenced operations and the third had ceased operations.

248. No penalties were applied by the IRD, during the review period, for failure to maintain adequate records.

249. Although the IRD's supervisory and enforcement measures are in place, they do not ensure the availability of accounting information in all cases. The IRD conducts a significant number of audits on companies and applies penalties for non-compliance (see section A.1.1); however, the availability of accounting information, in particular for ordinary and domestic companies, may not be ensured since compliance by companies with their annual tax filings is low (see section A.1.1). It is acknowledged that approximately 65% of ordinary companies and 80% of domestic companies engage a licensed service provider; however, those companies that have no connection with the AML/CFT laws may not be compliant with their tax obligations and therefore not under any supervision. With respect to partnerships, the low audit rates raises concerns since the availability of accounting information for partnerships is mainly ensured by the IRD. It is therefore recommended that Saint Kitts and Nevis strengthen its measures to ensure that accounting information is being maintained by ordinary and domestic companies and partnerships.

Monitoring by the FSRC

250. The FSRC monitors compliance with legal requirements by conducting on-site and off-site inspections of regulated businesses (including service providers). Although there are no obligations on service providers to hold accounting information, pursuant to section 33 of the FSRC Act, if accounting records are requested by the FSRC, a service provider is obligated to obtain the requested information from its client. As such, during a full-scope on-site inspection, the FSRC will examine the accounting records of a selection of the service provider's clients, if that information is kept on file, or if the accounting records are not held by the service provider, the service provider must obtain the records from its client.

251. The 2014 Report found that there was no specific system in place to monitor compliance with accounting record obligations unless the entity or arrangement carried on business in Saint Kitts and Nevis and could be subject to tax audits. Further, the FSRC's power to request the service provider to obtain and provide accounting records from its client had not yet been tested in practice. Therefore, Saint Kitts and Nevis was recommended to implement measures to ensure that all legal entities and arrangements comply with the obligation to maintain accounting records and underlying documents.

252. In order to address this recommendation, the FSRC Saint Kitts branch increased the number of on-site inspections it conducted. In 2015, it found that four of the 14 reviewed service providers were not in compliance

with their obligation to maintain (or have access to) their clients' accounting records. In 2016, the FSRC found that seven of the 15 reviewed service providers did not maintain (or have access to) their clients' accounting records. These inspections covered the service providers that were responsible for 90% of the exempt companies and all of the trusts, foundations and LPs registered in Saint Kitts. Also, in 2016, the FSRC specifically reviewed the files of foundations and 460 files of companies.¹⁴ The FSRC found that none of the foundations' files included accounting records and such records were not provided by the service provider when requested by the FSRC. The accounting records of 83 companies were either on file or provided by the service provider when requested by the FSRC.

253. Where the FSRC finds that a service provider does not have accounting records on file and fails to provide such records when requested by the FSRC, it lists this as a deficiency in the service provider's examination report. The deficiencies identified in the report are accompanied by recommended corrective actions and a time period, generally three to six months, is given for the service provider to implement the corrective action. A follow-up inspection is conducted by the FSRC to ensure that the corrective measures have been implemented. Where deficiencies continue to exist, the FSRC may grant the service provider additional time to implement the corrective action and a second follow-up inspection is conducted, or the FSRC may take enforcement action, including revoking the license.

254. Between July 2017 and June 2018, the FSRC Saint Kitts branch undertook 11 follow-up examinations of eight service providers for non-compliance with legal obligations (including the absence of accounting records or failure to provide upon request). In some cases, two follow-up examinations were conducted. Subsequent to the follow-up inspections, five of the eight service providers had collected accounting records for their clients.

255. In addition to the follow-up inspections, the FSRC Saint Kitts branch has taken enforcement action against service providers for non-compliance with legal obligations (including the absence of accounting records or failure to provide upon request). The table in paragraph 129 sets out the enforcement action taken by the FSRC against service providers. Also, between July 2017 and June 2018, the licenses of five service providers were not renewed due to non-compliance (including the absence of accounting records or failure to provide upon request).

256. If the FSRC revokes, suspends, or does not renew a service provider's license, it informs the Registrar. Legal entities and arrangements that

14. As it relates to exempt companies, the FSRC Saint Kitts branch examined 419 exempt company's files during the review period (96 in the second half of 2014; 29 in 2015; 281 in 2016; and 13 in the first half of 2017).

have engaged that service provider must find a new service provider or the Registrar will begin the strike off procedure.

257. In Nevis, the FSRC Nevis branch updated its *On-site Examination Procedures for Registered Agents* in 2014 to include a section specifically dealing with the examination of accounting records. These procedures have been in place since 2014 and were revised in February 2017. According to these procedures, when conducting an on-site inspection, the FSRC examiner checks the service provider's files to see whether or not the files contain accounting records and underlying documentation sufficient to show and explain the client's (i.e. IBC, LLC, trust, foundation) transactions; and enable the financial position of the client to be determined. If the FSRC requests accounting records and the service provider does not hold these, the service provider must obtain the records from its client.

258. The FSRC Nevis branch conducted 49 on-site inspections, during the review period. These examinations covered service providers that were responsible for 97% of the IBCs¹⁵ and LLCs, 98% of the foundations and all of the trust registered with the Nevis Registrar. The examination comprised of checks on whether the accounting records were maintained by the service provider and an evaluation of the provider's record keeping systems, retention period and condition of records.

259. In 28 of the cases, the FSRC examiners found the accounting records and underlying documentation on file at the registered office of the IBCs, LLCs, trusts or multiform foundations. According to Nevis officials, in the remaining 21 cases, the service provider confirmed that either: (i) they did not carry on management or bank account opening services for their clients; (ii) the directors, managers, trustees or management board themselves held the accounting records for the respective entities; or (iii) the relevant entity did not have accounting records as they did not conduct any financial transactions since their incorporation. The FSRC asked the service provider to obtain the accounting information from their client and provide it to the FSRC. Such information was provided to the FSRC in some instances.

260. Similar to Saint Kitts, where the FSRC Nevis branch finds a service provider does not have accounting records on file and fails to provide records when requested by the FSRC, it lists this as a deficiency in the service provider's examination report. Service providers are given time to implement the correct action to address the identified deficiencies and follow-up inspections are conducted to assess the service provider's progress with regards to the remedial action.

15. As it relates to IBCs, the FSRC Nevis branch examined 4 941 IBC's files during the review period (555 files in the second half of 2014; 1 702 files in 2015, 1 553 files in 2016, and 1 131 files in the first half of 2017).

261. During the review period, the FSRC Nevis branch conducted 29 follow-up inspections. In addition to the follow-up inspections, the FSRC Nevis branch has taken enforcement actions against service providers during the review period (see the table in paragraph 129). Further, the revocation or suspension of a service provider's license has consequences for entities or arrangements engaged by that service provider, since an IBC or a LLC may be struck from the register for failure to maintain a service provider for a period of 60 days (for IBCs) or one year (for LLCs).

262. Although the FSRC carries out supervisory measures and has increased the number of on-site inspections since the 2014 Report, the results of the inspections are a cause of concern due to the number of service providers not maintaining accounting records or providing such records upon request, as well as the relatively long time given to service providers to address the recommendations contained in the FSRC's examination report. Further, although the FSRC is taking enforcement action against service providers, sanctions have not been directly imposed on non-compliant legal entities or arrangements. As such, the monitoring programme of the FSRC does not ensure that exempt companies, exempt LPs, IBCs, LLCs, trusts, and foundations are compliant with the accounting records obligations in all cases. Accordingly, Saint Kitts and Nevis is recommended to take further supervisory measures and exercise enforcement measures, including taking action against non-compliant legal entities and arrangements, to ensure the availability of accounting information in all cases.

ToR A.2.2. Underlying documentation

263. The 2014 Report concluded that all relevant legal entities and arrangements are required to maintain underlying documentation in line with the standard. Under the Companies Act, LPs Act, Trusts Act and Foundations Act, legal entities and arrangements are required to keep underlying documents which reflect details of: (i) all sums of money received and expended and the matters in respect of which the receipt and expenditures take place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the relevant entity or arrangements. In case of non-compliance, sanctions may be applied. There has been no change in the relevant laws since that report.

264. Additionally, in Nevis, legal entities and arrangements are required to prepare and maintain adequate accounting records which include material underlying documentation including contracts and invoices and should reflect details of: (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the company. In case of non-compliance, sanctions may be applied. There has been no change since the first round to the relevant laws.

265. Every person required to keep records and books of account for purposes of complying with the Income Tax Act is required to retain underlying documentation, including invoices, contracts, etc. which reflect details of (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the relevant entity or arrangement.

266. Under the Tax Administration and Procedures Act and the Nevis Tax Administration and Procedures Ordinance, a taxpayer who is engaged in a business or independent professional activity, and who is not required by other laws to keep records listing all receipts and expenditures, must keep records and accounts that relate to that taxpayer's business or professional activity. The underlying documentation should reflect details of (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the relevant entity or arrangement. These obligations are applicable to general partnerships which carry on business in Saint Kitts and Nevis.

267. Retention requirements for underlying documents are the same as for other accounting records and are in line with the standard.

268. Monitoring of compliance with the requirements imposed on companies, partnerships, trusts and foundations to maintain underlying documents is under the supervision of the IRD and the FSRC. The IRD and FSRC's audit and monitoring programmes are the same as described above, therefore the conclusions made under section A.2.1 apply.

269. During the review period, Saint Kitts and Nevis received nine requests for accounting information. Seven of these requests related to individuals while two requests related to companies. Saint Kitts and Nevis provided the requested accounting information in seven cases. Peers indicated that the information was of good quality. With regards to the pending requests, please see element C.5 for further information.

A.3. Banking information

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

270. The 2014 Report concluded that banks' record keeping requirements are in place to ensure availability of banking information in line with the standard and that their implementation in practice is adequate. There has been no relevant change in the provisions or practice since this report. The

relevant provisions are contained in the AML/CFT laws and the Banking Act and are supervised by the ECCB and FSRC.

271. Banks' obligation to identify beneficial owners of their account holders is part of their AML/CFT requirements. Such obligations are generally in line with the standard. However, a legislative gap has been identified with regards to a LP because the general partner(s) are treated as the verification subjects and limited partners do not need to be verified by banks. According to Saint Kitts and Nevis officials, in practice, banks are verifying the identity of limited partners. Nevertheless, Saint Kitts and Nevis is recommended to ensure that banks identify all beneficial owners of LPs as required under the standard.

272. Supervision of banks' CDD obligations is carried out in the same manner as in respect of other regulated businesses (see element A.1). The ECCB and the FSRC carry out off-site and on-site inspection programmes covering a significant number of banks annually and applies a variety of enforcement measures in cases where deficiencies are identified.

273. Availability of banking information in Saint Kitts and Nevis was also confirmed in EOI practice. During the review period Saint Kitts and Nevis received 14 requests for banking information and was able to respond to all of these requests.

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

Legal and Regulatory Framework		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of the legal and regulatory framework:	While banks are required to verify the identity of general partners of a LP in line with the standard; there is no requirement to verify the identity of limited partners. Limited partners may be relevant for the identification of beneficial owners as defined under the standard.	Saint Kitts and Nevis should ensure that banks are required to identify all of the beneficial owners of a LP as required under the standard.
Determination: The element is in place.		
Practical implementation of the standard		
Rating: Compliant		

ToR A.3.1. Record-keeping requirements

275. The 2014 Report concluded that banks' record keeping requirements 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.

276. All commercial banking activities under the Banking Act and off-shore banking activities under the Nevis Offshore Banking Ordinance (now Nevis International Banking Ordinance) are listed as regulated business activities under the Proceeds of Crime Act and therefore subject to the AML/CFT laws. There are currently six institutions licensed to conduct commercial banking under the Banking Act (this is a decrease of one from the number of institutions licensed at the time of the first round review). The number of licensees is considered fairly stable. No new licenses have been granted since 2014.

277. The main record keeping requirements are contained in the AMLR and ATR. Banks are prohibited from opening anonymous accounts or accounts opened under fictitious names (s.4(10), AMLR and ATR). Banks are required to maintain policies for the application of identification and record keeping procedures (s.3(1), AMLR and ATR) and apply identification procedures before the establishment of a business relationship or before carrying out a one-off transaction (s.4(1), AMLR and ATR). Banks are further required to keep transactional and identity information in respect of their accounts pursuant to their CDD obligations (s.8(2), AMLR and ATR). The required information must be kept for at least five years after the customer relationship has ended or following the carrying-out of the one-off transaction (s.8(1), AMLR and ATR). In the case of breach of these obligations sanctions can be applied.

278. Supervision of banks' record keeping requirements is carried out by the ECCB (prudential supervision) and the FSRC (supervision of AML/CFT obligations). Based on the findings by the ECCB and FSRC, banks have a good knowledge of their AML/CFT and record keeping obligations. Where deficiencies are identified, the ECCB and FSRC take a variety of enforcement measures to remedy the failure and prevent it from happening again. Enforcement measures mainly consist of warning letters and application of administrative fines (see below and section A.1.1).

ToR A.3.1. Beneficial ownership information on account holders

279. The obligation to identify beneficial owners of the account holder is contained in the AML/CFT laws. As described in section A.1.1, banks (i.e. regulated businesses) are required to apply CDD procedures: (i) when establishing a business relationship or carrying out a one-off transaction;

(ii) ongoing during a business relationship; and (iii) when there is a suspicion of money laundering or doubts exist about the veracity or adequacy of previously obtained customer identification documents, data or information (s.4(1) AMLR and ATR).

280. In terms of timing of verification, the AMLR and ATR provide that a bank may complete the verification as soon as reasonably practicable after the establishment of the business relationship if this is necessary not to interrupt the normal conduct of business (s. 4, AMLR and ATR). The AMLR and ATR also allow for identification to be completed after the establishment of the business relationship. Regulation 4(9) of the AMLR and ATR outline the actions that regulated businesses should take when they are unable to apply the identification (which includes verification) procedures, including the refusal to establish the business relationship or carry out the one-off transaction. Where the relationship has been established, but verification cannot be completed, the relationship or transaction should be suspended.

281. Banks, upon establishing a business relationship, are required to identify the beneficial owner of the customer; take reasonable measures to verify the identity of the beneficial owner using reliable evidence that is reasonably capable of verifying the identity of the customer, third party or beneficial owner; and obtain additional information on the customer's business and risk profile (s. 4, AMLR, ATR, and detailed in the Guidance Notes).

282. Section 7 of the AMLR and ATR contain simplified CDD rules. As determined in section A.1.1, these rules are in line with the standard.

283. The definition “beneficial owner” and its interpretation as it applies under the AML/CFT laws is, generally, in line with the standard (see element A.1). However, as noted in section A.1.3, in the case of a LP, the general partner(s) should be treated as the verification subjects and limited partners do not need to be verified (s.44, Guidance Notes). Saint Kitts and Nevis officials advise that, in practice, banks are verifying the identity of limited partners. Nevertheless, there is a gap in the legal framework, although it is acknowledged that the materiality of this gap is very limited as there are only two LPs registered in Saint Kitts and Nevis (as provided in section A.1.3, all domestic and foreign LPs must register with the Registrar). Therefore, it is recommended that Saint Kitts and Nevis ensure that banks identify all beneficial owners of LPs as required under the standard.

284. As described in section A.1.1, a bank may enter into business with a third party (e.g. business introducer) and rely on CDD measures applied by the third party, subject to certain conditions; however, the bank remains ultimately responsible. The conditions for relying on a third party are the same as those described in section A.1.1. Therefore, as concluded in section A.1.1, the third party reliance rule poses a concern because the requirement for the

relying bank is to obtain sufficient information about the customer (including beneficial ownership information) to assess the risk associated with that customer. However, there is no guidance as to what “sufficient information” means, therefore, it is not clear whether this requirement is consistent with the international standard. Also, as the obligation to provide CDD documentation is on the third party, who may be outside of Saint Kitts and Nevis’ jurisdiction, it may, therefore, be difficult to enforce this obligation in practice. As such, Saint Kitts and Nevis should ensure that its third party reliance rules are in line with the international standard.

285. Banks are required to keep the identification of the beneficial owner updated (s.4, AMLR and ATR). CDD documentation including records of the actions taken in order to identify the beneficial owner and other supporting documents have to be retained by the bank for a period of at least five years after the business relation has ended (s. 8, AMLR and ATR). In the case of breach of the AML obligations sanctions apply (s. 14, AMLR and ATR, and s. 4, Guidance Notes).

Implementation of obligations to keep beneficial ownership information in practice

286. The ECCB is responsible for conducting prudential supervision of commercial banks and financial institutions licensed to conduct banking business under the Banking Act. The ECCB has a total of 30 staff in the Bank Supervision Department, 24 of who are bank examiners. The ECCB does not monitor banks’ compliance with AML/CFT obligations; however, any breach of AML/CFT obligations detected during an inspection is to be reported to the FSRC.

287. The ECCB employs a risk-based approach to supervision, involving a combination of on-site and off-site supervision. Off-site supervision involves the submission of risk-focused information such as Board of Directors’ minutes and reports as well as the submission of financial returns. On-site inspections are conducted to evaluate the overall financial condition of a financial institution which includes: determining the significant activities and associated risks in lending; ensuring compliance with relevant laws and prudential guidelines; determining adequacy of policies governing major operations and adherence thereto; and evaluating the effectiveness of the institution’s internal control system. According to the Banking Act, 2015, which came into force on 20 May 2016, an on-site inspection of a licensed financial institution must be conducted at least once every 36 months (s. 70, Banking Act, 2015). Generally, an on-site inspection is conducted by a team of five people.

288. After an on-site inspection, the ECCB prepares an examination report, highlighting any deficiencies or breaches detected during the on-site inspection. The report is shared and discussed with the Board of Directors of the bank and the final report is sent to the Ministry of Finance. If the ECCB find a deficiency or breach, the ECCB and the financial institution will conclude a written agreement providing for a programme of remedial action within a specified timeframe. The timeframe is dependent on a number of issues, including the severity of the deficiency and the risk posed; however, the timeframe will generally not exceed one year. If corrective action is not taken within the determined timeframe or if the institution has been non-responsive to remedial action in the past or has a history of serious problems, the ECCB will issue a written warning. Where a financial institution continues to be in breach of any law, regulation or guideline and has not taken the corrective action as set out in the written warning, the ECCB will issue a cease and desist order. If the breach of law continues, enforcement will continue in the following order – fixed monetary penalties, legal proceedings and restriction of revocation of licence.

289. During the review period, the ECCB conducted two on-site inspections of banks in Saint Kitts and Nevis. The main deficiencies that were noted related to the management of credit risk and operational risk. The ECCB did apply a penalty against an institution which failed to notify the ECCB of the change of location of an ATM. No other penalties, fines or charges were applied during the review period.

290. Supervision of the implementation of the obligation to obtain and maintain beneficial ownership information on account holders is carried out by the FSRC. This supervision is carried out in the same manner as in respect of other regulated businesses as described in element A.1.

291. During the review period, the FSRC conducted five on-site inspections of banks. The most common deficiencies identified were the absence of a compliance officer approved by the FSRC and incomplete internal policies. Enforcement measures were applied and the identified deficiencies were remedied.

292. The supervision of AML/CFT obligations is adequate to ensure banks' compliance with their CDD obligations in line with the standard. The FSRC carries out off-site and on-site inspections covering a significant number of banks annually and applies variety of enforcement measures in cases where deficiencies are identified.

293. During the review period Saint Kitts and Nevis received 14 requests for banking information, including requests for beneficial ownership information. Saint Kitts and Nevis was able to fully respond to all of these requests.

Part B: Access to information

294. 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).

295. As concluded in the 2014 Report, the Competent Authority has broad access powers to obtain all types of relevant information including ownership, accounting and banking information both for domestic tax purposes and in order to comply with obligations under Saint Kitts and Nevis’ EOI agreements. The Competent Authority’s broad access powers can be used regardless of domestic tax interest. Access powers are available in cases where information is requested for criminal tax purposes. In the case of failure to provide the requested information, the Competent Authority has adequate powers to compel the production of information. The Competent Authority’s access powers were further expanded in 2015 to request information from any person who may have the information in its possession or control to produce that information to the Competent Authority within 15 days. Penalties for not complying with the Competent Authority’s request for information were also increased.

296. The 2014 Report concluded that the secrecy provisions were in line with the standard. No relevant changes have been made to the legal framework or practice since that report.

297. The Competent Authority’s access powers are generally effectively used in practice. There is one pending EOI request which requires the

Competent Authority to seek a court order to obtain information from the information holders. The pending request is over a year old and legal proceedings are just beginning. According to Saint Kitts and Nevis officials, the reason for the delay is due to staff turnover at the Attorney General’s Chambers. Although there has been very limited negative impact on EOI (one case out of 23), effective EOI requires that the requested information is provided in a timely manner, therefore it is recommended that Saint Kitts and Nevis ensure that its powers to obtain information are used effectively.

298. The new table of determination and rating remains as follows:

Legal and Regulatory Framework		
Determination: The element is in place.		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice	Saint Kitts and Nevis has powers in place to obtain all types of information but did not effectively exercise these powers in the one case where it was necessary in order to obtain information from an information holder.	Saint Kitts and Nevis should ensure that its powers to obtain information are used effectively so that the requested information can be provided in a timely manner.
Rating: Compliant		

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

299. The 2014 Report concluded that appropriate access powers were in place. Due to Saint Kitts and Nevis’ limited EOI experience, it was recommended (in-text) that the ability of the Competent Authority to exercise its powers to collect information be monitored on an ongoing basis.

300. The Saint Kitts and Nevis Competent Authority has broad access powers to obtain all types of relevant information including ownership, accounting and banking information in order to comply with obligations under Saint Kitts and Nevis’ EOI agreements.

301. The Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act applies for the purposes of giving effect to the terms of a “scheduled agreement” in order to provide information in taxation matters or for providing information in taxation matters on request to a “scheduled country” (s.3). The reference to “scheduled countries” relates

to the ability of the authorities to exchange information on a unilateral basis where certain conditions are met. Whether the Act applies in respect of a “scheduled agreement” or a “scheduled country”, the access powers are identical.

302. The Competent Authority has “the power to do all things necessary or convenient to be done for or in connection with the performance of his function under” the Act or any scheduled agreement (s. 5, Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act). The Act was amended in 2015 (coming into effect on 31 December 2015) to expand the Competent Authority’s powers to request information from any person who may have the information in its possession or control to produce that information to the Competent Authority within 15 days.

303. The Competent Authority’s powers apply in respect of “information” which is broadly defined as (s.2(1), Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act):

- a. any fact, statement, document or record in whatever form, and includes any fact, statement or document or record held by any bank or other financial institution, or any person, including any nominee and trustee, acting in an agency or fiduciary capacity
- b. any fact, statement, document or record regarding the beneficial ownership of any company, partnership and any other person, including:
 - i. in the case of a collective investment fund, information on any shares, units and other interests
 - ii. in the case of a trust, information on any settlers, trustees and beneficiaries.

Access to information in practice

304. The EOI Unit does not have information available to it which it can use directly to answer incoming requests. In practice, a letter is sent to the person believed to be in possession of the requested information, generally the licensed service provider representing the entity from which ownership or accounting information is sought, or a bank if banking information is sought. This letter will refer to the legal basis under which the information is requested and will list details of the information required to be provided. The letter stresses the importance of confidentiality and, provided that the notification requirements are waived, additional language is added to clarify that the person requested to provide the information is prohibited from notifying any other person (including the taxpayer under investigation) except for their own attorney or any other person named by the Competent Authority.

305. The information holder has 15 days from the date the letter is issued to provide the requested information. If information is not provided within this timeframe, the Competent Authority sends a second letter with a short deadline (generally between five to seven days) requesting the production of the information, informing the information holder of the obligation to keep and provide the records, and outlining the penalties for not having or providing the information. If the record-keeper fails to produce the information, the Competent Authority notifies the regulatory authorities, namely the FSRC, for assistance and, will apply penalties or commences legal proceedings against the information holder. A person who fails to provide information when requested within the time specified by the Competent Authority commits an offence and is liable on summary conviction to a fine not exceeding XCD 50 000 (USD 18 500), a term of imprisonment not exceeding two years, or both (s. 17, Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act).

306. During the review period, Saint Kitts and Nevis received 23 requests of which it fully responded to 20 of the requests. With regards to two pending EOI requests, Saint Kitts and Nevis is waiting for a response to its request for clarification. With respect to the third pending EOI request, the Competent Authority followed the procedure set out in the above paragraph; however, the information holders have failed to produce the information. The Competent Authority is now seeking a court order in order to compel the information holders to provide the requested information (see discussion in section B.1.4). Overall, there has been no case where the requested information was not available because of the lack of access powers.

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

307. 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.

308. The 2014 Report concluded that the access powers of Saint Kitts and Nevis’ Competent Authority are not restricted by the requirement that its powers can only be exercised in cases where there is a domestic tax interest. The report also determined that all of Saint Kitts and Nevis’ EOI agreements, except for the CARICOM Multilateral Tax Treaty, allowed for EOI absent a domestic tax interest and were not subject to a reciprocity requirement. The 2014 Report concluded that the CARICOM Multilateral Tax Treaty does not provide for EOI to the standard where no impediment to obtain and provide bank information exists and where no domestic tax interest is present in either jurisdiction, as such this agreement only met the standard with respect to five jurisdictions (Antigua and Barbuda, Barbados, Belize, Jamaica and

Saint Vincent and the Grenadines). Since the 2014 Report, three signatories to the CARICOM Multilateral Tax Treaty (i.e. Dominica, Grenada and Saint Lucia) have amended their legislation to address the deficiencies in their domestic legislation. In addition, Antigua and Barbuda, Jamaica, Saint Kitts and Nevis, and Saint Lucia are now parties to the MAAC which means that they can exchange information absent a domestic interest without a reciprocity requirement once the MAAC enters into force in Antigua and Barbuda and Jamaica. EOI under the CARICOM Multilateral Tax Treaty is still not to the standard with Trinidad and Tobago due to a domestic tax interest requirement.¹⁶ Also, Guyana has not yet been reviewed by the Global Forum and it is therefore not possible to confirm that the CARICOM Multilateral Tax Treaty with regards to Guyana meets the standard.

309. There has been no change in the legal framework in this respect since the first round review and all EOI agreements entered into since the 2014 Report allow for EOI unimpeded by a domestic tax interest obligation and are not subject to a reciprocity requirement.

310. Under the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act, the Competent Authority has broad access powers for all tax matters. This Act applies for the purposes of giving effect to the terms of a “scheduled agreement” in order to provide information in taxation matters or for providing information in taxation matters on request to a “scheduled country” (s. 3). The reference to “scheduled countries” relates to the ability of the authorities to exchange information on a unilateral basis where certain conditions are met. The powers apply for the express purpose of responding to requests for information from a foreign authority, without regard to whether the information is relevant for Saint Kitts and Nevis’ domestic tax purposes (s. 3).

311. In practice, no peers have raised any issues.

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

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

313. The 2014 Report concluded that Saint Kitts and Nevis’ Competent Authority had adequate powers to compel the production of information in line with the standard. There has been no change to the legal provisions since this report.

16. As reviewed by the Global Forum in the Phase 1 Peer Review Report of Trinidad and Tobago, 2011.

314. The Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act sets out the enforcement provisions. Upon application to a judge for a court order, the Competent Authority is specifically empowered to require a person to testify, to produce information required for proceedings in the territory of the requesting party or related investigations (ss. 5(2)(a), 8(1) and (4)(a)). For all other requests, the Competent Authority will issue a notice in writing requiring the production of such information within a specific timeframe and form, and copies or extracts may be taken therefrom (ss.8(4)(b) and 8(5)(a)). In addition, the Competent Authority may, upon application to a judge for a search warrant, execute searches and seizures in order to obtain information for EOI purposes (s. 5(2)(a), s. 8 and s. 17(3)). In considering such an application for a search warrant, the judge must be satisfied of certain matters, including in particular whether the request will be seriously prejudiced unless immediate access to the information can be secured (s. 17(4)).

315. In 2015, section 17 of the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act was amended to increase the penalties for non-compliance with the Act. A person who fails to provide information when requested within the time specified by the Competent Authority by notice or by a Judge by order commits an offence and is liable on summary conviction to a fine not exceeding XCD 50 000 (USD 18 500),¹⁷ a term of imprisonment not exceeding two years, or both. Also, sanctions against a person who destroys or mutilates the information requested by the Competent Authority were increased from a fine of XCD 10 000 to XCD 100 000 (USD 37 000) and the term of imprisonment increased from two years to five years.

316. In the three-year review period, Saint Kitts and Nevis did not apply any penalties for failure to produce information. There is one pending EOI request which requires the Competent Authority to seek a court order to obtain information from the directors of an IBC. As noted above, the Competent Authority has followed the procedure to obtain the information; however, the information holders have failed to provide the requested information. The pending request is over a year old and the Attorney General's Chambers is just beginning legal proceedings. According to Saint Kitts and Nevis officials, the reason for the delay is due to staff turnover at the Attorney General's Chambers.

317. Effective EOI requires that the requested information is provided in a timely manner. The Saint Kitts and Nevis authorities should ensure that information holders provide the information in accordance with the deadline prescribed by the Competent Authority. If the information is not provided

17. This penalty was increased from XCD 10 000 to XCD 50 000.

within the deadline and no legally valid reasons for the delay are provided, there should be effective mechanisms to compel production of the information. Although there has been very limited impact on EOI during the review period (one case out of 23), one requesting jurisdiction has not received information more than one year after making its request. If the Attorney General's Chambers has continuing staffing issues, this could have further negative impact on effective EOI and may affect more than one jurisdiction. Therefore, it is recommended that Saint Kitts and Nevis ensure that its powers to obtain information are used effectively so that the requested information can be provided in a timely manner.

ToR B.1.5. Secrecy provisions

318. The 2014 Report concluded that the secrecy provisions protecting banking information and professional privilege contained in Saint Kitts and Nevis' laws were in line with the standard. The Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act was amended in 2015 to clarify that the secrecy provisions in the Banking Act do not apply to this Act. No other relevant changes to the secrecy provisions have been made since the 2014 Report.

319. As described in the 2014 Report, it is an offence to divulge confidential information¹⁸ to any person not entitled to possession thereof or to attempt, offer or threaten to divulge it to any person not entitled to possession or obtaining or attempting to obtain confidential information to which he or she is not entitled (s. 4(1), Confidential Relationships Act).

320. Section 178 of the Banking Act and section 29 of the Nevis International Banking Ordinance set out the bank secrecy provisions. Bank secrecy is not absolute and does not apply where the information is disclosed pursuant to another law of the Federation or agreement among the Participating Governments of the Currency Union¹⁹ (s. 178, Banking Act and s. 29, Nevis International Banking Ordinance). EOI agreements are given effect in the Federation through legislation and are therefore considered laws, consequently, where information is sought in connection with a request for

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18. Confidential information is defined as: “information concerning any property, or relating to any business of a professional nature or commercial transaction which has taken place, or which any party concerned contemplates may take place, which the recipient thereof is not, otherwise than in the normal course of business or professional practice authorised by the principal to divulge” (s. 2, Confidential Relationships Act).
 19. Participating Governments of the Currency Union include Anguilla, Antigua and Barbuda, Dominica, Grenada, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines.

information under an EOI agreement, and pursuant to the access powers described above, these exceptions will override the secrecy provisions in the Banking Act and the Nevis Offshore International Ordinance.

321. The Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act contains specific overrides to ensure access to information for EOI purposes. The exercise of powers to obtain information under this Act “shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information whether imposed by the Confidential Relationships Act, any other law or the common law” (s. 8(6)(b), Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act). The disclosure of confidential information or the giving of any testimony pursuant to that Act is also deemed to not be an offence under the Confidential Relationships Act or under any law being in force in the Federation (s. 11, Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act). In 2015, section 11 of this Act was amended to add specific reference to the Banking Act.

322. As described in the 2014 Report, where a person is required to testify or to produce information pursuant to the order of a judge, then the person is entitled to be represented by an attorney-at-law (s. 8(16), Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act). Items subject to legal privilege (as listed below) are expressly excluded from the scope of the Competent Authority’s power to obtain information (s. 8, Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act):

- a. any communication between an attorney-at-law and his client or any person representing his client made in connection with the giving of legal advice to the client
- b. any communication between an attorney-at-law and his client or any person representing his client or between such attorney-at-law or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings
- c. any item enclosed with or referred to in such communications and made
 - i. in connection with the giving of legal advice; or
 - ii. in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them;

except that any item held with the intention of furthering a criminal purpose are not subject to legal privilege.

323. Although the scope of this definition appears to go beyond the exception for items subject to attorney-client privilege contained in the 2002 OECD Model TIEA, the extension of legal privilege to items made in contemplation of legal proceedings or in connection with the giving of legal advice does not mean that *any* document or piece of information provided to a legal adviser in contemplation of legal proceedings becomes an item subject to legal privilege. The document or piece of information itself must have been made in contemplation of those proceedings. The same would be the case with items enclosed with communications relating to the giving of legal advice. The Saint Kitts and Nevis authorities have confirmed that the attorney-client privilege was not invoked in order to refuse to provide information in an EOI case during the period under review. Also, no issues were raised by peers in this regard.

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.

324. There are two types of rights and safeguards contained in the law which may have impact on EOI under Saint Kitts and Nevis' EOI agreements: (i) court order; and (ii) prior notification.

325. The 2014 Report concluded that the court procedure²⁰ to gather information in order to respond to an EOI request relating to information required for use in a proceeding in the territory of the requesting party is compatible with the application of reasonable safeguards. There has been no relevant change in the applicable rules since that report.

326. To date, Saint Kitts and Nevis has not had to apply this court procedure to gather information for EOI purposes. All other requests for information have been dealt with directly by the Competent Authority, without the court's intervention.

327. The Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act provides for prior notification where a request for

20. Note that this court procedure is different than the procedure to obtain a court order seeking to compel an information holder to provide the requested information when the information holder has refused to provide the information requested.

information is made that is not in connection with a criminal matter or an alleged criminal matter, and if the person’s whereabouts or address are made known to the Competent Authority. Exemptions from prior notification exist to ensure that notification can be waived in the event that the request is of a very urgent nature or where prior notification would seriously undermine the investigation of the requesting jurisdiction. The 2014 Report concluded that this prior notification process was compatible with effective EOI. There has been no relevant change in the applicable rules or practice since the 2014 Report.

328. There is no post-exchange notification requirement in Saint Kitts and Nevis’ EOI legislation.

329. The new 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

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

330. The rights and safeguards that apply to persons in the requested jurisdiction should be compatible with effective EOI. There are two types of rights and safeguards contained in the law which may have impact on EOI under Saint Kitts and Nevis’ EOI agreements.

Court Order

331. Where information must be obtained in order to respond to a request for information relating to a “proceeding in the territory of the requesting party or related investigations” then the Competent Authority must apply to a judge for an order to produce that information (s. 8(4)(a), Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act). The term “proceeding” is understood to mean any civil or criminal legal proceeding which takes place in any civil or criminal court, which may include a tax appeal in the requesting jurisdiction but does not include the investigative process prior to a court action.

332. Where the judge is satisfied that certain conditions are met, the judge may make an order that the person who appears to be in possession or control of the information to which the application relates shall produce it to a police

officer or give a police officer access to it within such period as the order may specify. The conditions that must be met are:

- the Competent Authority has certified that the request is valid under the relevant agreement
- the information to which the request relates is under the possession or control of a person in the Federation
- the information to which the request relates does not include items subject to legal privilege or items subject to protection as secret, as defined under the relevant agreement
- the notification requirements have been complied with
- there are no reasonable grounds for not granting the request.

333. Where an order is granted, the period for producing the information is 14 days, unless the judge considers that a longer or shorter period would be appropriate in the particular circumstances of the application. A judge may decide to shorten the period in cases where it seemed that the ability to obtain the information might be in jeopardy if the full 14 days were allowed to elapse. For instance, there may be a risk of the disappearance or deterioration of the requested information, or there may be a question as to the availability of the information holder.

334. Although this procedure adds a level of judicial oversight, this oversight is narrowly prescribed and the conditions that must be met appear reasonable. The timeline for producing information pursuant to an order is short (i.e. 14 days) and may be accelerated in certain cases. To date, the Saint Kitts and Nevis Competent Authority has not had to apply this court procedure. Therefore, the practical impact of these potential restrictions on the effectiveness of the Competent Authority's access powers could not be assessed; however, they appear minimal and in line with the application of reasonable safeguards.

335. No appeal right to this court order is granted in the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act. Judicial review is possible, in principle, but has never been pursued.

336. All other requests (i.e. not involving information required for proceedings in the territory of the requesting party) can be dealt with directly by the Competent Authority, without the court's intervention (s.8(4)(b), Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act).

337. All of the 23 EOI requests that Saint Kitts and Nevis received during the review period were dealt with directly by the Competent Authority.

Notification rights

338. As described in the 2014 Report, the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act provides for prior notification in limited circumstances: (i) where a request for information is made that is not in connection with a criminal matter or an alleged criminal matter, and (ii) if the person's whereabouts or address are made known to the Competent Authority, then this person must be notified by the Competent Authority of the existence of the request and the general nature of the information sought (s. 10(1)). Notification requirements can be waived in cases where the request is urgent or prior notification would seriously undermine the investigation of the requesting jurisdiction. Also, the Competent Authority is under no obligation to search for or conduct enquiries into the address or whereabouts of any person for this purpose.

339. The Saint Kitts and Nevis Competent Authority indicated that in practice the person's whereabouts or address is not likely to be available to them unless provided by the requesting jurisdiction. However, if the subject of the request is a local taxpayer, the Competent Authority will be able to get the information from the IRD and will notify that taxpayer of the existence of the request, provided that none of the exemptions from the notification requirements are applicable. It should be noted that the requirement to notify the taxpayer of an incoming request only applies in civil tax matters, and not if the request is made in respect of a criminal tax matter. Also, the Competent Authority advises requesting jurisdictions, in its acknowledgement letter that it will notify the taxpayer subject of the request, which is not a criminal matter or an alleged criminal matter, of the existence of the request. The requesting jurisdiction may contact the Saint Kitts and Nevis Competent Authority if it does not wish the taxpayer to be notified.

340. Any person notified may, within 15 days from the date of receipt of the notice, make a written submission to the Competent Authority specifying any grounds which he/she wishes the Competent Authority to consider in making its determination as to whether or not the request is in compliance with the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act or with provisions in any scheduled agreement, as the case may be, including any assertions that the information requested is subject to legal privilege. The Competent Authority is to consider the written submission, but is not obliged to permit or consider any oral submission by the person. The notification requirement does not prevent the Saint Kitts and Nevis Competent Authority from proceeding to obtain the requested information during the period when the taxpayer can make written submission. The law does not set out a timeframe for the Competent Authority to make a decision on a written submission. However, according to Saint Kitts and Nevis officials, the Competent Authority would act within the general timeframe for

replying to a request (i.e. 90 days from receipt of the request). Also, although the law does not contain an appeal process, if the person making a submission disagrees with the Competent Authority's decision, this person could seek a judicial review.

341. The time for making a written submission by the subject of the request is short (i.e. 15 days) and the fact of such submission does not prohibit the disclosure of information to the Competent Authority or its transmission to a requesting jurisdiction. According to Saint Kitts and Nevis officials, if a written submission convinces the Competent Authority that information should not be exchanged with the requesting jurisdiction, the Saint Kitts and Nevis Competent Authority would contact the requesting jurisdiction to determine a way forward.

342. There are exemptions from prior notification: (i) in the event that the request is of a very urgent nature; or (ii) where prior notification would seriously undermine the investigation of the requesting jurisdiction (s. 10(7), Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act).

343. In practice, when an EOI request is received, the Saint Kitts and Nevis Competent Authority will make a preliminary determination as to whether there are any reasons to waive the prior notification requirement, and, unless one of the exemptions applies, it will inform the requesting jurisdiction of the notification requirements. This is communicated to the requesting jurisdiction in the letter acknowledging receipt of the request. If the incoming request is not clear about waiving the prior notification requirements, the Competent Authority will seek clarification from the requesting jurisdiction before sending the notification letter to the taxpayer. The Saint Kitts and Nevis authorities indicated that they will not question the requesting jurisdiction's grounds for not notifying the taxpayer in question, as long as the explanation falls within the scope of one of the exemptions from prior notification provided under the law. A letter of notification is sent to the taxpayer after the request has been verified by the EOI Unit and, if applicable, a response is received from the requesting jurisdiction.

344. If none of the exemptions for prior notification requirements apply, the Competent Authority will send a notification letter to the taxpayer subject to the request, informing him/her of the existence of the request, the name of the jurisdiction making the request, the legal instrument under which the request is made and a very brief and general description of the information being sought. The notice also clearly outlines the timeframe in which the taxpayer may make a written submission to the Competent Authority.

345. During the review period Saint Kitts and Nevis received a number of requests that did not specify if it related to a civil or criminal matter. As

such, the Saint Kitts and Nevis Competent Authority contacted the requesting jurisdiction seeking clarification before determining whether a letter of notification was required to be sent to the taxpayer concerned. Of the 23 EOI requests received, 12 pertained to criminal matters. In practice, no issues arose from the prior notification procedure during the review period.

346. The 2016 ToR contain a new requirement to have an exception to time-specific, post-exchange notification.²¹ There is no post-exchange notification requirement set out in the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act.

21. A requested jurisdiction should provide for an exception from time-specific, post-exchange notification in cases where notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction and the requesting jurisdiction has made a request for the application of such an exception on this basis that is founded on reasonable grounds.

Part C: Exchanging information

347. Sections C.1 to C.5 evaluates the effectiveness of Saint Kitts and Nevis' 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 Saint Kitts and Nevis could request and provide information relevant for tax purposes in an effective manner.

C.1. Exchange of information mechanisms

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

348. The 2014 Report concluded that Saint Kitts and Nevis' network of EOI mechanism was “in place” and rated Compliant. In 2014, Saint Kitts and Nevis had three DTCs, 21 TIEAs and was a signatory to the CARICOM Multilateral Tax Treaty. Although the 2014 Report identified issues with some of the EOI agreements entered into by Saint Kitts and Nevis, these were not considered major issues and did not warrant a downgrade of the determination from “in place”.

349. Since the 2014 Report, Saint Kitts and Nevis has signed a DTC with the United Arab Emirates, signed a TIEA with Ireland, and ratified a TIEA with Germany, India, and South Africa. Also, the TIEA with New Zealand entered into force in March 2018. Further, on 25 August 2016, Saint Kitts and Nevis signed the MAAC, which entered into force in Saint Kitts and Nevis on 1 December 2016. The MAAC addresses the remaining concerns in relation to Saint Kitts and Nevis' EOI agreements that contain non-standard provisions as both Saint Kitts and Nevis and these treaty partners are now parties to the MAAC.

350. In practice, Saint Kitts and Nevis applies its EOI agreements in line with the standard. No issue in this respect was identified in the first round review and no issue was identified during the current period under review.

Saint Kitts and Nevis provides information to the widest possible extent as was also confirmed by peers.

351. The new 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

ToR C.1.1. Foreseeably relevant standard

352. Exchange of information mechanisms should allow for EOIR where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. The 2014 Report determined that all of Saint Kitts and Nevis' TIEAs and the DTCs with Monaco and San Marino were in line with the standard of foreseeably relevance.

353. The CARICOM Multilateral Tax Treaty provides for EOI that is “necessary” for carrying out the provisions of the Convention or of the domestic tax laws of the Contracting States. As determined in the 2014 Report, this term is recognised in the commentary to Article 26 of the OECD Model DTC as allowing for the same scope of exchange.

354. The 2014 Report concluded that the DTC with Switzerland was not in line with the standard as it limited EOI to “information as is necessary for carrying out the provisions of the Convention” as opposed to for the administration of the domestic tax laws. Given that both Switzerland and Saint Kitts and Nevis are parties to the MAAC, they are in a position to exchange information under the MAAC in accordance with the standard.

355. The 2014 Report also noted that the TIEA with Liechtenstein provided specific circumstances under which the requested party may decline a request if the amount of tax or duty in question did not exceed the threshold of EUR 25 000. According to Saint Kitts and Nevis officials, the Competent Authority would not question the requesting jurisdiction's statement that the tax amount exceeded the threshold and they would not decline a request based on this provision. To date, Saint Kitts and Nevis has not received a request, nor sent any requests, for information under this agreement. Saint Kitts and Nevis and Liechtenstein are beginning the process of amending the existing TIEA to bring it in line with the OECD Model TIEA. In addition, given that both Liechtenstein and Saint Kitts and Nevis are parties to the MAAC, they are in a position to exchange information under this agreement in accordance with the standard.

356. Saint Kitts and Nevis continues to interpret and apply its EOI agreements consistently with the standard of foreseeable relevance, as embedded in the commentary to Article 26 of the OECD Model Convention. The Saint Kitts and Nevis Competent Authority reported that all incoming EOI requests are processed according to the guidelines provided in their EOI Manual which is based on the EOI Working Manual published by the Global Forum.

357. The Saint Kitts and Nevis Competent Authority confirmed that it has never declined an EOI request on the basis of lack of foreseeable relevance. In practice, if a request was considered unclear or incomplete, Saint Kitts and Nevis would seek clarification or additional information from the requesting jurisdiction before declining to respond to it. Peers did not raise any concerns regarding the Saint Kitts and Nevis' interpretation of the standard of foreseeable relevance.

358. Since the 2014 Report, Saint Kitts and Nevis expanded its EOI network by entering into a new DTC with the United Arab Emirates; a new TIEA with Ireland; ratifying a TIEA with Germany, India and South Africa; and becoming a party to the MAAC. All of these instruments are in line with the standard of foreseeable relevance.

Group Requests

359. None of Saint Kitts and Nevis' EOI agreements or domestic law contain language prohibiting group requests. Saint Kitts and Nevis interprets its EOI agreements and its domestic law such that it can reply to a group request to the extent that it meets the standard of foreseeable relevance as described in the 2012 update to the Commentary on Article 26 of the OECD Model Tax Convention.

360. During the period under review Saint Kitts and Nevis did not receive or make any group requests. The same access powers and general procedures will apply as in respect of other types of requests (see section C.5.2).

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

361. The 2014 Report found that all of Saint Kitts and Nevis' EOI agreements allow for EOI with respect to all persons. The report noted that the TIEAs concluded with Germany, Portugal and Guernsey used the words “obtainable by” instead of the expression “in control of” used in Article 2 of the OECD Model TIEA.²² The report concluded that Saint Kitts and Nevis' interpretation

22. According to these TIEAs, the requested party is under no obligation “to provide information which is neither held by the authorities nor in the possession of nor

of “obtainable by” did not reduce EOI. To date, Saint Kitts and Nevis has not received a request, nor sent any requests, for information under these agreements. Further, Saint Kitts and Nevis, Germany, Portugal and Guernsey are parties to the MAAC, which allows for EOIR with respect to all persons.

362. The EOI agreements entered into by Saint Kitts and Nevis since the 2014 Report allow for EOI with respect to all persons. Peers have not raised any concerns.

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

363. The OECD Model Tax Convention Article 26(5) and the OECD 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.

364. The 2014 Report found that all of Saint Kitts and Nevis’ EOI agreements, except for the CARICOM Multilateral Tax Treaty and the DTC with Switzerland, contained provisions similar to Article 5(4) of the OECD Model TIEA or Article 26(5) of the OECD Model Tax Convention.

365. As described in section B.1.3, the 2014 Report concluded that the CARICOM Multilateral Tax Treaty only met the standard with respect to five jurisdictions (Antigua and Barbuda, Barbados, Belize, Jamaica and Saint Vincent and the Grenadines). Saint Kitts and Nevis authorities reported having made efforts to promote that the EOI article in this agreement be amended to fully conform to the international standard. However, this agreement has not been amended to date. Since the 2014 Report, three signatories to the CARICOM Multilateral Tax Treaty (i.e. Dominica, Grenada and Saint Lucia) have amended their legislation to address the deficiencies in their domestic legislation and can now exchange all types of information. In addition, Antigua and Barbuda, Jamaica, Saint Kitts and Nevis, and Saint Lucia are now parties to the MAAC which means that they can exchange all types of information once the MAAC enters into force in Antigua and Barbuda and Jamaica. EOI under the CARICOM Multilateral Tax Treaty is still not to the standard with Trinidad and Tobago due to serious deficiencies regarding access powers of the Trinidad and Tobago’s Competent Authority.²³

obtainable by persons who are within its territorial jurisdiction”. (Underlined for emphasis.)

23. As reviewed by the Global Forum in the Phase 1 Peer Review Report of Trinidad and Tobago, 2011.

Also, Guyana has not yet been reviewed by the Global Forum and information is not available as regards to Guyana's Competent Authority's power to access banking information and to obtain ownership, identity and accounting information for purposes of EOI. It is therefore not possible to confirm that the CARICOM Multilateral Tax Treaty with regards to Guyana meets the standard.

366. The DTC with Switzerland does not meet the standard. However, given that both Switzerland and Saint Kitts and Nevis are now parties to the MAAC, they are in a position to exchange information under this agreement in accordance with the standard.

367. The four EOI agreements that Saint Kitts and Nevis has entered into since the 2014 Report do not contain any limitations concerning the exchange of all types of information.

368. During the review period, Saint Kitts and Nevis exchanged different types of information, including ownership, accounting and banking information. There was no case 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. No issue was reported by peers in this respect.

ToR C.1.4. Absence of domestic tax interest

369. 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 OECD Model TIEA Article 5(2).

370. The 2014 Report concluded that Saint Kitts and Nevis' EOI agreements either contained language similar to that of Article 26(4) of the Model Tax Convention or Article 5(2) of the OECD Model TIEA or, when this was not the case, the domestic legislation of the treaty partners did not require the presence of domestic tax interest for the purposes of EOI. The report also found that in respect of Saint Kitts and Nevis' CARICOM partners, a domestic tax requirement existed in the case of Dominica, Grenada and Trinidad and Tobago. Since that report, Dominica and Grenada have both amended their legislation to remove the domestic tax interest requirement. The situation remains the same in respect of Trinidad and Tobago. Guyana has not yet been reviewed by the Global Forum and as such information is not available as regards to Guyana's Competent Authority's powers to access banking information and to obtain ownership, identity and accounting information for purposes of EOI. It is therefore not possible to confirm that the CARICOM Multilateral Tax Treaty with regards to Guyana meets the standard.

371. The EOI agreements entered into since the 2014 Report allow information to be obtained and exchanged even if it is not required for domestic tax purposes. In practice, no issues linked to domestic tax interest arose during the current review period and this is confirmed by peers.

ToR C.1.5. Absence of dual criminality principles

372. There are no dual criminality provisions in any of Saint Kitts and Nevis' EOI agreements, including those entered into since the 2014 Report. In practice, there has been no case where Saint Kitts and Nevis declined a request because of a dual criminality requirement. This has been confirmed by peers.

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

373. The 2014 Report describes an issue that arose in relation to EOI in criminal tax matters predating the entry into force of two TIEAs (see further description in section C.1.9); however, as noted in that report, Saint Kitts and Nevis amended its legislation and was able to obtain and exchange the requested information. The report determined that Saint Kitts and Nevis' EOI agreements provided for exchange in both civil and criminal matters.

374. The EOI agreements entered into by Saint Kitts and Nevis since its last review provide for EOI in both civil and criminal tax matters. No peers reported concerns regarding Saint Kitts and Nevis' ability to exchange information relevant to criminal tax matters.

ToR C.1.7. Provide information in specific form requested

375. The 2014 Report found that Saint Kitts and Nevis could provide information in any form to the extent allowed under its domestic laws or administrative practices.

376. The EOI agreements entered into since the 2014 Report allow the parties to provide information in the specific form requested to the extent allowable under the requested jurisdiction's domestic laws.

377. In practice, Saint Kitts and Nevis provides information in the requested form in line with the standard and no peers raised any concerns.

ToR C.1.8. Signed agreements should be in force

378. The 2014 Report concluded that Saint Kitts and Nevis had taken all steps necessary to bring into force all EOI agreements it had signed, except for the TIEA with Germany. Since then, Saint Kitts and Nevis has ratified this TIEA and a new TIEA with India and South Africa. Also, the TIEA with New

Zealand entered into force. In addition, Saint Kitts and Nevis signed a TIEA with Ireland, a DTC with the United Arab Emirates and ratified the MAAC.

379. Saint Kitts and Nevis' EOI network now covers 126 jurisdictions through 28 bilateral agreements, the CARICOM Multilateral Tax Treaty, and the MAAC. Two TIEAs and one DTC are currently not in force,²⁴ although Saint Kitts and Nevis has taken all necessary steps to bring these TIEAs into force and is awaiting notification of ratification from its treaty partners. With regards to the DTC, an incorrect version of the agreement was signed; Saint Kitts and Nevis and the United Arab Emirates are in the process of rectifying this issue. And the MAAC is currently not in force in 25 of Saint Kitts and Nevis' partner jurisdiction.²⁵

380. Saint Kitts and Nevis ratifies its agreements expeditiously. The ratification process in Saint Kitts and Nevis typically takes less than one year.

381. The following table summarises the outcomes of the analysis under element C.1 in respect of Saint Kitts and Nevis' bilateral EOI mechanisms):

Bilateral EOI mechanisms

A	Total number of DTCs/TIEAs (A= B+C)	28
B	Number of DTCs/TIEAs signed but not in force (B = D+E)	3
C	Number of DTCs/TIEAs signed and in force (C = F+G)	25
D	Number of DTCs/TIEAs signed (but not in force) and to the Standard	3
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	24
G	Number of DTCs/TIEAs in force and not to the Standard	1*

* This refers to the DTC with Switzerland. Both jurisdictions are parties to the MAAC and are able to exchange information in accordance with the international standard.

382. In addition to Saint Kitts and Nevis' bilateral agreements, Saint Kitts and Nevis signed the MAAC on 26 August 2016. The MAAC entered into force in Saint Kitts and Nevis on 1 December 2016. Saint Kitts and Nevis is

24. These are the TIEAs with Iceland and Ireland.

25. These 25 jurisdictions are: Antigua and Barbuda, 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, Former Yugoslav Republic of Macedonia, Gabon, Grenada (entry into force on 1 September 2018), Hong Kong (China) (extension by China) (entry into force on 1 September 2018), Jamaica, Kenya, Kuwait, Liberia, Macau (China) (extension by China) (entry into force on 1 September 2018), Morocco, Paraguay, Peru (entry into force on 1 September 2018), Philippines, Qatar, United Arab Emirates (entry into force on 1 September 2018), the United States, and Vanuatu.

also party to the CARICOM Multilateral Tax Treaty, which entered into force on 30 November 1994 in Saint Kitts and Nevis.

ToR C.1.9. Be given effect through domestic law

383. In the 2014 Report, two peers commented that Saint Kitts and Nevis had not provided information following requests that related to periods before the entry into force of the TIEAs under which the requests were made. The requests concerned criminal tax matters, and the peers were of the opinion that the entry into force provision of the TIEA obligated Saint Kitts and Nevis to exchange information with respect to criminal tax matters, whether they relate to a taxable period after or before the entry into force of the TIEA. On the other hand, Saint Kitts and Nevis considered that retroactivity was not permissible unless clearly provided for in the TIEA concerned, while accepting that information with respect to criminal tax matters which predates the entry into force of the TIEA should be exchanged if it relates to a tax period after the entry into force of the TIEA. Although Saint Kitts and Nevis did not fully accept the peers' interpretation, they amended their legislation to ensure that they had the power to obtain and exchange information in criminal tax matters that occurred prior to the entry into force of the agreement, or the amended legislation itself, provided that "such information shall not be used in evidence if its use would have the effect of having the concerned individual penalised". The 2014 Report noted that the amended legislation restricted the Competent Authority's powers to obtain and exchange information in criminal tax matters if such information is used as evidence and its use would lead to penalties in the requesting jurisdiction. The report concluded that it was uncertain how the restricted provision would be interpreted in practice.

384. Effective 27 August 2014, the provision restricting the Competent Authority's powers to obtain and exchange information in criminal tax matters if such information is used as evidence and its use would lead to penalties in the requesting jurisdiction was repealed from the Act.

385. Effective implementation of EOI agreements in domestic law has been confirmed in practice as there was no case encountered where Saint Kitts and Nevis was not able to obtain and provide the requested information due to unclear or limited effect of an EOI agreement in Saint Kitts and Nevis' law. No issues were raised 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.

386. The 2014 Report did not identify any issue in respect of the scope of Saint Kitts and Nevis' EOI network or its negotiation policy.

387. Since that report, Saint Kitts and Nevis has expanded its EOI network from 34 jurisdictions to 126. This EOI network comprises of four DTCs, 24 TIEAs, the MAAC and the CARICOM Multilateral Tax Treaty. Saint Kitts and Nevis' EOI network encompasses a wide range of counterparties, including all of its major trading partners, all the G20 members and all OECD members. Saint Kitts and Nevis is recommended to continue to develop its EOI network with all relevant partners.

388. Comments were sought from peers in the preparation of this report and no peer advised that Saint Kitts and Nevis had refused to negotiate or sign an EOI agreement with it. Liechtenstein did indicate that it had approached Saint Kitts and Nevis to amend the existing TIEA to bring it in line with the OECD Model TIEA but had not received a response. After receiving Liechtenstein's input, Saint Kitts and Nevis discovered that the request was made by Liechtenstein through diplomatic channels but not received by the appropriate Ministry in Saint Kitts and Nevis. Saint Kitts and Nevis now has Ministerial approval to amend the existing TIEA with Liechtenstein and will take the necessary action to facilitate the amendments to the TIEA. Also, given that both Liechtenstein and Saint Kitts and Nevis are parties to the MAAC, they are in a position to exchange information under this agreement in accordance with the standard.

389. 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
Rating: Compliant

C.3. Confidentiality

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

390. The 2014 Report concluded that all of Saint Kitts and Nevis' EOI agreements have confidentiality provisions in line with the standard. This continues to be the case with the new EOI agreements entered into by Saint Kitts and Nevis since the 2014 Report.

391. Although the 2014 Report concluded that Saint Kitts and Nevis' confidentiality rules were implemented in practice to ensure that the exchanged

information was protected in line with the standard, the report did note two potential areas of concern: (i) it did not appear that public access to the premises of the EOI Unit was restricted; and (ii) the EOI officer’s desk was located in a work area shared with other Ministry of Finance officials. Saint Kitts and Nevis was recommended to monitor the procedures in place to ensure that confidential tax information is not disclosed to unauthorised persons. Since the 2014 Report, Saint Kitts and Nevis has ensured that public access to the premises of the EOI Unit is restricted and this was confirmed during the March 2018 on-site visit to the Ministry of Finance. Also, EOI officers now have a closed office space, separate from other Ministry of Finance officials, which they use when working on EOI requests. These measures ensure confidentiality of the EOI requests in line with the standard.

392. There are adequate confidentiality provisions protecting tax information under Saint Kitts and Nevis’ domestic tax laws. No case of breach of confidentiality has been encountered in the EOI context and no concerns have been reported by peers.

393. The new 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

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

394. The 2014 Report concluded that all of Saint Kitts and Nevis’ EOI agreements met the standards for confidentiality including the limitations on disclosure of information received, and use of the information exchanged, which are reflected in Article 26(2) of the OECD Model Tax Convention and Article 8 of the OECD Model TIEA. The MAAC also provides for confidentiality in line with the standard under Article 22. The CARICOM Multilateral Tax Treaty has a confidentiality clause that determines that any information exchanged between the parties shall be treated as secret and shall only be disclosed to persons or authorities including courts and other administrative bodies concerned with the assessment or collection of the taxes which are dealt with in the agreement. It also specifies that such persons or authorities shall use the information only for the assessment or collection of taxes and may only disclose the information in public court proceedings or judicial decisions.

395. There are adequate confidentiality provisions protecting tax information contained in Saint Kitts and Nevis’ domestic laws which are supported by administrative and criminal sanctions applicable in the case of breach of

these obligations. There has been no change in these provisions since the 2014 Report.

396. Pursuant to section 4 of the Confidential Relationships Act and section 17 of the Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act, Ministry of Finance officials are subject to fines or imprisonment for disclosing taxpayer information in violation of the confidentiality laws. The Saint Kitts and Nevis authorities reported that there are no cases of improper disclosure of EOI information in the current review period.

397. The information contained in an EOI request received by Saint Kitts and Nevis is treated as secret. Information received from a treaty partner is only used for the purposes provided for it in the EOI agreement.

398. All EOI related tasks are centralised within a single EOI Unit which is trained on confidentiality principles. In addition, all employees of the Ministry of Finance (which includes EOI officers) undergo training that includes information on applicable confidentiality policies.

399. All documents pertaining to an EOI request are stamped “confidential” and the responses provided by Saint Kitts and Nevis always contain the standard wording stating that the information is furnished under the provisions of a tax treaty and is subject to tax confidentiality under the provisions of that treaty. All responses are sent by registered post because Saint Kitts and Nevis does not yet have the capability to send encrypted emails.

400. In order to obtain the requested information, the information holder receives a notice from the Competent Authority which contains only the minimal amount of information necessary to respond to the notice. In practice, the notice lists the details of the information to be provided and the legal basis of the notice (e.g. assistance under the respective EOI agreement together with reference to the relevant provision of Saint Christopher and Nevis (Mutual Exchange of Information on Taxation Matters) Act). The Saint Kitts and Nevis authorities have confirmed that the name of the person under investigation in the requesting jurisdiction will only be disclosed when it is necessary in order to obtain the requested information. The notice stresses the importance of confidentiality and, provided that the notification requirements are waived (see section B.2), additional language is added to clarify that the person requested to provide the information is prohibited from notifying any other person, including the person under investigation (which will only be known if such information is provided in the notice because of necessity), except for their own attorney or any other person named by the Competent Authority.

401. Access to data received from partners through EOI is limited to only the EOI officers who undertake EOI work. All records in relation to EOI

requests are kept in a dedicated fire-proof filing cabinet in the Competent Authority Designate’s office. Only she and the EOI officers have keys to this cabinet. The Ministry of Finance has adopted a “clean desk” policy. Also, only EOI related files that are being worked on may be removed from the cabinet and must be returned to the cabinet immediately after use.

402. Although the 2014 Report concluded that Saint Kitts and Nevis’ confidentiality rules were implemented in practice to ensure that the exchanged information was protected in line with the standard, the report did note two potential areas of concern: (i) it did not appear that public access to the premises of the EOI Unit was restricted; and (ii) the EOI officer’s desk was located in a work area shared with other Ministry of Finance officials. Saint Kitts and Nevis was recommended to monitor the procedures in place to ensure that confidential tax information was not disclosed to unauthorised persons. Since the 2014 Report, Saint Kitts and Nevis has ensured that public access to the premises of the EOI Unit is restricted and this was confirmed during the March 2018 on-site visit to the Ministry of Finance. In addition, EOI officers now have a closed office space, separate from other Ministry of Finance officials, which they use when working on EOI requests. These measures ensure confidentiality in line with the standard.

403. No case of breach of the confidentiality obligation in respect of EOI has been encountered by the Saint Kitts and Nevis authorities and no peers raised any concerns.

ToR C.3.2. Confidentiality of other information

404. Confidentiality rules should apply to all types of information exchanged, including information provided by a requesting jurisdiction in a request, information transmitted in response to a request and any background documents to such request. Saint Kitts and Nevis authorities confirm that in practice they consider all types of information relating to an EOI request confidential (including communications between Saint Kitts and Nevis and the requesting jurisdiction).

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

405. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise. The 2014 Report found that all of the TIEAs concluded by Saint Kitts and Nevis, as well as the CARICOM Multilateral Tax Treaty and the DTCs with Monaco and San Marino contained provisions in line with the standard. The DTC with Switzerland was not in line with the standard.

406. All of Saint Kitts and Nevis' EOI agreements concluded since the 2014 Report allow for the exceptions from the obligation to provide the requested information akin to the exemption contained in the OECD Model Tax Convention and OECD Model TIEA. The MAAC contains a provision consistent with the standard, ensuring the confidentiality of information exchanged and limiting the disclosure and use of the information received. With regards to the DTC with Switzerland, given that both Switzerland and Saint Kitts and Nevis are parties to the MAAC, they are in a position to exchange information under this agreement in accordance with the standard.

407. As discussed above, the scope of protection of information covered by the exemption contained in Saint Kitts and Nevis' domestic law is consistent with the international standard.

408. There was no instance during the review period where a person refused to provide information because of professional secrecy. Also, Saint Kitts and Nevis did not decline to provide information because it was covered by legal professional privilege or any other professional secret. Further, no peer raised any issue.

409. The new 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

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.

410. 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.

411. The 2014 Report concluded that Saint Kitts and Nevis should monitor the practical implementation of the organisational processes and the process for handling incoming requests to ensure that they could exchange information effectively and in a timely manner.

412. Saint Kitts and Nevis has taken steps to address this recommendation by monitoring to ensure that sufficient resources have been allocated to the EOI Unit. The EOI Unit is staffed with an additional EOI officer and another Ministry of Finance official is currently being trained to work in the EOI Unit. Further, Saint Kitts and Nevis' response times have improved since the 2014 Report, even with a significant increase in the number of incoming requests. During the review period, Saint Kitts and Nevis received 23 EOI requests (up from four requests during the last review period). Saint Kitts and Nevis responded to 78% of incoming requests within 90 days and 87% of requests within 180 days. There are three pending requests. Saint Kitts and Nevis is waiting for a response to its requests for clarification with regards to two of these pending requests. The third pending request requires legal proceedings to be commenced against the information holders. Overall, the organisation and procedures are complete and coherent. Peers were generally very satisfied with the responses sent.

413. 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

414. Over the period under review (1 July 2014 to 30 June 2017), Saint Kitts and Nevis received a total of 23 requests for information. The information requested in these requests²⁶ related to (i) ownership information (11 cases), (ii) accounting information (nine cases), (iii) banking information (14 cases) and (iv) other type of information (30 cases). The legal entities and arrangements for which information was requested²⁷ are broken down to (i) companies (seven cases), (ii) individuals (20 cases), (iii) trusts (three cases) and (iv) foundation which was operated by a trust company in Saint Kitts and Nevis (one case).

415. The following table relates to the requests received during the period under review and give an overview of response times needed by Saint Kitts and Nevis to provide a final response to these requests together with a summary of other relevant factors impacting the effectiveness of Saint Kitts and Nevis' EOI practice during the reviewed period.

Timeliness statistics

		Year 1		Year 2		Year 3		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	[A+B+C+D+E]	4	17	12	52	7	31	23	100
Full response: ≤ 90 days		4	100	9	75	5	71	18	78
(cumulative) ≤ 180 days		4	100	11	92	5	71	20	87
≤ 1 year (cumulative)	[A]	4	100	11	92	5	71	20	87
> 1 year	[B]	0	0	0	0	0	0	0	0
Declined for valid reasons		0	0	0	0	0	0	0	0
Status update provided within 90 days (for responses sent after 90 days)		0	0	3	100	2	100	5	100
Requests withdrawn by requesting jurisdiction	[C]	0	0	0	0	0	0	0	0
Failure to obtain and provide information requested	[D]	0	0	0	0	0	0	0	0
Requests still pending at date of review	[E]	0	0	1	8	2	29	3	13

Notes: Saint Kitts and Nevis counts each written request from an EOI partner as one EOI request even where more than one person is the subject of an inquiry and/or more than one piece of information is requested.

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.

26. Please note that some requests entailed more than one information category.

27. Please note that some requests entailed more than one individual or entity type.

416. Saint Kitts and Nevis responded to 78% of the incoming EOI requests within 90 days and 87% of requests within 180 days. The response times have improved since the 2014 Report, even with a significant increase in the number of incoming requests (up from four requests). Saint Kitts and Nevis' timely response to EOI requests was confirmed by peers who also noted good quality of responses.

417. In respect of two of the three pending requests, Saint Kitts and Nevis sought clarification from the requesting jurisdictions. In both cases the requesting jurisdiction has not yet provided the requested clarification. Saint Kitts and Nevis' requests for clarification have not caused any unnecessary delays as these requests for clarification were sent promptly upon receipt of the request. Also, where the request contained multiple information items and clarification was only required on one or some items, processing of the items that did not require clarification continued and the information in relation to these items was supplied as part of an interim reply.

418. With regards to the third pending request which is over a year old, Saint Kitts and Nevis' Competent Authority sought the requested information from the directors of an IBC; however, the directors refused to provide the information. Following the EOI procedure, the Competent Authority then approached the Attorney General's Chambers to commence legal proceedings against the directors. Saint Kitts and Nevis officials explained that the time delay in commencing the legal action is due to staffing turnover at the Attorney General's Chambers. Following the on-site visit, Saint Kitts and Nevis officials advised that the Attorney General's Chambers is finalising the affidavit to be filed with the court. In addition to commencing legal proceedings, the Competent Authority sent a request for information to the service provider of the concerned IBC and is awaiting a response.

419. During the period under review Saint Kitts and Nevis did not decline any EOI requests. Saint Kitts and Nevis provides status updates within 90 days (as required under the standard) and this is confirmed by peers.

ToR C.5.2. Organisational processes and resources

420. The 2014 Report concluded that Saint Kitts and Nevis' EOI Unit was sufficiently staffed and resourced, considering the few number of EOI requests received, and that EOI Unit staff had a high level of knowledge of EOI. There had been delays with two of the four EOI requests received during that period of review. Saint Kitts and Nevis was encouraged to monitor the handling of incoming requests to ensure that they could exchange information effectively and in a timely manner.

421. The number of EOI requests received by Saint Kitts and Nevis increased from four requests to 23 requests. In order to deal with the

increased number of EOI requests, the EOI Unit is staffed with a new EOI officer, thus raising the number of EOI Unit staff to three (the Competent Authority Designate and two EOI officers). All EOI Unit staff have a high level of knowledge of EOI and have attended training seminars on EOI facilitated by the Global Forum and internal training sessions. Saint Kitts and Nevis authorities also advised that an additional Ministry of Finance official is being trained to work in the EOI Unit to ensure that there will be sufficient resources available to handle any increase in the number of EOI requests. This increase in staffing has permitted Saint Kitts and Nevis to provide timely responses to EOI requests. The timeliness of Saint Kitts and Nevis' responses is confirmed by peers.

Incoming requests

422. The Competent Authority Designate uses a manual system of recording EOI requests (i.e. an excel spreadsheet) and a computerised database (based on the EOI database developed by the Global Forum) for easier tracking and monitoring of requests for EOI.

423. The procedures for handling incoming EOI requests remain the same as those described in the 2014 Report. The EOI Unit uses an EOI Manual (based on the Global Forum's EOI Working Manual) which sets out the proper procedures for handling requests, providing template forms for requesting information to fulfil a partner's request, and information on confidentiality. As the EOI Manual has not been revised since 2013, Saint Kitts and Nevis should, where appropriate, update the manual, including information on group requests and application of the MAAC.

424. The Competent Authority Designate uses several performance measures to monitor the effective operation of the EOI Unit. These indicators include: number of requests handled (to measure the EOI Unit's workload); response time (to measure the length of time before a reply is issued); number of open cases and case age (to ensure that cases are being continually reviewed); and number of closed cases (to measure EOI Unit accomplishments).

Outgoing requests

425. The 2016 ToR also includes a requirement to ensure the quality of requests made by the assessed jurisdiction. Saint Kitts and Nevis did not make any EOI requests during the review period; however, the EOI Manual does provide rules for handling outgoing requests and establishes procedures to ensure the quality of EOI requests. All outgoing requests would be made through the EOI Unit and would follow standard procedures to ensure consistency, all of which are contained in the EOI Manual. These procedures are

in line with the Global Forum's EOI Working Manual. The EOI Manual is available to all tax examiners.

Communication

426. Saint Kitts and Nevis accepts requests in English. If the request is not in English, the requesting competent authority would be asked to translate the request. Saint Kitts and Nevis sends outgoing requests in English as agreed with the particular treaty partner.

427. Official internal communication within the tax administration is carried by telephone, in person or by internal courier system.

428. Communication tools used for external communication with other Competent Authorities is done mostly through registered post. E-mails are used for sending acknowledgment letters, requests for clarification or to provide status updates. No communication that mentions the taxpayer(s) under investigation, details of EOI requests or any other information that may be confidential is sent through e-mail. All such confidential communication is sent via registered post. EOI information is not sent by e-mail because Saint Kitts and Nevis does not yet have the capability to send encrypted emails. Saint Kitts and Nevis officials confirm that confidential information is never sent by e-mail.

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

429. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. There are no factors or issues identified under this element that could unreasonably, disproportionately or unduly restrict effective EOI in Saint Kitts and Nevis.

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.1.1:** The number of newly registered companies in Saint Kitts is relatively small; however, Saint Kitts should monitor the “three-year grace period” policy that the Registrar applies to these companies in order to ensure the availability of ownership information in respect of all companies newly registered in Saint Kitts.
- **Elements A.1.1 and A.3:** Saint Kitts and Nevis should ensure that its third party reliance rules are in line with the international standard.
- **Element A.1.4:** It is recommended that Saint Kitts and Nevis ensure that there is an effective oversight of the legal obligations imposed on trustees to ensure that all beneficial owners of a trust are required to be identified, in line with the standard.
- **Element C.2:** Saint Kitts and Nevis is recommended to continue to develop its EOI network with all relevant partners.
- **Element C.5.2:** The EOI Manual has not been revised since 2013; Saint Kitts and Nevis should, where appropriate, update the manual, including information on group requests and application of the MAAC.

Annex 2: List of Saint Kitts and Nevis' EOI mechanisms

Bilateral international agreements for the exchange of information

EOI partner	Type of agreement	Date signed	Date entered into force (ToR C.1.8)
1. Aruba	TIEA	11-Sep-09	19-Oct-11
2. Australia	TIEA	05-Mar-10	11-Jan-11
3. Belgium	TIEA	18-Dec-09	20-Feb-14
4. Canada	TIEA	14-Jun-10	21-Nov-11
5. Curaçao ^a	TIEA	11-Sep-09	06-Nov-14
6. Denmark	TIEA	02-Sep-09	23-Feb-11
7. Faroe Islands	TIEA	24-Mar-10	17-Jun-11
8. Finland	TIEA	24-Mar-10	21-Mar-11
9. France	TIEA	01-Apr-10	16-Dec-10
10. Germany	TIEA	13-Oct-10	19-Sep-16
11. Greenland	TIEA	24-Mar-10	23-Mar-14
12. Guernsey	TIEA	18-Jan-12	14-Apr-13
13. Iceland	TIEA	24-Mar-10	Not in force
14. India	TIEA	11-Nov-14	02-Feb-16
15. Ireland	TIEA	20-Jul-15	Not in force
16. Liechtenstein	TIEA	11-Dec-09	14-Feb-11
17. Monaco	DTC	17-Sep-09	01-Dec-11
18. Netherlands	TIEA	02-Sep-09	29-Nov-10
19. New Zealand	TIEA	24-Nov-09	06-Mar-18
20. Norway	TIEA	24-Mar-10	12-Jan-11
21. Portugal	TIEA	29-Jul-10	19-May-17
22. San Marino	DTC	20-Apr-10	12-Feb-14
23. Sint Maarten ^b	TIEA	11-Sep-09	06-Nov-14

EOI partner	Type of agreement	Date signed	Date entered into force (ToR C.1.8)
24. South Africa	TIEA	07-Apr-15	18-Feb-17
25. Sweden	TIEA	24-Mar-10	31-Dec-10
26. Switzerland	DTC	26-Aug-63	01-Jan-61
27. United Arab Emirates	DTC	24-Nov-16	Not in force
28. United Kingdom	TIEA	18-Jan-10	19-May-11

Notes: a. Following the dissolution of the Netherlands Antilles on 10 October 2010, two separate jurisdictions were formed (Curaçao and Sint Maarten) with the remaining three islands (Bonaire, Saint Eustatius and Saba) joining the Netherlands as special municipalities. TIEAs concluded with the Kingdom of the Netherlands, on behalf of the Netherlands Antilles, will continue to apply to Curaçao, Sint Maarten and the Caribbean part of the Netherlands (Bonaire, Saint Eustatius and Saba) and will be administered by Curaçao and Sint Maarten for their respective territories and by the Netherlands for Bonaire, Saint Eustatius and Saba.

b. *Ibid.*

Convention on Mutual Administrative Assistance in Tax Matters (amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).²⁸ The Multilateral 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 original 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 Multilateral Convention was opened for signature on 1 June 2011.

Saint Kitts and Nevis signed the Multilateral Convention on 25 August 2016 and entered into force on 1 December 2016 in Saint Kitts and Nevis. Saint Kitts and Nevis can exchange information with all other Parties to the Multilateral Convention.

28. 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.

As of 31 July 2018, the Multilateral Convention is 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, Curaçao (extension by the Netherlands), Cyprus,²⁹ Czech Republic, Denmark, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension 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, Turkey, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Kingdom and Uruguay.

In addition, the Multilateral Convention was signed by, or its territorial application extended to, the following jurisdictions, where it is not yet in force: Antigua and Barbuda, 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, Former Yugoslav Republic of Macedonia, Gabon, Grenada (entry into force on 1 September 2018), Hong Kong (China) (extension by China, entry into force on 1 September 2018), Jamaica, Kenya, Kuwait (entry into force on

29. 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 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.

1 December 2018), Liberia, Macau (China) (extension by China, entry into force on 1 September 2018), Morocco, Paraguay, Peru (entry into force on 1 September 2018), Philippines, Qatar, United Arab Emirates (entry into force on 1 September 2018), United States (the original 1988 Convention in force on 1 April 1995, the amending Protocol signed on 27 April 2010) and Vanuatu (entry into force on 1 December 2018).

CARICOM

The Agreement among the Governments of the Member States of the Caribbean Community for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Profits or Gains and Capital Gains and for the Encouragement of Regional Trade and Investment allows for EOI between Antigua and Barbuda, Barbados, Belize, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Trinidad and Tobago.

Annex 3: Methodology for the review

The reviews are based on the 2016 ToR, 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 Saint Kitts and Nevis' implementation of the EOIR standard conducted by the Global Forum.

Laws, regulations and other material received

- St. Christopher and Nevis Constitution Order Fourth Schedule of the West Indies Act (CAP 1.01)
- Companies Act (CAP 21.03)
- Companies Ordinance (CAP 7.06)
- Companies Regulations, 1999
- Nevis Business Corporations Ordinance (CAP 7.01)
- Nevis Limited Liability Company Ordinance (CAP 7.04)
- Nevis Business Corporation Ordinance, 2017
- Nevis Limited Liability Company Ordinance, 2017
- Licences on Business and Occupations Act (CAP 18.20)
- Limited Partnerships Act (CAP 21.12)
- Trusts Act (CAP 5.19)
- Nevis International Exempt Trust Ordinance (CAP 7.03)
- Foundations Act (CAP 21.19)
- Multiform Foundations Ordinance (CAP 7.08)
- Banking Act (CAP 21.01)

Nevis International Banking Ordinance 2014
Proceeds of Crime Act (CAP 4.28)
Financial Services Regulatory Commission Act (CAP 21.10)
Companies Act, Seventh Schedule Financial Services (Regulations)
Order
Anti-Money Laundering Regulations No. 46 of 2011
Anti-Terrorism (Prevention of Terrorist Financing) Regulations No. 47
of 2011
Financial Services (Implementation of Industry Standards) Regulations,
No. 51 of 2011 with appended Guidance Notes
Income Tax Act (CAP 20.22)
Tax Administration and Procedures Act (CAP 20.52)
Unincorporated Business Tax Act No. 5 of 2010
Tax Administration and Procedures Ordinance (CAP 6.11(N))
Value Added Tax Act No. 3 of 2010
Saint Christopher and Nevis (Mutual Exchange of Information on
Taxation Matters) Act (CAP 20.60)
Confidential Relationships Act (CAP 21.02)

Administrations and organisations interviewed during the on-site visit

Ministry of Finance
Ministry of Justice, Legal Affairs and Communications, Saint Kitts
Legal Department, Nevis
Inland Revenue Department (Saint Kitts and Nevis branches)
Financial Services Regulatory Commission (Saint Kitts and Nevis branches)
Eastern Caribbean Central Bank

Current and previous reviews

- Saint Kitts and Nevis previously underwent an EOIR review through two assessments during the first round of reviews: the 2011 Phase 1 Report and the 2014 Phase 2 Report. Saint Kitts and Nevis' two assessments during the first round of reviews were conducted according to the terms of reference approved by the Global Forum in February 2010 (2010 ToR) and the Methodology (2010 Methodology) used in the first round of reviews.
- 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 31 July 2018, Saint Kitts and Nevis' EOIR practice in respect of EOI requests made and received during the three year period from 1 July 2014 to 30 June 2017, Saint Kitts and Nevis' responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Saint Kitts and Nevis during the on-site visit that took place from 5 to 8 March 2018 in Basseterre, Saint Kitts and Nevis.
- Information on each of Saint Kitts and Nevis' reviews are listed in the table below.

Review	Assessment team	Period under review	Legal framework as of (date)	Date of adoption by Global Forum
2011 Report	Mr Hasan Halil Gonul of Turkey; Mr Robert Gray of Guernsey and Ms Renata Fontana of the Global Forum Secretariat.	Evaluation of the legal and regulatory framework only	May 2011	August 2011
2014 Report	Mr Cumhur Inan Bilen of Turkey (who, during the process, was replaced by Mr Halil Cagdas Baran of Turkey); Mr Robert Gray of Guernsey; and Ms Ingebjørg Brækka of the Global Forum Secretariat.	1 July 2010 to 30 June 2013	23 May 2014	August 2014
2018 Report	Mr Amrit Agrahari of India; Ms Darma Romero of Panama; and Ms Kaelen Onusko of the Global Forum Secretariat.	1 July 2014 to 30 June 2017	31 July 2018	12 October 2018

Annex 4: Jurisdiction’s response to the review report³⁰

St. Kitts and Nevis reiterates its commitment to the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

St. Kitts and Nevis accepts the recommendations of the assessment team as detailed in the report and the overall rating of Largely Compliant. St. Kitts and Nevis values the opportunity to discuss the country specific content and the efforts of the Global Forum Secretariat to maintain consistency and transparency in the assessment process. St. Kitts and Nevis will take the necessary actions to address the recommendations that were made and will provide the Secretariat of the Global Forum with an update of its progress in its 2019 follow up report.

St. Kitts and Nevis thanks the assessment team for its dedication, professionalism and support during the review process. Appreciation is also extended to members of the Peer Review Group (PRG) for their input and approval of the report.

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

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GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report on the Exchange of Information
on Request SAINT KITTS AND NEVIS 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.

This report contains the 2018 Peer Review Report on the Exchange of Information on Request of Saint Kitts and Nevis.

Consult this publication on line at <https://doi.org/10.1787/9789264306141-en>.

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