GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

VANUATU

2019 (Second Round)

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Vanuatu 2019 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

July 2019
(reflecting the legal and regulatory framework
as at May 2019)

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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

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 Act	Anti-Money Laundering and Counter-Terrorism Financing Act (as amended)
AML Order	Anti-Money Laundering and Counter-Terrorism Financing Regulation Order (as amended)
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
BO	Beneficial ownership
CA	Companies Act
CDD	Customer Due Diligence
CTSP	Company and Trust Services Provider
EOI	Exchange of information
EOIR	Exchange of information on request
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
IC	International Company
ICA	International Companies Act
ITCA	International Tax Cooperation Act
LP/OLP	Limited partnership/Offshore Limited Partnership
Multilateral Convention (MAC)	The Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended
RBV	Reserve Bank of Vanuatu
TIEA	Tax Information Exchange Agreement

VAT	Value Added Tax
VFSC	Vanuatu Financial Services Commission
VFIU	Vanuatu Financial Intelligence Unit
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 report analyses the implementation of the standard of transparency and exchange of information on request in Vanuatu on the second round of reviews conducted by the Global Forum against the 2016 Terms of Reference. It assesses both the legal and regulatory framework as at 6 May 2019 and the practical implementation of this framework, in particular in respect of EOI requests received and sent during the period from 1 January 2015 to 31 December 2017. This report concludes that Vanuatu is rated overall **Partially Compliant** with the international standard.

2. Vanuatu previously underwent a review of its legal and regulatory framework in 2011 concluding that its framework was not in place. Vanuatu subsequently underwent a supplementary review that concluded in 2016 that sufficient progress had been made to allow Vanuatu to move to the next phase of review, on its practical implementation of the standard, which would be reviewed in the second round of reviews that had just started. In addition, Vanuatu underwent a special Fast-Track review in 2017, which included a provisional assessment in respect of Vanuatu's legal framework and practical implementation. That report provided that Vanuatu would likely be assigned an overall rating of "Largely Compliant" should it undergo a peer review under the 2010 Terms of Reference at that stage, but the standard was strengthened since then and the present full review of implementation led to the results below.

Compared determinations in the First and Second Round Reports and allocated ratings

Element		First Round Phase 1 Supplementary Report (2016) determination	Second Round Report (2019)	
			Determination	Rating
A.1	Availability of ownership information	In place	Needs improvement	PC
A.2	Availability of accounting information	Not in place	Needs improvement	NC
A.3	Availability of banking information	In place	Needs improvement	LC
B.1	Access to information	In place	In place	C
B.2	Rights and Safeguards	In place	In place	C
C.1	EOIR Mechanisms	Needs improvement	In place	C

Element		First Round Phase 1 Supplementary Report (2016) determination	Second Round Report (2019)	
			Determination	Rating
C.2	Network of EOIR Mechanisms	In place	In place	C
C.3	Confidentiality	In place	Needs improvement	LC
C.4	Rights and Safeguards	In place	In place	C
C.5	Quality and timeliness of responses	Not applicable	Not applicable	LC
	OVERALL RATING	Not applicable	Not applicable	PC

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

Progress made since previous review

3. Vanuatu made important progress over the last three years to align its laws and regulations on the international standard of transparency and exchange of information on request. In particular, Vanuatu has brought into force the Record Keeping and Confirmation of Information Regulation Order no 42 of 2017 that aligns on the standard the accounting obligations for all entities and arrangements. However, while the legislation is now largely in place, serious deficiencies are identified in its practical implementation (see below).

4. The second main issue highlighted in the 2016 report was that Vanuatu had not put in place a good network of international instruments to exchange information on request with all relevant partners. Today, most of the exchange of information instruments of Vanuatu are in force, which would allow partners to send requests for information to Vanuatu. In addition, Vanuatu is now a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) which entered into force on 1 December 2018.

5. Vanuatu has also done significant reforms on its AML/CFT legislation to provide for the availability of information on beneficial ownership in relevant entities and arrangements and in bank accountholders (see below).

Key recommendations

6. This report is the first peer review evaluation of Vanuatu's implementation in practice of the legal and regulatory framework put in place to apply the international standard. The key recommendations issued to Vanuatu therefore relate to practical issues in this implementation, in particular on the keeping of accounting records. Some other recommendations relate to new requirements under the strengthened 2016 standard, especially in relation to the availability of beneficial ownership information.

7. The implementation of the new accounting requirements introduced in 2017 has proven difficult. Vanuatu published the Record Keeping Order in the Official Gazette but no awareness raising campaigns or supervision were conducted to ensure that the new rules would be implemented in practice. During the onsite visit, some representatives of the Vanuatu Financial Services Commission and the company and trust service providers were not aware of the new rules. Only the competent authority (who does not conduct any supervision activities) was well aware of the new Record Keeping Order. Therefore, although the Record Keeping Order has aligned Vanuatu's legal framework on the standard, Vanuatu is recommended to ensure that the Order is implemented in practice so that accounting information is generally available.

8. With regard to beneficial ownership information, four recommendations are made to Vanuatu. Three relate to deficiencies in the legal framework and one to its implementation in practice. Even if the Company law now requires the identification and reporting of beneficial ownership information for domestic companies and domestic and foreign partnerships, domestic companies are not required to report changes to this information. AML legislation can only partially compensate this shortcoming. In addition, the definition of beneficial ownership in relation to trusts and foundations is not fully in line with the standard, and does not ensure that all their beneficial owner(s) would be correctly identified. These deficiencies in the definition of the beneficial owners of trusts and foundations would also affect the availability of information on beneficial ownership of related bank accounts.

9. In practice, the identification of beneficial owners of relevant entities and arrangements in Vanuatu is deficient, which could affect exchange of information. Although both the Vanuatu Financial Services Commission and the Financial Intelligence Unit have recently strengthened their supervisory activities, especially in relation to corporate and trust service providers, the measures taken are not sufficient to ensure that adequate, accurate and up-to-date beneficial ownership information is available in practice. Vanuatu should strengthen its supervision programmes further and apply effective sanctions in case of non-compliance. The same conclusion applies in relation to the supervision of financial institutions conducted by the Reserve Bank of Vanuatu.

10. With regard to confidentiality of the information exchanged, Vanuatu passed a Right to Information Act, effective from 26 November 2016, that enables public access to all information held by government agencies. Although exceptions seem to apply for the competent authority to refuse disclosing treaty protected information publicly, no express provision ensures that the respective confidentiality rules can be followed in all cases. Vanuatu should clarify this.

11. Finally, Vanuatu has committed sufficient resources and put in place sound organisational processes to handle inbound exchange of information

(EOI) requests in a timely manner. Nevertheless, as Vanuatu has received only two requests, this system has not been tested sufficiently in practice to allow for a full assessment of its compliance with the standard. Vanuatu is recommended to monitor the functioning of the organisational processes of the EOI unit to ensure that they are sufficient for an effective EOI in practice.

Overall rating

12. The Fast-track report adopted in 2017 granted a provisional Largely Compliant rating to Vanuatu mainly on the basis of the enactment of the Record Keeping Order which fixed the legal gap on the availability of accounting information. Vanuatu is now rated overall Partially Compliant with the international standard of transparency and exchange of information on request.

13. The requirements on beneficial ownership information introduced by the 2016 ToR were taken into account when assigning a rating on availability of ownership information. Although significant steps have been taken by Vanuatu, the legal framework does not yet sufficiently cover all relevant entities or enable identification of the correct beneficial owners in line with the standard for trusts and foundations. In addition, improvements need to be made with regard to supervision and application of sanctions. Therefore, element A.1 is rated Partially Compliant and element A.3 on banking information is rated Largely Compliant.

14. Vanuatu has closed the significant gaps that existed in its legal and regulatory framework on the keeping of accounting records (except regarding the retention period after an entity ceases to exist). However, the fundamental concern moved to the absence of practical implementation of the new rules although the requirements have been in force since March 2017. The issues with availability of accounting information were identified already in the 2011 Report and Vanuatu has had a significant time period to introduce new rules and ensure their effective implementation in practice. Therefore, while the legal framework is determined to be generally in place, Vanuatu is rated Non-Compliant with the standard on practical implementation of element A.2.

15. Vanuatu's competent authority has sufficient access powers to request and obtain all types of relevant information, including legal and beneficial ownership information, accounting and banking information from any person in order to comply with obligations under Vanuatu's EOI arrangements. In practice, Vanuatu successfully obtained the requested information in the two requests it received under the review period. There are no notification requirements in Vanuatu or any issues identified with rights and safeguard including appeal rights. The legal and regulatory framework on access powers continues to be in place, and Vanuatu is rated Compliant with the standard (elements B.1 and B.2).

16. The exchange of information instruments of Vanuatu are in place and compliant with the standard (elements C.1, C.2 and C.4).

17. With regard to confidentiality of the information exchanged, since the consequences of the 2016 Right to Information Act on information exchanged based on EOI instruments are not entirely clear, the legal and regulatory framework needs improvement and Vanuatu is rated Largely Compliant with the standard on this element (element C.3).

18. Considering that Vanuatu received only two requests over the three years under review (and none before), the EOI process has not been tested sufficiently in practice to allow for a full assessment of its compliance with the standard and is therefore rated Largely Compliant (element C.5).

19. This report was approved at the PRG meeting on 25-28 June 2019 and was adopted by the Global Forum on 29 June 2019. A follow-up report on the steps undertaken by Vanuatu to address the recommendations made in this report should be provided to the PRG no later than 30 June 2020 and thereafter in accordance with the procedure set out under the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.

Summary of determinations, ratings and recommendations

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place but certain aspects of the legal implementation of the element needs improvement	Even if requirements recently introduced in company law provide for the identification and reporting of beneficial ownership information for any new domestic companies and domestic and foreign partnerships, there is no requirement to report changes to this information as far as local companies are concerned. In addition, no requirements have been introduced for domestic companies that already existed before the entry into force of the new obligation. These gaps are compensated only to the extent the companies engage an AML obliged service provider, who collects details on beneficial owners.	Vanuatu is recommended to ensure that up-to-date beneficial owners of all relevant entities and arrangements in Vanuatu are required to be identified and made available in all cases in line with the standard.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
	Although Vanuatu's legal framework ensures that identity and beneficial ownership information is required to be collected for trusts in most cases, there is no clear definition of beneficial owner applicable to trusts. Therefore, it is not clear how the concept will be implemented in practice.	Vanuatu is recommended to ensure that information on beneficial owner(s) of trusts is available in all cases in accordance with the standard.
	Although foundations are required to identify their guardian, councillor, secretary and founder, there is no requirement to identify the beneficiary of the foundation. In addition, the definition of beneficial owner relies on "key persons" and the beneficiary is not part of the key persons, which might not enable to identify the correct beneficial owner.	Vanuatu is recommended to ensure that information on beneficiaries and beneficial owners of foundations is available in line with the standard.
Partially Compliant	Although both the Vanuatu Financial Services Commission (VFSC) and the FIU have made efforts to better co-ordinate and organise their supervisory activities over the last four years, especially in relation to company and trust service providers, there seems to be deficiencies in the quality of the beneficial ownership information kept by AML obliged professionals, although they are the main source of beneficial ownership information in Vanuatu. In addition, very limited supervision was conducted on the international companies' obligation to keep beneficial ownership details and on the obligation to report that information to the VFSC. Finally, available sanctions were not consistently applied by all relevant authorities in cases of non-compliance.	Vanuatu should further strengthen its supervision programmes and apply effective sanctions in case of non-compliance, so that beneficial ownership information is available in line with the standard on all legal entities and legal arrangements.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place but certain aspects of the legal implementation of the element needs improvement	Although the new Record Keeping Order requires to keep accounting records for five years, it is not clear who would be legally responsible to keep the records if the entity itself ceases to exist and to which persons the available sanctions could apply.	Vanuatu is recommended to ensure that the record keeping requirements require to keep accounting records for a minimum of five years in cases where the entity is liquidated and that the requirements are supported by dissuasive sanctions in case of non-compliance with the requirements.
Non-Compliant	Although Vanuatu improved its legal framework on accounting obligations significantly with the Record Keeping Order effective since 29 March 2017, there has been no supervision to ensure the effective implementation of the new order. The supervisory responsibilities are not clearly defined.	Vanuatu is recommended to ensure that the Record Keeping Order is implemented in practice by ensuring adequate supervision and sanctions in case of non-compliance so that accounting information is available in line with the standard.
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place but certain aspects of the legal implementation of the element needs improvement	Although Vanuatu's legal framework ensures that identity and beneficial ownership information is required to be collected for trusts in most cases, there is no clear definition of beneficial owner applicable to trusts. Therefore, it is not clear how banks should identify the beneficial owner(s), especially in cases where one or more of the key persons are legal entities or legal arrangements.	Vanuatu is recommended to ensure that information on beneficial owner(s) of trusts is available in all cases in accordance with the standard.
	The definition of beneficial owner for foundations relies on "key persons" and the beneficiary of a foundation is not part of the key persons. Not all beneficial owners would be identified in all cases.	Vanuatu is recommended to ensure that information on beneficiaries and beneficial owners of foundations is available in line with the standard.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Largely Compliant	Vanuatu has made good progress by clarifying the roles of the supervisory authorities, issuing prudential guidelines to banks and increasing the number of onsite visits. Nevertheless, adequate measures are not yet taken by the Reserve Bank of Vanuatu and the FIU which would ensure that full banking information is available in practice in line with the standard.	Vanuatu is recommended to continue to strengthen its supervisory program of banks and apply monetary sanctions where necessary to ensure that full banking information is available in line with the standard, including information on beneficial owners of all customers.
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is in place		
Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place		
Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place		
Compliant		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place		
Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place but certain aspects of the legal implementation of the element needs improvement	Vanuatu passed a new Right to Information Act, effective since 26 November 2016 that enables public access to all information held by government agencies. Although exceptions would enable the competent authority to refuse providing treaty protected information to the public, no express provision ensures that the relevant confidentiality rules can be followed in all cases.	Vanuatu should ensure that the confidentiality rules stipulated by its EOI agreements are respected in all cases.
Largely Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place		
Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework:	**This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.**	

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Largely Compliant	Vanuatu has committed sufficient resources and put in place sound organisational processes to handle inbound EOI requests in a timely manner. Nevertheless, this system has not been sufficiently tested in practice.	Vanuatu should monitor the practical implementation of the organisational processes of the EOI unit, in particular taking account of any significant changes to the volume of incoming EOI requests, to ensure that they are sufficient for effective EOI in practice.

Overview of Vanuatu

20. This overview provides some basic information about Vanuatu 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 Vanuatu's legal, commercial or regulatory systems.

Legal system

21. Formerly known as the New Hebrides Condominium, Vanuatu was jointly governed by British and French administrations for 74 years before gaining independence on 30 July 1980. This historical background has had significant impact to the legal system currently in force in Vanuatu. The legal system in Vanuatu is based on the English Common law, while also borrowing from the French Civil system. The Constitution is the supreme law of the Republic of Vanuatu. It provides that the British and French laws in force or applied in Vanuatu immediately before its independence continue to apply to the extent that they are not expressly revoked or incompatible with the independent statutes of Vanuatu.

22. At present, the Republic of Vanuatu is a sovereign parliamentary democracy. Vanuatu's Constitution provides for executive and legislative branches of government as well as the judiciary. The 52 members of Parliament are chosen in general elections held every four years. The head of state is the President of the Republic, who is elected for a period of five years by an electoral college consisting of Members of Parliament and the presidents of the Provincial Councils. The Prime Minister is elected by the members of Parliament and he/she appoints the Council of Ministers on which he/she attends as well. The 12 co-members of the Council of ministers oversee the administration of Vanuatu's 13 government ministries. Vanuatu has a population of 282 117 persons.

23. The Judiciary consists of the Supreme Court with a Chief Justice as well as a Magistrates Court. The Chief Justice is appointed by the President, on the advice of the Judicial Service Commission. The Supreme Court is the primary body for hearing tax matters.

24. The Constitution provides that treaties negotiated by the Government must be presented to Parliament for ratification when they concern international organisations, peace or trade; commit the expenditure of public funds; affect the status of people; require amendment of Vanuatu's laws; or provide for the transfer, exchange or annexing of territory. Exchange of Information Agreements, including the Convention on Mutual Assistance on Tax Matters, are not considered by Vanuatu to be such treaties. Accordingly, their ratification by the Parliament is not a Constitutional requirement. If a treaty conflicts with a law, the law prevails since it is superior to the treaty.

Tax and revenue system

25. Vanuatu's current revenue system mostly relies on the Value Added Tax (VAT), imposed on all taxable goods and services supplied in Vanuatu, as well as excises and import duties which in 2016, when combined, made up about 55%, or 11.5 billion vatu (VUV, EUR 93 million), of the total VUV 20.8 billion (EUR 164.5 million) of revenue collected (excluding grants). They are administered by the Director of Customs and Inland Revenue (DCIR). As a result of the Government's decision to increase VAT from 12.5% to 15% from 1 January 2018, annual VAT revenue reached a total of VUV 8 235 billion (EUR 65 million) for the whole of 2018. This represents 94.2% of the budget target (VUV 8 744 million, EUR 69 million) for 2018 and is 19.2% more than the collection made during 2017 (VUV 6 908.5 billion, EUR 55 million)

26. Vanuatu also has a Stamp Duties Act pursuant to which a fee is levied on certain transfers, including marketable securities, transfers on sale, leases, and transfers of shares.

27. Vanuatu has no tax imposed on corporate or individual income. However, corporate and individual income tax has been planned (see recent developments section below for more details).

28. Vanuatu started to offer honorary citizenships in 2015 for a fee of EUR 146 500. In 2016, the sales consisted of 16% of government revenue. Since then, the sales have continued to increase covering about 25% of the government revenue. In the first quarter of 2018, the sales totalled about EUR 14.2 million. According to the Vanuatu authorities, sales are made mainly to Chinese residents but there are plans to widen the scope of the programme to other jurisdictions. The honorary citizenship gives right to a Vanuatu passport and to invest in Vanuatu but no rights to vote or otherwise participate to politics in Vanuatu. The Vanuatu Development Support Programme (VDSP) and Vanuatu Contribution Programme (VCP), together collected VUV 9 996.2 billion in total (EUR 79 million) in 2018. This is 371.5% more than the budget target of VUV 2 120 billion

(EUR 16 800 million) for 2018 and is 112.4% more than collections in 2017 (VUV 4 705.4 billion, EUR 37 200 million). Vanuatu clarified that this honorary citizenship does not imply a tax residence status.

Financial services sector

29. Concerning the magnitude of its financial sector and offshore sector the last figures available show that the total assets for both domestic banks and international banks as at December 2018 were VUV 132.4 billion (EUR 1.03 billion) and USD 100 million respectively. The offshore industry contributes around VUV 60 million (EUR 483 million) to the Government budget via the Vanuatu Financial Services Commission (VFSC) in terms of company services and fees.

30. The Reserve Bank of Vanuatu (RBV) oversees the country's monetary policy and is the regulatory authority for its domestic and international banking and insurance sectors. The VFSC is responsible for both regulating companies and developing the financial services industry in Vanuatu.

31. The Vanuatu Investment Promotion Authority has primary role of the promotion of foreign direct investment into Vanuatu. Foreigners may conduct business in Vanuatu by setting up a local company provided for under the Companies Act if they meet the investment, employment and training obligations imposed by the Authority who grants permits before investments can be made. Vanuatu was not able to provide figures on the amount of investments during the latest years.

32. The company and trust management business is dominated by accountants and lawyers who render registered agent and company formation services for international as well as domestic companies and trusts. All company and/or trust service providers need to obtain a licence from the VFSC under the Company and Trust Services Providers Act (2010).

AML framework

33. Vanuatu has been assessed on FATF requirements by the Asia/Pacific Group on Money Laundering (APG). In 2015, the APG issued a Mutual Evaluation Report where it found serious deficiencies, including inadequate customer due diligence (CDD) and inadequate supervisory frameworks for financial institutions and designated non-financial businesses and professions (with Immediate Outcome on transparency rated "low"). Based on this result, Vanuatu entered the enhanced follow-up process of the FATF.

34. As a result, Vanuatu has strengthened its AML/CFT legal framework since 2016 by making a significant number of amendments. The new

framework is intended to enhance the supervisory structures, including broader and clearer supervision culture and greater enforcement powers, improve law enforcement capabilities and remove barriers of international co-operation and participation in the area of AML.

35. On 29 June 2018, the FATF declared that Vanuatu is no longer subject to the enhanced follow-up process and welcomed Vanuatu's significant progress in improving its AML/CFT regime noting that Vanuatu has established the legal and regulatory framework to meet the commitments in its action plan regarding the strategic deficiencies.[1] The review did not include a re-assessment of effectiveness, which will be part of the 5th follow-up assessment of Vanuatu.

36. The changes that are relevant to this review relate mostly to the amendments on the availability of beneficial ownership information and supervision. In 2016, Vanuatu introduced the requirements to identify beneficial owners and a definition of beneficial owner in its AML law and enhanced the definition further in 2017. Similar amendments on requiring to identify beneficial owner(s) were made to the International Companies Act, which deals with International Companies that conduct business solely outside Vanuatu and the Companies Act, which regulates local companies.

37. The Vanuatu Financial Intelligence Unit (FIU) is the supervisor and regulatory authority for Vanuatu's AML/CFT regime as a whole. With regard to financial institutions, the main responsibility has been shared with the RBV. The VFSC, who acts as the company Registrar, also conducts AML supervision which is mainly targeting Company and Trust Service Providers. All of these authorities conduct both off-site and onsite supervision.

Recent developments

38. The multilateral Convention on Mutual Administrative Assistance in Tax Matters was signed by Vanuatu on 22 June 2018 and it entered into force on 1 December 2018. Consequently, Vanuatu's treaty network is broadened significantly from 14 to 126 partner jurisdictions.

39. Participation in the Multilateral Convention is closely linked to Vanuatu's commitment to the automatic exchange of financial account information under the Common Reporting Standard. Vanuatu is working towards first exchanges to take place in the second half of 2019. Delays are due to

1. In the third follow-up report published in September 2018, the APG re-rated technical compliance of 27 recommendations. Recommendations 10 and 22 (which were rated partially compliant), and 24 and 25 (which were rated Non-compliant) are now re-rated Largely Compliant.

the Convention only coming into force on 1 December 2018 and the need to finalise development of systems to facilitate collection and exchange of information. Vanuatu is also exploring possibilities to use the Multilateral Convention to request information for VAT audits as well as request assistance in recovery of taxes.

40. Vanuatu has had plans to introduce income tax but recently the government decided not to proceed with the plan at this time, although it has indicated "in principle" support for it. Vanuatu has proceeded with administrative reforms and on 10 June 2019 (i.e. after the limit date for this report) the new Tax Administration Act (and a number of related Acts) was passed by the Parliament. From a preliminary analysis, the Tax Administration Act generally addresses the legal shortcomings identified in the new accounting records requirements introduced in 2016 with the Record Keeping Order by requiring records to be retained for entities that ceased to exist and also removes the shorter retention period for small business to keep records. Under the new Tax Administration Act, the Director of Customs and Inland Revenue will have responsibility to administer the new record keeping rules which apply to all businesses in Vanuatu (including international companies, companies and foundations). Vanuatu has advised it has commenced action on recommendations of the assessment team concerning lack of awareness of record keeping obligations. As part of the implementation of the new Tax Administration Act, the business community has been informed of the new law and specific attention has been directed to the record keeping requirements. Information has been provided to key industry groups and public notices have been placed in local newspapers. In addition, the Right to information Act has been amended (amendment passed by the Parliament on 10 June 2019) to remove the possibility of information that is confidential under a TIEA or the Convention being released. This resolves the deficiency identified in this act and discussed under C.3 of this report.

41. In January 2020, the International Tax Cooperation Act, which currently contains all the provisions on access powers of the competent authority, will be repealed and similar access powers under the new Tax Administration Act will apply. Vanuatu reported that the new legislation would further enhance the currently available access powers by providing a wider spectrum of powers. In addition, there are plans to move the Competent Authority (EOI unit) to the Tax Administration. Vanuatu reported that the new legislation and Regulations would provide for CRS and other exchange requirements. In addition, it is intended that the Director of Customs and Inland Revenue will become the Vanuatu Competent Authority from January 2020.

Part A: Availability of information

42. 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.

43. The 2016 Report concluded that the legal and regulatory framework of Vanuatu ensures the availability of legal ownership and identity information for companies, partnerships and trusts in line with the standard. Since the 2016 Report, there have been some further legal developments in relation to bearer shares which align and repeal some of the rules that existed and prohibit the issuance of bearer shares for all company types in Vanuatu.

44. In practice, the availability of legal ownership information is generally adequately ensured through the combination of supervisory and enforcement measures taken by the Vanuatu Financial Services Commission (VFSC), which operates as the company Registrar, and the Financial Intelligence Unit (FIU). The measures include checks done at the time of registration of new entities and supervision by AML obliged entities. While the number of exchange of information requests satisfied is too low to lead to any conclusion on the availability of ownership information in practice, in both of the two EOI cases Vanuatu executed during the review period, legal ownership information was obtained to the satisfaction of the peer.

45. Under the standard as strengthened in 2016, beneficial ownership on relevant entities and arrangements should be now available. Vanuatu has significantly changed its company law and the AML/CFT legal framework over the last three years to meet this requirement.

46. In 2016, Vanuatu introduced the requirements to identify beneficial owners under the AML Act and the definition of beneficial owner was enhanced

in 2017. The definition of the beneficial owner of legal entities contains all aspects of beneficial ownership and the law provides for sufficient mechanisms to ensure that appropriate measures are required to be taken to properly identify and verify the identity of the beneficial owners. These requirements ensure that where a domestic or foreign company engages an AML obliged person, the beneficial owner of the entity is required to be identified in line with the standard. However, only International Companies and overseas companies are required to engage an external AML obliged person. Beneficial ownership information in respect of domestic companies is also requested to be collected by directors or secretaries of the companies under AML legislation, but these requirements have still to be systematically put in place.

47. Similar amendments on requiring to identify beneficial owner(s) were made to the International Companies Act, which deals with International Companies that conduct business solely outside Vanuatu, and most recently to the Companies Act and Partnerships Act. The 2018 amendment to the Companies Act in force as of 8 January 2019 has introduced beneficial ownership requirements for domestic companies with reporting obligations upon registration with the registrar, but does not provide for the updating of the information.

48. Further gaps exist in relation to the definition of the beneficial owner of trusts and foundations, where the definition does not ensure that the beneficial owner is correctly identified in all cases.

49. The implementation of rules requiring the availability of beneficial ownership information in practice relies on reporting obligations of International Companies and Local Companies to the VFSC and on AML supervision conducted by the VFSC and the FIU. Their supervisory measures consist mainly of off-site and on-site inspections and application of sanctions by the FIU in cases where deficiencies are identified. Although both the VFSC and the FIU have made efforts to better co-ordinate and organise their supervisory activities, especially in relation to company and trust service providers (CTSPs) during and after the review period, there are deficiencies in the quality of beneficial ownership (BO) information kept by AML obliged professionals, as confirmed by Vanuatu Authorities. Only limited supervision was conducted on the international companies' obligation to keep BO details and on the obligation to report that information to the VFSC. No supervision took place on the new obligation for local companies to report to the VFSC BO information since the new rules have only recently been adopted, and the reporting obligation for directors of local companies under AML has still to be put in place. In practice, approximately half of all the BO declarations by International Companies reported are not yet registered by the VFSC. Although the FIU imposed some sanctions for non-compliance, sanctions were not consistently applied by all relevant authorities in cases of

non-compliance. Therefore, adequate measures are not taken to ensure that adequate, accurate and up-to date beneficial ownership information is available in practice and Vanuatu is recommended to address these deficiencies.

50. During the current peer review period, beneficial ownership information was not requested in the two requests for information received by Vanuatu.

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

Legal and Regulatory Framework		
	Underlying factor	**Recommendation**
Deficiencies identified in the legal and regulatory framework	Even if requirements recently introduced in company law provide for the identification and reporting of beneficial ownership information for any new domestic companies and domestic and foreign partnerships, there is no requirement to report changes to this information as far as local companies are concerned. In addition, no requirements have been introduced for domestic companies that already existed before the entry into force of the new obligation. These gaps are compensated only to the extent the companies engage an AML obliged service provider, who collects details on beneficial owners.	Vanuatu is recommended to ensure that up-to-date beneficial owners of all relevant entities and arrangements in Vanuatu are required to be identified and made available in all cases in line with the standard.
	Although Vanuatu's legal framework ensures that identity and beneficial ownership information is required to be collected for trusts in most cases, there is no clear definition of beneficial owner applicable to trusts. Therefore, it is not clear how the concept will be implemented in practice.	Vanuatu is recommended to ensure that information on beneficial owner(s) of trusts is available in all cases in accordance with the standard.
	Although foundations are required to identify their guardian, councillor, secretary and founder, there is no requirement to identify the beneficiary of the foundation. In addition, the definition of beneficial owner relies on "key persons" and the beneficiary is not part of the key persons, which might not enable to identify the correct beneficial owner.	Vanuatu is recommended to ensure that information on beneficiaries and beneficial owners of foundations is available in line with the standard.
Determination: The element is in place, but needs improvement		

Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice	Although both the Vanuatu Financial Services Commission (VFSC) and the FIU have made efforts to better co-ordinate and organise their supervisory activities, especially in relation to company and trust service providers, over the last four years, there seems to be deficiencies in the quality of the beneficial ownership information kept by AML obliged professionals, although they are the main source of beneficial ownership information in Vanuatu. In addition, very limited supervision was conducted on the international companies' obligation to keep beneficial ownership details and on the obligation to report that information to the VFSC. Finally, available sanctions were not consistently applied by all relevant authorities in cases of non-compliance.	Vanuatu should further strengthen its supervision programmes and apply effective sanctions in case of non-compliance, so that beneficial ownership information is available in line with the standard on all legal entities and legal arrangements.
Rating: Partially Compliant		

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

52. Vanuatu's legal framework provides for four types of companies, all of which should be registered:

- Private company (local company) – Regulated under the Companies Act, it is prohibited from offering securities to the public and the amount of shareholders is limited to 50. There is no requirement for minimum share capital. At 31 December 2017, there were 1 748 local companies registered. Local companies are the second most prominent type of companies in Vanuatu after international companies.
- Public company – Regulated under the Companies Act, this company form is very similar to that of private company, except that it does not have a limit on shareholders and, if licensed, can offer securities to the public. There were no such companies registered at 31 December 2017. The Companies Act offers possibility to register as Community Company as well with the difference being that the main purpose of the company must be promotion of community interest and the shareholders must be members of the respective community. There were none registered.

- Overseas company – the Companies Act requires companies incorporated outside of Vanuatu to register when they are carrying on business in Vanuatu. There were 24 overseas companies registered at 31 December 2017.
- International company – Regulated by the International Companies Act, these companies are not permitted to carry on business in Vanuatu. At 31 December 2017, there were 5 468 international companies registered. The number of these companies has been on the decline because some have been struck off for not paying fees and in some cases for not providing details of their beneficial owner(s). In June 2018 there were 3 559 registered.

53. The two requests received during the review period related both to local companies' information (banking information, directors and business activity).

Legal ownership and identity information requirements

54. The 2016 Supplementary report did not address this matter as no changes had been made, thus reference to the previous report would be to the 2011 report. The following section of the report deals with the availability of legal ownership information from the perspective of legal and regulatory requirements as well as, for the first time, their practical implementation in practice.

55. All Vanuatu incorporated companies are required to maintain information on their owners under requirements of the Companies Act (CA) and international companies are required to maintain such information under the International Companies Act (ICA). The availability of this information is ensured primarily by requiring companies to register with the VFSC, who operates as the Registrar, and by corporate record keeping requirements.

56. All Company and Trust Service Providers (CTSPs) need to be licensed with some limited exceptions[2] (the most notable exception being acting as a

2. Services that require being licenced are (i) general administrative services, (ii) providing a registered office, (iii) receiving, sending or redirecting communication for a company, (iv) providing a registered agent for an international company, (v) acting as a director, secretary, nominee shareholder or nominee member of a company, (vi) any other related services. Notable exceptions are (i) services provided by a company to the same group of companies, (ii) services provided by Vanuatu licensed financial institutions or insurance companies if operations fully fall under that licence, (iii) acting as a director or secretary for another company or trust beneficially owned by the director, his/her family members, (iv) acting as a liquidator, appointed receiver of assets of a company or (v) if the person acts as a director of less than six companies. The provision of legal or accounting services including tax consulting services requires a licence.

director for up to six companies). These AML obliged service providers are required to be involved in the formation and existence of ICs. Therefore, they are important sources of legal ownership and beneficial ownership information. The following table[3] shows a summary of the legal requirements to maintain legal ownership information in respect of companies.

Legislation regulating legal ownership of companies

Type	Company law	Tax law	AML Law
Private (local) company	All	None	Some
Public company	All	None	Some
Overseas company	Some	None	All
International company	All	None	All

57. Each of these regimes is subject to oversight by the VFSC as well as of the FIU in case the company itself is an AML obliged.

Tax law

58. Because there is no income tax in Vanuatu, requirements under tax law are limited. Any new business must register with the tax authority for VAT purposes, but no information on legal ownership is requested for this purpose.

Company law requirements

59. The VFSC operates as the company Registrar and keeps some legal ownership information for companies in general. The application to incorporate a private or public company must include the following: (i) the name of the company; (ii) whether the rules of the company differ from the respective model rules set out in the annexes to the Companies Act; (iii) the full name, physical address and postal address of each director (legal persons can be directors); (iv) the full name of every shareholder, and the number of shares to be issued to every shareholder; (v) the registered office of the proposed company; (vi) the postal address of the company, which may be the registered office or any other postal address.

3. The table shows each type of entity and whether the various rules applicable require availability of information for “all” such entities, “some” or “none”. “All” in this context means that every entity of this type created is required to maintain ownership information for all its owners (including where bearer shares are issued) and that there are sanctions and appropriate retention periods. “Some” in this context means that an entity will be required to maintain information if certain conditions are met.

60. Domestic private and public companies must submit an annual return to the VFSC where updated ownership information has to be reported (ss. 67 and 119 of the Companies Act). Vanuatu reported a 100% level of compliance with this obligation. They must also notify the Registrar of any changes to the registered details mentioned above within 10 days of the change, including registering share transfers (s. 113 Companies Act).

61. The VFSC monitors, amongst others, the filing of annual returns. However, there are no figures available on these monitoring activities. Non-compliant entities may be fined with a maximum fine equivalent to EUR 190 or struck-off from the register if they fail to comply with their filing requirements. There are no figures available on entities struck off by VFSC during the review period because of failure to file annual returns.

62. All registered companies, except overseas companies, must keep an updated share register (s. 39 CA, s. 58 ICA). The register must include the names and addresses of each shareholder, the number of shares held by each of them, the date of issue of shares and details on any transfers of shares. The register must be kept in the registered office of the company or in other address in Vanuatu registered with the Registrar (s. 114 CA, s. 58 ICA).

63. In June 2017, Vanuatu raised the maximum fine for not complying with the requirements to keep the share register for local companies from VUV 25 000 (EUR 190) to VUV 25 million (EUR 190 000) (Companies amendment Act no. 32 of 2017) and moved from an "on conviction" application of the fine to an "on spot" one. The sanction in relation to reporting the change to the VFSC was not amended respectively and remains only at VUV 5 000 (EUR 40) and is applicable to the directors of the company. However sanctions have never been implemented in practice since, according to the VFSC, before the abovementioned amendments, a court decision was needed and the process would have been too costly for the administration. In practice, enforcement of these requirements took place through warnings to the non-compliant entity or registered agent, after which the compliance was ensured.

64. International companies are formed in Vanuatu by filing the company's constitution with the VFSC which keeps a register of International Companies. Their registered agents are required, among other things, to obtain the register of members (shareholders) of the company. International companies are also required to notify their registered agent of any change to the register of members within 14 days. Respectively, the agent has to update the record within 14 days and, in case the agent ceases to be the registered agent, it must keep the records for 6 years from that date (s. 35 ICA). The agent is also obliged to notify the VFSC when the name or constitution of the company changes. There does not seem to be an obligation for the company or the registered agent to report to the VFSC legal ownership information. The information held by registered agents is verified by VFSC during onsite

inspections. These obligations are further supported by CDD obligations under AML legislation (see below).

65. Sanctions for non-compliance with the abovementioned obligations apply for both the international company itself and the registered agent. If the company fails to keep an updated share register, a daily fine of approximately EUR 22 applies to the company and its directors. The sanctions applicable to the registered agent were introduced in June 2017. The maximum sanction is VUV 25 million (EUR 190 000) and/or imprisonment of 15 years for natural persons and VUV 125 million (EUR 970 000) for companies. In addition, there is also a possibility of striking the company off the register (s. 106(4)). Sanctions have never been applied in practice and enforcement of these requirements took place only through warnings to the non-compliant entity or registered agent, after which the compliance was ensured in all cases.

66. Foreign incorporated companies that want to conduct business in Vanuatu must register as overseas companies with the VFSC within 20 days of starting business in Vanuatu and comply with any requirements under the laws of Vanuatu (s. 155(1) Companies Act). The application must be signed by an authorised representative of the company and be accompanied by sufficient evidence of incorporation, the name and address of at least one person resident or incorporated in Vanuatu authorised to accept service of documents on behalf of the overseas company and a statement of the nature and place of business of the company. Registration must also include full names, residential address, nationality and occupation of each director (s. 157(1-2)). Some changes (i.e. directors, address) must be reported to the Registrar.

67. In 2017, Vanuatu introduced a new requirement effective from January 2018 for overseas companies to provide, upon registration, full names of all their shareholders and in case of nominee arrangements, the full name of the nominator, whether or not a beneficial owner (s. 157(2)b)). In the case of public companies, this requirement applies only to holders of 25% or more shares. Changes of shareholders would only be reported to the Register yearly when the company files an annual return. This will be in addition to AML requirements to disclose the beneficial owners of the company under AML/CFT law. Since however, information on legal owners and nominators could be limited by the 25% thresholds, in particular in those cases where information cannot be obtained through other means, Vanuatu is recommended to make sure that legal ownership information and information on nominators in nominee arrangements is always available for oversees companies with a sufficient nexus to Vanuatu (see Annex 1).

68. Overseas companies are not required to maintain a share register under the laws of Vanuatu. In case legal ownership changes after registration, information should be available through the individual or company who is authorised to accept service of documents on behalf of the overseas company.

Providing such service requires the person to be licensed under the CTSP Act (s. 3(1c)) and all CTSPs are AML obliged persons who must verify the identity of the owners of the overseas company and keep this information updated (see A.1.1 on AML/CFT framework, para. 101 below). Therefore, ownership information on foreign companies registered as overseas companies is available in Vanuatu but the updating might be not immediate. For the supervision of requirements for overseas companies (under both company and AML law) the same conclusions reached for International Companies apply.

Nominees

69. Nominee arrangements are allowed in Vanuatu, but according to Vanuatu authorities, their number has been on the decline when requirements were strengthened, including beneficial ownership requirements. Availability of information concerning nominee arrangements is ensured mainly through AML/CFT legislation and for ICs based on the ICA.

70. All nominees in Vanuatu are AML obliged entities under the AML Act (s. 2(v)). They are required to conduct customer due diligence procedures, which would involve identifying the customer. Other AML obliged persons must also identify nominee arrangements (s. 12, 16, 17 AML/CFT Act).These obligations are supported by a sanction to a maximum of VUV 2.5 million (EUR 19 000) and/or 2 years imprisonment for individuals and VUV 12.5 million (EUR 97 000) for entities.

71. The ICA now contains express filing provisions (since June 2017) on nominee arrangements for international companies. The obligation is supported by a sanction to a maximum of VUV 25 million (EUR 190 000) and 15 years imprisonment. For legal persons the maximum sanction is VUV 125 million (EUR 970 000). A similar obligation applies to overseas companies since January 2018 (as described above). Similar rules do not exist for domestic companies under the Companies Act.

72. In the course of its AML/CFT supervision (both on-site and off-site), the supervisory authorities routinely check AML obliged entities' compliance with the above requirements. There are currently seven situations of filings of nominee arrangements for International Companies which where all subject to on-site inspection by VFSC.

Retention period, inactive companies and companies that ceased to exist

73. The company laws do not contain express requirements to keep ownership information after a company ceases to exist but information on legal ownership information is available either with the VFSC or in case the entity is required to or engages an AML/CFT obliged person, with that person.

74. First, with regard to local companies (private, public) which have been liquidated, legal ownership information is available with the VFSC since all changes to legal ownership must be reported, as described above. The VFSC reported that it keeps all information reported to it indefinitely regardless of the registration status of the company, including legal ownership information, although there is no express legal requirement to do so.

75. Second, while ownership information is not kept up to date in the register of the VFSC on international and overseas companies, they are all required to have a relationship with an AML obliged person. Under the AML/CFT Act, reporting entities are required to maintain identity and legal ownership information for six years after the termination of the relationship with their customer. This ensures that information on owners is kept in line with the standard even in case of liquidation of the customer. The registered agent of an international company must retain legal ownership information for at least six years after the relationship has ended. It is unclear how information would be kept in case of liquidation of the reporting entity. However the issue is of less relevance now that legal and, for ICAs, beneficial ownership information (see below) has to be reported regularly to the VFSC.

76. The VFSC monitors the status and activity of companies. It strikes off local companies not in compliance with filing obligations, those put in liquidation or otherwise when there is a request from the shareholders (s. 140 CA). An international company is struck-off when VFSC has reasonable cause to believe that the company is not active or is in breach of s. 10 of ICA (on restrictions to international companies) and the company does not respond to notices. With this strike off, neither the company nor its director, member (owner) or liquidator may carry on business or deal with any asset of the company, make claims to any rights in the name of the company or act in any way in the affairs of the company (s. 108 ICA). The assets technically belong to the State but the Vanuatu authorities indicated that in practice most are shelf companies with no assets. A company struck-off the registry loses its legal personality.

77. After the strike off, the court may appoint a liquidator after receiving an application from the VFSC asking to liquidate the company (ss. 109 and 110 ICA). When the official liquidator has completed his/her duties, he/she must submit a written report on the conduct of the liquidation proceedings to the VFSC and, upon receipt of the report, all remaining assets of the company, wherever situated, are deemed owned by the government and the company is dissolved. According to information provided by Vanuatu, requests for liquidation are few.

78. In case a company has not been dissolved, it can be restored to the register during the next 20 years if it complies with the notice or pays its fees but this requires submitting an application to the court (s. 107 ICA). During

the review period, 136 ICs have been restored. For the moment there is no online register of struck-off companies but Vanuatu indicates that one will be launched in July 2019. This presents an issue since struck off companies are mainly companies that do not have an obligation to provide an annual update to the VFSC, which might lead to an absence of information on the last owners of the company. The Vanuatu authorities should put in place a system for monitoring struck-off International Companies to make sure that ownership information is available in all cases to the standard (see Annex 1).

Availability of legal ownership information in practice in relation to EOI

79. Vanuatu received two EOI requests during the review period. While executing these requests, the Competent Authority in Vanuatu asked and obtained legal ownership information from several information holders including banks operating in Vanuatu, the VFSC, the Department of Customs and Inland Revenue and the Department of Lands. The peer concerned confirmed that it had obtained the information as requested and no issue was raised regarding the quality and accuracy of the information.

Availability of beneficial ownership information

80. Under the standard as strengthened in 2016, a new requirement is that beneficial ownership information on companies should be available. Since its 2015 AML review by the Asia/Pacific Group on Money Laundering, Vanuatu has worked actively to ensure that beneficial ownership information would be available for all relevant entities and arrangements and introduced several amendments to address recommendations made by the APG.

81. In Vanuatu, this aspect of the standard is met through (1) requirements under company law and (2) the AML/CFT legal framework. Each of these legal regimes is analysed below.

Legislation regulating beneficial ownership information of companies

Type	Company law	Tax law	AML Law
Private (local) company	Some	None	Some
Public company	Some	None	Some
Overseas company	Some	None	All
International company	All	None	All

Obligations to identify beneficial owners of companies under company law

82. The 2018 amendments to the Companies Act (regulating local private and public companies and overseas companies) require beneficial ownership information to be provided at the moment of the registration of any new company with the Registrar (i.e. VFSC). Beneficial owner is defined in this law as "a natural person who is the ultimate owner or ultimate controller of a company" including "circumstances where ownership or control is exercised through a chain of ownership or by means of indirect control that may not have legal or equitable force, or be based on legal or equitable rights" (Art. 1 and 2 of Companies (Amendment) Act no. 27 of 2018). This definition in broadly in line with the standard although senior management as fall back option is not expressly mentioned but is nonetheless always followed in practice on the basis of the AML approach which allows this step when needed. See also section on International Companies (in particular, paragraph 92) since they share the same definition of beneficial owner. VFSC has a standard process in place for all legal entities and arrangement for the validation of beneficial ownership information (check of name, date of birth, residential address, phone number, official copy of identity documents, utility bills, etc.). However, there are no requirements of updating the information and nothing is provided for existing companies. There are no specific obligations on the company itself to keep beneficial ownership information although directors, being AML obliged persons, should keep this information under AML law (see below).

83. The amendment to the CA provides for the obligation for the Registrar to keep a register of beneficial owners information which has to be kept up to date (s. 188A). However, it is unclear how this obligation can be met given the absence of any requirements for the companies to provide information on changes concerning beneficial owners, differently from changes in the management and legal ownership structure, which have to be reported to the VFSC (s. 67). The VFSC can request beneficial ownership information from the company (s. 7 and s. 7A). Refusal to provide the information will lead to a fine upon conviction not exceeding VUV 75 million (EUR 586 000).

International companies

84. The ICA was amended in June 2016 to include a definition of beneficial owner and an obligation for ICs to report the information to the VFSC, who must keep a register on beneficial owners. The VFSC may not incorporate the company unless the information is provided (s. 125(2-3)). Existing international companies had three months to submit details on their beneficial owners, i.e. by September 2017 (s. 125(5)).

85. A three month time limit applies also if beneficial owners of the company change: the VFSC must be notified by the company within three months of the change (s. 125(5)). Vanuatu informed that as of June 2019 international companies will be able to also use the VFSC website to update the information while for the time being only domestic companies can use it for that purpose.

86. The form for reporting the beneficial owners requires reporting beneficial owners (which can be an entity or arrangement) and ultimate beneficial owners (which must be a natural person) and requires attaching a valid passport copy or birth certificate of each natural person.

87. With the amendments to the ICA effective as of 16 June 2017, all international companies need to keep up to date records of the beneficial owners of the company (s. 58A ICA), in addition to the pre-existing reporting obligation to the VFSC.

88. A company that fails to follow the above obligations is struck off the VFSC Register (s. 58(6)).

89. With regard to the definition of beneficial owner, Vanuatu first introduced an amendment to the ICA, effective in June 2016, defining beneficial owner as

> "a natural person who ultimately owns a share or debenture in an international company and who exercises ultimate effective control over the share or debenture even though it may be registered in the name of another entity" (s. 1(1) ICA).

90. This definition did not fully meet the international standard as it did not capture control on the company through means other than ownership. Since the first reporting of beneficial owners was made based on this definition, it is not ensured that the information reported captures all beneficial owners as defined by the standard. Further changes to the definition were introduced in June 2017. Section 1 of the ICA now defines beneficial owner as "a natural person who is the ultimate owner or ultimate controller of a company" and owner as "a person who has a legal entitlement of 25% or more of the company by way of ownership of shares or otherwise". Further, new section 1(4) states:

> for the purpose of the definition of beneficial owner, ultimate owner and ultimate controller includes circumstances where ownership or control is exercised:
>
> (a) through a chain of ownership; or
>
> (b) by a means of indirect control that may not have legal or equitable force, or be based on legal or equitable rights.

91. The definition of controller was also added to section 1 of the ICA, according to which a "controller of a company means a person who exercises influence, authority or power over decisions about the company's financial or operating policies, including as a result of, or by means of, a trust, agreement, arrangement, understanding or practice". There was a 6-month deadline after the gazetting of the new amendments in 2017 to update the beneficial ownership information provided on the basis of the previous definition. ICs who failed to do so have been struck-off.

92. The definition of the beneficial owner in the ICA explicitly provides for two of the three aspects of beneficial ownership as defined under the standard (i.e. controlling ownership interest and control through other means). Senior management is not expressly mentioned. However, according to the VFIU, in all these cases the AML approach is followed according to which a reporting entity (including CTSP licensee, Director, Secretary, registered agent, trustee or nominee shareholder) may carry out the prescribed identification and verification processes on senior management officials of the customer if it can reasonably prove that there is doubt on the identification and verification of the beneficial owners (clause 7(6) of AML Regulation Order No. 122 of 2014 (AML Order, as amended by the amendment no. 153 of 2015). Since all ICAs must engage an AML obliged person the interaction of the two requirements (under AML and company law) makes sure that the definition of beneficial owner is in line with the standard. VFSC, VFIU and RBV issued, under their respective official labels, the same guidance between March and April 2018[4] where, among other things, the process for collecting and validating BO information is explained, including through the use of practical examples which are broadly in line with the standard. Beneficial owner information is disclosed to the VFIU via the AML/CFT Registration Form. In the event that BO information is not reported on time, VFIU issues either its formal warning or penalty notice pursuant to sections 50B or 50C of the AML/CFT Act (see below for the AML framework).

93. The definition does not provide for alternate options when identifying the beneficial owner, although the approach seems to be cumulative rather than cascading meaning it would potentially capture more information than a cascading approach. A guidance for this purpose has been approved by both the AML/CFT Supervision Working Group and the AML/CFT National Coordinating Committee. This guidance has to be adopted by every supervisory agencies which play a role in licensing institutions. Supervisory agencies include VFIU, Department of Customs and Inland Revenue (licensing issuing authority for Casinos and interactive gaming), Department of Cooperative

4. The guidance as issued by the VFSC is available at: https://www.vfsc.vu/wp-content/uploads/2018/05/MARKET-ENTRY-FIT-AND-PROPER-CONTROL-MARCH-2018.pdf.

(licensing issuing authority for Savings and Loans Cooperatives) and VFSC. This approach is in line with the standard.

94. The legal and regulatory framework for ensuring the availability of beneficial ownership information on international companies is in place. Its full implementation in practice is not ascertained yet. In practice, the legal deadline for ICs to submit beneficial ownership information to the VFSC was September 2017, but the Vanuatu authorities indicate that the final deadline for the first-time reports for ICs on their beneficial owners ended on 31 December 2017. The 70 ICs that failed to report their beneficial owners by that deadline were struck off the VFSC Register.

95. The VFSC representatives interviewed during the onsite visit indicated that on 3 September 2018, 4 759 international companies were registered and 4 757 forms (declarations) on beneficial owners were submitted. The VFSC has processed part of these forms and at the time of the on-site visit registered beneficial owners on 2 699 ICs but the remainder of the information was still not analysed and registered. However, the situation improved since and as of 6 May 2019 there are still 375 ICs to be processed. The VFSC representatives reported that all ICs who had beneficial ownership information inserted to the register had natural person(s) reported as beneficial owners but these details are unknown for the remaining part. However, information is not available on the activities and modalities adopted to check this information when submitted.

96. So far only international companies that clearly failed their obligation (i.e. did not report anything) have been systematically approached (i.e. through their registered agents) by the VFSC. Therefore, any possible quality concerns in the submitted data have not been addressed by contacting the company in question.

97. In addition, there has been no onsite inspection conducted by the VFSC that would target international companies directly and their obligation to keep beneficial ownership information or any other information. Vanuatu is therefore recommended to improve the timeliness and quality of the registration and enforcement process, so that it ensures that accurate and up-to-date beneficial ownership information is available in the register and that in case of suspected non-compliance, the ICs are systematically contacted to rectify any deficiencies and ultimately sanctioned.

98. The 2017 amendment to the ICA also requires that the registered agent of an international company obtain the constitution, certificate of incorporation, details of beneficial owners, register of members and details on any nominee shareholders or directors (s. 35(5) ICA). Agents must keep this information up to date and retain it for at least six years after they cease to be the registered agent for the company. Further requirements are placed on the

registered agent to ensure any changes to the details of beneficial owners are updated in its records within 14 days after the change occurs. In addition, the agent is also obliged to report any change in any nominee shareholders to the VFSC (but not on beneficial owners).

99. The ICA imposes relevant penalties for a failure to comply with the requirements. Registered agents who fail to comply with the requirements are subject to a fine not exceeding VUV 25 million (EUR 190 000) or imprisonment not exceeding 15 years or both; and for body corporates a fine not exceeding VUV 125 million (EUR 970 000).

AML/CFT framework

100. For private and public companies, the availability of beneficial ownership information until recently fully relied on AML/CFT legislation. However, they are not required to have a relationship with an external AML obliged person although according to AML legislation (s. 2(p)(ii)), any person (whether or not the person is a trust or company service provider) acting (or arranging for another person to act) as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons is a reporting entity and is then requested to adopt CDD rules which includes the identification of the beneficial owners (s. 12 of AML law, see below). There is no evidence that BO information is collected by directors of private and domestic companies and that this requirement is enforced by the relevant authority pursuant to AML law. The FIU informed that the process for the identification of directors of local companies as AML reporting persons has just started. However, their registration as AML obliged person with the FIU and the supervision of their obligations to collect beneficial ownership information under AML has not yet started.

101. On the contrary, overseas and international companies have an obligation to have a resident agent subject to AML/CFT requirements.

102. The revised AML/CFT Act imposes obligations on all reporting entities (AML obliged entities) to obtain legal and beneficial ownership information as part of the regular Customer Due Diligence (CDD) process. In addition, all reporting entities must have appointed an AML/CFT compliance officer (s. 34 AML Act). The list of AML obliged persons is rather comprehensive and include financial institutions, lawyers, notaries, accountants[5] and

5. With regard to lawyers, notaries and accountants the AML/CFT Act specifies that they are reporting entities when they provide services that relate to: (i) buying or selling of real estates, business entities or properties, (ii) managing of currencies, securities or other assets, (iii) managing of banks, savings or securities accounts, (iv) organising contributions for the creation, operation or

all licensees under the CTSP Act (see list in paragraph 56). Tax consulting/advisory and general legal services are also covered by these requirements (s. 2 AML Act). The reference to "person carrying on business" under section 2 of the AML Act seems to add to the scope any other person not covered by the previous list when carrying on business on a professional basis.

103. The CDD measures require that persons covered by the AML/CFT obligations identify and verify the identity of their customers.[6] This includes, in respect of legal persons, that the AML obliged person has to identify the customer's beneficial owner(s) and take reasonable measures to verify the accuracy of the information obtained (s. 12(2-3) AML Act, s. 3 and schedule 2 AML Order). Where it is not possible to carry out CDD measures in line with the AML Act (e.g. where no sufficient information is provided) the AML obliged person must file a suspicious transaction report to the FIU (s. 13(1) AML Act) and must not continue with the transaction unless authorised by the FIU (s. 13(2)). With regard to services other than transactions, the reporting entity must not enter into a customer relationship and must end any existing relationship if proper CDD cannot be achieved.

104. Non-compliance by the reporting entity is subject to a fine not exceeding VUV 25 million (EUR 190 000) for individuals and VUV 125 million (EUR 970 000) for companies. In addition, for individuals a 15 year imprisonment is possible (s. 13(3) AML Act). These sanctions are in force since June 2017 and were increased significantly.

105. The AML act contains a definition of a beneficial owner. The new definition in force since June 2017 is the same definition as under the ICA.[7] According to the VFIU, a cumulative approach has always to be followed in the identification of the beneficial owners, which provides for the identification of senior management officials if the BO information is difficult to collect (there is doubt) and this difficulty has been duly proven.

106. The beneficial owner must be identified based on the legal entity's constitutive documents and its register of shareholders, information and documents provided by the client (or its representative), or information

management of legal persons or legal arrangements, (v) creating, operating or managing legal persons or legal arrangements.

6. Further guidance is given in Anti-Money Laundering and Counter-Terrorism Financing Order (2014), hereafter "AML order".

7. AML Act, Part 1, s. 1: "beneficial owner means a natural person who is the ultimate owner or ultimate controller of a person or entity; For the purpose of the definition of a beneficial owner, ultimate owner and ultimate controller include circumstances where ownership or control is exercised: (a) through a chain of ownership; or (b) by a means of indirect control that may not have legal or equitable force, or be based on legal or equitable rights.".

received from other sources. The AML obliged person is required to maintain documents proving identity of the beneficial owner (such as valid passport, ID card or driving licence) as specified in AML Order, schedule 2B. In April 2018 the VFIU issued a detailed guidance on the process AML obliged persons have to follow for the collection and validation of beneficial ownership information which is considered broadly in line with the standard (see paragraph 92).

107. The client of an AML obliged person is required to provide the necessary information for it to carry out CDD measures, including identification of the beneficial owner(s). The provision of false or misleading information to an AML obliged person, after amendments in 2017, is now subject to a fine not exceeding VUV 15 million (EUR 117 000) or imprisonment up to 5 years for natural persons or a fine not exceeding VUV 75 million (EUR 586 000) for body corporate (e.g. wilful deception with purpose to mislead the service provider) (Art. 32B of the AML Act).

108. An AML obliged person is allowed to rely on CDD measures applied by certain third parties. The relying AML obliged person must satisfy itself that the intermediary or third party is regulated and supervised, and has measures in place to comply with the requirements under the Vanuatu AML Act. It must also immediately obtain and keep the CDD records required by the AML Act and have access on request to any relevant records without delay (s. 18(1)). Pursuant to an amendment in force since June 2017, the reporting entity must also review whether the location of the intermediary or third party is a high risk location/country. The Vanuatu authority clarified that for this purpose they refer to the FATF non-co-operative jurisdiction list. The records that need to be obtained include records that identify the beneficial owner(s) including confirming documents. The reporting entity remains ultimately responsible for ensuring that CDD measures are applied in accordance with the Vanuatu AML law and applicable regulations. In case of non-compliance with requirements for CDD reliance, sanctions vary from VUV 1 million (EUR 7 700) and/or imprisonment of 1 year and VUV 5 million (EUR 40 000) for entities. This set of penalties specific to intermediaries or third party introducers (section 18 of the AML Act) has to applied on top of other possible applicable penalties for the non-compliance with sections 12 (obligation to identity the customer) and 16 (obligation to verify the identification of customers).

109. An AML obliged person is required to perform on-going risk based due diligence to monitor the customer's account, service or relationship with each of its customers to identify, mitigate and manage the risk it may reasonably face with that customer that might involve money laundering, financing of terrorism or other serious offences without tax fraud being expressly mentioned (s. 17 AML Act). After registering with the VFIU, a reporting entity, regardless of its ML/TF risk level, must provide to the VFIU its updated

information, including information on its legal and beneficial owner, within 14 days of the change (s. 9A and 9B of the AML Act). However, the obligation does not include an absolute obligation for the reporting entity to keep customer records (including information on the beneficial owner) updated at all times in cases where risk level of their customers is seen small. This is confirmed in the AML Order which states that the reporting entity must put in place appropriate risk based systems and controls to determine whether any further customer information (including updating existing information) is required for ongoing CDD process (s. 8(1)). Section 8 of the AML Order offers further instructions, namely that the reporting entity must have processes to perform the monitoring required by law.

110. CDD documentation, including measures taken to identify the beneficial owner and other supporting documents, must be retained by the obliged person for a period of at least six years after the business relation has ended (s. 19(5) AML Act).

111. The above requirements ensure that where a domestic company, international company or foreign company engages an AML obliged person, the beneficial owners of the company are required to be identified in line with the standard although doubts may arise as to whether this information is kept up to date in all cases. This has a potential effect on availability of updated beneficial ownership information on domestic companies and overseas companies that engage AML obliged persons (while ICs have separate obligations to keep the information up to date as stated above). The new requirements under the CA do not seem to solve the issue since there are no requirements to report updated BO information (the new law refers only to information to be provided upon registration). Although this is not a major deficiency per se, Vanuatu is recommended to ensure that beneficial ownership information for all companies is kept up to date in line with the standard in all cases (see Annex 1).

Enforcement and implementation of the AML/CFT framework

112. Enforcement in practice relies on (AML) supervision conducted by the VFSC and the FIU (see A.3 on the supervision for financial institutions by the Reserve Bank of Vanuatu).

113. The VFSC Supervision Department was established on 1 October 2016 and currently consists of five staff members (including the manager). Any previous supervision was limited to observations made during registration.

114. The Department applies a risk-based approach to supervision. This consists of a general risk assessment process and risk classification for each entity. The VFSC conducts both offsite analysis and onsite visits. According

to VFSC representatives, both approaches aim to identify and rank the biggest risks, while the risk classification process tries to rank each firm based on its risk profile. Further, they stated that risk-based supervision has proven difficult as it requires a genuinely forward-looking analysis and an ability of VFSC to constantly evaluate and re-evaluate risks and review prioritisation. Currently, the VFSC has focused on the main risks identified, which however Vanuatu has not shared for the purpose of this peer review.

115. During onsite visits, the VFSC checks a random sample of customer data for compliance with the relevant obligations, including obligations under the CTSP Act and AML Act. The check includes verifying beneficial ownership information and confirming how the beneficial owner has been identified.

116. In the period 2015-17, the Supervision Department of the VFSC conducted one onsite visit to one service provider (out of 27 registered). The service provider had 281 companies or legal arrangements as clients. Approximately 20% of the customer files were checked, consisting of 35 ICs and 23 trusts and an unknown number of domestic companies. According to the VFSC, beneficial ownership requirements were found fully in place, for all customers, after giving the CTSP possibility to fix any shortcomings. However, the supervisor seemed to be satisfied with having a natural person as a beneficial owner, without investigating further on the process followed to identify him/her. This poses serious risks on the quality of beneficial ownership information as collected and verified in Vanuatu. The VFSC should not confidently rely on the agents' expected ability to perform their duties as AML obliged persons, without their activities being regularly supervised in a comprehensive way.

117. The VFSC representatives reported that generally, the issues that have been identified under the current supervision programme have related to: (i) requirement to inform the VFSC of any changes to key persons and for the VFSC to approve any changes, (ii) files to be updated to include beneficial ownership details (iii) assignment of a Compliance Officer to conduct in-house customer due diligence trainings, (iv) all trust money held must be audited by an independent auditor, (v) develop a written policy on dispute resolution, (vi) compliance officer to ensure that due diligence exercise are conducted on clients who have not gone through the process and copies of those due diligence exercise including certified copies of IDs, CVs, Police clearance etc. to be kept on file, (vii) requirements for ongoing risk assessment to be conducted on all existing trust clients and other international clients and update their risk rating, a copy of which must be kept on their files, (viii) development of proper internal policies, such as staff manual, outsourcing agreement, code of conduct, clear guidelines on management of trust funds and trust assets.

118. Although a large number and variety of deficiencies were identified, no sanctions were imposed during the review period by the VFSC because these deficiencies have been corrected after the issuance of warnings. No targeted follow-up activities have been reported on previously identified cases of non-compliance.

119. The focus of the VFSC has been to conduct supervision on licensed CTSP's and to review their customer files; no inspection of an international company has yet taken place (as noted above).

120. Although the VFSC has gradually increased its supervision activities, the intensity, quality and the lack of sanctions actually imposed still do not ensure that beneficial ownership information would be available in Vanuatu in all cases. In addition, there are no evidences that local companies, in theory as seen above subject to AML rules through their directors or secretaries, have ever been audited for the purpose of making sure that BO information is kept and up to date. Vanuatu is recommended to continue to strengthen its supervision programme and apply sanctions where necessary to ensure that beneficial ownership information is collected and kept up to date.

121. The Supervision department of the FIU was set up in 2000 and its first permanent officer recruited in 2005. In 2015, the staff including the manager consisted of 5 persons and has since then increased significantly to 16 with 2 more planned to be joining by the end of the 2018 and one in 2019.

122. The FIU has two main objectives, namely to disseminate financial intelligence for relevant persons and to regulate/supervise all AML reporting entities (section 5(1) of the AML Act). This includes financial institutions that are under the responsibility of the Reserve Bank of Vanuatu (see section A.3) and which may be subject to AML supervision by this other authority as part of its prudential supervision (see list under paragraph 102). There seems to be some overlap with the VFSC and the Reserve Bank of Vanuatu, especially with regard to the supervision of CTSPs and financial institutions, although the FIU clarified that they are the main AML/CFT regulator and supervisor in Vanuatu. The FIU can also assist other authorities when they need assistance.

123. All reporting entities, including CTSPs, need to register with the FIU and have an obligation to submit an audited annual report. It is not clear whether this applies also to domestic companies not in a professional relation with a CTPS since the process of identification of directors as reporting entities is starting only now (see paragraph 82 above).

124. Supervision is risk-based and consists of offsite and onsite reviews. The offsite reviews consist of checking compliance with AML/CFT provisions and registration using submitted information, public sources of information, other external sources and complaints received.

125. Onsite reviews consist mainly of checking compliance with CDD requirements: whether information has been verified and kept up to date, suspicious transactions reported to the FIU, and that transaction and CDD information is kept according to s. 19 of the AML Act for six years after the customer relationship was terminated. With regard to beneficial ownership, the FIU checks that the beneficial owner is a natural person. As noted above with the supervision performed by the VFSC, ensuring that the beneficial owners are natural persons is not sufficient to ensure the quality of the information collected. However, during the review period, VFIU did not conduct any onsite examinations on reporting entities. This was due to VFIU's resources directed towards Vanuatu's efforts in complying with the FATF listing. In that period, VFIU did direct all high-risk entities to undertake a comprehensive independent audit of their compliance with the AML Act. In the Direction, the VFIU issued the methodology and scope of the independent audit. All the 21 identified ML/TF high-risk CTSP licensees undertook the independent audit and submitted their audit report to the VFIU but no other indications were submitted on the assessment of the quality of this information.

126. All requested high-risk sector entities submitted audit reports to the FIU, i.e. 5 domestic banks, 6 international banks, 21 CTSPs, 3 money remitters and 4 casinos.

127. Vanuatu registered a 100% level of compliance with these requirements. However this assessment is only based on the fulfilment of the obligation to submit these reports (i.e. all required CTSPs submitted their independent reports). Vanuatu was in fact not able to share the outcome of these audits as included in these reports.

128. In 2019, the FIU is planning to issue a direction also to dealers in securities to undergo an independent audit. In the interim, they have been submitting their annual audited financial reports and AML/CFT compliance reports. No further plans regarding independent audits were presented with regard to lawyers, notaries or accountants which are however considered high-risk sectors and constantly subject to direct supervision by the FIU (see paragraph 132).

129. During the period 2015-17, the FIU reports it has taken countermeasures towards cases of non-compliance identified. In case deficiencies are found that are not major, the first step is to give a compliance direction. In more serious cases, a compliance warning is issued.[8] The following table

8. Enforcement measures available to the FIU are set in the AML Act (s. 50B to 50I). VFIU may issue a formal warning to a reporting entity contravening the AML Act. A penalty notice may be issued to a reporting entity that commits an offence under the Act; VFIU may request an entity to undertake an activity in

shows the distribution each year. Vanuatu clarified that non-compliance with beneficial ownership requirements should be considered under the category "Procedure Manual" (which is highlighted in the table) since it captures entity's CDD policy, processes and procedures. However, it is not clear whether deficiencies with specific reference to BO requirements have been identified, rectified and sanctioned.

	AML/CFT Registration	AML/CFT Procedure manual	AML/CFT Risk Assessment Report & Audit Report	AML/CFT reporting requirements	Additional information	Total
Year 2015						
Compliance direction	13	3	0	3	1	20
Compliance Report	1	2	0	40	0	43
Warning for compliance	8	12	0	0	0	20
Formal warning	0	0	0	0	0	0
Penalty notice	0	0	0	0	0	0
Total	**22**	**17**	**0**	**43**	**1**	**83**
Year 2016						
Compliance direction	27	49	10	0	6	92
Compliance Report	26	47	12	0	3	88
Warning for compliance	42	77	12	0	8	139
Formal warning	0	0	0	0	0	0
Penalty notice	3	0	0	0	0	3
Total	**98**	**173**	**34**	**0**	**17**	**322**
Year 2017						
Compliance Direction	35	63	30	0	5	133
Compliance Report	7	11	2	0	0	20
Compliance Warning	11	13	8	0	0	32
Formal Warning	4	1	2	0	1	8
Penalty Notice	0	0	0	0	0	0
Total	**57**	**88**	**42**	**0**	**6**	**193**

compliance with the AML Act; VFIU may apply to the Courts for an enforcement order for breaches to the terms of the enforceable undertaking; VFIU may apply to the Courts for performance injunction (requiring a person to do something) or a restraining injunction (restrain a person from doing something) in compliance with the AML Act; VFIU may publish a notice of non-compliance and other remedial action as ordered by the court on the official gazette VFIU may remove a director, manager, secretary or other officer of a reporting entity who are disqualified VFIU may suspend or remove a reporting entity if the entity failed to comply with the AML Act.

130. The FIU representatives reported that with regard to beneficial ownership information, although training has been arranged, including workshops and seminars for the relevant reporting entities, the compliance level is not yet sufficient. The FIU estimates that in about 30% of cases a legal entity was still identified as the beneficial owner. When such cases are found, the entity is required to rectify the situation immediately and sanctions are applied based on the seriousness of the issue and the willingness of the entity to correct the mistake. The Vanuatu authorities report that there has been limited need to resort to formal warnings or to impose high monetary sanctions, since in most cases the reporting entity has been willing to address the deficiencies quickly and the omission have originated from lack of knowledge or minor negligence.

131. The supervision conducted by the FIU has targeted for the time being only high-risk sectors and not all AML obliged entities. Lawyers, notaries and accountants who are required to conduct CDD and collect beneficial ownership information on their customers are considered high-risk and have been subject to supervision. Once the supervision of high-risk sectors will be over, the plan is to start supervising all the other sectors with the target to have all entities in Vanuatu supervised in the future.

132. It can be concluded that although both the VFSC and the FIU have made efforts to better co-ordinate and organise their supervisory activities, especially in relation to CTSPs, over the last four years, there are deficiencies in the quality of the beneficial ownership information kept by AML obliged professionals, while they are one of the main sources of beneficial ownership information in Vanuatu. In addition, very limited supervision was conducted on the international companies' obligation to keep beneficial ownership information and on the obligation to report that information to the VFSC, as supported by the fact that approximately half of all the BO declarations filed are not yet registered by VFSC and no in-depth control was performed on those forms processed either. No supervision at all has taken place as far as the same obligations on local companies are concerned since the requirements have been only recently introduced and even if the obligation to keep BO information is also provided under the AML legislation for directors, this requirement has never been implanted, supervised and enforced (i.e. no sanctions have been applied).

133. Although the FIU has applied countermeasures in cases of identified non-compliance, sanctions seem to have been applied only in very limited circumstances since in the vast majority of cases the issues identified were addressed by the assessed entity.[9] However, the supervisor was satisfied with

9. The FIU informed that sanctions (compliance direction, compliance report, warning for compliance, formal warning) are basically non-monetary

the fact of having a natural person as beneficial ownership, without looking at how this natural person has been identified.

134. Therefore, also in the case of the VFIU (as it was in the case of VFSC, see paragraph 121) appropriate measures are not taken to ensure that adequate, accurate and up-to-date beneficial ownership information is available in practice.

135. These deficiencies could have a significant effect on exchange of information on request in practice and Vanuatu should further strengthen its supervision programmes and apply effective sanctions in case of non-compliance, so that beneficial ownership information is available in line with the standard.

A.1.2. Bearer shares

136. Vanuatu immobilised bearer shares for International Companies in 2010, with full effect since 31 December 2012. Bearer shares that were not held by a custodian at that date became disabled (i.e. the share ceased to carry any of its entitlement or rights).

137. In 2016, the ICA was further amended (i) to repeal the mentioned custodial arrangement, (ii) to prohibit the issuance of new bearer shares; and (iii) for all existing bearer shares to be converted into registered shares (International Companies (Amendment) Act No. 4 of 2016, in force on 7 July 2016). The shareholders lost all rights to the shares if they were not converted, with the ownership automatically transferred to the custodian. However, Vanuatu reported that the VFSC did not license any custodians, which means that it is unlikely that bearer shares were submitted to custodians under this regime.

138. In 2017, Vanuatu introduced further transitional provisions to both the ICA and the Companies Act: bearer shares (and now also share warrants) must be changed to registered shares or registered warrants within three months from commencement of the amending Act (s. 39(2-3) ICA and (ss. 33(2-3) CA), i.e. by 16 August 2017. The company must also enter into its Register of Members the name of the holder of a registered share or registered share warrant (s. 39(4) ICA). It can be concluded that Vanuatu has prohibited bearer shares by requiring existing shares to be converted to registered shares and by prohibiting issuance of new bearer shares. These requirements are supported by a heavy sanction.

enforcement measures. The only monetary enforcement measure ever pursued by VFIU is Penalty Notices. In 2015 and 2017, it issued no penalty notices, in 2016, VFIU issued 3 penalty notices of VUV 1 million each (total of VUV 3 million for the 3 penalties).

139. However, the provisions about bearer shares not immobilised with custodians being disabled and the 2016 provisions about losing ownership rights to the shares submitted to custodians were repealed. Vanuatu authorities clarified that the purpose of repealing previous provisions was to make clear that any bearer shares or warrants that were in place immediately prior to the amendments must be converted to registered shares. The 2017 Act repealed and replaced the 2016 provisions with a new and effective provision. The last amendment, according to Vanuatu, had as a sole objective, to extend the scope to share warrants giving additional three months to all to convert outstanding bearer shares. In addition, Vanuatu authorities clarified that there is no indication of bearer shares or warrants being in circulation, without providing a clear indication on the basis for this assumption.

140. Therefore, some doubt arises as to whether existing bearer shares could still have rights attached to them. While Vanuatu indicates that its purpose has been to abolish bearer shares completely, this has been done in a way that leaves room for doubt on the practical consequences of the new provisions.

141. Even if the issuance of bearer shares and share warrants is now prohibited and Vanuatu is of the general view that there are no more outstanding bearer shares, the sequence of several laws amending and/or repealing previous rules leaves some doubts on the current legal consequences for possible outstanding bearer shares. Vanuatu is recommended to monitor its legislation to make sure that any existing bearer shares, if not converted to registered shares within the deadline, would be legally not valid. Vanuatu could also usefully increase supervision significantly in relation to all entities to ensure no bearer shares are in circulation (see Annex 1).

A.1.3. Partnerships

142. Three forms of partnerships can be established in Vanuatu:

- *General Partnership*: can be established under the Partnership Act (1975). Partners can be individuals or legal entities but in the latter case cannot be legal entities or associations incorporated in Vanuatu.
- *Limited Partnership* – LP: can be established under the Partnership Act (1975). A maximum of 20 partners is allowed. Partners can be individuals or legal entities with at least one being a general partner with full liability.
- *Offshore Limited Partnership* – OLP: can be established under the Offshore Limited Partnership Act (2009). OLPs can be either offshore professional partnerships or offshore general partnerships (s. 3 OLP Act). An offshore professional partnership must be made up of individuals and may only practice in accounting, actuarial science, engineering, law or another field determined by the VFSC.

By contrast, an offshore general partnership may be made up of both individuals and bodies corporate.

Availability of identity information

143. The 2011 report indicated that general partnerships had no obligation to register with the VFSC and had only an obligation to register its name when carrying on business in Vanuatu.[10] LPs[11] and OLPs on the contrary have to register with the VFSC before commencing any business or undertaking. Identity information requirements for partnerships as analysed in the 2011 report are confirmed to be in line with the standard.

144. With new requirements introduced by a 2018 amendment to the Partnership Act, all partnerships (general and limited) must now register with the VFSC. The authorities have not indicated how many general partnerships are currently registered in Vanuatu; however, four are under the supervision of the VFSC since they are CTSPs. Two LP are registered while no OLP was registered in 2017.

145. The 2018 amendments to the Partnership Act require, at the moment of the registration, that details of "each key person" of the partnership be submitted to the VFSC (s. 1 C). Key persons are defined as beneficial owner, owner or controller of the applicant. Beneficial owner is defined as a natural person who ultimately owns or ultimately controls an applicant (s. 1). A partnership must inform the VFSC of any changes in the key persons within 14 days. A failure to update the information is an offence punishable upon conviction by a fine not exceeding VUV 125 million (EUR 970 000) with possibility, after written notice, to cancel the registration of the partnership. Under the new law, at least half of the partners have to be natural persons resident in Vanuatu. There are no specific requirements for general and limited partnerships themselves to keep a register of members/partners.

10. The obligations related to the registration of a business name under the Business Names Act remain (see 2011 report, para 104). In particular, a general partnership has to state the name and principal place of business, postal address, and the full name, address, occupation and nationality of every partner (Schedule 2).
11. An LP which is not register is deemed to be a general partnership (s. 48 Partnership Act). Registration is effected by delivering to the registrar a statement signed by the partners containing the firm's name, the general nature of the business, the principal place of the business, the full name of each of the partners, the term of the partnership, a statement that the partnership is limited and the sum contributed by each limited partner (s. 51, Partnership Act). Any change to the above must be reported to the VFSC within seven days of any such change (s. 52, Partnership Act).

146. Offshore Limited Partnerships, when registering with the VFSC, have to provide the name of their general partners, and since a 2018 amendment to the Offshore Limited Partnership Act, they must also provide the details of their limited partners (that only had to be kept at their registered office before).[12] There are no specific rules regulating foreign partnerships operating in Vanuatu; they are subject to the same requirements as local partnerships.

Availability of beneficial ownership information

147. The same AML obligations as described in respect of companies apply in respect of partnerships (see further section A.1.1). Appropriate measures must be taken to identify the beneficial owners, and sanctions apply in the case of failure. The information is required to be kept updated and retained for at least five years after the end of the business relationship. Although the details on the beneficial owner of a partnership need to be collected, the law is silent as to the definition of beneficial owner of a legal arrangement, i.e. there exists only the definition applicable to companies as explained in section A.1.1 of the Report. Therefore, in the absence of any guidance, it is not evident how the definition would apply to partnerships.

148. Although AML obligations cover relevant financial institutions and professionals (including notaries, lawyers, accountants and auditors) only OLPs have an obligation to engage an AML obliged person (a CTSP acting as registered office in Vanuatu). Domestic (general and limited) partnerships and foreign partnerships that carry on business in Vanuatu are not required to engage an AML obliged service provider because there is no requirement to have a registered agent, bank account or other similar requirement. As for the case of directors and secretaries of domestic companies, there are no evidences that partners of partnerships, in theory as seen above subject to AML rules as reporting entities (s. 2(p)(ii)), are collecting and have ever been audited for the purpose of making sure that BO information is kept and up to date.

149. The AML regime is complemented by the new requirements under the Partnership Act, in force since 8 January 2019, pursuant to which beneficial ownership information has to be provided at the moment of the registration with the VSFC and changes have to be reported. However, it is not clear what process the VFSC should follow to ascertain that BO information is properly reported, since the new law only includes a very general definition of beneficial ownership as "a natural person who ultimately owns or ultimately controls" a partnership. The 2018 amendment clarifies (s. 1H) that for partnerships that cease to exist and are cancelled from the register, the Registrar "may make such further order as he or she thinks fit for the custody of the books and documents and the protection of the assets of the

12. See 2011 Report, para. 108 to 113 for further information.

partnership until the order is cancelled". This requirement does not seem to satisfy the retention requirements in all cases as per the standard.

150. Vanuatu is therefore recommended to ensure that identification of beneficial owners of all domestic and foreign partnerships that carry on business in Vanuatu is required to be available in Vanuatu as required under the standard, including for partnerships that cease to exist (see Annex 1).

Oversight, enforcement and availability of Information in Practice

151. The supervision of rules ensuring the availability of information on partners of partnerships and their beneficial owners as per the standard is performed partly in the same way as in respect of companies, i.e. based on AML supervision by the VFSC and the FIU. Legal ownership information for partnerships is based on registering with the VFSC. As already concluded in section A.1.1, the intensity of AML supervision is not sufficient and this includes cases where partnerships engage AML obliged professionals. Vanuatu is therefore recommended to address this gap. The two EOI requests received by Vanuatu during the review period were not related to partnerships.

A.1.4. Trusts

152. The 2016 Report concluded that the information on beneficiaries and settlors of trusts was available in Vanuatu with requirements in the AML/CFT legislation for CTSPs to obtain this information as part of CDD.

153. Since then, Vanuatu has further enhanced these requirements and introduced similar requirements also under the new CTSP Act.

Types of Trust and similar arrangements and requirements to maintain identity and beneficial ownership information

154. The two types of trust that can be set up in Vanuatu are Unit Trusts set up under the Unit Trust Act (2006) and trusts set up under principles of UK common law (see paragraphs 27 to 29 of the 2016 Report and 115 to 120 of the 2011 Report). Unit trusts are required to be registered with the VFSC (see details below) but there were none registered at the end of 2017.[13] Trusts set up under UK common law do not need to register.

13. Unregistered unit trusts must not be promoted in Vanuatu (s. 3(1)) which is supported by a sanction of VUV 10 million (EUR 76 000) and/or up to 10 year imprisonment (s. 3(3)).

155. For all trusts managed in Vanuatu, identity and beneficial ownership information is currently collected and kept by the trustees who need to be licensed under the CTSP Act (s. 4(1-2) CTSP Act) and follow the requirements set by that Act. Some exceptions apply to licencing, notably, acting as a trustee for an employee retirement scheme, or when another licensing obligation already applies (for providing professional legal or accounting services or in the case of the provider being licensed under the Financial Institutions Act or the International Banking Act). Licensing requirements apply also in relation to domestic trustees of foreign trusts. Additionally, non-professional trustees do not need to be licenced (s. 2(a-b)).

156. The amended CTSP Act (in force since June 2017) requires that the CTSP operating as the trustee or otherwise rendering services to a trust obtains the following information about the trust:

i. identity of the settlor of a trust in respect of which the license provides a trust service

ii. identity of each trustee of the trust

iii. identity of the protector of the trust

iv. identity of each beneficiary or class of beneficiaries

v. details on the beneficial owner of the trust

vi. details on any other person providing professional services to the trust.

157. The CTSP must update its records within 14 days of any change to the information. The information must be retained for six years after the licensee ceases to provide trust services in relation to the trust (s. 25B(1-3) CTSP Act).

158. Although the details on the beneficial owner of a trust need to be collected, the law is silent as to the definition of beneficial owner of a trust i.e. there exists only the definition applicable to companies as explained in section A.1.1 of the Report. Therefore, in the absence of any guidance, it is not evident how the definition would apply to trusts.

159. For Unit trusts, the main source for complete identity and beneficial ownership information would be the trustee. The 2018 amendment to the Unit Trust Act in force as 8 January 2019 introduced enhanced entry market due diligence requirements for this category of trust. In particular, upon registration of the scheme with the VFSC, the applicant must submit, among other things, details of each key persons (s. 6(2)(d)). A key person is defined as the beneficial owner, owner, trustee, director, manager or controller of the applicant or unit trust. Beneficial owner is defined as a natural person who ultimately owns or ultimately controls an applicant or unit trust (s. 1). The

definition of key persons does not contain all the parties to a trust or it is not clear for this purpose (e.g. beneficiaries are not included in the list). Also, the definition of beneficial owner is not in line with the standard since does not include control by other means and by senior management and there is no guidance on the application of the definition to this legal arrangement. However, AML legislation and relevant regulations (see below), applicable to trustees, at least solve the issues of all the relevant parties to be identified.

160. As per the definition of beneficial ownership in the context of a trust, also in this case there are no indications in the law or guidance on how the beneficial owners to all the parties of a unit trust should be identified, in accordance with the standard.

161. The AML/CFT requirements that apply in Vanuatu are explained in section A.1.1 of the Report. In addition, there are special requirements that apply only to legal arrangements (AML/CFT Order 122/2014). A reporting entity must obtain at minimum, the following from the customer or business partner: (i) full name of the trust, (ii) full business name (if any) of the trustee, (iii) type of trust, (iv) country in which the trust was established, (v) full name and address of each trustee, (vi) full name and address of each settlor and each beneficiary and the purpose of the intended nature of the business relationship with the reporting entity (s. 3(c) AML/CFT Order). However, the AML/CFT Order requires to identify the "ultimate beneficial owner" of the legal arrangement only when the customer is deemed as a high risk customer (s. 6 on enhanced customer identification process). Although the AML law contains the general beneficial ownership definition applicable to legal persons (amendment applicable since June 2017), there is no indication on where the definition of beneficial owner for legal arrangements should be derived from. In addition, as described above, the CTSP Act requires to identify the protector of the trust but there is no similar requirement under AML/CFT Act.

162. It can be concluded that the current requirements ensure that identity and beneficial ownership information is required to be collected in most cases, but there is no clear definition of beneficial owner applicable to trusts (including unit trusts) in any of the applicable legislation or guidance. Therefore it is not clear how the CTSPs or other AML/CFT reporting entities should identify the beneficial owner especially in cases where one or more of the key persons are legal entities or legal arrangements. Thus, the legal framework does not ensure that the beneficial owners of trusts are correctly identified. In addition, non-professional trustees do not need to be licensed, and therefore are not required to follow the CTSP Act. It is not clearly defined when a trustee would cross the limit of acting in a professional capacity. The AML/CFT rules provide for similar provisions but require the ultimate beneficial owner to be identified only when the customer is deemed "high risk".

163. Considering these deficiencies, Vanuatu is recommended to ensure that information on beneficial ownership of trusts is available in all cases.

Oversight, enforcement and availability of Information in practice

164. The Oversight programme by the various AML supervisory bodies is described in Section A.1.1 Beneficial ownership information – Implementation of obligations to keep beneficial ownership information in practice. The FIU reports that it supervises 11 trustees, but could not provide any specific statistics. It is concluded that similar issues that have been identified in the oversight previously in the report are present also in relation to trusts and Vanuatu is recommended to increase the intensity of supervision and apply sanctions when required.

165. Vanuatu has not received any EOI requests concerning trusts during the period under review.

A.1.5. Foundations

166. A Foundation can be incorporated in Vanuatu under the Foundations Act (FA) of 2009. A foundation is a separate legal entity incorporated under the Act into which property is transferred by the founder for a specific purpose, which may be any lawful purpose in Vanuatu. Foundations can be public or private (s. 3 FA). A foundation must have a founder, who is the individual or body corporate that subscribes to the charter establishing the foundation and irrevocably transfers, or agrees to transfer, the initial assets, if any, to the foundation. A foundation may have more than one founder (s. 4 FA). At 31 December 2017 there were 11 private foundations and no public foundations registered, the same as during the 2016 Review.

167. The 2016 Report confirmed that the rules regarding the maintenance of ownership and identity information in respect of foundations in Vanuatu were in accordance with the standard. Practical implementation was not reviewed. Since then, amendments effective since January 2018 (Foundation (amendment) Act 2017) introduced requirements for collecting and maintaining beneficial ownership information.

Requirements to maintain identity and beneficial ownership information

168. A foundation is incorporated by registering the charter of the foundation with the VFSC (s. 5 FA). Registration must include: (i) the original charter of the foundation, (ii) whether the foundation is to be private or public, (iii) the foundation's name, (iv) the details of the initial assets to be transferred, (v) the name and address of the secretary of the foundation, (vi) the address of the registered office in Vanuatu and (vii) must be signed

by or on behalf of the founder (s. 6, FA). The identity of the beneficiary(ies) of the foundation does not need to be provided. Foundations must also keep a register of its councillors, secretary and guardian at its registered office that is up to date. The register must contain, for any natural person: (i) full name and any former names, (ii) business of usual residential address, (iii) nationality, (iv) occupation and (v) date of birth. For a body corporate the requirements are: (i) name and former names and (ii) address of its registered office. The foundation must ensure that the register is available for inspection during business hours by the VFSC, founder, councillors, guardian and secretary of the foundation. Since January 2018, the fine that applies to the foundation and its councillors for not complying with these requirements was raised from VUV 1 million to VUV 125 million (EUR 7 600 to EUR 970 000; s. 19(4)). Notably, the FA does not require foundations to keep information on its beneficial owners but must still report this information to the VFSC, as described below (paragraph 171). Obligation to keep beneficial ownership information is however available under AML Law being foundations reporting entities (AML Law, s. 2(g)).

169. A foundation must file with the VFSC an annual return signed by the foundation's secretary and containing: the foundation's name and registered address; the full name and address of each councillor who is an individual; and for a councillor that is a body corporate, its full name, the place where it is incorporated and the address of its registered office. This does not include the identity of the beneficiaries (s. 52 FA).

170. With the amendments effective since 5 January 2018, additional information is required to be submitted, namely (viii) details of each key person and (ix) details of any beneficial owners of key persons (s. 6(2)). A key person is defined as founder, councillor, secretary or guardian of a foundation (s. 2). The beneficiary remains not to be identified. For any existing foundations, this additional information was required to be reported within six months from the commencement of the act (i.e. by June 2018). If the information is not provided, the VFSC may give a notice in writing and dissolve the foundation. A foundation must also give the VFSC written notice of: (i) a change of or addition of a beneficial owner, (ii) a change in the circumstances of a key person or beneficial owner that may affect whether he/she is fit and proper and (iii) any transfer of assets exceeding VUV 1 million (EUR 7 600) or its equivalent in foreign currency to the foundation. These changes must be notified within 14 days of the change (s. 49(5)A). If a foundation fails to comply with these requirements, the foundation commits an offence punishable upon conviction by a fine not exceeding VUV 125 million (EUR 970 000). In addition, the VFSC can dissolve the foundation. It appears there is limited reporting obligation in cases where any of the key persons changes because the law requires this notification only if it can potentially affect fit and proper requirements (i.e. compared to beneficial ownership,

there is an additional condition). There are no figures available on the level of compliance with these requirements and actions taken.

171. The definition of beneficial owner of the foundation was introduced to the Foundations Act (section 4A) in the amendments effective since January 2018:

> 4A Meaning of beneficial owner
>
> (1) A beneficial owner of a key person is a natural person who ultimately controls the key person.
>
> (2) For the purpose of subsection (1), control means exercising influence, authority or power over the key person, and includes circumstances where the key person is acting as a nominee or proxy on behalf of another person or entity.
>
> (3) For the avoidance of doubt, if a key person is acting as a nominee or proxy on behalf of a legal person or legal arrangement, the natural person who ultimately controls the key person is the natural person who:(a) has a legal entitlement to 25% or more of the legal person or legal arrangement by way of ownership of shares or otherwise, including ownership exercised through a chain of ownership; or (b) otherwise exercises control, directly or indirectly, over the legal person or legal arrangement.

172. The definition is not fully in line with the standard because beneficiaries are not part of the "key persons". It will not ensure the identification of all beneficial owners, for example in cases where the founder has set up the foundation to the benefit of another person who receives the benefit from the foundation but does not exercise control over the key persons. The same requirements with no additional details are replicated in the guidance issued by all the supervisors in Vanuatu in 2018 (see paragraph 92). A new amendment to the Foundation Act in 2018, in force as of 8 January 2019 does not address this issue. The threshold of 25% which applies to all the parties of the foundations is considered in line with the standard, given the status of separate legal entities of foundations in Vanuatu, which allows the application of the same approach as per legal entities. Finally, while foundations as such are considered reporting entities under the AML law (s. 2(g)) and then subject to requirements on beneficial ownership information, it is not clear who should be in charge of this requirement and whether this requirement is actually fulfilled.

173. Therefore, Vanuatu is recommended to ensure that identity of the beneficiary is required to be available and verified in line with the standard as well as the identify of all beneficial owners of the foundations.

Oversight, enforcement and availability of information in practice

174. According to the VFSC, foundations do file annual returns and have to communicate main changes within 14 days. However, as noted above, these returns do not update details on all the key persons or beneficial owners.

175. During the period 2015-17, the VFSC has inspected one foundation and found that information on key persons and beneficial ownership details were sufficient. The FIU did not report inspecting any foundations.

176. Overall, the supervision in relation to foundations follows the general supervision programme by the various AML supervisory bodies as described in Section A.1.1 Beneficial ownership information – Implementation of obligations to keep beneficial ownership information in practice. Foundations are not considered high-risk by the Vanuatu authorities. Issues that have been identified in the oversight previously in the report are present also in relation to foundations and Vanuatu is recommended to increase the intensity of supervision and apply sanctions when required.

177. Vanuatu has not received any EOI requests concerning foundations during the period under review.

A.2. Accounting records

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

178. The legal and regulatory framework of Vanuatu on the availability of accounting information was not in place at the time of the 2011 and 2016 reviews. Specifically, for trusts, partnerships, offshore limited partnerships and international companies, requirements were found either non-existent or not to the standard.

179. Since then, Vanuatu has adopted a new Record Keeping and Confirmation of Information Regulation Order no 42 of 2017 (Record Keeping Order), with effect from 29 March 2017. The regulation provides for record keeping and record retention requirements for persons deriving business and property income that are consistent with the EOIR standard.

180. The implementation of these new accounting requirements in practice has proven difficult. Vanuatu published the Record Keeping Order in the Official Gazette[14] but the supervisory functions were not defined as some

14. However, at the time of the review, the record keeping regulation was not publicly available in the online portal (which however, is not a government portal) where all other laws and regulations were usually made available.

senior representatives of the VFSC who, according to Vanuatu authorities, was supposed to be responsible for ensuring that the new obligations are respected, seemed not to be aware of the new Record Keeping Order during the onsite visit. Thus, there has been no supervision to ensure the effective implementation of the new order. Furthermore, the Record Keeping Order was enacted as a ministerial order under the ITCA (i.e. a law on international co-operation in the field of tax). No other legislation (e.g. company or accounting law) contains any reference to these rules. As the ITCA only deals with exchange of information, likely to be an unfamiliar area to many companies, it seems unlikely that all the concerned entities and arrangements would now follow the enhanced obligations. This conclusion is supported by the fact that during the onsite visit the CTSPs who were interviewed had very limited knowledge of the Record Keeping Order.

181. Therefore, although the legal framework was significantly improved by the Record Keeping Order, and the recommendations on the legal framework from the 2016 Report are addressed and can thus be deleted, the challenges have moved to practical implementation. There is no evidence to support that concerned entities and arrangements are aware of the new requirements and implement the Record Keeping Order in practice.

182. Vanuatu is recommended to ensure that the Record Keeping Order is implemented in practice by raising awareness of the obligations and ensuring adequate supervision of the obligations, so that accounting information is available in line with the standard for all entities and arrangements.

183. During the review period, the two requests received by Vanuatu did not concern accounting information. Therefore, availability in practice for EOI purposes was not tested.

184. The record keeping obligations were found non-compliant to the Standard in the 2016 Report when the Record Keeping Order was not in force. The situation has not much improved in practice since then, despite the fact that the issues with availability of accounting information were identified already in the 2011 Report and Vanuatu has had significant time to implement new rules and ensure their effective implementation in practice. Therefore, Vanuatu is rated non-compliant on the practical implementation of this element.

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

Legal and Regulatory Framework		
Deficiencies identified	**Underlying Factor**	**Recommendations**
	Although the new Record Keeping Order requires to keep accounting records for five years, it is not clear who would be legally responsible to keep the records if the entity itself ceases to exist and to which persons the available sanctions could apply.	Vanuatu is recommended to ensure that the record keeping requirements require to keep accounting records for a minimum of five years in cases where the entity is liquidated and that the requirements are supported by dissuasive sanctions in case of non-compliance with the requirements.
Determination: The element is in place but needs improvement.		
Practical Implementation of the standard		
Deficiencies identified	**Underlying Factor**	**Recommendations**
	Although Vanuatu improved its legal framework on accounting obligations significantly with the Record Keeping Order effective from 29 March 2017, there has been no supervision to ensure the effective implementation of the new order. The supervisory responsibilities are not clearly defined.	Vanuatu is recommended to ensure that the Record Keeping Order is implemented in practice by ensuring adequate supervision and sanctions in case of non-compliance so that accounting information is available in line with the standard.
Rating: Non-Compliant		

A.2.1. General requirements and A.2.2. Underlying documentation

Company law and tax law requirements

186. There are some requirements to keep records in each of the laws that concern each specific type of entity or arrangement.

187. The legal framework is in place for local companies, overseas companies, foundations, unit trusts and regulated entities such as banks and insurance companies. On the opposite, the accounting obligations for international companies (the vast majority of companies incorporated in Vanuatu), partnerships (general, limited and offshore) and trusts were found not in line with the standard in 2016. The main aspects for each entity and arrangement type that relate to accounting information are summarised below.

188. The Companies Act contains clear accounting requirements for local and overseas companies and clear requirements can be found in the Foundations Act as well. Before the new law entered into force (see below) there were no requirement in either the Companies Act or the ICA for companies to retain underlying documents such as invoices, contracts, etc. with regard to accounts. In the case of companies conducting business in Vanuatu that are required to be audited for VAT or business licence purposes, underlying documents would presumably be necessary to complete an audit, however there is no express provision that requires to keep necessary records in company law or tax law.

189. Regulated entities such as international banks, domestic banks and licensees under the Insurance Act are required to keep accounting in line with the standard under the respective laws.[15]

190. An international company must keep "such accounts and records as are necessary in order to reflect its financial position" (s. 63, ICA). This obligation in itself does not sufficiently ensure that records are kept in line with the international standard.

191. Partnerships are bound to render true and full information of all things affecting the partnership to any partner or his/her legal representative. Therefore, the Acts applicable to partnerships do not require keeping records in line with the standard.

192. With regard to trusts, the AML Act applies to any person acting as a trustee in Vanuatu and only requires that the person or entity retain records of all transactions involving the trust. However, this requirement in itself is not equivalent to an express requirement to retain records of accounts in line with the standard.

193. Pursuant to the Unit Trust Act, a manager of a unit trust scheme must publish the buying and selling prices of all units at least on a monthly basis (s. 13, Unit Trust Act). In addition, the manager must file an annual report with the VFSC which included an investment report, a statement of assets and liabilities, a statement of income and distribution, a copy of the audited accounts and the auditor's report, and details of the fees paid to the manager and trustee report (s. 15). Therefore, a manager of a unit trust scheme is required to keep records of account in line with the standard.

The 2017 Record Keeping Order

194. Since the obligations to keep accounting records in Vanuatu were limited the Vanuatu Minister in charge of finance and competent authority for

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

EOI purposes enacted the Record Keeping and Confirmation of Information Regulation Order no 42 of 2017 (Record Keeping Regulation), effective since 29 March 2017, which is directly aimed to address these deficiencies.

195. The Regulation was approved "to provide for standards for record keeping and retention requirements for persons deriving business and property income, that would be consistent with the internationally agreed Global Forum standards for the exchange of tax information" (s. 1(a) Record Keeping Order). Its scope of application is broad. Vanuatu has clarified that it applies to business and property income in Vanuatu or elsewhere by a company incorporated in Vanuatu.[16] The requirements have to be considered as fully applicable also to International companies even though this would imply a radical change compared to the current situation, as some enforcement authorities (VFSC) shared their doubts on how difficult this would be in practice given the nature of these companies.

- "Business" is defined as including any industrial, commercial, professional or vocational activity conducted for profit; the activity of renting out real property or any activity of a company.
- The term "Company", for the purposes of the regulation means a body corporate, statutory corporation, foundation, partnership, trust, or unincorporated association or body of persons or an estate, whether formed in Vanuatu or elsewhere; or an entity established under foreign law that has legal characteristics similar to that of a body corporate, foundation, partnership or trust.
- "Property income" means any income received by virtue of owning property. It includes passive income such as dividend, interest, royalty, or annuity, or other amount arising from the provision, use or exploitation of property; or a gain on disposal of real property in Vanuatu.

196. The regulation cover all relevant entities and arrangements.

197. The general record keeping obligations under the regulation require that a person who carries on a business or who derives property income maintains records that correctly explain all transactions; enables the financial position of that person to be determined with reasonable accuracy at any time; and allow financial statements to be prepared (s. 3(1)) Record Keeping Order).

16. Art. 2 of the Record Keeping Order ("Interpretation") specifies that "business" means "(a) any industrial, commercial, professional or vocational activity conducted for profit, whether conducted continuously or short-tem; (b) the activity of developing or renting out real property; or (c) any activity of a company".

198. Before the recent amendments, there were no explicit obligations in Vanuatu's legislation to retain underlying documents such as invoices, contracts, etc. The Record Keeping Regulation now explicitly specifies that a reference to records in the regulation includes all source and underlying documents relating to transactions entered into by the person, including invoices, purchase orders, delivery dockets, receipts and contracts (s. 3(5)). Further, the term "records" is defined in the regulation to include (a) a book of account, document, paper, register, bank statement, receipt, invoice, voucher, contract or agreement; and (b) any information or data stored on an electronic data storage device (s. 2(1)).

199. The obligations also ensure that when a person maintains records outside Vanuatu, the Competent Authority may issue a notice requiring the person to make the records available for inspection in Vanuatu within the time specified in the notice.

200. The Record Keeping Order requires that records must be maintained for five years from after the end of each fiscal year to which the records relate. This requirement is in line with the standard. In the case of small businesses that conduct their business wholly in Vanuatu and that have less than VUV 10 million (EUR 76 000) in business sales in any year, records need to be kept for three years (ss. 3(2)b, s. 2 Record Keeping Order). Vanuatu explained that the time period was decided to be shorter because these entities would pose low risk and in case they had any operations outside Vanuatu, this exception would not apply. Although this limitation is not in line with the Standard, it can be concluded that as it concerns only small companies with domestic activities, the materiality of the gap is low. Nevertheless, Vanuatu is recommended to ensure that all entities are required to keep records for five years, in line with the standard (see Annex 1).

201. The Record Keeping Order provides for sanctions for non-compliance. A person who contravenes a provision of the Regulation commits an offence on conviction by a fine not exceeding VUV 20 000 (EUR 155) or a term of imprisonment not exceeding 12 months or both. The Record Keeping Order does not mention to which persons in particular the sanctions would be applicable. However Vanuatu clarified that the sanction for non-compliance falls on the person who acted or omitted to act in accordance with the requirements of the Order. If a company failed to keep records, the company would be liable.

202. Compared to the sanction levels under both the ITCA (see section B.1.4) and the AML/CFT Act (see A.1.5) the sanction is quite low: the ITCA provides sanctions varying from VUV 1 million to 2 million (EUR 7 700 to 15 000) for not providing requested information to the competent authority and the AML Act on not keeping transaction records up to VUV 25 million for individuals and VUV 125 million for companies

(EUR 190 000 and EUR 970 000). The sanction does not seem dissuasive enough to trigger compliance. It is noted that in extreme cases, imprisonment up to one year is a possibility in the Order.

203. Nevertheless, Vanuatu is encouraged to increase the level of sanctions available in case of non-compliance with the Record Keeping Order to increase the dissuasive effect (see Annex 1).

Entities that ceased to exist

204. There is no express requirement in the Record Keeping Order to keep records of an entity that has ceased to exist. According to the Vanuatu authorities, liquidation would not change the requirements to keep records for five years. However, it is unclear who would be legally responsible to keep the records if the entity itself ceases to exist. It is therefore not evident if any sanctions could be applied in case of non-compliance. Sanctions apply to "persons" who contravene with the obligations of record-keeping, but the term "persons" is not defined in the context of the Record Keeping Order.

205. Further requirements are contained in the AML Act, where service providers are required to keep transaction records of their customers for six years after the end of the customer relationship. This would apply also in cases where the customer entity was liquidated. However, these requirements do not ensure that all relevant accounting records are kept based on these rules because the service provider would only keep records on transactions and no other relevant documents of the customer especially underlying documents.

206. Vanuatu is recommended to ensure that the record keeping requirements are applied in such a way that accounting records are kept for five years in cases where the entity or arrangement ceases to exist.

Oversight and enforcement of requirements to maintain accounting records

207. The 2016 Report did not analyse oversight and enforcement in relation to accounting records.

Supervision activities of Vanuatu authorities

208. As Vanuatu does not have an income tax, record keeping for tax purposes has largely been focused on compliance with domestic taxes such as Value Added Tax and other fees and charges. DCIR operates a VAT audit programme that contributes to enforcement of tax record keeping requirements for entities and arrangement liable to pay VAT in Vanuatu. Records

checked during VAT audits are tax invoices, receipts, cheque books and banking records.[17] There are approximately 2 000 VAT taxpayers in Vanuatu, which however do not cover international companies.

209. According to Vanuatu authorities, the VFSC and the FIU have the main responsibility for general record keeping supervision (including, in the case of FIU, through the use of independent audits). The supervisory activities for both of these authorities are explained in the report in section A.1.1. Compliance with requirements under AML legislation to keep sufficient transaction records is regularly checked during onsite visits. General compliance is reported as good.

210. The Record Keeping Order was intended by Vanuatu to bring the accounting rules to the EOIR standard but in practice ensuring implementation has proven difficult. To implement the new rules, Vanuatu simply published the Record Keeping Regulation in the Official Gazette. At the time of the review the record keeping regulation was not publicly available in any online portal, including one, where all other laws and regulations were available (although not maintained by the government). The Vanuatu authorities nonetheless note that many of the relevant stakeholders in Vanuatu receive automatically alerts when new laws, including orders, are published on the Official Gazette.

211. In addition, the supervisory functions were not defined in practice as some senior representatives of the VFSC who, according to Vanuatu authorities, were supposed to be responsible for ensuring that the new obligations are respected, seemed not to be aware of their supervisory role for the new Record Keeping Order during the onsite visit. The Vanuatu authorities nonetheless consider that some other VFSC managers in the compliance area are aware of the existence of the Order. In any event, there has been no supervision to ensure the effective implementation of the new order.

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17. The term "records" for tax purposes is defined in the VAT Act to include the following: Accounting books (whether manual, mechanical or electronic); A record of all goods and services supplied by or to the registered person identifying the goods and services, the suppliers or their agent; All tax invoices, invoices, credit notes and debit notes relating to the supplies made or received; Other documents as are necessary to verify the entries in the books of accounts; Documentation that describes the accounting system used. Bank statements; Audited financial statement of the company: profit and loss statement and balances sheets. According to the information provided by Vanuatu, the Tax Office has 6 types of tax audits that are carried out yearly: 1 (refund check), 2 (single period audit), 3 (at least 3 return periods), 4 (comprehensive audits – one year and plus), 5 (specific audits) and 6 (Joint audits with Customs Audit). Section 54 of the VAT Act [CAP 247] provides for record keeping requirements.

212. Furthermore, the Record Keeping Order is a ministerial order under the ITCA. The Minister of Finance and Economic Management, who is the Competent Authority of Vanuatu, signed the Record Keeping Regulation by exercising his delegated regulatory powers under section 17 of the International Tax Cooperation Act No 7 of 2016 (ITCA).[18] Any other legislation on legal entities or arrangements or on AML does not contain any reference to these rules. Awareness activities started only very recently, through consultation with the private sector on a draft of the Tax Administration Act that incorporates the provisions of the Record Keeping Order.

213. Therefore, although the legal framework was significantly improved by the Record Keeping Order, and all the recommendations on the deficiencies of the legal framework from the 2016 Report can thus be deleted, the challenges have now moved to practical implementation and supervision.

214. The record keeping obligations were found non-compliant to the Standard in the 2016 Report before adoption of the Record Keeping Order. The situation has not improved in practice since then, despite the fact that the issues with availability of accounting information were identified already in the 2011 Report and Vanuatu has had significant time to implement new rules and ensure their effective implementation in practice. In addition to this, the fact that some enforcement authorities (VFSC), after the introduction of the Record Keeping Order, shared their doubts on how difficult this would be in practice to check the accounting records of international companies, given their nature, makes even more clear that the new rules are difficult to implement in practice. Therefore, Vanuatu is rated non-compliant on the practical implementation of this element.

215. Vanuatu is recommended to ensure that the Record Keeping Order is implemented in practice by ensuring adequate supervision and enforcement of the obligations so that accounting information is available in line with the standard for all entities and arrangements.

Availability of accounting information in EOI practice

216. Vanuatu received no EOI requests regarding accounting information.

18. Pursuant to section 17 of the Act, "the Minister may make Regulations not inconsistent with this Act, prescribing matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act".

A.3. Banking information

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

217. In terms of banking information, the 2011 and 2016 Reports concluded that record keeping obligations of banks were in line with the standard. Since 2016, the AML/CFT legislation was strengthened (as described in Section A.1.1).

218. Vanuatu has both domestic and offshore banks (called international banks). Domestic banks are governed by the Financial Institutions Act (FIA) and international banks by the International Banking Act (IBA). All international banks are required to have a physical presence in Vanuatu. There were three international banks and seven domestic banks registered in August 2018. Five of the domestic banks take in deposits.

219. The FIU is the authority mainly responsible for supervising financial institutions, but it can delegate this supervisory role to the Reserve Bank of Vanuatu (RBV) in accordance with the amendments to the AML/CFT Act effective since June 2017. The RBV currently serves as the regulatory authority for financial institutions and checks banks' compliance with their record keeping obligations.

220. The EOIR standard now requires that beneficial ownership information (in addition to legal ownership) be available in respect of accountholders. The AML Act applies similarly to financial institutions as to all other AML obliged persons (see A.1.1). The applicable rules allow for correct identification of the beneficial owners in most cases and require for CDD to be conducted, including on-going monitoring. Deficiencies identified in Section A.1.1 with regard to trusts and foundations where the legal framework does not ensure identification of the correct beneficial owners have a direct effect on the availability of relevant banking information since it is not clear how financial institutions should identify the beneficial owners, especially in those cases where the key persons are legal entities or legal arrangements. Vanuatu is recommended to ensure that information on beneficial owners of trusts and foundations is available in line with the standard.

221. Although Vanuatu has made good progress during the latest years to clarify the roles of the supervisory authorities, issued guidelines and increased the number of onsite visits, the RBV and the FIU have not yet taken measures sufficiently adequate to ensure that full banking information is available in practice in line with the standard. Supervision is not yet conducted systematically, in particular on the quality of the information collected. In addition, no monetary sanctions were applied in case of infringements identified. According to the RBV, this is due to the current

focus on implementation after the significant amendments in 2017 and 2018, including improving policies and procedures, updating the market entry "fit and proper" requirements as well as selective onsite supervision where International banks are rated high risk. The VFIU pointed out how important progresses were made in the recent years (registration, awareness raising campaigns, follow-up on-site examinations). However, given the need to provide concrete evidences that the standard is implemented in practice, Vanuatu is recommended to continue to strengthen its supervisory programme of banks and apply appropriate and dissuasive monetary sanctions where necessary to ensure that full banking information is available in line with the standard, including information on beneficial owners of all account holders.

222. The availability of banking information was confirmed in practice in one case, to the satisfaction of the requesting peer.

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

Legal and Regulatory Framework		
Deficiencies identified in the legal and regulatory framework	**Underlying factor**	**Recommendation**
	Although Vanuatu's legal framework ensures that identity and beneficial ownership information is required to be collected for trusts in most cases, there is no clear definition of beneficial owner applicable to trusts. Therefore, it is not clear how banks should identify the beneficial owner(s), especially in cases where one or more of the key persons are legal entities or legal arrangements.	Vanuatu is recommended to ensure that information on beneficial owner(s) of trusts is available in all cases in accordance with the standard.
	The definition of beneficial owner for foundations relies on "key persons" and the beneficiary of a foundation is not part of the key persons. Not all beneficial owners would be identified in all cases.	Vanuatu is recommended to ensure that information on beneficiaries and beneficial owners of foundations is available in line with the standard.
Determination: The element is in place, but needs improvement		

Practical Implementation of the standard		
Deficiencies identified in the implementation of EOIR in practice	**Underlying Factor**	**Recommendations**
	Vanuatu has made good progress by clarifying the roles of the supervisory authorities, issuing prudential guidelines to banks and increasing the number of onsite visits. Nevertheless, adequate measures are not yet taken by the Reserve Bank of Vanuatu and the Financial Intelligence Unit which would ensure that full banking information is available in practice in line with the standard.	Vanuatu is recommended to continue to strengthen its supervisory program of banks and apply monetary sanctions where necessary to ensure that full banking information is available in line with the standard, including information on beneficial owners of all customers.
Rating: Largely Compliant		

A.3.1. Record-keeping requirements

Availability of banking information

224. The 2011 and 2016 Reports both determined that Vanuatu had put in place a legal framework ensuring availability of banking information. Practical implementation was not analysed.

225. With regard to record keeping requirements, the Financial Institutions Act requires that any licensee under the act must retain all cheques and bank drafts drawn on the licensee that are in its possession; and all bills of exchange and promissory notes made payable at the licensee and that are in its possession for six years from the (due) date of the instrument. There are no similar requirements in the International Banking Act although international banks are covered by the AML Act and therefore would be required to maintain transaction records.

226. There has been no change to the banking laws since 2016, but the AML/CFT legislation has been strengthened. The changes are identical to what has been described in Section A.1.1 of this report because the AML Act applies to financial institutions as to service providers and relevant professionals. To summarise, all financial institutions are subject to Customer Due Diligence requirements (CDD) of the AML Act and penalties for failure to comply with their CDD obligations are sufficient.

227. In addition, the Reserve Bank of Vanuatu has in January 2018 issued mandatory guidelines on CDD/KYC requirements for both domestic and international banks.

228. With regard to the general requirements in the guidelines, all international and domestic banks are required to have in place adequate policies, practices and procedures that promote high ethical and professional standards and prevent the bank from being used, intentionally or unintentionally, by criminal elements. Certain key features should be included by banks in the design of KYC programmes. They should start from the banks' risk management and control procedures and should include (1) customer acceptance policy, (2) customer identification and (3) on-going monitoring of high risk accounts. Banks should not only establish the identity of their customers, but should also monitor account activity to determine those transactions that do not conform with the normal or expected transactions for that customer or type of account. KYC should be a core feature of the banks' risk management and control procedures, and be complemented by regular compliance reviews and internal audit. Overall, the prudential guidelines seem robust and provide for clear practical guidance how the AML Act should be applied. Effect on beneficial ownership information is analysed below.

Beneficial ownership information on account holders

229. The EOIR standard now requires that beneficial ownership information be available in respect of accountholders (in addition to the identity of account holders). Under the AML Act, banks are required to identify beneficial owners of their account holders and take reasonable measures to verify the accuracy of the information obtained (s. 12(2-3) AML Act, s. 3 and schedule 2 AML Order).

230. The AML Act does not allow for CDD measures which would not include the requirement to identify and take reasonable measures to verify the identity of the beneficial owner of a customer. Where it is not possible to carry out CDD measures in line with the AML Act (e.g. where no sufficient information is provided) the financial institution must not continue with the transaction unless authorised by the FIU (s. 13(2)). With regard to other services than transactions, the financial institution must not enter into a customer relationship and must end any existing relationship if proper CDD cannot be achieved. Non-compliance by the financial institution is subject to a fine of VUV 25 million for individuals and VUV 125 million for companies (EUR 190 000 and EUR 970 000). In addition, for individuals (e.g. natural persons working for or on behalf of the reporting entity or contractor/agent of the reporting entity) imprisonment up to 15 years is possible (s. 13(3) AML Act). These sanctions in force since June 2017 were increased significantly and apply similarly to all AML obliged entities.

Definitions of beneficial owner(s)

231. The beneficial ownership definitions that financial institutions apply are identical to the definitions discussed in Section A.1.1, i.e. “beneficial owner means a natural person who is the ultimate owner or ultimate controller of a person or entity” (since the 2017 amendments to the AML/CFT Act). Issues were identified in the legal framework in relation to trusts (see Section A.1.4) and foundations (see Section A.1.5).

232. With regard to trusts, Vanuatu’s legal framework ensures that identity and beneficial ownership information is required to be collected by the financial institution but there is no clear definition of beneficial owner applicable to trusts. Therefore, it is not clear how the financial institution should identify the beneficial owner especially in cases where one or more of the key persons are legal entities or legal arrangements. The prudential guidelines issued by the RBV mention trusts but does not mention how the beneficial owner of the trust should be identified.[19] In March 2018 the RBV issued a guidance on market entry and fit and proper controls where instructions are given for the identification of beneficial owners, including in the case of trusts. The instruction says that “trustees will be the beneficial owners” and that “a beneficiary is similar to a member with an interest in the trust and therefore may be a beneficial owner depending on their unit interest”. These instructions are not in line with the standard.

233. With regard to foundations, the definition of beneficial owner in the Foundations Act relies on “key persons”. As the beneficiary is not part of these key persons, the definition might not enable the identification of the correct beneficial owner. While the guidance mentioned in the previous paragraph, specially provides for a process to identify beneficial owners in the case of foundations, there are no elements in it to fix the issues identified in the legal definition under A.1 (see paragraph 173).

234. Regarding the timeline for keeping the information up to date, the RBV indicated that a risk-based approach must be applied, as confirmed in the prudential guidelines. Regular reviews and updates have to be done on the one hand periodically according to the respective customer risk, and on the other hand on an occasion-related basis as soon as information that requires

19. “… in relation to trusts it is essential that the true customer relationship is understood. International banks should establish whether the customer is taking the name of customer, acting as a “front”, or acting on behalf of another person as trustee, nominee or other intermediary. If so, a necessary precondition is receipt of satisfactory evidence of the identity of any intermediaries, and of the persons upon whose behalf they are acting, as well as details of the nature of the trust or other arrangements in place. Specifically, the identification of a trust should include the trustees, settlors/grantors and beneficiaries” (Prudential Guidelines paragraph 25).

an update occurs. For customers rated with a low risk, an occasion-related update may be sufficient. No further guidance is provided.

235. To summarise, the available rules allow for identification of the beneficial owner in most cases and require for sufficient CDD to be done but the on-going monitoring could be improved. There are deficiencies with regard to trusts and foundations where the legal framework does not ensure identification of the correct beneficial owner in all cases. Vanuatu is recommended to ensure that information on beneficial owners of trusts and foundations is available in line with the standard. In addition, Vanuatu is recommended to ensure that information on beneficial ownership on all accountholders is accurate and up to date in all cases (see Annex 1).

Introduced business rules

236. The relying financial institution must itself make sure that the intermediary or third party is regulated and supervised, and has measures in place to comply with the requirements under the Vanuatu AML Act. It must also immediately obtain and keep the CDD records required by the AML Act and have access on request to any relevant records without delay (ss. 18(1)). According to an amendment in force since June 2017, the financial institution must also review whether the location of the intermediary or third party is a high risk location/country (ss. 18(1)d) (if yes enhanced CDD is to be applied) but the concept is not further defined. The records that need to be obtained include records that identify the beneficial owner(s) including confirming underlying documents. Ultimate responsibility remains on the relying institution as confirmed by the AML Act and the prudential guidelines. These rules are in line with the standard.

Oversight activities and enforcement provisions to ensure the availability of banking information

237. Previously, the FIU was the authority mainly responsible for supervising financial institutions but it has delegated this supervisory role to the RBV in accordance with the amendments to the AML/CFT Act effective since June 2017 (s. 8B AML Act). The RBV currently serves as the regulatory authority for financial institutions and checks banks' compliance with their record keeping obligations. According to the AML Act, the RBV has all the monitoring and enforcements powers available to the FIU (ss. 8b(2)). The FIU nonetheless retains its powers in relation to banks. After the change in 2017, RBV continued to supervise banks on prudential as well as AML/CFT. However, the co-operation and sharing of information between RBV and VFIU is reported to be improved. RVB now can also share information and co-operate with foreign counterparts. In general, the role of other supporting agencies is much clearer and given the establishment of the Supervision

Working Group (see below), there is better co-ordination and co-operation to assist each other. Awareness is also reported to have been improved.

238. Reserve Bank of Vanuatu undertakes review of banks on customer due diligence, record keeping and compliance with AML Act and with the Reserve Bank's guideline 9 on Customer Due Diligence. The onsite reviews can also be conducted jointly with the FIU in accordance with the Memorandum of Understanding between these authorities. Another MOU which supersedes the one between the VFIU and RBV was signed on 29 December 2017 by all Heads of the agencies making up the AML/CFT Supervisory Working Group. This MOU spells out the roles of different agencies regarding AML/CFT.

239. The Vanuatu authorities explained that from 2015 until end of 2017 their priority was on addressing AML/CFT deficiencies identified by the FATF. Most of the work that was done concerned legislative amendments, setting the overall governance and supervisory framework and awareness raising. Further, market entry fit and proper assessments were a priority for reporting institutions. AML/CFT onsite reviews, which also focus on beneficial ownership of accountholders, were targeted on international banks, which are identified in the National Risk Assessment as high risk.

240. The RBV has a manual that guides its AML/CFT supervisory functions. Prior to the onsite, they ask the bank to submit pre-onsite information (outline of main activities, summary of performance and forecast for upcoming years, update of AML/CFT programmes, overview of risk management system, etc.). Based on these information, the RBV performs random selection of files, on which they will focus their attention during the onsite review. A visit would normally take a week. Staff members responsible for prudential supervision are also involved in AML/CFT supervision, resulting in important work load for the staff. Normally three staff members would be involved during an onsite review.

241. The VFIU also bases its on-site reviews on the outcome of offsite analysis. Entities identified by the offsite review as operating with serious concern (significant breach or non-compliance with the AML/CFT Act and other benchmarks) are subject to the onsite review, based on risk assessment. The VFIU then conducts comprehensive onsite on these entities where they are asked to complete the compliance report and provide certain additional information (including specific documents and records) to be provided prior to the onsite. Depending on the information available to the examination team, an onsite usually lasts 3-5 days and is conducted by the seven members of the VFIU supervision staff. During the onsite, the examination team undertakes a sample review of records, record keeping requirements, CDD, transactions, organisational structure, staff job descriptions, trainings/educations, staff awareness of the AML Act, adherence to the AML/CFT Procedure Manual.

242. During the period 2015-17, the FIU and RBV conducted 15 onsite visits and 17 prudential consultations. Infringements were identified in 14 cases and written warnings were given in each of the cases. In one case the licence was revoked. However, no monetary sanctions were applied. The statistics are presented in more detail in the table below.

	Number of registered banks	Number of on-site inspections	Number of on-site inspections having identified AML/CFT infringements	Type of sanction/measure applied			Number of sanctions taken to court (if applicable)
				Written warning	Fines		
					Number	Amount (VUV)	
2015	12 (5 Domestic and 7 International Banks)	2 onsite visits and 8 prudential consultations	2	2	none	n/a	1 licence revoked
2016	11 (5 domestic and 6 international)	9 on-site inspections, 2 prudential consultations	8	8	none	n/a	n/a
2017	11 (5 domestic and 6 international)	4 onsite visits and 7 prudential consultations	4	4	none	n/a	none

243. Although Vanuatu has made good progress to clarify the roles of the supervisory authorities, issued guidelines and increased the number of onsite visits, adequate measures are not yet taken by the RBV and the FIU which would ensure that full banking information is available in practice in line with the standard.

244. Vanuatu is recommended to continue to strengthen its supervisory programme of banks and apply monetary sanctions where necessary to ensure that full banking information is available in line with the standard, including information on beneficial owners of all accountholders.

Availability of bank information in EOI practice

245. Vanuatu received one request where part of the request concerned banking information and was able to obtain the information successfully as confirmed by the requesting peer. Information requested included account information, loan agreements and other contracts, any accounts or other financial accounts held by the bank in relation to the relevant person(s). No banks has refused to co-operate.

Part B: Access to information

246. 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).

247. Vanuatu's access powers were assessed under the 2010 ToR and found to be adequate: the competent authority has sufficient access powers to request and obtain all types of relevant information including legal ownership information, accounting and banking information from any person in order to comply with obligations under Vanuatu's EOI arrangements. The legal and regulatory framework was determined to be "in place". There have been no relevant changes in the legal framework since the 2016 review. The available access powers also ensure access to beneficial ownership information.

248. During the review period Vanuatu received two requests and the competent authority used its access powers successfully in both of the cases. Information was obtained from other government agencies and a number of banks. The requesting jurisdiction in both of the cases reported that the information obtained was very useful and that Vanuatu had worked actively with the peer to help them in their investigation.

249. The table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: in place
Practical Implementation of the standard
Rating: Compliant

B.1.1. Ownership, identity and bank information and B.1.2. accounting records

250. The competent authority who is responsible for all requests received under Vanuatu's tax information exchange arrangements is the Tax Policy Department (TPD), within the Ministry of Finance and Economic Management of Vanuatu. The TPD is also the body responsible for overseeing the work of the tax administration of Vanuatu.

General access powers

251. The access powers available to the competent authority have not changed since the 2016 report. The International Tax Cooperation Act (ITCA) (effective since 7 July 2016) provides Vanuatu's Competent Authority with the power to obtain and provide information for EOI purposes.

252. Pursuant to Article 4 of the ITCA, Vanuatu's Competent Authority has the power to require the production of information from any person. This is also the access power that the competent authority uses in principle in all EOI requests.

253. Pursuant to Article 3 of the ITCA, Vanuatu's Competent Authority has also the power to carry out EOI requests including but not limited to (i) taking statements from any person; (ii) providing information and articles of evidence to any person who requires access to that information for the purposes of the ITCA (e.g. foreign competent authorities, the tax administration and judicial bodies in accordance with the relevant Agreement and the ITCA); (iii) serving of documents and (iv) executing searches and seizures.

254. A notice issued under Article 4(6) of the ITCA requires the information holder to provide the requested information within normally 14 days but this timeframe can be shortened or extended if the competent authority has special reasons to do so. In practice, Vanuatu applies a 14 day time limit in notices but it granted the information holder one week of extra time in one complex case. In addition, the information should be provided in such form as the TPD requires including original documents or copies of original documents; and the information should be verified or authenticated in such manner as the TPD requires.

255. The powers given to the competent authority by the ITCA allow for the competent authority to effectively obtain information in line with the standard. There are no limitations on the ability of the competent authority to obtain information held by banks or other financial institutions and there are no special procedures (such as requirement of a court order) for accessing information held by banks in Vanuatu. With regard to beneficial ownership information, the VFSC and FIU representatives confirmed that they are able to provide information. The VFSC clarified that information pertaining to ICs, including beneficial ownership information, can be shared only under the circumstances and with those entities as stated under section 125A(6) ("Confidentiality of company records") of the International Companies Act as amended in the 2018 Consolidated Edition (Order No. 64 of 2018). According to the VFSC the tax competent authority might not be captured by this list since in any case it cannot be considered as a "Domestic regulatory authority", expressively mentioned under art. 125A (6)(v).[20] However, according to the VFSC, the general powers granted under the ITCA will be sufficient to obtain the information. Section 16 of the ITCA provides for a general overriding effect of this act towards any possible limitations due to confidentiality of the information as included in any other acts in Vanuatu. Vanuatu is recommended to monitor the implementation of its access powers in order to make sure that specific restrictions imposed under certain laws do not undermine the general powers provided under the ITCA (see Annex 1).

256. Considering these broad powers, any type of ownership information (including beneficial ownership information held by the relevant authorities and entities themselves) and accounting information can be collected in Vanuatu from any person object of the request or any third parties and can be exchanged upon request with counterparts. Vanuatu clarified that in the case of requests made to International companies, the notice would be directed to the manager at the companies' public address in the first instance. However, separate notices can be sent to accountants and agents who may hold information if there are special circumstances. In the case of non-response or non-compliance, the original letter would generally be followed up with a personal visit to attempt to negotiate resolution. If compliance is not obtained, the matter would be referred to the Attorney General's Department to initiate prosecution action. Search warrants and summons to appear can be issued as required and appropriate.

20. According to the VFSC, the Competent Authority cannot be considered such an authority since it is not a body or an agency established under the law of Vanuatu which: (a) grants or issues under that law or any other law licensees, permits, certificates, registrations or other equivalent permissions; and (b) performs any other regulatory function related to a matter referred to in (a), including developing, monitoring or enforcing compliance with standards or obligations prescribed by or under that law or any other law.

Databases accessible to the competent authority

257. The competent authority has direct access to several government public and confidential databases. The database on domestic companies and business name is publicly available and the competent authority may acquire information from that database directly (provided that the partner has not already used the database as it is available at www.vfsc.vu). However, this public database excludes details on nominators of nominee shareholders and details of beneficial owners. The database does not contain any information on international companies either.

258. Concerning confidential government databases it has access to any relevant information held by the Government, such as DCIR taxpayer lists, databases, land title information, VFSC registers of international companies, beneficial owner registers. The competent authority may send a notice to any of the government agencies to obtain information from any of their databases.

Access to bank, ownership and accounting information in practice

259. During the peer review period, the competent authority obtained ownership information successfully in two cases which concerned banking information. Requests were made to a number of banks. Information requested included account information, loan agreements and other contracts, any accounts or other financial accounts held by the bank in relation to the relevant person(s). The information was provided by the banks within two weeks.

260. In cases where the requesting jurisdiction is not able to identify in which bank the account is held, the Vanuatu competent authority is prepared to send a notice to all banks in Vanuatu provided that the request is valid. This has been done in one of the two cases referred to above, where the competent authority sent a request to all the commercial banks in Vanuatu since the banking details of the persons concerned were not known by the requesting party but sufficient identity information was included to identify the account holder.

261. The information was provided to the satisfaction of the peer. Accounting information was not requested by Vanuatu's peers during the review period.

262. The notice used to request the information from information holders contains information contained in the request from Vanuatu's partners only to a limited extent. The notice contains: (i) reference to the powers granted to the competent authority under article 4(4) of the ITCA, (ii) time limit for the reply, (iii) a request for the recipient to certify that all documents are either original or true copies (iv) a prohibition of disclosing any information

about the notice according to s. 14 of the ITCA and (v) in case documents are provided in electronic form, a request that they are provided in readable form such as PDF, Word or Excel files. The identification details of the entities and arrangements or natural persons the information is requested on is provided in an annex as well as all the questions to be replied to. No further information regarding the background of the request or details on the foreseeable relevance of the request is communicated. Additionally, the Vanuatu competent authority includes an explanatory note on the ITCA, its purpose and the applicable provisions, including sanctions for non-compliance.

263. In practice, the competent authority follows the rules provided by the ITCA and the practical guidelines that are provided in the EOI manual based on the OECD model (see further element C.5). These rules contain e.g. practical guidance to support execution of the provisions of the ITCA and are well within the standard.

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

264. 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.

265. The powers provided to the Vanuatu competent authority under the ITCA can be used to provide EOI assistance regardless of whether Vanuatu needs the information for its own domestic tax purposes.

266. Under Article 3 of the ITCA it is expressly stated that the powers granted to the Vanuatu competent authority may be used for the fulfilment of Vanuatu's obligations under its international agreements. Article 3(2) reads as follows: "The competent authority is to assist a requesting State in accordance with the terms of the Agreement[21] with that State". The terms of all of the agreements that allow information to be exchanged for tax purposes, that Vanuatu is party to, provide for information to be obtained and exchanged notwithstanding that it is not required for any domestic tax purpose. Vanuatu interprets the term "state" as covering also dependencies of states.

267. In practice Vanuatu indicated it had no domestic tax interest in the information it gathered and exchanged in the two requests handled during the review period.

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

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

268. Sanctions for not complying with notices sent by the competent authority are clearly specified in Article 11 of the ITCA: in the case a person who is required to report or produce any information which is in his or her possession or control and: (i) without lawful excuse fails to do so within such time as required by the Vanuatu competent authority; or (ii) alters, destroys, mutilates, defaces, hides, or removes any information or makes a wilful attempt to do so, commits an offence punishable on conviction by a fine of not more than VUV 1 000 000 (EUR 7 800) or by a term of imprisonment not exceeding two years, or both. The same sanction applies to a person who knowingly makes a false declaration to the Vanuatu competent authority or an authorised officer.

269. The competent authority may also apply to the Supreme Court for the issue of a search warrant authorising entry into a premise for the purposes of search and seizure of documents (ITCA, s. 8).

270. The Vanuatu competent authority reported that they have been able to respond to both the incoming cases under the review period without the need to resort to the imposition of any of these penalties as all information requested from information holders was provided. However, in case an information holder would not comply with the notice, they are ready to impose all available sanctions.

B.1.5. Secrecy provisions

271. There are two types of secrecy or confidentiality provisions that are relevant for the purposes of this section: bank secrecy and professional secrecy. The rules in respect of each of these are analysed below.

272. Article 13 of the ITCA allows Vanuatu's competent authority to obtain information regardless of any secrecy provisions that would apply to the information. In particular, the law says that it is not considered as an offence under any other law for the time being in force in Vanuatu, for a person to (i) divulge any confidential information; or (ii) provide articles or documents; or (iii) give any testimony in conformity with an order or notice issued pursuant to a request; or (iv) provide information pursuant to the Regulations to facilitate the automatic exchange of information; or (v) otherwise provide information, to the Vanuatu competent authority or any authorised recipient for tax purposes pursuant to a requirement of the ITCA. Furthermore, the person is not in breach of any confidential relationship between him/her or any other person; and a civil or criminal liability action is not to be taken against him/her or his/her employer by reason of complying with the order or notice. Furthermore, Article 16 states that the provisions of

the ITCA have effect despite any obligations as to confidentiality or other restriction for the disclosure of information imposed by any other act. The only exception to this rule is legal privilege as Article 4 of the ITCA indicates that notices do not confer any right to the competent authority to require production of information subject to legal privilege.

Bank secrecy

273. The legal basis for bank secrecy in Vanuatu is provided for international banks by section 39 of the International Banking Act (IBA) and for domestic banks by section 55 of the Financial Institutions Act (FIA). There has not been any relevant changes since the 2016 Report.

274. The IBA prohibits the disclosure of "protected information"[22] or any other information relating to the international banking business of a licensee or a depositor or other customer of the licensee (s. 39(1)). Similarly, the FIA provides any statement, return or information provided by a licensee to the RBV must be regarded as confidential by the recipient (s. 55(1)).

275. According to the IBA and the FIA, banking secrecy can be lifted when the disclosure, inter alia, is required under any law of Vanuatu, such as the ITCA. As noted, above, Article 13 reinforces this exception in favour of EOI.

276. In practice, under the review period the competent authority asked information to all four commercial banks in Vanuatu and obtained it from the relevant domestic bank successfully. Additionally, the relevant professional from the banking sector confirmed they would be in position to provide any information the competent authority should they receive a notice. Although experience is limited to this one case, no potential problems have been identified that could hinder access to bank information in the future.

Professional secrecy

277. The 2016 Report indicated that secrecy provisions applicable to legal professionals do not prevent effective exchange of information. In practice, Vanuatu has not requested lawyers to provide information in relation to EOI cases. However, lawyers can be a source of CDD information including beneficial ownership information collected on their clients and are subject to registration with the VFIU as reporting entities. The VFIU informed that

22. "Protected information" is defined as: the fact of whether a person has an account with a licensee, the name in which the account of a depositor or other customer stands the balance of any such account or the amount of any individual transaction undertaken by any licensee for a depositor or other customer of the licensee.

there are no legal impediment for the provision of information obtained by lawyers under the performance of their activities as CTSP licensees.

278. The power to require production of information is limited by legal privilege under Articles 4(8) and 13(3) of the ITCA. Neither the ITCA nor Vanuatu's international treaties contain a definition of legal privilege. Legal privilege in Vanuatu is defined consistently with general principles common to common law jurisdictions. As explained in detail in the 2016 report (see paragraphs 70 and 71), there have been two court cases in Vanuatu (not related to EOI) where the court found that documents were not protected by legal privilege. In particular, according to one of the cases, legal professional privilege will not apply to a document which demonstrates a prima facie dishonesty or iniquity, as a matter of public policy considerations.

279. Vanuatu further clarified that legal professional privilege only pertains to communications between the legal practitioner and his/her client in his/her capacity as legal representative for expected or current litigation. Even in those cases, the privilege may be lost if the communication is made for criminal purpose. Because legal professional privilege has not been extended beyond the legal profession, if a lawyer acts as a nominee, trustee or registered agent, the privilege would not apply. Vanuatu also expects that legal privilege will be applied in the context of the law and respective international agreement, and would not be applied to defeat the operation of the agreement. This interpretation given by the authority seems to be in line with the general orientation of the court in the relevant cases mentioned above.

280. To conclude, although there are no practical experiences available, the applicable rules should allow the competent authority to access information and exchange it in line with the standard.

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.

281. The 2016 Report found that Vanuatu had no issues regarding notification requirements or appeal rights and the element was determined to be in place. Since then there have been no changes in legislation. No issues were identified in practice during this review. The table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: In Place

Practical Implementation of the standard
Rating: Compliant

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

282. Vanuatu law does not require notifying the person who is the subject of a request for information (i.e. person who the investigation concerns in the requesting jurisdiction), neither before the information is exchanged (prior notification) nor after the information is exchanged (time specific post notification).

Appeal rights

283. Information holders may seek to resist a request for information through the domestic court system. Vanuatu uses the common law judicial system and the right to seeking an appeal is not legislated for in any particular legislation as a matter of criminal and civil procedure. Vanuatu authorities explained that the right to appeal is itself a substantive liberty interest and comes with the notion that when a party to a case is not satisfied, it can lodge an appeal (within the allocated timeframe). For VAT purposes, there is a right to appeal stipulated under the VAT Act (s. 26).

284. If an information holder would like to have a notice it has received from the competent authority reviewed by a court, the holder would first need to go through a fact finding process. Vanuatu authorities clarified that the information holder at this stage would be provided only information relating to the authority to issue the relevant notice, reference to the agreement involved and proof of legal appointment of the Competent Authority. The confidentiality provisions of the ICTA and TIEA apply and the letter request would not be disclosed to the information holder . After going through that stage, the holder can lodge an appeal to the Appeal Court.

285. The procedures in place for appeals contain no explicit rules or procedures that are intended to delay or hinder exchange of information. Vanuatu authorities advised that while some delays are inevitable where there is an appeal, the Court would not allow frivolous or vexatious litigation to be used to frustrate the EOI process. Similarly, while there may be possible delays (if substantive litigation is undertaken), it remains open to the Court to make orders to protect the information from loss or destruction. In case of an appeal, Vanuatu also reported that it would disclose information necessary to fulfil the request or to defend their position, but the request itself would not be disclosed without agreement of the EOI partner concerned. In addition, robust anti-tipping off safeguards are provided under the applicable law (ITCA, s. 14).

286. Finally, the possibility of filing a case to the Supreme Court on unconstitutionality of the ITCA itself is possible in parallel (s. 6(1) Vanuatu Constitution). Vanuatu clarified that if there was a constitutional court case, the outcome of that case would cover any decision under their ordinary rules of precedent. However, in their opinion, a successful constitutional challenge is very unlikely in this regard.

287. In practice, the two requests received by Vanuatu have resulted in the issue of 11 notices requiring information. No appeals towards the notices or challenges on the constitutionality of the relevant laws were made.

Part C: Exchanging information

288. Sections C.1 to C.5 evaluate the effectiveness of Vanuatu's network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all Vanuatu's relevant partners, whether the confidentiality of the information received is ensured, whether Vanuatu's network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Vanuatu can provide the information requested in a timely manner.

C.1. Exchange of information mechanisms

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

289. Vanuatu has signed 14 TIEAs between 2009 and 2012. Vanuatu also recently signed the Multilateral Convention on Mutual Administrative Assistance (Multilateral Convention) on 22 June 2018. The Multilateral Convention entered into force on 1 December 2018 in Vanuatu.

290. Vanuatu now has 126 EOI relationships but not all its TIEAs were in force during the period under review and on some of them there is still a doubt as to whether they have entered into force. The 2016 Report noted that only 2 of the 14 TIEAs were in force. Vanuatu reported to have processed the needed ratifications and informed its partners of the completion of its procedures, so that all TIEAs should have now entered into force. However, the date of the entry into force for some TIEAs with Vanuatu is still unclear.

291. In the current review period (2015-17), Vanuatu received two EOI requests based on the same TIEA, which was interpreted in accordance with the standard. In particular, the requesting peer was satisfied with Vanuatu's interpretation of the foreseeable relevance standard.

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

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

Other forms of exchange of information

293. Vanuatu committed to the automatic exchange of financial account information under the Common Reporting Standard and is currently working towards first exchanges to take place in the second half of 2019. Delays are due to the Multilateral Convention only coming into force on 1 December 2018 and the development of systems to facilitate collection and exchange of information.

C.1.1. Foreseeably relevant standard

294. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction.

295. All of Vanuatu's TIEAs are based on the OECD Model TIEA and, with few immaterial exceptions, are identical to it. The Multilateral Convention also complies with the standard.

Clarifications and foreseeable relevance

296. Vanuatu's interpretation of the foreseeable relevance standard is consistent with the scope of the OECD Model TIEA. The EOI procedures in Vanuatu require any incomplete or unclear request to be clarified (or additional information requested) prior to declining a request. This includes advising the requesting competent authority if the request is inefficient or defective.

297. Vanuatu responded to two EOI requests during the review period. In one of the requests, the Vanuatu competent authority worked with the requesting competent authority to improve the request (in particular, technical errors were identified) to ensure the partner would receive what it needed. The peer was satisfied with the co-operation and reported that the information received from Vanuatu was very useful.

Group requests

298. Vanuatu has not received any group requests. Vanuatu's procedures to deal with group requests are similar to those on individual requests.

299. The main difference compared to normal requests relates to the information that must be included in the request, as detailed in Vanuatu's EOI manual, which mirror paragraph 5.2 of the Commentary to Article 26 of the OECD Model Convention. The requesting jurisdiction should provide: (i) a detailed description of the group, (ii) an explanation of the applicable law, (iii) an explanation why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law and (iv) a showing that the requested information would assist in determining compliance by the taxpayers in the group.

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

300. Vanuatu's EOI agreements the exchange of information in respect of all persons. In practice, the two EOI requests related to companies and individuals resident in Vanuatu and the requesting jurisdiction.

C.1.3. Obligation to exchange all types of information

301. Vanuatu's TIEAs all contain Article 5(4)(a) and (b) from the Model TIEA which provides that information held by banks, financial institutions, agents and fiduciaries must be exchanged as well as information regarding ownership.

C.1.4. Absence of domestic tax interest

302. There is no domestic tax interest requirement in Vanuatu or in its EOI agreements. Vanuatu's EOI partner did not report any issues in practice with regard to domestic tax interest requirements. Vanuatu reported that it has in practice dealt with cases without domestic tax interest without any issues.

C.1.5. and C.1.6 Exchange information relating to both civil and criminal tax matters

303. All of Vanuatu's EOI instruments provide for exchange of information in both civil and criminal matters, and regardless of whether the conduct under investigation, if committed in Vanuatu, would constitute a crime. Vanuatu received and answered two requests related to civil matters. No request related to criminal tax matters was received during the period under review.

C.1.7. Provide information in specific form requested

304. There are no impediments under Vanuatu domestic law and EOI agreements that would prevent Vanuatu from providing information in the specific form requested. Vanuatu is prepared to do so to the extent such form is known or permitted under Vanuatu's law or administrative practice, but has not received specific requests so far.

C.1.8. Signed agreements should be in force

305. The 2016 Report noted that there were delays on Vanuatu's part in ratifying signed agreements and in notifying Vanuatu's treaty partners about completing internal procedures to bring the ratified EOI agreements into effect.

306. After the 2016 Report, Vanuatu reported action to address the issue of pending notifications regarding completion of internal procedures. Vanuatu sent all pending notifications to eight jurisdictions,[23] and consequently, these TIEAs should have all come into force between 2016 and 2017. However, the date of entry into force of one of these agreements is still pending final communication between the Ministries of Foreign Affairs of the two concerned jurisdictions. Nevertheless, both parties agree that the agreement is now in force.

307. Vanuatu stated that, following a review of their laws in 2017, there is no need any more to ratify through Parliament TIEAs or similar agreements such as the Multilateral Convention or the four TIEAs whose ratification was pending (with Grenada, Ireland, Korea and San Marino). Any TIEA or similar agreement signed by Vanuatu will thus be processed significantly faster from now on. Accordingly, Vanuatu sent formal notices on 8 June 2017 to these four TIEA partners notifying completion of its internal procedures. However, Vanuatu lost data and documents with cyclone Pam and had to ascertain the date of entry into force of the TIEAs with its partners. The competent authority says to be in contact with the Ministry of Foreign Affairs and the relevant competent authorities to get the correct date of entry into force. However, concerning the TIEA with Grenada, there are doubts as to whether a bilateral agreement has ever been signed as none of the authorities can retrieve the signed text, but the EOI relationship now exists under the Multilateral Convention.

308. In total, of the 14 (possibly 13, see above) TIEAs signed, according to Vanuatu, it has now completed all necessary steps in all TIEAs to bring them into force. However, as seen above, the date of entry into force for at least three jurisdictions (Grenada, Korea and Norway) is still not know. Vanuatu signed the Multilateral Convention on Mutual Administrative Assistance, as amended in 2010 (Multilateral Convention) on 22 June 2018, deposited

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23. Australia, Denmark, Faroe Islands, Greenland, Iceland, New Zealand, Norway and Sweden.

instrument of ratification on 28 August 2018 and it entered into force on 1 December 2018. By joining the Multilateral Convention, Vanuatu has also activated with certainty its EOI relationship with all its bilateral treaty partners, irrespective of the status of the TIEAs. However, given the issues identified in the recent past concerning the post-ratification procedure and the persisting uncertainty on the entry into force of certain treaties, Vanuatu is recommended to improve its communication with partners after an agreement is considered ratified from its side to make sure that agreements are swiftly in force (see Annex 1).

309. The following table summarises the outcomes of the analysis under element C.1 in respect of Vanuatu's bilateral EOI mechanisms, i.e. all bilateral mechanism are complemented by the MAC.

EOI bilateral mechanisms

EOI relationships, including bilateral and multilateral (MAC) or regional mechanisms	126
In force	111
In line with the standard	111
Not in line with the standard	0
Signed but not in force	15 (where MAC not in force)
pending ratification in the assessed jurisdiction	0
In line with the standard	15
Not in line with the standard	0
Bilateral mechanisms (DTCs/TIEAs) not complemented by multilateral or regional mechanisms	**0**

C.1.9. Be given effect through domestic law

310. If a treaty conflicts with a law, the law is superior to the treaty. Exchange of Information Agreements as well as the Multilateral Convention are implemented under domestic law by the International Tax Cooperation Act No. 7 of 2016. It can be concluded that Vanuatu has in place the legal and regulatory framework to give effect to its EOI mechanisms. No issues arose in practice during the current review period.

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

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

311. Vanuatu has recently become a Party to the Multilateral Convention, which brings its total number of EOI partners from 14 to 126.

312. If a jurisdiction expresses its interest in entering into a TIEA, Vanuatu indicates that it will not refuse to negotiate or sign the agreement. Nevertheless, Vanuatu prefers to use the Multilateral Convention for exchange of information on request over individual TIEAs and expects that there would be special reasons mentioned by the potential partner for entering into a new TIEA. Vanuatu has received requests from three jurisdictions to start TIEA negotiations before the Multilateral Convention was ratified. Vanuatu reported that it has written to these jurisdictions, which are Parties to the Multilateral Convention, to confirm whether TIEA negotiations would still be relevant, and is prepared to start negotiations if the potential TIEA partner provides motivation and so wishes.

313. Vanuatu is recommended to continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

314. The determination of Element C.2 remains "in place", and Element C.2 is rated "compliant".

315. The table of recommendations, 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.

316. The 2016 Report concluded that all of Vanuatu's EOI agreements have confidentiality provisions in line with the standard. The Multilateral Convention also includes appropriate confidentiality provisions.

317. After the adoption of the 2016 Report, Vanuatu enacted the Right to Information Act (RTI Act), which came into force on 26 November 2016. The purpose of the Act is to enhance public access to information held by government. Although the Act does not explicitly provide that information exchanged based on Vanuatu's EOI agreements must not be disclosed, the different grounds for refusing disclosure seem to allow the competent authority to refuse providing treaty protected information publicly in most cases. However, the law also includes a benefit-harm test where public interest is weighted against the harm caused by the disclosure. The rules contained in the RTI Act are not clear enough to ensure that the confidentiality rules of

Vanuatu's EOI agreements can be followed in all cases. Therefore, Vanuatu should ensure that the confidentiality rules stipulated by its EOI agreements are respected in all cases.

318. In practice, the internal procedures for protecting information are set out in Vanuatu's EOI Manual. EOI documents are stamped or watermarked as "EOI confidential". With respect to incoming requests, Vanuatu's policy is not to disclose the request letters received from its treaty partners. Neither is the competent authority required by law to disclose the nature of enquiry and the purpose of the request when seeking information from information holders (see section B.1).

319. There have been no ascertained cases of breaches of confidentiality relating to information obtained by Vanuatu officials in relation to EOI or more broadly by taxation officers in the course of their duty.

320. The table of recommendation, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified	Vanuatu passed a new Right to Information Act, effective from 26 November 2016 that enables public access to all information held by government agencies. Although exceptions would enable the competent authority to refuse providing treaty protected information to the public, no express provision ensures that the relevant confidentiality rules can be followed in all cases.	Vanuatu should ensure that the confidentiality rules stipulated by its EOI agreements are respected in all cases.
Determination: The element is in place but certain aspects of the legal implementation of the element needs improvement.		
Practical Implementation of the standard		
Rating: Largely Compliant		

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

321. The TIEAs and the Multilateral Convention provide for appropriate confidentiality provisions. They also authorise the use of information exchanged for non-tax purposes, with the prior authorisation of the supplying authority and where tax information may be used for such other purposes in accordance with their respective laws. In the period under review, there were

no requests where the requesting partner sought Vanuatu's consent to utilise the information for non-tax purposes.

322. The domestic legal framework which provides for the confidentiality of EOI information in Vanuatu is based on the Official Secrets Act and the ITCA.

323. As found in the previous assessments, the Official Secrets Act covers the confidentiality requirement for all public officials and provides an overarching protection to classified information in general. This Act covers any official information in use or possession of any official in his/her capacity of permanent or temporary employment with the Government of Vanuatu. The unauthorised use or wrongful communication of classified material, which includes EOI information, is prohibited and any person who fails to comply with these requirements is guilty of an offence. Secrecy under the Official Secrets Act is to be maintained by any person during the service and after the person ceases to hold office.

324. The ITCA provides further rules, namely that any information provided to or received by the competent authority is confidential (s. 12(1)). However, information can be provided to the Department of Customs and Inland Revenue for the purposes of administering and enforcing tax laws (s. 12(2)).

325. The Right to Information Act (RTI Act) came into force on 26 November 2016. The purpose of the Act is to enhance public access to government-held information, towards greater transparency in government. The RTI Act is applicable to all government agencies and government funded entities, all of which must have a Right to Information Officer, who receives applications from the public about information held by the relevant agency and makes decisions on disclosure in accordance with the RTI Act.

326. An agency or officer may decline that he/she has information or access or that information in cases where disclosure would seriously prejudice certain important interests. The RTI Act does not explicitly provide exemption from disclosure to information that is exchanged under an EOI agreement of Vanuatu. The interests that could be most relevant in the case of EOI under Vanuatu's international agreements include: (i) the information was obtained in confidence from another State or an international organisation, and to communicate it would seriously prejudice relations with that State or the international organisation and (ii) the information was obtained from a third party and to communicate it would constitute an actionable breach of confidence (s. 44(1)). In addition, some other grounds could be relevant in special cases, where the disclosure causes serious prejudice to (iii) the prevention or detection of crime, (iv) the apprehension or prosecution of an offender, (v) the administration of justice, (vi) the assessment or collection of any tax or duty, (vii) disclosure could result in embarrassment to, or cause

a loss of confidence in the Government of Vanuatu (s. 46 and 48). The final decision is always subject to a harm versus interest test as the Officer must weigh the public interest of the disclosure against harm to the interest protected under the relevant exemption (s. 39(b)). Finally, the RTI Act provides that information is not exempted from access under the Act solely because it is classified by the government agency as confidential (s. 40).

327. The Vanuatu authorities stated that the RTI Act does not undermine Vanuatu's obligations to keep information confidential in accordance with the terms of its international agreements and that disclosure clearly would prejudice the relationship with the requesting jurisdiction and also OECD/Global Forum. Therefore, information would not need to be disclosed in accordance with s. 44(1) of the RTI Act. Vanuatu also reported that the Ministry is seeking to amend the Act to remove any doubt that the rules stipulated by Vanuatu's international agreements would be respected.

328. However, although the applicable rules seem to allow the Vanuatu competent authority to deny access of the public to any information exchanged under Vanuatu's TIEAs or the Multilateral Convention in most cases, the scope of application of public interest is unclear and could potentially conflict with confidentiality requirements under the agreements. The RTI Act does not explicitly refer to information protected by confidentiality rules of Vanuatu's TIEAs or the Multilateral Convention as basis for refusing to provide information to the public. This concern is underlined by the fact that Vanuatu's domestic legislation takes precedence over the terms of international agreements. The harm versus interest test provided by the RTI Act could also lead to situations where in some cases public interest could be deemed more important than the relationship with a specific State or that disclosure in a specific case would not affect State-level relationships. Vanuatu should therefore ensure that the confidentiality rules stipulated by its EOI agreements are respected in all cases.

329. Vanuatu clarified that the Competent Authority (VCA) function (for EOIR) in Vanuatu is currently managed by the Tax Policy Unit within the Ministry of Finance (and not the Tax Administration). The VCA has created a closed environment for EOIR information. Confidential information obtained will not be shared with the tax administration until appropriate systems are in place to secure the information. The VCA is undertaking an ISO27000 risk assessment to help develop effective risk mitigation strategies.

Practical measures to ensure confidentiality of the information received

330. The VCA office is located within the Ministry of Finance (MOF) Building, access to the building is through security doors using proximity cards issued to MOF staff only. The VCA office is in a secure room which can only be accessed by VCA staff via a PIN coded door as a secondary

security barrier. Confidential files are stored in that secure room to which only the VCA staff have access.

331. In practice, the internal procedures for protecting information held by the competent authority are set out in Vanuatu's EOI Manual. EOI documents are stamped or watermarked as "EOI confidential". With respect to incoming requests, Vanuatu's policy is not to disclose the request letters received from its treaty partners. Neither is the competent authority required by law to disclose the nature of enquiry and the purpose of the request when seeking information from information holders (see section B.1). The two EOI cases received during the review period were exchanged with EOI partners via secured encrypted e-mails.

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

C.3.2. Confidentiality of other information

333. The 2016 Report found that the confidentiality provisions in Vanuatu's agreements use the standard language of Article 8 of the OECD TIEA Model and do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction. The rules on confidentiality in Vanuatu protect these types of information in the same way as the information exchanged. No issues arose in practice during the current review period.

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.

C.4.1. Exceptions to provide information

334. The international standard allows requested parties not to supply information in response to a request in certain identified situations, for instance where the requested information would disclose confidential communications protected by attorney-client privilege.

335. The 2016 Report concluded that the rights and safeguards applicable in Vanuatu did not unduly prevent or delay effective exchange of information. Each of Vanuatu's TIEAs and the Multilateral Convention contain a provision similar to Article 7 of the Model TIEA, providing that a jurisdiction can refuse to exchange information in certain instances. No legal changes have since been made, and element C.4 remains in place.

336. In practice, the Vanuatu competent authority did not experience any practical difficulties in responding to EOI requests due to the application of rights and safeguards in Vanuatu.

337. The 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.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.

338. In order for exchange of information to be effective, jurisdictions should request and provide information under their 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.

339. Operational management of EOI in Vanuatu commenced in practice in July 2016 when the International Tax Cooperation Act (ITCA) came into force and gave the Competent Authority domestic legal powers to enforce TIEAs. Prior to this, the EOI unit had no administration in practice.

340. EOI staff have received specialised training on EOI. All inward and outward (should there be any in the future) are recorded in an electronic file.

Relevant EOI paper files are stored in a locked cabinet in the EOI office to which only EOI officers have access.

341. Vanuatu received two requests during the review period, and although it did not provide the complete information to the requesting jurisdiction within 90 days, Vanuatu did send interim status updates to that peer. The feedback from the peer was positive, and noted that the information received from Vanuatu was deemed useful.

342. The table of recommendations and rating is as follows:

Legal and Regulatory Framework		
This element involves issues of practice. Accordingly, no determination has been made.		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice	Vanuatu has committed sufficient resources and put in place sound organisational processes to handle inbound EOI requests in a timely manner. Nevertheless, this system has not been sufficiently tested in practice.	Vanuatu should monitor the practical implementation of the organisational processes of the EOI unit, in particular taking account of any significant changes to the volume of incoming EOI requests, to ensure that they are sufficient for effective EOI in practice.
Rating: Largely Compliant		

C.5.1. Timeliness of responses to requests for information

343. Over the period under review (1 January 2015-31 December 2017), Vanuatu received two requests for information from one peer in relation to ownership information in both cases, and banking information in one case. Both requests related to companies and individuals. Vanuatu reported it did not receive any request outside the review period.

344. Vanuatu answered one request within 180 days and the second request in nine months. The peer feedback provided to the assessment team indicates that the peer was satisfied with Vanuatu's assistance, and found the information from Vanuatu useful.

345. For the first case, the Vanuatu competent authority received the request in January 2017 and contacted the requesting jurisdiction after five days to help them reformulate the request to make it more effective as they considered the requesting jurisdiction risked not capturing all the available

information in Vanuatu. The peer agreed to amend the request and sent it to Vanuatu after one month. The Vanuatu competent authority managed to obtain the requested information and replied at the end of August 2017 (within 180 days after receiving the amended request).

346. With regard to the second case (received in November 2017), the Vanuatu competent authority sent three separate interim status updates to the requesting jurisdiction. The first update was within 90 days of receipt of the request. It was positive that the Vanuatu competent authority was proactive in keeping their treaty partner in the loop on their status of obtaining the requested information. The full set of requested information was sent to the requesting jurisdiction nine months after the second request was received.

347. Although Vanuatu received only 2 EOI request letters, the cases required Vanuatu to send notices to 14 different information holders, which indicates that the case were of complex nature. Taking into account the level of development of Vanuatu's EOI practice, it seems that the Vanuatu competent authority put their best effort to obtaining the information and exchanged it within reasonable time.

C.5.2. Organisational processes and resources

Organisation of the competent authority

348. The Minister of Finance or his/her authorised representative is the competent authority for EOI. The Manager of the Tax Policy Unit in the Ministry of Finance and Economic Management has been authorised to perform the functions of the delegated competent authority on a day-to-day basis. The office of the competent authority has four officials to support EOI activities when needed. The operations of the EOI unit are supported and funded by the Ministry.

349. Operational management of EOI commenced in practice in July 2016 when the International Tax Cooperation Act 2016 came into force and gave the Competent Authority domestic legal powers to enforce Vanuatu's EOI agreements.

350. EOI staff have received specialised training on EOI, which included overview of legal provisions, internal processing of requests, confidentiality and secure filing procedures. All inward requests are recorded in an electronic register. The same would apply to outward requests, should any arise. Relevant EOI paper files are stored in a locked cabinet in the EOI office to which only EOI officers have access.

351. Operational procedures for EOI in Vanuatu are contained in an EOI manual which is based on the OECD model manual and is updated regularly

by the competent authority office. This is also supported by a basic checklist sheets and summaries of procedures and legal obligations that are designed to assist staff understand their obligations. However, the EOI manual has some notice templates in the annexes that are not updated to reflect the template provided to the assessment team and used in practice in the two requests to banks, as reported before under B.1.2. Vanuatu is encouraged to enhance the quality of the EOI manual and make updates where necessary (see Annex 1).

352. Each individual request letter from a foreign competent authority is counted as one request (not amount of taxpayers). If a request is defective, it will still be counted as a request, but will be recorded as invalid or rejected. There are proper processes included in the EOI Manual relating to reviewing and processing EOIR requests. Should the Vanuatu competent authority require more time to obtain the requested information, status updates would be provided to the requesting jurisdiction within 60 days of the receipt of the request. Discussions were also held with the requesting competent authority via email and other communication channels to assist in getting the right information.

353. As at September 2018, the EOI Manual has been updated with a section dealing with Group Requests, which are covered under Vanuatu's TIEAs as well as the Multilateral Convention.

354. It can be concluded that Vanuatu has committed sufficient resources and put in place sound organisational processes to handle inbound EOI requests in a timely manner. Nevertheless, this system has not been sufficiently tested in practice nor is it yet clear how the entry into force of the Multilateral Convention in December 2018 may impact the number of requests received by Vanuatu. Vanuatu should monitor the practical implementation of the organisational processes of the EOI unit, in particular taking account of any significant changes to the volume of incoming EOI requests, to ensure that they are sufficient for effective EOI in practice.

355. There are plans to transfer the EOI unit (i.e. delegate the powers of the Vanuatu Competent Authority) from the Ministry of Finance to the Tax Administration (i.e. the Director of Customs and Inland Revenue). It is recommended that Vanuatu ensure the smooth transition of the EOI unit, including provision of staff training, ensuring proper confidentiality arrangements of documents and IT systems and updating of the EOI manual accordingly (see Annex 1).

Outgoing requests

356. Vanuatu has not sent any requests, mainly because there is no income tax in Vanuatu. However, the competent authority/EOI unit has outlined the process related to sending requests in the EOI manual, which follows very

closely the OECD template, and considering the current level of development is well within the standard.

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

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

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**: In the case of foreign companies ("overseas companies") information on legal owners and nominators are limited by a 25% threshold. Vanuatu is recommended to make sure that legal ownership information and information on nominators in nominee arrangements is always available for oversees companies with a sufficient nexus to Vanuatu.
- **Element A.1.1:** Vanuatu is recommended to ensure that beneficial ownership information for companies is kept up to date in line with the standard in all cases.
- **Element A.1.1**: The Vanuatu authorities should put in place a system for monitoring struck-off International Companies to make sure that ownership information is available in all cases to the standard.
- **Element A.1.2**: Even if the issuance of bearer shares and share warrants is now prohibited and Vanuatu is of the general view that there are no more outstanding bearer shares, the sequence of several laws amending and/or repealing previous rules leaves some doubts on the current legal consequences for possible outstanding bearer shares. Vanuatu is recommended to monitor its legislation to make sure that any existing bearer shares, if not converted to registered shares within the deadline, would be legally not valid. Vanuatu could also usefully increase supervision significantly in relation to all entities to ensure no bearer shares are in circulation.

- **Element A.1.3**: Vanuatu is recommended to ensure that identification of beneficial owners of all domestic and foreign partnerships that carry on business in Vanuatu is required to be available in Vanuatu in line with the standard including for partnerships that cease to exist.
- **Element A.2:** In the case of small businesses that conduct their business wholly in Vanuatu and that have less than VUV 10 million (EUR 76 000) in business sales in any year, records need to be kept for three years (ss. 3(2)b, s. 2 Record Keeping Order). Vanuatu is recommended to ensure that all entities are required to keep records for five years.
- **Element A.2:** Vanuatu is encouraged to increase the level of sanctions available in case of non-compliance with the Record Keeping Order to increase the dissuasive effect.
- **Element A.3**: Vanuatu is recommended to ensure that information on beneficial ownership on all accountholders is accurate and up to date in all cases.
- **Element B.1**: Vanuatu is recommended to monitor the implementation of its access powers in order to make sure that specific restrictions imposed under certain laws do not undermine the general powers provided under the ITCA.
- **Element C.1.8**: Vanuatu is recommended to improve its communication with partners after an agreement is considered ratified from its side to make sure that agreements are swiftly in force.
- **Element C.2:** Vanuatu is recommended to continue to conclude EOI agreements with any new relevant partner who would so require.
- **Element C.5**: Vanuatu is encouraged to enhance the quality of the EOI manual and make updates where necessary.
- **Element C.5:** It is recommended that Vanuatu ensure the smooth transition of the EOI unit from the Ministry of Finance to the Tax Administration such that EOI is performed in an effective manner.

Annex 2: List of Vanuatu's EOI mechanisms

1. Summary table of bilateral EOI instruments

	EOI partner	Type of agreement (DTC, TIEA, other)	Date signed	Date of ratification by the assessed jurisdiction	Date entered into force
1	Australia	TIEA	21-Apr-2010	7-Jan-2011	9-Sep-2016
2	Denmark	TIEA	13-Oct-2010	7-Jan-2011	9-Sep-2016
3	Faroe Islands	TIEA	13-Oct-2010	7-Jan-2011	23-Sep-2016 for criminal and 1-Jan-2017 for other
4	Finland	TIEA	13-Oct-2010	7-Jan-2011	8-Mar-2011
5	France	TIEA	31-Dec-2009	7-Jan-2011	10-Aug-2016
6	Greenland	TIEA	13-Oct-2010	7-Jan-2011	10-Sep-2016 for criminal and 1-Jan-2017 for other
7	Grenada	TIEA	31-May-2011	[a]	[a]
8	Iceland	TIEA	13-Oct-2010	7-Jan-2011	9-Sep-2016 for criminal and 1-Jan-2017 for other
9	Ireland	TIEA	7-Apr-2011	[a]	19-Feb-2015
10	Korea	TIEA	14-Mar-2012	[a]	[a]
11	New Zealand	TIEA	4-Aug-2010	7-Jan-2011	27-Oct-2016
12	Norway	TIEA	13-Oct-2010	7-Jan-2011	[b]
13	San Marino	TIEA	19-May-2011	[a]	8-June-2017
14	Sweden	TIEA	13-Oct-2010	7-Jan-2011	8-June-2017

Notes: a. The EOI instruments for Grenada, Ireland, Korea and San Marino do not need to be ratified by the Parliament. Vanuatu informed that they are working with the Ministry of Foreign Affairs and Competent Authorities of Grenada and Korea to get the correct dates of entry into force in all these cases.

b. Vanuatu informed that they are working with the Ministry of Foreign Affairs and Competent Authorities of Norway to get the correct dates of entry into force.

2. Convention on Mutual Administrative Assistance in Tax Matters (as 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).[24] The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation 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.

The Multilateral Convention was signed by Vanuatu on 22 June 2018 and entered into force on 1 December 2018 in Vanuatu. Vanuatu can exchange information with all other Parties to the Multilateral Convention.

As of 6 May 2019, the Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, 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,[25] Czech Republic, Denmark, Estonia,

24. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention (the Multilateral Convention) which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.
25. 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.

Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Peru, Poland, Portugal, Qatar, 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 Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by, or its territorial application extended to, the following jurisdictions, where it is not yet in force: Armenia, Brunei Darussalam (entry into force on 1 July 2019), Burkina Faso, Dominica (entry into force on 1 August 2019), Dominican Republic, Ecuador, El Salvador (entry into force on 1 June 2019), Gabon, Kenya, Liberia, Mauritania, Morocco (entry into force on 1 September 2019), North Macedonia, Paraguay, Philippines, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).[26]

26. Since the United States is a Party to the original Convention only and Vanuatu is not a member of the OECD or of the Council or Europe, the Multilateral Convention cannot be considered as an EOI instrument between the two jurisdictions, especially as they did not consult to reach a meeting of the minds on its application.

Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference and 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 evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 6 May 2019, Vanuatu's EOIR practice in respect of EOI requests made and received during the three year period from 1 January 2015 to 31 December 2017, Vanuatu's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Vanuatu's authorities during the on-site visit that took place from 3 to 6 September 2018 in Port Vila, Vanuatu.

List of laws, regulations and other materials received

Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014

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

Anti-Money Laundering and Counter-Terrorism Financing (Amendment) Act No. 16 of 2017

Anti-Money Laundering and Counter-Terrorism Financing Regulation Order No. 122 of 2014

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

Business Licence Act No. 1 of 2006

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

Companies Act No. 12 of 1986

Companies (Amendment) Act No. 31 of 2017

Company and Trust Services Providers Act no. 8 of 2010

Company and Trust Services Providers (Amendment) Act no. 8 of 2017

Constitution of Vanuatu

Financial Institutions Act (FIA) consolidated 2006

Insurance Act No. 54 of 2005

International Bank Act (IBA) No. 4 of 2002

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

International Companies (Amendment) Act No. 21 of 2012

International Companies (Amendment) Act No. 4 of 2016

International Companies (Amendment) Act No. 14 of 2017

International Tax Co-operation Act No. 7 of 2016

Mutual Assistance in Criminal Matters Act No. 14 of 2002

Mutual Funds Act No. 38 of 2005

Official Secrets Act of 1988

Offshore Limited Partnership Act (OLPA)

Partnership Act

Protected Cell Companies Act No. 32 of 2009

Record Keeping and Confirmation of Information Regulation Order No. 42 of 2017

Trust Companies Act No. 10 of 1988

Unit Trust Act No. 36 of 2005

Authorities interviewed during on-site visit

Department of Customs and Inland Revenue (DCIR)

Ministry of Finance and Economic Management of Vanuatu, Tax Policy Department (Vanuatu Competent Authority)

Reserve Bank of Vanuatu (RBV)

Vanuatu Financial Services Commission (VFSC)

Vanuatu Financial Intelligence Unit (FIU)

Representatives of three banks operating in Vanuatu

Representatives of four Trust and Company Service Providers

Current and previous reviews

This report is the third review of Vanuatu conducted by the Global Forum on the EOIR standard. Vanuatu previously underwent a review of its legal and regulatory framework (Phase 1) originally in 2011 and a supplementary review (Phase 1) in 2016. Vanuatu's Phase 1 report was adopted by the Global Forum in October 2011 and recommended that Vanuatu would not move to Phase 2 of the first round of reviews. Vanuatu subsequently underwent the supplementary review resulting in a Phase 1 Supplementary Report published in November 2016. That report concluded that sufficient progress had been made to allow Vanuatu to progress to the next round of reviews. Practical implementation would be therefore reviewed in the second round of reviews.

The Phase 1 reviews were conducted according to the terms of reference approved by the Global Forum in February 2010 (2010 ToR) and the Methodology used in the first round of reviews.

Summary of reviews

Review	Assessment team	Period under review	Legal framework as of	Date of adoption by Global Forum
Round 1 Phase 1	Mr Kamlesh Chandra Varshley (India), Mr Bhaskar Goswami (India) Mr Luigi Petese (Italy) and Ms Amy O'Donnell from the Global Forum Secretariat	n.a.	2010	October 2011
Round 1 Supplementary to Phase 1	Ms Vandana Ramachandaran (India), Mr Nicola Russo (Italy) and Ms Elaine Leong from the Global Forum Secretariat	n.a.	2016	November 2016
Round 2	Ms Robbie Banaga (The Philippines), Ms Elaine Leong (Singapore) Mr Jani Juva and Mr Francesco Bungaro from the Global Forum Secretariat	1 January 2015 to 31 December 2017	6 May 2019	July 2019

Annex 4: Vanuatu's response to the review report[27]

Vanuatu would like to thank the assessment team, the Global Forum Secretariat, and the Peer Review Group for the hard work done on preparing the 2019 Exchange of Information on Request Peer Review Report for Vanuatu.

Vanuatu has committed to meet the global forum transparency standards and has made significant progress over recent years. We are working hard in all areas to meet the current and emerging standards and expect to be fully compliant in the medium term. Vanuatu is finding the challenge difficult. As a small developing country, our resources are limited. However, despite this, we are making good progress and expect to do so into the future.

On 10 June 2019, the Vanuatu Parliament passed the Tax Administration Act (TAA) which specifically requires records to be retained for 5 years where an entity ceases to exist. In addition, the TAA will remove the shorter record retention period for small businesses. This will bring Vanuatu's record keeping legislation fully in line with the 2016 Standard. In addition, the Director of Customs and Inland Revenue will now be responsible for the administration of the general record keeping requirements set out in that Act. This directly addresses the assessment teams concerns about the lack of clarity on who is responsible for enforcing these rules. The Tax Administration Act is a key piece of legislation for Vanuatu and will significantly enhance the ability of Vanuatu to access information for the purposes of exchange of information.

Vanuatu appreciates the feedback given in the review process and has already taken steps to address the recommendations in the report and will actively ensure that they are implemented. For example, business have been briefed on the enhanced record keeping requirements and the relevant laws are now accessible on our website.

Vanuatu respectfully submit that the more appropriate rating for element A.2 should be "partially compliant". While the practical implementation issues identified by the assessment team are real, we do not believe that they

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

are so severe that they represent such a fundamental risk to the effective implementation of EOI in practice to justify a "non-compliant" rating for this element. Revision of this rating to "partially compliant" would, in our view, also be more consistent with ratings given to other jurisdictions which had significant failings in their practical implementation of this element but who were rated "partially compliant" or "largely compliant''. Given the improvements made by Vanuatu over recent years, a partially compliant rating for element A.2 is considered to be more appropriate for Vanuatu.

Vanuatu also consider that with the amendment of Vanuatu's Right to Information Act, the assessment team's concerns about confidentiality in element C3 are now fully addressed and the rating should be revised to "compliant".

In light of the above, Vanuatu considers that an overall rating of "largely compliant" would be more appropriate.

Vanuatu looks forward to working with the Global Forum and our exchange partners on this important work. We are committed to being fully compliant with the Global Forum standards and to contribute to its work in improving tax compliance at a regional and global level.

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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 VANUATU 2019 (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 2019 Peer Review Report on the Exchange of Information on Request of Vanuatu.

Consult this publication on line at ***https://doi.org/10.1787/dd70b774-en***.

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