

GLOBAL FORUM ON
**TRANSPARENCY AND EXCHANGE OF
INFORMATION FOR TAX PURPOSES**



Peer Review Report on the Exchange of Information
on Request

MACAU, CHINA

2020 (Second Round)

Global Forum on Transparency and Exchange of Information for Tax Purposes: Macau, China 2020 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE
OF INFORMATION ON REQUEST

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Table of contents

Reader’s guide	5
Abbreviations and acronyms	9
Executive summary	11
Overview of Macau (China)	21
Part A: Availability of information	29
A.1. Legal and beneficial ownership and identity information	29
A.2. Accounting records	59
A.3. Banking information	70
Part B: Access to information	77
B.1. Competent authority’s ability to obtain and provide information	77
B.2. Notification requirements, rights and safeguards	87
Part C: Exchanging information	91
C.1. Exchange of information mechanisms	91
C.2. Exchange of information mechanisms with all relevant partners	96
C.3. Confidentiality	97
C.4. Rights and safeguards of taxpayers and third parties	101
C.5. Requesting and providing information in an effective manner	102
Annex 1: List of in-text recommendations	109
Annex 2: List of Macau’s EOI mechanisms	111
Annex 3: Methodology for the review	114
Annex 4: Macau’s response to the review report	117

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 160 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

2013 Report	2013 EOIR peer review report on Macau (China), as adopted by the Global Forum in November 2013 (including ratings)
AMCM	Monetary Authority of Macau
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
BL	Basic Law
CC	Commercial Code
CRAC	Committee for the Registry of Auditors and Accountants
CTL	Complementary Tax Law
CDD	Customer Due Diligence
DAIJ	Public Accounting, Tax Investigation and Appeals Department
DSAJ	Legal Affairs Bureau
DTC	Double Tax Convention
EOI	Exchange of information
EOI Act	Information Exchange Act
EOIR	Exchange of Information on Request
FATF	Financial Action Task Force
FSA	Financial System Act
FSB	Financial Services Bureau
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
IPIM	Trade and Investment Promotion Institute

ITR	Industrial Tax Regulation
TIEA	Tax Information Exchange Agreement
MAC	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
NITI	International Tax Information Centre
OSL	Offshore Sector Law
SAR	Special Administrative Region

Executive summary

1. This report analyses the implementation of the international standard of transparency and exchange of information on request in Macau (China) on the second round of peer reviews conducted by the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum). It assesses both the legal and regulatory framework in force as of 3 January 2020 and the practical implementation of this framework against the 2016 Terms of Reference, including in respect of exchange of information (EOI) requests received and sent during the review period from 1 October 2014 to 30 September 2017.

2. In 2013, during the first round of peer reviews, the Global Forum evaluated Macau (China) against the 2010 standard and over the period from 1 July 2009 to 30 June 2012. The 2013 Report assigned an overall rating of Largely Compliant to Macau (China) (see Annex 3). This report concludes that Macau (China) continues to be rated overall **Largely Compliant** with the international standard.

Comparison of ratings for First Round Report and Second Round Report

Element	First Round Report (2013)	Second Round Report (2020)
A.1 Availability of ownership and identity information	PC	PC
A.2 Availability of accounting information	C	LC
A.3 Availability of banking information	C	C
B.1 Access to information	LC	LC
B.2 Rights and Safeguards	C	C
C.1 EOIR Mechanisms	C	C
C.2 Network of EOIR Mechanisms	C	C
C.3 Confidentiality	C	C
C.4 Rights and safeguards	C	C
C.5 Quality and timeliness of responses	LC	LC
OVERALL RATING	LC	LC

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

Progress made since previous review

3. Since the 2013 peer review, several developments have taken place in Macau (China). Some of them have directly influenced the recommendations made by this report. First, the Commercial Code was amended, entering into force in June 2015, to abolish bearer shares. As a result, the 2013 recommendation on bearer shares has been removed, while this report identified some legacy issues which Macau (China) is recommended to address. Second, the new law on EOI in tax matters (Law no. 5/2017) was approved in June 2017, replacing the former information exchange act (Law no. 20/2009). This new law raises some concerns that resulted in two new recommendations.

4. Further, clarifications provided by Macau (China) and other relevant stakeholders enabled the Global Forum to make changes in one of the recommendations made in 2013 concerning the availability of accounting records (A.2), which has now been requalified as the deficiency of practice rather than the legal framework of Macau (China).

5. The EOIR standard was strengthened in 2016 and beneficial ownership of relevant entities and arrangements is since required to be available. The anti-money laundering (AML) regulation, which is the primary source of beneficial ownership information in Macau (China), has evolved in the past few years and was evaluated as part of this review. In particular, changes have been made in the AML Law (No. 2/2006), the AML/CFT Regulation (No. 7/2006) and associated guidance provided by relevant supervisory bodies. This report makes several recommendations for further improvement necessary to fully comply with the EOIR standard with respect to the availability of beneficial ownership information in practice.

6. Finally, EOI practices have continued to develop since the first round of EOIR peer review. Whilst the number of requests received by Macau (China) remains low (six requests received during a three-year review period), the EOI treaty network has continued to develop which may lead to a growing number of requests. Most notably in this respect, the Multilateral Convention of Mutual Tax Administration and Assistance in Tax Matters (MAC) was extended by China to Macau (China) and entered into force after the end of the review period, on 1 September 2018.

Key recommendations

7. The first set of recommendations concerns the availability of legal ownership information, in particular with respect to bearer shares. Macau (China) abolished bearer shares in 2015. The holders of bearer shares and their successors were given one year to request the conversion of their titles into registered shares. Since this period elapsed, the non-converted

bearer shares are considered destroyed. However, the holder of the bearer shares or whoever demonstrates legitimate interest may request the annulment of the destruction of the titles through the court. The period during which the request can be made is not limited by law. Therefore, Macau (China) is recommended to clarify the time limit after which holders of bearer shares can no longer claim rights over the destroyed shares. In addition, Macau (China) is recommended to introduce effective sanctions which would ensure that ownership and identity information is maintained for a period of at least five years and provided in the cases of the liquidation or dissolution of the company.

8. The availability of legal ownership information in Macau (China) is also constrained by the fact that there is no system of monitoring compliance with commercial filing obligations or imposition of penalties for non-compliance, except in the case of entities that pay distributions out of their pre-tax profits, which are monitored by the tax authorities. Furthermore, compliance with ownership record-keeping obligations by private companies is not systematically monitored. As in the 2013 Report, Macau (China) is recommended to ensure that all its monitoring and enforcement powers are appropriately exercised in practice.

9. Several gaps have been identified with respect to the availability of beneficial ownership information. Beneficial ownership information in Macau (China) is available through AML-obliged persons (mainly financial institutions, notaries and auditors). However, whilst in practice most legal entities and arrangements will come in contact with these AML-obliged persons, there is no legal requirement to ensure that beneficial ownership information is available in all cases and at all times and during the entire lifetime of all entities. Macau (China) is therefore recommended to address this gap. Furthermore, Macau (China) is recommended to ensure that notaries and auditors are correctly applying the definition of “ultimate beneficial owners” in practice and collecting beneficial ownership information in accordance with the international standard. Finally, Macau (China) is recommended to strengthen its supervisory and enforcement system over certain AML-obliged persons (auditors/accountants).

10. Whilst in general this report concludes that the legal and regulatory framework and its implementation in practice ensure the availability of accounting records and underlying documentation, certain deficiencies were identified. Macau (China) is recommended to introduce effective sanctions which would ensure that accounting records and underlying documents are maintained for a period of at least five years and provided in the cases of the liquidation or dissolution of the company. Further, for certain type of entities (Group B taxpayers), there is insufficient evidence that the existing supervisory and enforcement measures are sufficient to ensure that the record keeping requirements are implemented in practice. Therefore, Macau (China)

is recommended to ensure effective enforcement of the requirement that comprehensive underlying documentation is kept for all entities for a minimum of five years.

11. With respect to the access to information, the report notes that the new EOI Act, which was introduced in 2017 with subsequent changes made in 2019, introduces a limitation on the tax years in relation to which information can be gathered. Access and exchange would therefore not be available for other information, even when it is available in Macau (China). Macau (China) should ensure that its competent authority has access to all information available. Further, Macau (China) should also ensure that the scope of legal professional privilege under the laws of Macau (China) is not interpreted in a manner which could prevent access by Macau's competent authority to information that is necessary for effective EOI.

12. Finally, Macau (China) is also recommended to ensure that the practical implementation of the organisational processes for and the level of resources committed to EOI purposes remains adequate for effective EOI.

Exchange of information practice

13. The number of requests received by Macau (China) has increased from two requests received during the first round (1 July 2009-30 June 2012) to six requests received during the second round (1 October 2014-30 September 2017); yet, it remains small. There was one request during the review period that was declined for legitimate reasons. Of the remaining five requests received, the information was provided within 180 days in four cases and within one year in one case. The requests related to accounting information in five cases, banking information in one case and other information, including ownership, in one case. The efficiency and effectiveness of Macau's response to EOI requests was commented upon by its EOI partners in a positive manner, but given that Macau's EOI practices are not sufficiently tested, Element C.5 is rated "Largely Compliant".

Overall rating

14. Macau (China) has been assigned a rating for each of the 10 essential elements, as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the determinations and any recommendations made in respect of Macau's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Macau (China) has been assigned the following ratings: Compliant for elements A.3, B.2, C.1, C.2, C.3 and C.4, Largely Compliant for elements A.2, B.1 and C.5, and Partially Compliant

for element A.1. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Macau (China) remains Largely Compliant.

15. This report was approved at the Peer Review Group of the Global Forum on 27 February 2020 and was adopted by the Global Forum on 27 March 2020. A follow-up report on the steps undertaken by Macau (China) to address the recommendations made in this report should be provided to the Peer Review Group no later than 30 June 2021 and thereafter in accordance with the procedure set out under the 2016 Methodology for peer reviews and non-member reviews.

Summary of determinations, ratings and recommendations

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>)		
The legal and regulatory framework is in place but needs improvement	Whilst the obligation to keep ownership information for a period of at least five years applies to cases of the liquidation or dissolution of the company and falls on various persons related to the entity, or the liquidators, no sanctions are envisaged in the law of Macau (China) for the breach of these duties.	In so far as there are no penalties provided, Macau (China) should introduce effective sanctions against the relevant persons where they fail to comply with requirements to maintain and provide ownership and identity information.
	Macau (China) has passed legislation to abolish bearer shares and ensure the availability of information on all shareholders in Macau companies, but holders of bearer shares can still claim rights in front of a court and the law does not limit the period during which such claims can be made.	Macau (China) is recommended to clarify the time limit after which holders of bearer shares can no longer claim rights over the shares considered destroyed.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
<p>The legal and regulatory framework is in place but needs improvement <i>(continued)</i></p>	<p>The legislation which seeks to ensure the availability of beneficial ownership information relies on the AML-obliged persons, such as financial institutions, notaries and auditors/accountants/tax advisors, as part of their CDD obligations. However, whilst in practice most legal entities and arrangements will come in contact with these AML-obliged persons, there is no legal requirement to ensure that beneficial ownership information is available in all cases and at all times and during the entire lifetime of all entities.</p>	<p>Macau (China) is recommended to ensure that beneficial ownership information is available for all relevant entities in accordance with the international standard.</p>
<p>Partially Compliant</p>	<p>There is no system of monitoring compliance with commercial filing obligations or imposition of penalties for non-compliance, except in the case of entities that pay distributions out of their pre-tax profits, which are monitored by the tax authorities. Furthermore, compliance with ownership record-keeping obligations by private companies is not systematically monitored.</p>	<p>Macau (China) should ensure that all its monitoring and enforcement powers are appropriately exercised in practice to support the legal requirements which ensure the availability of ownership and identity information, in particular for private companies and partnerships.</p>
	<p>The AML-obliged persons in Macau (China) collect information on “ultimate beneficial owners” of legal entities and arrangements. However, the definition of “ultimate beneficial owners” leaves some doubts as to its application in practice by notaries and auditors/accountants/tax advisors in accordance with the EOIR standard.</p>	<p>Macau (China) is recommended to take measures which would ensure that notaries and auditors/accountants/tax advisors are correctly applying the definition of “ultimate beneficial owners” in practice and collecting beneficial ownership information in accordance with the international standard.</p>

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Partially Compliant <i>(continued)</i>	Macau's AML supervisory authorities carry out a variety of supervisory measures. However, there are differences across supervised sectors in terms of frequency, depth of supervision and applied enforcement. Gaps have been identified in the supervisory arrangements over auditors/ accountants.	Macau (China) is recommended to strengthen its supervisory and enforcement system over certain AML-obliged persons.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
The legal and regulatory framework is in place but needs improvement	Whilst the obligation to keep accounting records and underlying documents for a period of at least five years applies to cases of the liquidation or dissolution of the company and falls on various persons related to the entity, or the liquidators, no sanctions are envisaged in the law of Macau (China) for the breach of these duties.	In so far as there are no penalties provided, Macau (China) should introduce effective sanctions against the relevant persons where they fail to comply with requirements to maintain and provide accounting information.
Largely Compliant	For relevant entities that are not Group A complementary taxpayers, there is insufficient evidence that the existing supervisory and enforcement measures are sufficient to ensure that the record keeping requirements are implemented in practice.	Macau (China) should strengthen the effective supervision and enforcement of the record keeping requirements to ensure that comprehensive underlying documentation is kept for all entities for a minimum of 5 years.
Banking information and beneficial ownership information should be available for all account-holders (<i>ToR A.3</i>)		
The legal and regulatory framework is in place		
Compliant		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1</i>)		
The legal and regulatory framework is in place but needs improvement	The 2017 EOI Act introduced a limitation in that “[t]he information used for exchange on request is limited to the information with respect to a period up to the year in which the request was received by the Macao SAR from five [tax] years prior to that year”. Access and exchange would therefore not be available for other information, even when it is available in Macau (China).	Macau (China) should ensure that its competent authority has access to all information available.
Largely Compliant	Doubts remain as to the interpretation of the scope of the legal professional privilege in practice and whether the legal professional privilege can be relied upon to prevent access by Macau’s competent authority to all information obtained by a lawyer, whether from the client or third parties, during the course of his/her legal profession.	Macau (China) should monitor the application of the legal professional privilege to ensure that its scope is not interpreted in a manner which could prevent access by Macau’s competent authority to information that is necessary for effective EOI.
	The 2017 EOI Act has not been applied during the review period and therefore the assessment of its implementation in practice was not possible.	Macau (China) should monitor the application of the new EOI law to ensure it conforms to the standard.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>)		
The legal and regulatory framework is in place		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Compliant	The 2017 EOI Act restricted the possibilities of exception to the notification of the subject of the request but its application in practice could not be tested as the change took place only four months before the end of the review period.	Macau (China) is recommended to monitor the implementation of the new provision on notification to ensure it does not unduly delay exchange of information.
Exchange of information mechanisms should provide for effective exchange of information (<i>ToR C.1</i>)		
The legal and regulatory framework is in place		
Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
The legal and regulatory framework is in place		
Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
The legal and regulatory framework is in place		
Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
The legal and regulatory framework is in place		
Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner (<i>ToR C.5</i>)		
Legal and regulatory framework	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	Macau (China) 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.	Macau (China) should monitor the practical implementation of EOIR, particularly by taking account of any significant changes to the volume of incoming EOI requests, to ensure that it remains effective.

Overview of Macau (China)

16. This overview covers some basic information about Macau (China) that provides the context necessary for understanding the analysis in the main body of this report.

Legal system

17. Macau (China) is a Special Administrative Region (SAR) under the sovereignty of the People's Republic of China (China). China resumed the exercise of sovereignty over Macau – previously administrated by Portugal – on 20 December 1999.

18. The fundamental principles concerning the autonomous status of Macau (China), its relationship with China's Government, the political structure and the institutional framework, as well as the fundamental rights and duties of its residents are contained in the Macau Special Administrative Region Basic Law (Basic Law, or BL), which entered into force on 20 December 1999. Under the Basic Law, Macau's pre-1999 system is preserved for 50 years, i.e. until 2049 (Art. 5). During this period, Macau (China) enjoys a high level of autonomy in all matters, except defence and foreign affairs.

19. The Chief Executive is simultaneously Macau's highest-ranking officer and the head of the government. He/she is appointed for a five-year term (renewable once) by the Chinese Government, following the outcomes of local consultations (Arts. 45 and 47 BL). The Chief Executive shares his/her executive powers with the Executive Council, which comprises five Secretaries appointed by the Chief Executive, including the Secretary for Economy and Finance. The Legislative Council is Macau's legislative body (Art. 67 BL). Macanese laws are passed by the Legislative Council after consultation with the Executive Council and are announced by the Chief Executive. Executive orders and executive rulings are issued by the Chief Executive (Art. 50 BL); enforceable rulings are issued by major officials (Art. 64 BL) and each government department is authorised to issue enforceable notices and circulars.

20. The Basic Law vests Macau (China) with independent judicial power. Macau's legal system is based on the continental tradition of civil

law. Laws, regulations and other normative acts in force in Macau (China) prior to 20 December 1999 maintain their legal value, except for any part that contravenes the Basic Law (Art. 8). In the hierarchy of laws, the Basic Law is followed by laws, administrative regulations, resolutions of the Legislative Council, executive orders, executive rulings from the Chief Executive and rulings from major government officials.

21. Macau (China) can on its own conclude and implement agreements with foreign states and regions and relevant international organisations in the relevant fields (Art. 136 BL). Further, the application to Macau (China) of international agreements to which China is a member or becomes a party is decided by the Chinese Government, and after seeking the views of the government of the Region (Art. 138 BL), as was the case with the extension of the Convention on Mutual Administrative Assistance in Tax Matters (the multilateral Convention) to Macau (China) in 2018.

22. Macau's Government is solely responsible for the implementation of Macau's tax agreements. The Chief Executive is responsible for signing international agreements – including DTCs and TIEAs. Draft DTCs and TIEAs, agreed by the Macanese government and its counterparty, are brought forward to the Chinese government for comment.

23. Macau's tax administration agency is the Financial Services Bureau (FSB). The FSB is the competent authority with the right to receive, deliver and execute the EOI requests. Macau (China) has a network of 23 bilateral EOI agreements, of which 19 are in force as of 30 November 2019. The multilateral Convention is in force since 1 September 2018. A complete list of all the relevant international agreements is set out in Annex 2.

24. It is not necessary to incorporate international law into domestic law for its effective application. Once international agreements are published in the Official Gazette of Macau (China), pursuant to the 1999 Publication of Laws Act, they immediately and automatically become part of Macau's legal order. In the event of a conflict between international agreements and domestic law, international agreements applicable to Macau (China) take precedence (Art. 1(3) Civil Code).

Economy

25. Macau (China) has an area of approximately 32.9 square kilometres, and a population of about 667 400 as of December 2018. The currency is Macau Pataca. As of 1 December 2019, MOP 100 = EUR 11.29. In 2018, Macau's gross domestic product (GDP) was about MOP 444.7 billion (EUR 50.2 billion) and the per capita GDP topped MOP 673 481 (EUR 76 036), one of the highest in Asia.

26. Together with Hong Kong (China), it is one of the two international free ports in China, allowing free movement of goods, intangible assets and capital. Whilst previously based on export – and particularly re-export – trade, Macau’s economy is nowadays largely dominated by tourism and gaming industry with about 85% of total government revenue coming from gaming-related taxes in 2019 (as of October 2019).

Tax system

27. Pursuant to the Basic Law, Macau (China) practises an independent taxation system (Art. 106) and its government is empowered to enact laws concerning all matters of taxation. Macau levies: industrial tax (business registration tax), complementary tax (profits tax), professional tax (salary tax), urban property tax, gaming tax, franchise tax, consumption tax (excise tax), motor vehicle tax, tourism tax and stamp duty. The tax year and the calendar year coincide. The major sources of government revenue are the gaming tax, the complementary tax and the professional tax.

28. Industrial tax is a kind of annual registration fee for business activities. It ranges from MOP 150 to MOP 80 000 (EUR 17 to EUR 9 032), depending on the nature of the activity. As a tax incentive, its payment has been suspended since 2002. However, all companies operating in Macau (China) – including foreign incorporated companies operating therein on a stable basis – still need to fulfil the obligations prescribed in the registration procedure (Arts 8 and 9 Industrial Tax Regulation).

29. The complementary tax is levied on total net income at a progressive rate from 3% to 12% (Art. 2 of the Complementary Tax Law No. 21/78/M, as amended (CTL)). Certain types of income are exempt from complementary tax (Art. 9 CTL). Non-residents are subject to tax in Macau (China) upon receipt of any income derived from business services or activities in Macau (China). Resident companies are subject to taxation on their worldwide profits, irrespective of whether such profits arise from business activities in Macau (China). A company is regarded as resident in the place where it is incorporated. As such, a company is resident in Macau (China) only if it is incorporated in Macau (China). Foreign companies – i.e. companies that are incorporated outside Macau (China) and are not considered as residents – are subject to tax in Macau (China) on total net income derived in Macau (China) and have to fulfil tax obligations, including filing of annual tax returns.

30. Casino sub/concessionaires are taxed at 35% of gaming revenues. Franchise tax is imposed on regulated businesses, generally including gaming, telecommunications and public transportation. Tax is levied on a contractual basis with the amount imposed determined by the government

according to the nature of operations of the business. A tourism tax of 5% is a tax levied on consumption by consumers at classified hotels, restaurants and entertainment entities. Salary tax is levied on all employees and self-employed professionals at progressive tax rates from 7% to 12%. Finally, stamp duty is charged on certain activities (e.g. house leasing) or documents (e.g. licences). Stamp duty is levied at a fixed rate, depending on the type of activity or document. The transfer of property is also taxed under the stamp duty scheme, at a progressive rate from 1% to 3%. Written documents for the purchase and sale or gains from transfer of immovable or movable properties (including shares in companies and partnerships that have their headquarters located in Macau (China)) are subject to stamp duty at 0.5% of the transaction price.

Financial services sector

31. Banks are authorised under the Financial System Act (FSA, approved by Decree-Law No. 32/93/M), while insurance companies are authorised under the Macau Insurance Companies Ordinance (MICO, approved by Decree-Law no. 27/97/M). The Monetary Authority of Macau (China) (AMCM) is the main regulatory and supervisory authority, exercising the functions of a quasi-central bank with the power to regulate and supervise all financial institutions in Macau (China), including banks, financial intermediaries, finance company, money changers, cash remittance houses, exchange counters, payment service institutions, financial leasing companies, insurance companies, insurance intermediaries and other financial institutions. The authority for supervision, co-ordination and inspection of such financial activity is carried out by AMCM through its Banking and Insurance Supervision Departments.

32. The total number of authorised banking institutions operating in Macau (China) as of October 2019 was 30. This number included a government owned Postal Savings Office, 11 locally incorporated banks and 18 branches of banks incorporated outside Macau (China). The only two offshore banks ceased activities in mid-2017 with the liquidation and revocation of their bank licences completed by February 2018, as part of the process which revoked the Offshore Regime of Macau (Decree Law no. 58/99/M) (see paragraphs 40-42). Apart from local capital, banks in Macau (China) are either subsidiaries or branches of banks incorporated in different countries or jurisdictions, including Mainland China, Portugal, Hong Kong (China), Chinese Taipei, UK, USA and Singapore. At the end of 2018, the total assets of the banking sector amount to MOP 1 788.2 billion (EUR 201.9 billion), being 406.1% of GDP. Domestic loans to private sector constituted MOP 1 011.3 billion (EUR 114.2 billion) (229.7% of GDP). Resident deposits amounted to MOP 635.4 billion (EUR 73.8 billion) (144.3% of GDP).

33. In October 2019, there were 25 authorised insurance companies operating in Macau (China), of which 12 were life insurers and the remaining were non-life insurers. In total, 9 entities (7 life insurers and 2 private pension fund management companies) were authorised to conduct private pension fund management business. In terms of origin, 10 of the authorised insurers and 2 private pension fund management companies were incorporated locally and the remaining were branches of overseas insurance companies. In 2018, the total gross assets were MOP 124.47 billion (EUR 14.1 billion) (27.99% of GDP). The gross premiums of the insurance industry were MOP 21.16 billion (EUR 2.4 billion), being 4.76% of GDP. Meanwhile, total gross claims in 2019 Q2 are MOP 3.9 billion (EUR 440 310) (3.64% of GDP). The authority for supervision, co-ordination and inspection of insurance activity rests with the Chief Executive and is carried out by the AMCM through its Insurance Supervision Department.

34. Purchase or sale on behalf of third parties of securities and other instruments in the money, financial or foreign exchange markets are authorised operations which can only be provided by banks or financial intermediaries. By October 2019, there were 2 financial intermediaries authorised to carry out business in Macau (China). In addition, there was 1 finance company, 2 financial leasing companies, 2 payment service companies, 11 money changers, 6 exchange counters, 2 cash remittance companies and 3 other financial institutions operating in Macau (China).

35. Macau (China) has no stock exchange but companies can seek listing on the Hong Kong stock exchange.

Relevant professions

36. Regulated professional service providers include lawyers, notaries, other independent legal professionals and accountants. In Macau (China), as of December 2019, there were 422 registered lawyers in practice and 130 lawyers in training. Lawyers and other independent legal professionals are subject to supervision by the Macau Lawyers Association.

37. Further, as of 22 November 2019, there were 58 notaries in Macau (China), 53 in private practice and 5 notaries public. These professionals are supervised by the Legal Affairs Bureau (DSAJ).

38. In addition, as of 30 September 2019, there were 191 registered accountants, 127 registered auditors, 3 registered accounting firms and 14 registered auditing firms. The Committee for the Registry of Auditors and Accountants (CRAC), a regulatory body under the supervision of the FSB, has powers to assess professional qualifications, accept registrations and recommend disciplinary actions against accountants, auditors and fiscal consultants.

39. It is not known how many company service providers operate in Macau (China), providing services such as the incorporation of companies and company secretarial services. These providers are under the supervision of the Economic Services Department.

Offshore sector

40. In an effort to raise Macau’s profile as an international service centre, the Macau Offshore Legislation was introduced and became effective in 1999, offering both financial and non-financial offshore services and providing a package of incentives and exemptions on taxes. Pursuant to the Decree-Law 58/99/M of 18 October 1999 (Offshore Sector Law, or OSL), an “offshore activity” is any economic activity dedicated to foreign markets, to be pursued exclusively with non-residents and by means of transactions in currencies other than the pataca.

41. Macau’s offshore sector included Offshore Financial Institution, Offshore Commercial Services Institutions, Offshore Auxiliary Services Institutions and Offshore Trust Management. All these entities are subject to prior authorisation from Macau’s authorities (Art. 3 OSL). Offshore financial institutions and offshore trust management institutions are regulated and supervised by the AMCM, while the Macau Trade and Investment Promotion Institute (IPIM) is responsible for licensing and supervision of non-financial offshore institutions (commercial and auxiliary services).

42. Law no. 15/2018 (“Repeal of legal regime of the offshore services”) repealed Macau’s offshore regime and terminated the issuance of licence for accessing the offshore activity since October 2017. As of November 2019, 284 entities were licensed to provide non-financial offshore services and none is licensed to provide financial offshore service (no offshore trust management companies have ever been licensed). The offshore licences which are not expired or revoked before 1 January 2021 will expire from that date (Art. 4 Law no. 15/2018). The list of such institutions will be published in the Official Gazette in January 2021. The effected institutions may apply for a transition into local companies and will become subject to Complementary Tax Regulation after 2021. Otherwise, they must cease their operation and going to dissolve. Pursuant to Law no. 58/99/M, licence revocation for any reason shall imply the dissolution and winding up of the offshore institution. Accordingly, offshore entities were operational during the period covered by this review (1 October 2014 to 30 September 2017), but will cease their activities in 2021.

AML/CFT framework

43. The AML/CFT framework comprises of Law No. 2/2006 “Prevention and suppression of the crime of money laundering” (as amended, the AML Law), Law No. 3/2006 “Prevention and suppression of the crimes of terrorism” (as amended, the CFT Law), and Administrative Regulation No. 7/2006 “Preventative measures for the crimes of money laundering and financing of terrorism” (as amended, the AML/CFT Regulation), as well as further guidances provided by relevant supervisory bodies. The AML, CFT Law and the AML/CFT Regulation were updated in 2017, while the supervisory guidances were updated in 2018 and early 2019 to reflect the latest requirements in international standards.

44. The AML/CFT Regulation regulates the implementation of the preventive measures concerning money laundering and establishes the supervisory system over the implementation of Macau’s AML/CFT framework. It sets the obligations for the identification and verification of clients, identification of their transactions, record keeping, enhanced due diligence for ultimate beneficial owners, risk assessment of customers, etc. Pursuant to the AML/CFT Regulation, supervising authorities can issue enforceable guidance and instructions specifying the AML/CFT obligations of the supervised entities. The supervising authorities also perform inspections and institute administrative proceedings for administrative sanctions when there is failure to comply with the preventive measures.

45. The Mutual Evaluation of Macau’s compliance with the AML/CFT standard was conducted by the Asia/Pacific Group on Money Laundering (APG) in 2016-17. Conclusions on the issues related to the EOIR standard are that the effectiveness of measures ensuring the availability of beneficial ownership on legal persons and arrangements to the authorities of Macau (China) and measures targeted at the prevention of misuse of these persons and arrangements for money laundering or terrorist financing, are considered substantial. With respect to its technical compliance with FATF Recommendations in 2017, Macau (China) was rated “Compliant” for Recommendation 10 (Customer due diligence), “Partially Compliant” for Recommendation 22 (Designated Non-Financial Businesses and Professions: Customer due diligence), and “Largely Compliant” for 24 (Transparency and beneficial ownership of legal persons) and 25 (Transparency and beneficial ownership of legal arrangements). In January 2019, Macau (China) submitted the first regular follow-up report to the APG and successfully upgraded Recommendation 22 to “Largely Compliant”. The complete mutual evaluation report and mutual evaluation follow-up report have been published and are available at (https://www.gif.gov.mo/web/en_evaluation_reports.html).

Recent developments

46. In summary, the Macau (China) authorities reported the following relevant developments:

- i. The Commercial Code was amended, entering into force in June 2015, to abolish bearer shares and to define company with permanent activity in Macau (China) (Law no. 4/2015).
- ii. Macau (China) stopped issuing new offshore licences in October 2017 and the remaining offshore licences will expire on 1 January 2021 at the latest (Law no. 15/2018).
- iii. The new exchange of information in tax matters Law (no. 5/2017) was approved in June 2017, replacing the former information exchange act (Law no. 20/2009).
- iv. The Multilateral Convention of Mutual Tax Administration and Assistance in Tax Matters (MAC) was extended by China to Macau (China) and entered into force on 1 September 2018 and the network of bilateral agreements enabling EOI has been expanded.
- v. Changes have been made in the AML Law No. 2/2006, the AML/CFT Regulation No. 7/2006 and relevant guidance provided by relevant supervisory bodies.

Part A: Availability of information

47. 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 banking 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.

48. The 2013 Report found that the legal and regulatory framework on the availability of identity and legal ownership was in place but certain aspects needed improvement and the practice was rated “Partially Compliant” with the EOIR standard. Macau (China) was recommended to ensure that robust mechanisms are in place to identify the owners of bearer shares or abolish them. Since then, Macau (China) amended the Commercial Code (CC) to abolish bearer shares (Law No. 4/2015, entered into force in June 2015). This amendment addresses the gap in the legal framework identified by the 2013 Report and therefore the recommendation is removed. However, the holders of bearer shares can still claim rights in front of a court and the law does not limit the period during which such claims can be made. Macau (China) is recommended to close the remaining legal gap. In addition, Macau (China) is recommended to introduce effective sanctions which would ensure that ownership and identity information is maintained for a period of at least five years and provided in the cases of the liquidation or dissolution of the company.

49. The 2013 Report further concluded that there was no system for monitoring compliance with commercial filing obligations or imposing penalties for non-compliance in Macau (China), except in the case of entities that pay distributions out of their pre-tax profits, which are monitored by the tax authorities. Further, compliance with ownership record-keeping obligations by private companies was not systematically monitored. The deficiencies identified in the enforcement practices have not been fully addressed and therefore the recommendation remains.

50. The EOIR standard was strengthened in 2016 and beneficial ownership of relevant entities and arrangements is since required to be available. The legislation which seeks to ensure the availability of beneficial ownership information relies primarily on the AML-obliged entities, such as financial institutions, notaries and accountants, as part of their customer due diligence (CDD) obligations. Whilst in practice most legal entities and arrangements will come in contact with these AML-obliged persons, there is no legal requirement to do so, which would ensure that beneficial ownership information is available in all cases and during the entire lifetime of all entities and arrangements. Further, the definition of “ultimate beneficial owners” leaves some doubts as to its correct application in practice by notaries and auditors/accountants/tax advisors and some deficiencies have been identified in the supervisory arrangement over auditors. Macau (China) is therefore recommended to address these issues.

51. During the review period, Macau (China) received one request related to legal ownership information and was able to provide the information in just over 90 days by obtaining it from the Legal Affairs Bureau (DSAJ). The peer concerned was satisfied with the information received. No requests have been made for beneficial ownership information.

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

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
Deficiencies identified	Whilst the obligation to keep ownership information for a period of at least five years applies to cases of the liquidation or dissolution of the company and falls on various persons related to the entity, or the liquidators, no sanctions are envisaged in the law of Macau (China) for the breach of these duties.	In so far as there are no penalties provided, Macau (China) should introduce effective sanctions against the relevant persons where they fail to comply with requirements to maintain and provide ownership and identity information.
	Macau (China) has passed legislation to abolish bearer shares and ensure the availability of information on all shareholders in Macau companies, but holders of bearer shares can still claim rights in front of a court and the law does not limit the period during which such claims can be made.	Macau (China) is recommended to clarify the time limit after which holders of bearer shares can no longer claim rights over the shares considered destroyed.

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
	The legislation which seeks to ensure the availability of beneficial ownership information relies on the AML-obliged persons, such as financial institutions, notaries and auditors/accountants/tax advisors, as part of their CDD obligations. However, whilst in practice most legal entities and arrangements will come in contact with these AML-obliged persons, there is no legal requirement to ensure that beneficial ownership information is available in all cases and at all times and during the entire lifetime of all entities.	Macau (China) is recommended to ensure that beneficial ownership information is available for all relevant entities in accordance with the international standard.
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement		
Practical Implementation of the standard		
	Underlying Factor	Recommendations
Deficiencies identified	There is no system of monitoring compliance with commercial filing obligations or imposition of penalties for non-compliance, except in the case of entities that pay distributions out of their pre-tax profits, which are monitored by the tax authorities. Furthermore, compliance with ownership record-keeping obligations by private companies is not systematically monitored.	Macau (China) should ensure that all its monitoring and enforcement powers are appropriately exercised in practice to support the legal requirements which ensure the availability of ownership and identity information, in particular for private companies and partnerships.
	The AML-obliged persons in Macau (China) collect information on “ultimate beneficial owners” of legal entities and arrangements. However, the definition of “ultimate beneficial owners” leaves some doubts as to its application in practice by notaries and auditors/accountants/tax advisors in accordance with the EOIR standard.	Macau (China) is recommended to take measures which would ensure that notaries and auditors/accountants/tax advisors are correctly applying the definition of “ultimate beneficial owners” in practice and collecting beneficial ownership information in accordance with the international standard.

Practical Implementation of the standard		
	Underlying Factor	Recommendations
	Macau's AML supervisory authorities carry out a variety of supervisory measures. However, there are differences across supervised sectors in terms of frequency, depth of supervision and applied enforcement. Gaps have been identified in the supervisory arrangements over auditors/ accountants.	Macau (China) is recommended to strengthen its supervisory and enforcement system over certain AML-obliged persons.
Rating: Partially Compliant		

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

53. The CC, which is the central piece of legislation governing the establishment and management of corporations in Macau (China), provides for the creation of:

- Private companies (“*sociedades por quotas*”): the capital of a private company is broken down into shares (quotas) and the shareholders are jointly and severally liable for the payment of all shares (Art. 356 CC). Shares cannot be embodied in negotiable instruments. A private company cannot have more than 30 shareholders and cannot have capital lower than MOP 25 000 (EUR 2 823). An individual can create a private company the capital of which consists of a single share (Art. 390 CC).
- Public companies (“*sociedades anónimas*”): public companies can only be created by a minimum of three shareholders and their capital cannot be lower than MOP 1 000 000 (EUR 112 900). The capital is divided into shares, all of the same nominal value, which cannot be lower than MOP 100 (EUR 11.3). The liability of a shareholder is limited to the value of the shares he/she subscribes. Public companies may issue ordinary or preference shares. They can also issue bonds provided they do not exceed the amount of the paid-up and existing capital.

54. As of 22 November 2019, there were 59 320 private companies and 453 public companies registered with the Commercial and Moveable Property Registry of the DSAJ (the Registry).

55. The legal ownership and identity requirements for companies is found through the combination of company, tax and AML laws. Beneficial ownership information is available through AML-related requirements. The following table shows a summary of the legal requirements to maintain legal and beneficial ownership information in respect of companies and entities.

Legislation regulating legal ownership of companies¹

Type	Company Law	Tax Law	AML Law
Private companies	Legal – all	Legal – all	Legal – all
	Beneficial – none	Beneficial – none	Beneficial – all
Public companies	Legal – all	Legal – all	Legal – some
	Beneficial – none	Beneficial – none	Beneficial – some

Company law requirements: i. Legal obligations

Commercial and Moveable Property Registry

56. As described in the 2013 Report, private companies are required to register in the Registry of the DSAJ within 15 days from the date of the act of incorporation (Art. 187 CC). The act of incorporation of a company is a written document with certification of signatures of the shareholders or an authenticated document. The act of incorporation must mention the identity of the shareholders and that of their representatives (if any), as well as the appointment of the administrators and, if they exist, the auditor or the members of the audit committee, or the company secretary (Art. 179 CC). It is an obligation of the company to have the signatures and identity documents of its shareholders authenticated by a notary. Both certification or authentication can be done by public notaries or private notaries (lawyers with a private notary’s licence).² Following the registration of its act of incorporation, the company acquires legal personality (Art. 176 CC).

57. The Commercial Registration Code (Decree Law No. 56/99/M) also requires that all transfers of shares in private companies be filed with the registrar (Art. 5(1)c), which needs to be done within 15 days from the day

1. “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” means that an entity will be required to maintain information if certain conditions are met.
2. According to Art. 2, Art. 6 and Art. 7 of the Notary Code approved by Decree-Law no. 62/99/M, both public notaries and private notaries can perform notarial functions, which includes the act of incorporation of a company.

that the event occurred (Art. 14 Commercial Registration Code). In order to register a change of ownership in a private company, the transfer document (as certified by a notary), an updated list of shareholders, the identification documents of each new shareholder and evidence of stamp duty payment must be submitted. Changes are recorded within ten days of receipt of all relevant information by the Registry. Shareholders cannot enforce their rights against third parties (i.e. persons other than the company and the transferor) until their shareholding is recorded in the Registry (Art. 9 Commercial Registration Code).

58. Whilst the registration process for public companies is the same, changes of shareholdings are not filed with the Registry, but are recorded in a special register held by the company itself (Art. 417 CC). Changes in the shareholdings of public companies are only effective once entered into the company's register of shares (Art. 424(2) CC). In addition, public companies that exercise gaming activities³ are required to issue public notice every year in two local newspapers of the list of shareholders who possess 5% of their shares or above. This information must be provided to Gaming Inspection and Co-ordination Bureau at least 10 days before its publication in newspaper (Art. 31, Macau Gaming Law No. 16/2001).

59. As concerns foreign companies, Macau (China) does not employ a place of effective management criterion for determining tax residency. Instead, under the Commercial Code, companies that are formed under foreign laws but which have their main organ of administration located in Macau (China) are subject to the Commercial Code in the same way as commercial entities formed under Macau law (Art. 175(1)). A company's organ of administration is the body that possesses the competence to manage and represent the company (Art. 235(1) CC) and the "main organ of administration" is akin to the concept of the main management of the company. Therefore, Art. 175(1) CC can be considered as referring to foreign companies having sufficient nexus with Macau (China) in application of the EOIR standard. In practice, since the registration process is the same for such companies, as those incorporated under Macau laws, the Registry advised that no separate figures are maintained regarding the number of registered private and public companies that are foreign incorporated companies with their main organ of administration in Macau (China).

60. In addition, all companies which exercise a permanent activity in Macau (China) are subject to the legal provisions on business registration (Art. 178(1) CC), including the obligation to file changes in the companies' shareholdings. At the time of the 2013 Report, the law did not specify the

3. Only public companies incorporated in Macau (China) may be licensed to exercise gaming activities (Art. 7 Law No. 16/2001).

meaning of the term “permanent activity”. Macau (China) has since amended the Commercial Code to define a company with permanent activity in Macau (China) as “a fixed place of business notably a place of management, a branch or an office through which the activity of a company is wholly or partly carried on in Macau SAR” (Art. 178(2) Law no. 4/2015, entered into force in June 2015). Companies which exercise a permanent activity in Macau (China) and have their registered office or main place of administration abroad must appoint a representative with permanent residence in Macau (China) who has the power to receive any communications, citations and notifications that may be addressed to the company, set aside capital for their activities in Macau (China) and register the respective resolutions (Art 178(4) Law no. 4/2015). Failure to comply with these requirements may lead to the liquidation of the assets in Macau (China) by the courts at the request of the Public Prosecutor’s Department. According to the Registry, there are currently 647 foreign companies conducting permanent activities in Macau (China).

61. All the registered facts and related documents are filed in an appropriate folder and kept within the Registry (Art. 56(2), 57 Commercial Registration Code). In practice, information is maintained in an electronic database, including these filings. The records held for each private company include identity information on both past and present shareholders. The Industrial Tax and Group B Taxpayer Centre of the FSB can directly access this database. Members of the public can access information in the commercial register (including the name and address of the shareholders, but not sensitive information, such as their contact number or identification card number), by submitting a request in person at the Registry’s office and paying a fee. Only the parties in the act will be registered in the database of the Registry and made known to the public.

62. As described in the 2013 Report (paragraphs 115-116), the legislation of Macau (China) does not recognise the figures of nominee shareholders and nominee directors. Any person acting on behalf of a shareholder or director will have to do it through the normal figure of representation which requires the issuing of specific powers of attorney by the represented person to their nominee (Art. 255 Civil Code).

AMCM and IPIM

63. The Offshore Regime of Macau (Decree Law no. 58/99/M) was revoked in December 2018. Upon voluntary surrender of licences, there had been no more offshore banks in Macau (China) since February 2018. However, some licences of the providers of offshore commercial and auxiliary services are still in effect.

64. Under the legal regime which was in effect during the review period, offshore institutions were formed as a company incorporated according to the law of Macau (China), or the branch of an institution incorporated abroad. All the obligations mentioned above apply to them. In addition, offshore financial institutions and providers of offshore commercial and auxiliary services are subject to the licencing and supervision of the Macau Monetary Authority (AMCM) and the Macau Trade and Investment Promotion Institute (IPIM), respectively. When submitting their licence application, entities were under an obligation to provide legal ownership information. The regulators of offshore institutions are notified of changes in ownership in such entities and the licensee must get their prior approval in some cases (for further details, see the 2013 Report, paras 98-101).

65. The ownership and identification information which is provided to the IPIM does not extend to beneficial ownership information. However, in some instances, beneficial ownership information is available through auditors (as AML-obliged entities). All offshore banks and non-financial offshore entities must appoint an auditor and the submission of audited report per each financial year is stipulated by the Offshore Law.

Information kept by legal entities

66. Under the CC, each public or private company that is incorporated under Macau law, or any foreign incorporated company that has its main organ of administration located in Macau (China), is required to maintain its own act of incorporation and a book of registration of shares (Arts. 175(1), 176, 179 and 252 CC). The books may be kept at the registered office of the company or in any other location within Macau (China), provided that this location has been communicated to the shareholders (Art. 252(3) CC). A shareholder who reaches the position of “dominant shareholder”⁴ must communicate this fact to the company for publication as part of the company’s annual report. Similar obligations apply where the shareholder ceases to be a dominant shareholder.

67. The EOIR standard requires that ownership information must be kept for a period of at least five years. In accordance with Article 49 CC, there is an obligation to retain the books, correspondence, documentation and other items recording the exercise of an enterprise, duly ordered, for 5 years from

4. A dominant shareholder may be an individual or it may be a collective person who, by himself or together with other companies of which it is also the dominant shareholder, or with other shareholders to whom it is connected by agreements outside the company, obtains a majority of the company capital, or controls more than half of the votes, or has the power to elect the majority of the members of the board of administration (Art. 212 CC).

the last entry made in the books (Art. 49(1) CC). This obligation also applies to cases of liquidation or dissolution of the company, and falls on the heirs or the liquidators (Art. 49(2) CC) (see further paragraph 177). The Macau authorities reported that no sanctions are envisaged in the law for the breach of these obligations and no active monitoring of compliance is carried out. Macau (China) is therefore recommended to address the gap in the legal framework.

68. Entities themselves are not obliged to keep beneficial ownership information.

Company law requirements: ii. Enforcement measures and oversight

Commercial and Moveable Property Registry

69. Initial ownership information for public and private companies is available through the commercial registration requirements. All the required documents, including those certified documents, must be submitted to the Registry, no matter whether the notarisation/certification of documents is done by public or private notaries. Further, both Macau's authorities and professionals advised that, in practice, the notary certifying the transfer documents would also usually submit these documents to the Registry for registration, at the request of the founders.

70. The Registry registers the acts brought forward by an applicant, and non-filings are not monitored and sanctioned by the Registry. However, Macau's authorities noted that an entity does not exist as a legal person until it is registered and its members would bear unlimited personal liability for its debts (Art. 190(1) CC), which is a strong deterrent. Similarly, the transfers of shares in private companies will not be effective against third parties until a new shareholder is recorded in the commercial register and those of a public company until registered in the book of shares, which provides a strong incentive for registration.

71. For this reason, the Macau authorities consider that the filing duties are inevitably complied with. During the review period, 9 610 applications to register a transfer of ownership were made, in the context of over 60 100 registered entities.

72. The Registry processes any filings, including for changes in ownership, even if these are submitted after the 15-day prescribed time-limit. No penalties are imposed for late filings. In principle, the Registrar has the power to apply to court for a judicial examination of a commercial entity that continues to fail to comply with its registration and filing requirements following the issuance of a rectification notice. Amongst other things, the court can then order the dissolution of the non-compliant entity (Art. 211(7) CC). This power has not been exercised by the Registrar to date.

73. A preliminary verification of information exists through the certification by notaries of the identity and corporate documents submitted to the Registry. Notaries are subject to regulation and have the status of public officials in Macau (China); their monitoring and regulation are further discussed below. Private notaries (lawyers with private notary's licence) in Macau (China) are also subject to the same regulations when performing the notarial functions. Further, the Registry checks all information that is submitted for filing, and an entity would be requested to provide any missing information. Whoever is obliged by law to provide information on the activity of the company, and provides it in an untruthful manner, is punishable with imprisonment up to three months and a fine of up to 60 days (Art. 482 CC). In practice, there have been no cases in which this penalty has been applied.

AMCM and IPIM

74. The AMCM and IPIM are responsible for monitoring compliance with the obligations to file ownership and identity information of offshore entities. Pursuant to the FSA, failure to observe registration duties, refusal to provide information or send compulsory data to AMCM, submitting or showing AMCM any false information or documents, constitute “especially serious” offences (Art. 122(2)). Penalties for such offences are: fine; suspension of the voting rights of any shareholder for a period of one to five years; prohibition from holding any board position or carrying out management or directorship duties in any institution under AMCM's supervision for a period of six months to five years. These sanctions may be applied concurrently.⁵ Entities engaging in non-financial offshore activities without authorisation face penalties ranging from MOP 100 000 to MOP 500 000 (EUR 11 290 to EUR 56 450).

75. Macau authorities reported that offshore banks have strictly complied with the relevant regulatory requirements and there has been no enforcement action undertaken so far. In case of reviewing a licence application, the AMCM will take into account the group structure of the institution to identify the beneficial owners and obtain relevant identification information. Failure to provide such information by the applicant would result in the rejection of the application. In respect of filing ownership and identity information of existing offshore institutions, the identity of qualified shareholders and their respective holdings in the share capital need to be registered with the AMCM according to Article 37 of the FSA. Under the “Guideline on Disclosure of Financial Information”, the offshore institution need to disclose a list of shareholders with qualifying holdings on semi-annual basis.

5. The default fine ranges between MOP 10 000 and MOP 5 000 000 (EUR 1 110 to EUR 555 156) (Art. 128). Additional sanctions may be applied, which include loss of capital invested in the operations carried out and publication of the sanctions.

76. Compliance of non-financial offshore entities is supervised by IPIM which issued guidelines on preventive measures regarding AML/CFT matters and guidelines for application and notification on change of company particulars to all non-financial offshore institutions.⁶ IPIM is also granted with powers to apply fines and trigger proceedings for violations. The IPIM employs a supervision team to conduct on-site and off-site inspections of Offshore Commercial Services Institutions for compliance with regulatory and AML obligations. Since 2014, 211 on-sites and over 416 off-sites were conducted by the IPIM. No case of non-compliance was recorded as a result of these inspections, although 107 letters were issued recommending that improvements be made on more minor issues. As of November 2019, 284 entities were licensed to provide non-financial offshore services.

Information kept by legal entities

77. Failure to keep company registers or books is punishable under the CC: the non-registration or the late registration of acts subject to it, or the lack of maintenance in order and updating of the company books are considered serious breaches of the duties of administration that can lead to the dismissal of the administrator (Art. 389(4) and (5) CC).

78. As identified by the 2013 Report, in practice, Macau's government authorities do not systematically monitor the maintenance and updating of company books by the entities. Macau's officials observed that these provisions are self-enforceable due to the consequences generated by their breach (see para 70 above). Furthermore, all public companies (and some private companies) are required to appoint a supervisory board or a single supervisor comprising at least one independent auditor, and would therefore be subject to a degree of independent supervision. However, this requirement does not extend to all private companies and partnerships. It is not known how many of these entities have currently appointed a supervisory board/single supervisor.⁷ This cannot be considered as an appropriate supervision of obligations to maintain accurate ownership information.

6. https://www.ipim.gov.mo/wp-content/uploads/2018/03/2018-AMLCFT-guidelines_english-version.pdf and <https://www.ipim.gov.mo/en/services/offshore-service/guidelines-on-preventive-measures-and-notices/guidelines-to-macao-offshore-companies-for-application-and-notification-on-change-of-company-particulars/>.

7. Among Offshore Commercial Services Institutions and Offshore Auxiliary Services Institutions, only one institution should comply and has appointed an independent auditor to be a single supervisor in accordance with the Macau Commercial Code.

Tax law requirements

Legal obligations

79. Tax authorities maintain records on Macau’s taxpayers, including legal ownership information of companies. Pursuant to the Industrial Tax Regulation (ITR), any company that wishes to conduct business activities (including financial activities) in Macau (China) has to register for industrial tax and submit to the FSB an “M/1 form” 30 days before starting business operations (Art. 8 ITR). Another M/1 form must be submitted to the FSB within 15 days after any increase of business capital; change of company name, logo, address and place of operations; start (or conclusion) of new (or existing) business activities; or, reconstruction or enlargement of the business facilities.

80. Macau’s authorities have indicated that, when submitting the M/1 form, this is an administrative requirement set by the tax authority that the applicants also submit their company registration certificate, which contains legal and ownership (shareholders) information of the company, as a supporting document.⁸ Companies will commonly submit the copy of the commercial registration certificate provided by the Registry, or the acts of incorporation and company by-laws as published in the Official Gazette of the Government of Macau (China); and the copy of identity documents of all the shareholders and their legal representatives or the power of attorney of the authorised persons for the purpose of applying the registration. In practice, where supporting information is not submitted (including where ownership information is not submitted), the application will remain pending until the missing information is submitted.

81. In addition to the initial registration, companies operating in Macau (China) are required to submit annual and/or complimentary tax returns under the Complementary Tax Law (CTL). Information filed with the tax authorities includes legal ownership information. In particular, (i) private companies are required to provide the name and address of the shareholders and their participation in the profits in their annual returns; and (ii) public companies – when dividends are distributed from pre-tax profits – are required to indicate the name and address of the shareholders who received dividends (Art. 10(3) CTL). In total, Group A taxpayers (which includes all public companies and certain private companies and partnerships – see

8. The submission of company registration certification is not required if the applicant can provide the company registration number for the tax authority to verify and access into the company registration record through the shared database network connected with the Company Registrar supervised under DSAJ.

the definition and figures provided in paragraphs 167 and 168 below) have submitted:

	2014	2015	2016	2017	2018
Tax returns submitted by private companies Group A taxpayers	4 022	4 293	4 468	4 626	4 917

82. The FSB has also reported that some of the public companies are making distributions from their pre-tax profits and therefore submitted tax returns with breakdown of shareholders' name, address and dividend. In particular, Group A taxpayers, which choose to distribute pre-tax profits, have submitted:

	2014	2015	2016	2017	2018
Tax returns submitted by public companies Group A taxpayers	328	354	369	350	362

83. Foreign companies which are carrying out industrial or commercial activity in Macau (China)⁹ are subject to the same tax registration and filing obligations. It is possible for a foreign entity to be required to register as an industrial taxpayer even if it is not required to register with the commercial registry because it does not meet the “permanent activity” threshold as defined by Article 178(3) CC: “[w]ithout prejudice to a shorter period foreseen in another legal provision, the activity carried out by the company in the MSAR for a period of more than one year or, interpolated, for periods of more than three months per year, for five consecutive years is assumed to be permanent” (see also paragraph 60 for the definition of the company with permanent activity in Macau (China)). The Macau authorities reported that there are 647 foreign incorporated companies as per the record of the Registry, and there are 848 foreign entities as per record of FSB.

84. Tax reporting does not include beneficial ownership information.

9. The ITR sets out a list of industrial and commercial activities in its annex. Entities that conduct any of those activities in Macau (China) are required to register as an industrial taxpayer. This list of activities is comprehensive and covers all primary, secondary and tertiary industries. As well as stating specific activities within each sector, there are also general catch-all provisions that encompass all other economic activities. A holding company is considered as managing the companies or other commercial entities in which it has a share/stake-holding; this is an activity listed in the ITR annex and a company doing so in Macau (China) is required to register for industrial tax purposes.

Enforcement measures and oversight

85. Failure to register is an offence punished with a penalty ranging between MOP 200 and MOP 100 000 (EUR 22.6 to EUR 11 290), depending on the seriousness of the case (Arts. 37 to 47 ITR). An entity that makes a payment to another that has not registered as an industrial taxpayer, is not entitled to deduct it as expense when calculating its taxable income for complementary tax purposes.

86. Failure to submit a tax return under the CTL will trigger a penalty ranging between MOP 500 and MOP 5 000 (EUR 56 to EUR 555), and a penalty for late filing is MOP 100 to MOP 1 000 (EUR 11.3 to EUR 113). In practice, the FSB can monitor the filing status of all taxpayers by generating filing status reports from its electronic databases.

87. These penalties were imposed by the FSB in some, but not all cases where non-compliance was detected, as follows:

- Eight cases for failure to comply with registration requirements under the ITR, with an average fine of MOP 2 250 (EUR 254) imposed per case. The fines imposed were paid in three cases.
- Seventy cases for late filings under the CTL, with an average amount imposed of MOP 486 (EUR 55). The fines were paid in 58 cases (or 83% of the time); and 653 cases for non-filings under the CTL, with an average amount imposed of MOP 6 199 (EUR 700). The fines were only paid in 56% of these cases. Although non-payment appears high, the FSB has also been actively de-registering taxpayers that repeatedly fail to comply with filing requirements.

88. Where a taxpayer has not filed a tax return for two consecutive years, the FSB would conduct a tax inspection to assess the operations of the taxpayer. Where it is verified that no operations are being conducted, the taxpayer would have its industrial tax registration removed. In 2014-19, the FSB cancelled the tax registration of 4 459 taxpayers for repeated non-filing and inactivity.

89. If the taxpayer intentionally refuses to submit the tax return documents, or submits documents that are incorrect or incomplete, the penalty is between MOP 1 000 and MOP 20 000 (EUR 113 to EUR 2 258) (Arts. 64 to 66). These penalties apply to both companies and partnerships. There were 27 cases in which penalties were imposed for intentional refusal to submit tax return documents or submission of incorrect or incomplete documents in 2014-November 2019.

90. In conclusion, supervision and enforcement of filing obligations under tax law is satisfactory.

AML law requirements

91. The AML Law (Law No. 2/2006, “Prevention and suppression of the crime of money laundering”) imposes several duties on the AML-obliged persons, including (i) duty to adopt CDD measures, including the duty of identification and verification of the identity concerning the contracting parties, clients and patrons; (ii) duty to adopt adequate measures to detect operations suspected of money laundering; (iii) duty to refuse performing operations, when the necessary information is not provided for the compliance with the duties established in (i) and (ii); and (iv) duty to keep records, for a reasonable period of time, relative to the compliance with the duties established in (i) and (ii) (Art. 7 AML Law). These duties apply to the following entities: (i) those supervised by the Monetary Authority of Macau (China), such as credit institutions, financial companies, offshore financial institutions, insurance companies; (ii) lawyers, solicitors, notaries, public registrars, auditors, accountants and tax advisers, when involved in certain operations, including the creation, operation or management of legal persons or entities without legal personality or buying and selling of enterprises; and (iii) providers of services within the scope of certain activities (Art. 6 AML Law).¹⁰

92. The AML/CFT Regulation (Administrative Regulation No. 7/2006, “Preventative measures for the crimes of money laundering and financing of terrorism”) further specifies the scope of CDD duties envisaged by Art. 7 AML Law. The AML-obliged persons in Macau (China) must obtain identification information and carry out appropriate verification of the identification of the contracting parties and clients using reliable and independent source documents, data or information, when (i) establishing business relationship, (ii) the operations might indicate the commission of the crimes of money laundering or financing of terrorism; (iii) occasional transactions of high value; and (iv) there are doubts about the veracity or adequacy of previously obtained identification data provided by the contracting parties, clients or patrons (Art. 3 AML/CFT Regulation). Further, they should identify and verify the identity of the “ultimate beneficial owners” of the activity and – for legal persons or legal arrangements – put in place adequate measures that allow the determination of the individuals who hold ultimate effective

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10. (1) Acting as an agent in forming legal persons; (2) acting as a director or secretary of a company, a partner or holding of a similar position in relation to other legal persons; (3) providing a registered office, business address, premises, administrative or postal address for a company, or any other legal person or entities without legal personality; (4) acting as a trustee; (5) acting as a partner of a company on behalf of another person; and (6) carrying out the measures necessary for a third party to act in the manner prescribed in subparagraphs (2), (4) and (5).

control over them (Art. 3 AML/CFT Regulation). Neither the AML Law nor the AML/CFT Regulation define the term “ultimate beneficial owners”, nor envisage the methods of identifying them, but some additional enforceable guidance and instructions issued by supervisory authorities, and discussed in detail below with respect to specific types of AML-obliged persons, do so.

93. In performing these duties, financial institutions are supervised by the AMCM; auditors, accountants and tax advisers by the Financial Services Bureau (FSB); lawyers by Macau Lawyers Association; solicitors by the Independent Commission for the Exercise of the Disciplinary Power over Solicitors; and notaries and registers by the Legal Affairs Bureau (DSAJ) (Article 2 AML/CFT Regulation). Pursuant to the AML/CFT Regulation, supervising authorities can issue enforceable guidance and instructions specifying the AML/CFT obligations of the supervised entities. The supervising authorities also perform inspections and institute administrative proceedings for administrative sanctions when there is failure to comply with the preventive measures.

94. The AML/CFT Regulation also specifies that supporting documents related to compliance with the identification duties must be kept for a period of at least five years following completion of the operation. In addition, entities should maintain all records of the identification information, account files and business correspondence for at least five years following the termination of an account or business relationship (Art. 6 AML/CFT Regulation).

95. Non-compliance with CDD measures, including the identification and record keeping duties, constitutes an administrative offence punishable with a fine between MOP 10 000 to MOP 500 000 (EUR 1 129 to EUR 56 450) (for natural persons) and MOP 100 000 to MOP 5 000 000 (EUR 11 290 to EUR 564 500) (for legal persons), with the possibility to go above in case of high benefits (Article 7-B AML Law).

Notaries

96. Notaries are a key actor in the creation of companies and intervene when the ownership structure of private companies changes. Under the Instructions on Money Laundering and the Financing of Terrorism issued by the DSAJ and applicable since 15 November 2018 (DSAJ Instructions), notaries and registers are required to identify contracting parties wishing to establish a legal person. The duty of identification and of verification of identity applies whenever a notary/register is involved in the life cycle of an entity. However, beneficial ownership information is not fully available through notaries. Notaries do not have a continuous relationship with companies and would perform CDD only when involved in the creation of the public companies, and in the creation or transfer of shares in private companies.

Therefore, if beneficial owners having control through other means than ownership change, notaries would not detect the change and update their information. The definition is also unclear on what level of ownership qualifies a beneficial owner.

Legal obligations

97. Public and private companies are created by means of a written document (Art. 179(1) CC). The registration of incorporation is done in accordance with documents which include the act of incorporation (Art. 35(1)(a) Commercial Registration Code), which must mention, *inter alia*, the identity of the shareholders and of their representatives, if any, and the capital subscribed by each shareholder (Art. 179(3) CC). Registration can only be done after “filing the related documents in appropriate file” (Art. 58 Commercial Registration Code). This means that the act of incorporation is filed with the Registry. Therefore, all public and private companies will come in contact with notaries at the moment of incorporation.

98. In the context of the transfer of shares in private companies, the signatures of the contracting parties are required to be certified by a notary. Transfer of shares has to be registered (Art. 366(1) CC), and the transfer document must be filed with Registry under Art. 58 of Commercial Registration Code. Such certification is required for any document subsequently filed with the Registry. The details of the notary who certified or notarised each document are recorded in the Registry. This enables the tracing of the notary (either public or private) who conducted a particular notarisation/certification. Therefore, when the transfer of shares takes place, all private companies will in principle come in contact with notaries subject to CDD obligations; however, the same does not apply to public companies, for which the change of shareholding will be recorded internally and this record will be limited to legal ownership.

99. The DSAJ Instructions specify that the term “beneficial owner” refers to the natural person(s) who ultimately owns or controls a party intervening in a notarial or registration act and/or the natural person on whose behalf a transaction/operation or activity is conducted, including in the case of civil societies or commercial companies, the natural person(s) who ultimately owns or controls, directly or indirectly, a sufficient percentage of shares, voting rights, or participation in the share capital of a legal person; the natural person(s) who ultimately controls such legal person by other means and, if all other available means have been exhausted, the natural person(s) who hold the senior management positions (section II).

100. Whilst this definition corresponds with the internationally recognised standard and employs a cascading test for identifying beneficial

owners, the DSAJ Instructions do not specify what is considered “a sufficient percentage” of shares, voting rights, or participation in the share capital of a legal person for establishing ultimate beneficial owners and thus there is no certainty as the application of this definition in practice. Macau (China) is therefore recommended to address this gap.

101. The notarial act of creating a company identifies its shareholders (including the name, type and number of identification document). To verify the identity of the beneficial owner of the act, for acts in which the intervening parties are legal persons subject to registration, the identification of the shareholders or members of the respective bodies, when they are not intervening parties in the act, is carried out through the Registry (for entities registered therein). If the respective entities are not registered in the Registry in Macau (China), it has been reported by Macau that notaries are relying on the information provided by the applicants themselves.

102. Certain information must be recorded in the notary’s computer system. According to the DSAJ Instructions, notaries are required to insert information about the identification of the parties, their representatives and authorised parties (in particular nationality, home address, date and place of birth, occupation, employer or business) and the other information about the act (such as source of funds and payment method). The DSAJ revised the above Instructions on 15 November 2018, and since then notaries have been obliged to insert more details concerning the act and also the information about the effective beneficial owner(s).

103. During the review period (and prior to 15 November 2018), two previous versions of the DSAJ Instructions applied, from November 2006 and September 2016. The main differences brought in by the Instruction from September 2016 were the inclusion of the verification requirement, along with that of identification, and the inclusion of the requirement of the identification and verification of beneficial owners. The Instruction from November 2018 increased the scope of the services in which the CDD duties become applicable to include the full or partial transfer of commercial enterprises, as well as the legal act or transactions such as the management of client funds, securities or other assets by the representatives where they are granted with the power of attorney to act on behalf of the shareholder, director, trustee. It also removed the pecuniary threshold for CDD.

104. Notaries’ records must be made available to the DSAJ for purposes of monitoring compliance with preventive duties. If, for any reason, there is a cessation or suspension of the addressees’ activity, the records, accompanied by the documents collected, must be delivered to the DSAJ for record keeping.

Enforcement measures and oversight

105. Notaries' activities are mainly governed by the Notary Code issued by Decree Law no 62/99/M. As of September 2019, there were 53 private notaries and 5 public notaries in Macau (China). Both public and private notaries are supervised by the DSAJ which has a supervisory team of seven employees. Since the public notaries are civil servants and are working in the notary offices under DSAJ, practically, their works can be supervised more easily than that of private notaries. Therefore, the inspections of the supervisory team in DSAJ target primarily private notaries. According to the Portaria no 10/99/M, ordinary inspections on private notaries are conducted according to an annual plan (Art. 2). The supervisory team of DSAJ also carries out extraordinary inspections and specific inspections according to the law referred above and these two kinds of inspections do not have the temporal restriction mentioned above.

106. DSAJ carried out 4 on-site inspections in 2014, 6 in 2015, 5 in 2016, 14 in 2017, 7 in 2018 and 7 in 2019. During on-sites, the DSAJ inspector will verify the documents of the notaries in order to inspect the compliance with the DSAJ instructions, including those related to beneficial ownership information. In this period, one licence was suspended in 2014 (and revoked finally in 2016), one licence was suspended in 2017 and enforcement measures with respect to 2018 and 2019 are ongoing.

107. As about 45% of notaries have been subject to an onsite inspection in a three-year review period between 2014 and 2017, enforcement and supervision appears satisfactory.

Auditors, accountants and tax advisers

108. Auditors, accountants and tax advisers might be more regularly involved in the affairs of companies than notaries are. Therefore, the beneficial ownership information they collect might be more frequently updated. However, they perform CDD only when involved in limited actions. The definition is also unclear on what level of ownership qualifies a beneficial owner.

Legal obligations

109. Auditors play a significant role in monitoring compliance by ensuring the maintenance and updating of company books, including the shareholder register, in their capacity as supervisors of commercial entities. As noted in paragraph 65 above, all offshore banks and non-financial offshore entities were required to appoint an auditor. Further, all public companies (and some private companies) are required to appoint a supervisory board or a single supervisor comprising at least one independent auditor. However, this requirement does not extend to all private companies and partnerships.

110. In addition, CDD duties will only apply with respect to auditors, accountants and tax advisers performing specific functions. According to Articles 6(5) and 7 of the AML Law, they must adopt CDD measures, including the duty of identification and verification of the identity concerning the contracting parties, clients and patrons, when participating or assisting, in the exercise of their professional activities, the operations of (1) buying and selling of real property; (2) managing of client funds, securities or other assets; (3) managing of bank, savings or securities accounts; (4) organisation of contributions necessary for the creation, operation or management of companies; and (5) creation, operation or management of legal persons or entities without legal personality or buying and selling of enterprises.

111. Further explanation of the AML-related duties with respect to these professions is provided through the Guidelines for the prevention and suppression of money laundering and financing of terrorism for auditors, accountants and tax advisers, which were issued by the FSB (FSB Guidelines). The most recent version of the FSB Guidelines entered into force on 31 January 2019. Compared to the 2016 FSB Guidelines, which were in effect during the review period, the 2019 version imposed additional obligations on auditors/accountants in Section 5 “Customer due diligence and measures to detect suspicious operations”, including:

- Auditors, accountants and tax advisers should not have business relationship with a client who is anonymous or provides a fictitious name (Section 5.1).
- Auditors, accountants and tax advisers are required to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers within the scope of the activities identified above; or (if permitted) may complete verification after the establishment of the business relationship, provided that this occurs as soon as reasonably practicable; this is essential not to interrupt the normal conduct of business; and the ML/TF risks are effectively managed (Section 5.9).
- Auditors, accountants and tax advisers are required to apply CDD requirements to existing customers on the basis of materiality and risk, and to conduct due diligence on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained (Section 5.11).

112. Section 5.7.1 of the FSB Guidelines defines that for legal persons:

- i. the identity of the natural persons (if any – as ownership interests can be so diversified that there are no natural persons (whether

acting alone or together) exercising control of the legal person or arrangement through ownership) who ultimately have a controlling ownership interest in a legal person

- ii. to the extent that there is doubt as to whether the person(s) with the controlling ownership interest are the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural persons (if any) exercising control of the legal person or arrangement through other means
- iii. where no natural person is identified under the previous two paragraphs, auditors, accountants and tax advisers should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official.

113. Whilst this definition corresponds with the internationally recognised standard, the FSB Guidelines do not define “a controlling ownership interest in a legal person”. Macau authorities reported that this requirement is commonly interpreted in line with AML international obligations as any ownership exceeding 25%, but no evidence has been provided and uncertainty remains concerning the application of this definition in practice. Macau (China) is therefore recommended to address this gap.

114. For other types of business relationships (not those listed in paragraph 110 above), for example, audit clients, auditors are required to comply with the Auditing Standards. In accordance with the Auditing Standards (Administrative Regulation No. 23/2004), auditors are required to perform CDD requirements before accepting the engagement but this duty is limited to applying “appropriate audit procedures to identify the natural persons or juridical persons who control, or have significant influence to, or have special relationship with the entity, and the transactions between the entity and such persons”.

115. No evidence has been provided by Macau (China) and uncertainty remains concerning the application of this definition in practice. Further, Article 5.2.4 of the FSB Guidelines stipulates that auditors, accountants and tax advisers have to conduct ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with their knowledge of the clients, their business and risk profile, including, where necessary, the source of funds. Article 3 stipulates that risk assessments must be kept up to date. All the relevant risk factors should be considered before determining the appropriate level of mitigation measures to be applied. Auditors, accountants and tax advisers may differentiate the extent of measures, depending on the type and level of risk element for the various risk factors. Auditors, accountants and tax advisers have not been

provided with clear and mandatory guidelines as to the frequency of the updates, so Macau (China) should monitor the ongoing due diligence by these professionals (see Annex 1).

Enforcement measures and oversight

116. Auditors and accountants must be licensed by the CRAC, their regulator, in order to operate in Macau (China). They are required to act in accordance with the professional standards set out in the Statute of Auditors and Code of Professional Ethics of Registered Auditors. Auditors/accountants who fail to comply with the obligation set out in these documents can be subjected to disciplinary penalties, such as a warning, a fine of a maximum of MOP 500 000 (EUR 56 450); suspension of licence of up to three years or cancellation of their registration (Art. 85(1), Statute of Auditors). As supervisors, auditors/accountants can be subject to criminal sanction if they obstruct or hinder acts necessary to the supervision of the activities of the company (Art. 484 CC). Since 2014, there were no instances in which criminal sanctions were required to be imposed. However, one case is currently under trial, whereby verdict is pending.

117. In practice, compliance with these standards is mostly a matter of self-regulation. The CRAC only intervenes and takes disciplinary action, such as recommending the Chief Executive to suspend or revoke the professional's licence, in the event of receiving a complaint. Since January 2014, there were six cases in which the CRAC found violations of law by accountants/auditors; suspension of practice was applied to the auditor/accountant in one case, a warning was issued in one case, and in other cases, the auditors/accountants were fined.

118. As of 30 September 2019, there were 191 accountants, 127 auditors, 3 accounting firms and 14 auditing firms registered in Macau (China). Therefore, only a very small percentage of auditors/accountants have been subject to enforcement measures. Macau (China) is therefore recommended to address this gap to ensure effective supervision.

Financial institutions

119. Financial institutions have been subject to CDD requirements throughout the review period. However, whilst Macau's authorities reported that in practice all entities will open and maintain bank accounts in Macau, no legal obligation exists to support this assertion in full and no evidence has been provided by Macau (China) to support this claim.

Legal obligations

120. The legal and regulatory requirements relating to CDD and identification of beneficial owners by financial institutions are provided by the FSA,¹¹ the AML Law, and the AMCM Anti-Money Laundering and Combating the Financing of Terrorism Guideline (AMCM AML Guideline). The AMCM AML Guideline was last revised in December 2016 and January 2019 to ensure compliance with the international AML/CFT standards of the FATF. The 2016 revisions related to CDD and beneficial ownership information included a requirement that when relying on a third-party to conduct CDD, institutions should satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third parties upon request without delay.¹²

121. The FSA imposes compulsory identification of all customers (Art. 106). Credit institutions should verify the identity of the customers, record the identity of all customers who make significant transactions and refuse to serve those who decline to provide evidence of their identity. Opening of accounts, deposits in cash or other valuables and the hiring of safe deposit boxes must only be conducted in the name of customers identified by name, address and official proof of identity.

122. Institutions should establish and implement an adequate and appropriate AML/CFT system, including policies, procedures and controls to mitigate the risks of money laundering and terrorist financing. There should be an independent and adequately resourced compliance and audit function in place to ensure compliance with the AML/CFT-related requirements and communicate any deficiencies to the board of directors or senior management (Art. 5.1 and 5.4 AMCM AML Guideline).

123. Institutions can never establish a business relationship with a customer who provides a fictitious name or insists on anonymity (Art. 6.5.1 AMCM AML Guideline). According to customer identification and verification rules, financial institutions are required to: identify, verify and record the identity of customers and the related beneficial owners using reliable and independent source documents, data or information (Art. 8.1.1 AMCM AML Guideline).

11. Decree-Law no. 32/93/M, 5 July 1993.

12. The Guideline came into effect on 8 July 2016 (Circular no. 021/B/2016-DSB/AMCM of 15 June 2016), replacing the previous framework (Circular no. 010/2009-AMCM of 5 August 2009). Further revisions were made to the Guideline which came into effect on 2 December 2016 (Circular no. 030/B/2016-DSB/AMCM) and 30 January 2019 (Circular no. 006/B/2019-DSB/AMCM). The 2019 revision added a clarification requiring information sharing within the same financial group to include information on suspicious transactions reporting.

124. The term of “beneficial owner” is defined as “the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement” (Art. 8.2.1 AMCM AML Guideline). Further, “[a] controlling ownership interest depends on the ownership structure of the company. It may be based on a threshold, e.g. 25% of ownership interest, or lower if higher risk scenarios apply”. The Macau authorities explained that the computation of the 25% ownership interest is achieved through the analysis of any direct or indirect holding as the reference to the “the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement” indicates. The ultimate control on the ownership is therefore calculated with reference to both direct and indirect holdings in the company/account holder. This definition is in line with the EOIR standard. The AMCM AML Guideline also requires that, whereby no natural persons with controlling ownership or ability to exercise control through other means can be identified, then the entity’s senior management would be considered beneficial owners (Art. 8.2.3).

125. Institutions should not open accounts, establish business relationship or carry out any transactions with customers unless the CDD process is completed and the customer identity is satisfactorily established (Art. 8.1.2 AMCM AML Guideline). For corporate entities, the details of incorporation should be verified through certificate of incorporation or equivalent documents issued by the relevant government agencies. For verification of identification of beneficial owners, valid original identity documents should be provided (Art. 8.4.2 AMCM AML Guideline).

126. Institutions should obtain “satisfactory evidence” of the identity of the nominees or the intermediaries (e.g. lawyers, accountants) and the persons on whose behalf they are acting, as well as the details of the arrangements in place, for nominee and fiduciary accounts or client accounts opened by professional intermediaries (Art. 9.2 AMCM AML Guideline). The satisfactory evidence refers to the verification requirements stipulated in Art. 8.4.1(c) to (e) and 8.4.2(b) of the AMCM AML Guideline.

127. According to Art. 5.8 of the AMCM AML Guideline, financial institutions may rely upon some third parties, e.g. introducers, intermediaries or other members of the same financial group to perform certain CDD measures, including with respect to legal and beneficial ownership. The reliance is subject to the following criteria: (a) institutions should satisfy themselves that the third parties are not located in the countries identified by the FATF or other similar bodies as having strategic AML/CFT deficiencies but are properly regulated, supervised and/or monitored to have implemented

adequate measures in compliance with the CDD and record-keeping requirements in line with the AMCM AML Guideline; (b) institutions relying upon third parties should immediately obtain the information to satisfy minimum requirements for establishing business relationship; (c) institutions should satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third parties upon request without delay; and (d) institutions should satisfy themselves that the systems of the third parties to verify the identity of their customers are reliable. Institutions relying on CDD performed by third parties still assume ultimate responsibility in this regard.

128. Regular and ongoing review of existing records should be carried out to ensure that they are up to date (Art. 8.1.3 AMCM AML Guideline). Macau's authorities identified that periodic reviews and update of customer information should be carried out within a reasonable period of time set on a risk-sensitive basis (Paragraph 7).¹³ Whilst financial institutions are under duties to keep beneficial ownership information, the regulatory framework does not specify the frequency of reviews of the existing records and Macau (China) needs to address this gap (see Annex 1).

129. Finally, institutions should ensure that all CDD information and transaction records are available swiftly to competent authorities upon request (Art. 12.3 AMCM AML Guideline).

Enforcement measures and oversight

130. The AMCM is the overall competent supervisory authority for the financial sector. It exercises its supervision through the AMCM-Banking Supervision Department (DSB) and AMCM-Insurance Supervision Department (DSG).

131. The AMCM monitors compliance with the AML obligation of financial institutions by conducting on-site inspections. During on-site inspections, relevant policies and procedures are reviewed, and sample tests of customer account opening documents and transactions are undertaken to ensure the financial institutions' compliance with CDD, record keeping and ongoing due diligence requirements. Following an on-site inspection, an exit meeting is conducted with the institution's management to communicate any findings and concerns, a report of findings will then be issued to the institution. Findings identified are subject to regular follow-ups until the issue

13. Paragraph 7 of the Industry Guidance on AML/CFT Controls (Supplementary to the AMCM AML/CFT Guideline); Circular No. 022/B/2016-DSB/AMCM (effective Date: 8 July 2016).

is resolved, while high-level meetings with senior management would be called for regarding more serious concerns.

132. The AMCM has an on-site inspection team of 8 employees and an off-site supervisory team of 10 employees which together oversee the operations of the 29 banks (27 local banks and 2 offshore banks) in Macau (China).¹⁴ The breadth, depth and frequency of on-site examinations are driven by the bank’s overall risk profile. Based on the assessed level and trend of risks in the bank as well as findings and issues of concerns identified in the ongoing supervision, risk-based onsite inspections are carried out at authorised financial institutions.

133. During the peer review period, the AMCM conducted in total 29 onsite inspections at banks. Thematic reviews included the review of compliance with CDD (including identification of BO) and record keeping requirements. Compliance by banks with regard to CDD (including identification of beneficial owners) have been very high, except that there was one incident in which the AMCM has imposed a fine of MOP 500 000 (EUR 56 450) on a bank for its violation of the record keeping requirement in 2015. In the light of this evidence, the in-text recommendation included in the 2013 Report, which urged Macau (China) to monitor the ongoing due diligence by banks to ensure that the ongoing due diligence by banks is carried out in practice has been removed.¹⁵

134. The application of enforcement measures and oversight over financial institutions thus appears satisfactory.

Availability of legal and beneficial ownership information in practice in relation to EOI

Legal ownership

135. Initial legal ownership information for public and private companies is available through the commercial registration requirements. The main source of such information in practice is the information filed with the Registry of the DSAJ, which is directly available to the tax administration. This information is supplemented with the information obtained by the tax administration through tax filings or audits. Further, current ownership

14. The two offshore banks ceased activities in mid-2017 with the liquidation and revocation of their bank licences completed by February 2018.

15. The AML/CFT Mutual Evaluation Report published in December 2017 by the APG concludes that “[c]ompliance with beneficial ownership information has been improving over the years because of the ongoing AMCM focus, and compliance is now satisfactory” (paragraph 286).

information can be obtained from companies themselves or from relevant professionals, e.g. notaries, accountants, financial institutions.

136. The situation with respect to the monitoring of compliance with the requirement to keep legal ownership information for companies has not changed since the 2013 Report and is not comprehensive. Accordingly, Macau (China) is recommended to ensure that all its monitoring and enforcement powers are appropriately exercised in practice to support the legal requirements which ensure the availability of ownership and identity information.

137. During the review period, Macau (China) received one request related to legal ownership information and was able to provide the information in just over 90 days by obtaining it from the DSAJ. The peer concerned was satisfied with the information received.

Beneficial ownership

138. Beneficial ownership information is available through the AML framework. Financial institutions, notaries, and auditors/accountants are the main sources of beneficial ownership information as they are subject to a CDD legal obligation for AML/CFT purposes. At the stage of company formation, beneficial ownership information is available through public and private notaries involved in the relevant transaction. In the process of the transfer of shares, beneficial ownership information for private companies will be available through notaries. The Macau authorities explained that the relevant notary can be identified in the database of the supervisory department (DSAJ), since all notaries are required to insert the transaction data into the computer system during the processing of notarial or registration acts (see further the DSAJ's Instructions as mentioned in paragraph 102 of the report). In some limited circumstances explained above, auditors, which are compulsory for public companies, may provide a source of beneficial ownership information for public companies. The relevant auditor can be identified on companies that are Group A taxpayers (which includes all public companies and certain private companies and partnerships – see further paragraphs 167 and 168 below), since they are required to appoint accountants or auditors to submit their annual tax returns. Besides, public companies are also required to disclose their annual audited report publicly, in which the appointed auditor has to be indicated.

139. However, the definition of “ultimate beneficial owners” provided to notaries and auditors/accountants/tax advisors in the relevant enforceable instructions and guidelines raises some doubts as to its correct application in practice.

140. Further, beneficial ownership information is available through financial institutions, most importantly banks. Whilst there is no formal legal requirement to maintain a bank account in Macau (China); the authorities noted that from a practical perspective, an operational company needs to open a bank account for its daily business transactions, but they have no supporting statistics to provide. However, nothing prevents an entity to register in Macau (China) and perform its activities entirely outside the jurisdiction, in which case it would probably not open a bank account or contract another service provider in Macau (China).

141. In the light of the above limitations, Macau (China) is recommended to ensure that beneficial ownership information is available for all relevant entities in accordance with the international standard.

142. Macau's AML supervisory authorities are carrying out a variety of supervisory measures. These measures include preventive programmes, off-site monitoring and on-site inspections verifying the availability of beneficial ownership information, and application of enforcement measures where deficiencies are identified. However, there are differences across supervised sectors in terms of frequency, depth of supervision and applied enforcement. Care should be taken that all relevant professionals perform adequate measures to identify beneficial owners of their clients as required under the standard. Macau (China) should therefore continue in its efforts to strengthen its oversight regime with respect to auditors/accountants.

143. This deficiency is particularly important due to limited sources of beneficial ownership information in Macau (China) with no obligations to maintain or report beneficial ownership enshrined in company or tax law.

144. No requests have been made for beneficial ownership information during the review period.

A.1.2. Bearer shares

145. The 2013 Report acknowledged that it is open to public companies to issue bearer shares. While only a limited number of such shares were known to be in circulation, there were insufficient mechanisms in place to ensure the availability of ownership information in all circumstances. Macau (China) was therefore recommended to ensure that robust mechanisms are in place to identify the owners of bearer shares or abolish bearer shares.

146. Responding to the recommendation, Macau (China) amended the Commercial Code to abolish bearer shares (Law no. 4/2015). From 1 June 2015, companies are no longer allowed to issue bearer shares, convert registered shares into bearer shares, nor to transfer bearer shares, with the exception of transfers resulting from judicial decision (Art. 2 Law no. 4/2015).

The holders of bearer shares and their successors were given one year to request the conversion of their titles into registered shares, i.e. until 1 June 2016 (Art. 4 Law no. 4/2015). Once this period elapsed, the rights of the holder of the bearer shares who had not requested the conversion of the titles have been suspended and the non-converted bearer shares are considered destroyed (Art. 5 and 6 Law no. 4/2015). Whilst Macau (China) has passed legislation to abolish bearer shares and ensure the availability of information on all shareholders in Macau companies, holders of bearer shares can still claim rights in front of a court and the law does not limit the period during which such claims can be made. The holder of the bearer shares or whoever demonstrates legitimate interest may request the annulment of the destruction of the titles through the court (Art. 6 Law no. 4/2015). Macau authorities explained that the legitimate interest will need to be established by the court on a case-by-case basis. So far, no such annulment has taken place.

147. Macau’s authorities reported that as of 31 May 2015, there were 127 taxpayers who were able to issue bearer shares. Among them, 13 had really issued bearer shares. Among the 13 taxpayers who had issued bearer shares, 11 have closed and 2 have amended their articles of association to remove bearer shares. Among the 127 taxpayers, 33 have closed, 18 have amended their articles of association to remove bearer shares, 2 are bankrupt and are in process of liquidation. Among the remaining, 74 have replied they have no bearer shares (but have not indicated having amended their articles of association).

148. Macau’s authorities take the view that from June 2016 there are only registered shares in Macau (China). They pointed to the fact that any non-converted titles representative of bearer shares are considered destroyed and have not reported any attempts to overturn this decision through the procedure envisaged by Art. 6 Law no. 4/2015.

149. Although Macau (China) has taken actions to ensure the availability of information on all shareholders in Macau companies, Macau (China) is recommended to clarify the time limit after which holders of bearer shares can no longer claim rights over the destroyed shares. Furthermore, Macau (China) should supervise the implementation of the law to ensure all companies complied with it (see Annex 1).

A.1.3. Partnerships

150. Pursuant to the Commercial Code, general partnerships (*sociedades em nome colectivo*) and limited partnerships (*sociedades em comandita*) can be formed in Macau (China) (Art. 174). As of 22 November 2019, there have been 2 general partnerships registered in Macau (China) and 1 limited partnership. Both types of partnerships are considered commercial companies

and are therefore subject to the same Commercial Code requirements in respect of Macau's companies and Commercial Registration Code requirements described above regarding the obligation on private companies to file ownership transfer information with the DSAJ registrar. Foreign partnerships are treated in the same way as foreign companies. As the same requirements and conclusions apply, no further analysis is necessary.

A.1.4. Trusts

151. It is not possible to form a trust under Macau's law and there is no domestic trust legislation. Macau (China) has not ratified the *Hague Convention on the Law Applicable to Trusts and their Recognition*. Alongside the general rule, and as described in the 2013 Report in paras 154-160, the offshore legislation expressly regulates the provision of "offshore trust management" services. Only a person licensed by AMCM can be a "trust management institution" and act as a trustee of an offshore trust. However, as of the end of the review period, no offshore trust management institutions has been licensed by the AMCM.

152. Under Macau's laws, there are no restrictions preventing a resident of Macau (China) to act as trustee, protector or administrator of a trust formed under foreign law. Any Macau resident trustee acting for a foreign trust, whether in or outside of the offshore sector, would be subject to the AML regime (Art. 6 AML Law). Such trustees, if they act by way of business, are required to register as taxpayers by reason of conducting a commercial or industrial activity. Through tax registration, the identity of the trustee would become known to Macau's tax authorities. Where the trustee wishes for such activities (i.e. the conduct of investment and financial activities on behalf, and for the benefit, of another) to be formally recognised by Macau's tax authorities, documentation is required to be produced to formally establish a "representative" relation (see A.1.1 above). Furthermore, taxpayers are subject to inspection by Macau's tax authorities to ensure that they conduct the specific commercial activities for which they are tax registered. Accordingly, through the combination of documentation requirements under the Civil Code and tax inspections, it is considered possible for such trust arrangements to be detected.

153. Beneficial ownership information on trusts is available on the basis of AML rules. The DSAJ Instructions specify that in the case of trusts, notaries identify the following as beneficial owners: the settlor, the trustees, the protector (if any), the beneficiaries or, if these have not yet been determined, the category of persons for whose main benefit the trust has been set up or its activity is conducted, as well as any other natural person who ultimately controls the trust, at the end of the chain, through direct or indirect participation or by other means (section II). Similarly, under the FSB Guidelines, auditors,

accountants and tax advisors are concerned with the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (section 5.7.2). Finally, the AMCM AML Guideline envisages that for trusts, financial institutions should establish the identity of the settlors, the trustees, the beneficiaries or any other natural persons (e.g. protector) exercising ultimate effective control over the trust (including through a chain of control/ownership) (Art. 8.2.3).

154. Macau’s authorities reported that there is no known trust in Macau (China). During the three-year review period, Macau (China) did not receive any EOI requests relating to trusts.

A.1.5. Foundations and associations

155. Macau law provides for the establishment of legal persons in the form of associations and foundations. Associations are non-profit-making organisations, while foundations are defined as legal persons with a social purpose (Arts. 154 and 173 Civil Code). Macau’s authorities confirmed that no specific individual or beneficiary can benefit from the foundation’s assets. There has been no change in this respect since the first round review, and the 2013 Report concluded that information on the founders and management bodies is available for all foundations. Foundations are regulated for AML purposes. As of December 2018, there have been 12 foundations and 45 associations registered in Macau (China). During the three-year review period, Macau (China) did not receive any EOI requests relating to foundations or associations.

A.2. Accounting records

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

156. The 2013 Report concluded that the legal and regulatory framework and its implementation in practice ensure the availability of accounting information in line with the standard; yet, it noted certain deficiencies. Macau’s commercial and tax laws generally ensure that reliable accounting records are kept by all relevant entities and arrangements for a minimum period of five years from the period to which it relates regardless of whether an entity or arrangement ceases to exist. However, Macau (China) is recommended to introduce effective sanctions which would ensure that accounting records and underlying documents are maintained for a period of at least five years and provided in the cases of the liquidation or dissolution of the company.

157. Concerning the availability of accounting records and underlying documentation, the 2013 Report found that Group A taxpayers (which includes all public companies and certain private companies and partnerships – see further paragraphs 167 and 168 below) are required to maintain such documents, including contracts and invoices, in accordance with the standard. In contrast, an entity in Group B taxpayers must keep “items recording the exercise of its enterprise” (Art. 49 CC). The 2013 Report concluded that the exact scope of this term and the underlying records covered by this obligation was not clear and therefore contained a recommendation that Macau (China) closes this gap.

158. Since then, the relevant rules remained the same but clarifications provided by Macau’s authorities make it plausible that the provisions in place are interpreted by Group B taxpayers to comply with the standard. Nevertheless, Macau (China) has not provided sufficient evidence that these requirements are implemented in practice and therefore the recommendation has been transformed to ensuring effective enforcement of the requirement that comprehensive underlying documentation is kept for all entities for a minimum of five years.

159. During the three-year review period, Macau (China) received five requests related to accounting information, including underlying documentation. Of these requests, one concerned a Group B taxpayer, one concerned a Group A taxpayer and two concerned offshore companies. Macau (China) responded to three requests in just over 90 days and one within 267 days. No issue in this respect was reported by peers.

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

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
Deficiencies identified	Whilst the obligation to keep accounting records and underlying documents for a period of at least five years applies to cases of the liquidation or dissolution of the company and falls on various persons related to the entity, or the liquidators, no sanctions are envisaged in the law of Macau (China) for the breach of these duties.	In so far as there are no penalties provided, Macau (China) should introduce effective sanctions against the relevant persons where they fail to comply with requirements to maintain and provide accounting information.
Determination: The element is in place but needs improvement		

Practical Implementation of the standard		
	Underlying Factor	Recommendations
Deficiencies identified	For relevant entities that are not Group A complementary taxpayers, there is insufficient evidence that the record keeping requirements are implemented in practice.	Macau (China) should strengthen the effective supervision and enforcement of the record keeping requirements to ensure that comprehensive underlying documentation is kept for all entities for a minimum of 5 years.
Rating: Largely Compliant		

A.2.1. General requirements

161. Macau's commercial and tax laws generally ensure that reliable accounting records are kept for all relevant entities and arrangements.

Legal obligations

Company Law

162. As described in the 2013 Report, pursuant to the CC, individuals and legal persons carrying out a “commercial enterprise” are required to have “organised bookkeeping, adequate to his enterprise, in order to enable chronological knowledge of all his operations, as well as the periodic preparation of balance sheets and inventories” (Arts. 38 and 39 CC). The CC requires each commercial entrepreneur to keep books, correspondence, documentation and other items recording the exercise of his enterprise for five years (Art. 49 CC). Both companies and partnerships formed under the CC and those that are incorporated under foreign laws but have their main organ of administration located in Macau (China) are subject to the accounting and bookkeeping obligation under the CC (Art. 175 CC). The same applies to offshore institutions.

163. Annual accounts are prepared in accordance with the Accounting Standards contained in Administrative Regulation 25/2005. As a general rule, at the end of each accounting period, the administrators of the company or partnership are required to organise the annual accounts and prepare a report on the accounting period and a proposal for the apportioning of the results (Art. 254 CC). Such annual accounts are then handed to the supervisory board or single supervisor, who analyse them and prepare a report and an opinion to be submitted to the shareholders (Art. 256). As discussed in A.1.1 above, the appointment of a supervisory board or a single supervisor is compulsory for all public companies and certain private companies and partnerships which (i) have 10 or more members or (ii) issue bonds (Art. 214(2) CC). Companies

and partnerships that have appointed a supervisory board or a single supervisor are also required to maintain audited accounts (Art. 24(1), Statute of Auditors).

164. There are no sanction imposed by the company law of Macau (China) other than those applicable with respect to offshore entities (however, see the sanctions imposed by the tax law in paragraphs 169 and 170). Offshore commercial and auxiliary institutions are required to send their annual report and accounts, together with the relevant auditor’s report, to the IPIM (Art. 66 OSL). Failure to comply with this duty is punished with a fine of MOP 20 000 to MOP 100 000 (EUR 2 258 to EUR 11 290) (Art. 70(1)(d) OSL). OFIs are required to send their annual report and accounts to the AMCM (Art. 76 and 77 FSA). Failure to comply would result in penalties including a fine of between MOP 10 000 to MOP 5 million (EUR 1 129 to EUR 564 500; Art. 122, 126 and 128 FSA).

165. Trustees of offshore trusts “are specially bound ... to provide administration accounts, management accounts and deeds of application of the trust” (Art. 48(1)(c) OSL). Offshore Trust Management companies are required to submit their annual report and accounts, together with a written opinion made by their external auditor or supervisory board, to the AMCM (Art. 37). In addition, trustees incorporated as Macau (China) companies (Art. 44(1)(b)) are subject to the same accounting records keeping requirements detailed above.

166. Foundations are not subject to specific accounting obligations under the Civil Code. However, under the Statute of Auditors, all foundations are required to maintain audited accounts (Art. 24), even though no further details are specified regarding the particular accounting books and documents that the foundation must keep. All auditors are required to maintain their working papers for a minimum period of six years (Art. 38, Statute of Auditors; Technical Guidelines for the Application of Technical Auditing Standards No. 3, Chapter IV). “Working papers” in this context include certain underlying documentation of the client (i.e. the foundation), such as important contracts, as well as financial statements and analyses of transactions and balances. Foundations that are declared public interest entities are under an obligation to present their annual report or previous operating accounts (Art. 11 Law 11/96/M). In practice, these accounts are presented to, and maintained by, the FSB. The 2013 Report concluded that although there were only 40 foundations registered with the Identification Services Bureau, Macau (China) should still clarify that the accounts required to be kept are in line with the international standard. No changes have been reported by Macau (China) since the 2013 Report with respect to this issue, so the in-text recommendation is kept (see Annex 1).

Tax Law

167. As further described in the 2013 Report, under the CTL, taxpayers are divided into two main categories with different accounting obligations. Taxpayers “with accounting properly organised” belong to Group A, whilst the other taxpayers belong to Group B (Art. 4 CTL). The following persons are always considered Group A taxpayers:

- *sociedades anónimas* (public companies), *sociedades em comandita por acções* (partnerships limited by shares) and *cooperativas* (co-operatives)
- any company with separate liability whose capital is above MOP 1 000 000 (EUR 111 031) or whose taxable profits in the last three years have been on average above MOP 500 000 (EUR 55 516, increased to MOP 1 million since 25 January 2020)
- taxpayers other than those listed above may also opt to be part of Group A provided that they have organised accounting records (Art. 4(2)(c) CTL). After three years, they may seek the authorisation of the Tax Director to opt out of Group A and become part of Group B (Art. 4(6)(R)).

168. As of December 2019, there are 5 849 Group A taxpayers of which 391 are public companies, 5 283 are private companies and partnerships, and 175 are foreign entities that were not subject to registration under the Commercial Code (see A 1.1 – Tax law for further details). At the same time, there are 74 819 Group B taxpayers, including 73 954 which were private companies and partnerships, and 865 foreign entities that were not subject to registration under the CC. The remaining in each category of taxpayers comprised mainly individuals, with some non-profit entities (2 foundations in Group A and 5 foundations and 25 associations in Group B). Generally, Group B taxpayers comprise small businesses and individual traders. As a result, although the number of entities that are Group B taxpayers is significantly higher than the number that are Group A taxpayers, the tax revenue assessed as payable by all Group B taxpayers represents on average only around 4.1% of the total amount assessed as payable by Group A taxpayers over the review period. Therefore, Group A taxpayers form the economically more significant category despite the lower number of entities.

169. Group A taxpayers must keep all required books of company, documents, or other accounting information, whilst Group B taxpayers must at least keep books to register purchases, sales (for retail sales, the global figure per day) and services rendered (Art 18 CTL). Pursuant to the CTL, Group A taxpayers are required to attach their annual accounts to the income tax return (Art. 13 CTL).¹⁶ The Macau authorities further explained that in the

16. See 359 Form: www.dsf.gov.mo/download/complementar/DSF_Mod_359.pdf.

tax return form of Group B, taxpayers have to state whether they have proper accounting records including Income Statement, Balance Sheet, General Ledger, supporting invoices and receipts. If the taxpayers indicated that they have maintained the above-mentioned documents, the tax assessment will rely on the figures they provide, to be followed by selective tax inspections. Therefore, it is the common knowledge for Group B taxpayers that having these documents is considered as having proper accounting record in the design of the tax form.

170. Group A taxpayers are subject to a fine of MOP 100 to MOP 20 000 (EUR 11.3 to EUR 2 258) if they do not possess appropriately compiled accounting records or do not arrange them according to the requirements contained in the CTL (Art 65(1)(a) CTL). There is a fine of MOP 1 000 to MOP 20 000 (EUR 113 to EUR 2 258) in case of refusal to exhibit the books or related documents and also for concealment, destruction, falsification and vitiation of such books and documents (Art. 65(1)(c)). For Group B taxpayers, the fine for not keeping the prescribed accounting records is MOP 100 to MOP 500 (EUR 11.3 to EUR 56). They are also subject to a fine of MOP 500 to MOP 10 000 (EUR 56 to EUR 1 129) for refusing to exhibit to authorised civil servants the books and documents which they should possess as well as their rendering void, concealment, destruction, falsification and vitiation (Art. 65(2)).

171. In summary, the legal and regulatory framework of Macau (China) ensures the keeping of reliable accounting records for all relevant entities and arrangements. Under the CC, companies and partnerships formed under Macau’s laws and those that have their main organ of administration located in Macau (China) are required to maintain accounting records which: (i) correctly explain all transactions; (ii) enable the financial position of the company to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared. The same holds true with respect to offshore trusts. Foreign companies and partnerships conducting commercial or industrial activity in Macau (China) are subject to the same tax accounting obligations as domestic companies and partnerships. All foundations are required to maintain audited accounts, although the law does not set out details with regard to the accounts to be kept. Foundations that are “public interest entities” are required to submit their annual accounts to the FSB.

A.2.2. Underlying documentation

Legal obligations

172. Group A taxpayers are required to keep accounting books and documents as required under the CTL to allow for the determination of the taxpayer’s profits for complementary tax purposes (Art. 18(1)). Chief

Executive Order No. 58/2013, clarifies that the accounting books and documents required to be maintained by Group A taxpayers include balance sheet and income statement, daily journal, general ledger, minutes of companies (where applicable), contracts, invoices and other documents (s. 1). FSB issued a supplementary notice to the above, which states that the standards set by the Chief Executive Order applies to Group A taxpayer's record-keeping obligation under Art. 18(1) CTL (para. 1 of FSB Public Notice No 001/DIR/2013). It also clarifies that the related documents which are required to be kept for five years under Art. 18(4) CTL include contracts, invoices and other supporting documents (para. 2). The clarification provided by the Chief Executive Order and the FSB notice ensure that Group A taxpayers are required to maintain underlying records, including contracts and invoices, in line with the standard.

173. However, the 2013 Report concluded that it was not clear that such underlying records are required to be kept by Group B taxpayers. Although the order clarified that the retention period in Art. 18(4) applies to accounting books and “related documents”, including contracts, invoices and other supporting documents, there is no clear obligation under the CTL expressly requiring Group B taxpayers to keep such underlying “related documents” in the first place: Art. 18(2) CTL only requires Group B taxpayers to keep books to register purchases, sales and services rendered. As mentioned in A.2.1 above, the majority of relevant entities are Group B taxpayers, although it is noted at the same time that a significantly greater proportion of complementary tax is collected from Group A rather than Group B taxpayers (Group B taxpayers contribute 5% of the total Complementary Tax revenue).

174. Macau's authorities further noted that through filing of tax returns procedures, non-Group A complementary taxpayers are required to submit the complementary tax Group B tax returns form, in which there lies a section for them to choose whether or not their reporting returns are based on proper accounting records and underlying documentation including general ledger, profits and loss statements, balance sheets and other supporting documents like invoices. For Group B taxpayers who choose to have proper accounting records indicating that they have the above-mentioned documentation in the tax returns, their taxable profits will be assessed based on their reported profits following with inspection of the accounting documents. Otherwise, their taxable profits will be assessed by estimation of taxable profits by the Tax Assessment Committee for Complementary Tax.

175. In addition to these tax provisions, all commercial entities (regardless of whether they are Group A or Group B taxpayers) are subject to the requirement under the Commercial Code to keep books, correspondence, documentation and other items recording the exercise of its enterprise (Art. 49 of the CC). The 2013 Report concluded that the exact scope of “items” is

unclear and, as a result of the combination of these factors, Macau (China) was recommended to clarify that the obligation for entities that are not Group A taxpayer entities to maintain underlying documentation is also in accordance with the international standard.

176. Since the 2013 Report, the relevant rules have remained the same. However, Macau's authorities clarified that the reference to "items" in Article 49 of the CC covers all necessary records of transactions, both domestic and international, and applies to both Group A and Group B taxpayers (see further on the implementation of these requirements in practice in paragraphs 182 to 193).

177. The Offshore Preventive Measures for offshore commercial services institutions and offshore auxiliary services require these entities to keep verifiable identification documents of clients and operations carried out (Para. 3.2). Verifiable records also comprise written information concerning each operation regarding, inter alia, its nature, object, amount and methods of payment employed, and written information about customers' backgrounds, country of residence, transactions, the nature of services rendered and profession and that retention of this information will be sufficient to form verifiable records for the reconstruction of transactions.

Companies that ceased to exist and retention period

178. Companies and partnerships formed under the CC are obliged to keep their accounting books and records for five years from the last entry made in the books (Art. 49 CC). The termination of the business does not terminate the responsibility to maintain records for the prescribed period. This responsibility falls on a shareholder, last director and service provider who are jointly responsible. In case of liquidation, the liquidator is responsible for maintaining the records. The Macau authorities reported that no sanctions are envisaged in the law for the breach of these obligations and no active monitoring of compliance is carried out. In practice, the tax authority will go to each of the concerned person in their attempt to obtain the relevant documents. Macau (China) is therefore recommended to address the gap in the legal framework.

179. Pursuant to the Complementary Tax Regulation, accounting records and related documents also need to be kept for five years (Art. 18). Such information should be maintained within the jurisdiction or otherwise be available to be submitted by the relevant entity at any time (such as, for instance, in case it is requested during the course of an inspection procedure). The Financial Services Bureau permanently keeps records on the tax returns documents filed by taxpayers (Art. 1 Order 94/88/M).

180. The Offshore Sector Law does not contain specific or additional retention requirements for accounting documents kept by offshore

institutions. Offshore institutions incorporated as Macau companies will be subject to the minimum retention period in the CC. For both Macau (China) incorporated and the remaining offshore institutions (i.e. those that are branches of companies incorporated abroad) the requirements under the AML regime to maintain transaction records for a minimum period of five years would also apply. As noted earlier in this report, the offshore regime is in the process of being abolished and no new entities are being admitted.

181. In summary, Macau’s commercial and tax laws generally ensure that reliable accounting records are kept by all relevant entities and arrangements for a minimum period of five years.

Availability of underlying documentation

182. In summary, with respect to underlying documentation, entities which are Group A taxpayers are required to maintain such documents, including contracts and invoices, in accordance with the standard. However, the 2013 Report found a gap in that the obligation of entities which are not Group A taxpayers to keep such underlying records was unclear: although these entities must keep “items recording the exercise of its enterprise”, under the CC, the exact scope of this term was not clear. Accordingly, Macau (China) was recommended to clarify that entities that are not Group A taxpayers are also subject to the requirement to maintain underlying documentation in accordance with the standard.

183. Whilst no changes have been made in the regulatory framework, clarifications provided by Macau’s authorities make it plausible that the provisions in place are interpreted to comply with the standard (see paragraphs 174 to 176 above) and the recommendation in question has therefore been removed. Nevertheless, Macau (China) has not provided sufficient evidence that these requirements are implemented in practice and therefore a new recommendation has been made to ensure effective enforcement of the requirement that comprehensive underlying documentation is kept for all entities for a minimum of 5 years.

184. In practice, the monitoring and enforcement of these accounting and bookkeeping obligations are mainly conducted by (i) Macau’s tax authorities, (ii) AMCM, IPIM (for relevant offshore entities) and (iii) independent auditors (where appointed). Companies and partnerships are not required to file accounting documents with the Registry.

185. First, the FSB, when conducting tax assessments and inspections, also checks the accuracy of the taxpayer’s accounting documents which were the subject of the audit. Under Macau’s tax regime, Group A taxpayers are required to detail in their annual tax return accounting information, including their profit or loss, the depreciation, sale and purchase of assets, and details regarding the use of funds and capital. Group B taxpayers are only required

to declare their income, expenses and overall result (profit or loss amount) in their annual tax return. However, Group B taxpayers can choose to indicate that further accounting documents (such as balance sheet or supporting accounting documents) are maintained, in which case the FSB would conduct a follow-up inspection of this documentation. This option is available as although the CTL only expressly requires Group B taxpayers to keep books to register purchases, sales and services rendered, the Commercial Code sets out further obligations for all commercial entities to keep books, correspondence, documentation and other items recording the exercise of their enterprise (see also A 2.2).

186. All tax returns by Group A taxpayers are submitted in paper form. Group B taxpayers can choose between paper form (if accounting records are available) or e-version. Each tax return is either examined by the DAIJ (for Group A taxpayers) or the Industrial Tax and Group B Taxpayer Centre (for Group B taxpayers) for sufficiency of information. Certain headline accounting information (such as revenue and breakdown of profit and loss for Group A taxpayers) is then recorded in the electronic taxpayer database of the FSB, but not all submitted accounting information is inputted. The rest of the information is kept in paper format in the taxpayer file. All information submitted to the FSB is kept permanently.

187. Tax inspections and tax audits are conducted by the DAIJ (which has a team of 41 staff) for both Group A and Group B taxpayers. Tax inspections are conducted when irregularities are noted in tax returns during the preliminary check, on the basis of suspicious reporting by third parties and when discrepancies are noted as compared against information supplied by other government authorities (such as utilities payment). From 2014 to 31 October 2019, the DAIJ internal tax inspection team conducted on-site tax inspections specifically to 46 Group A taxpayers and 24 Group B taxpayers. At the same time, the external tax inspection team conducted 65 492 routine inspections for industrial tax purposes and 13 527 routine inspections for complementary tax purposes across both Group A and Group B taxpayers. Further information was requested in 3 431 cases for Group A taxpayers and 687 cases for Group B taxpayers. Compliance has been found to be high, with only two cases in which the requested information was not provided. Penalties were imposed which averaged around MOP 5000 (EUR 565) per case and the fines in these two cases have been paid. Outstanding payment cases are sent to the Coercive Collection Division for follow-up. Upon continued non-payment of fines, all of the relevant person's assets can be seized, including bank accounts, movable and immovable assets that are necessary to settle the outstanding penalty payment.

188. Second, in the offshore sector, Offshore Commercial Services Institutions and Offshore Auxiliary Services Institutions (which are not subject to complementary tax) file annual accounts with the IPIM. In general, the IPIM would request more information or conduct an on-site inspection where the

auditor's report contains an adverse opinion. Since 2014, no off-site inspections and no on-site inspections have been conducted. The last off-site inspection of IPIM dates back 2011. The sector is transitioning to its closure in 2021.

189. Similarly, offshore financial institutions had to submit their audited accounts for inspection by the AMCM annually, which checked the accounts against the institutions' statutory return. See the Round 1 report for details, as there are no longer any offshore banks in Macau (China) since 2018.

190. Third, all public companies and certain private companies and partnerships are required to maintain audited accounts – see A.1.1 above. Therefore, these entities are subject to independent supervision from auditors with regard to their compliance with accounting and underlying record keeping requirements. In practice, it is not known how many private companies and partnerships fall within this requirement.

191. As discussed above, auditors are subject to licensing and regulation in Macau (China). The CRAC follows a model of self-regulation in conducting its supervisory function over auditors and accountants. Investigations and disciplinary actions are undertaken as and when the CRAC receives a complaint. Between January and September 2014, there were three cases in which the CRAC found violations of law by accountants/auditors. Amongst them, one disciplinary penalty in the form of suspension of practice was applied to the accountant/auditor. Since October 2014, there were three cases in which the CRAC found violations of law by accountants/auditors and three disciplinary penalties were imposed.

192. Finally, the CC contains an enforcement procedure in case the administrators fail to prepare the company's or partnership's annual accounts. If the annual accounts and the report of the administration are not presented to the shareholders up to three months after the end of the accounting period, any shareholder can request the court to set a time limit, of no more than 60 days, for its presentation. If such presentation does not take place within the set time limit, the court can order the termination of the functions of any one or more administrators and appoint a judicial administrator with the task of preparing the annual accounts and the report of the administration covering all the time elapsed since the last approval of the accounts (Art. 259). In practice, from 2014 to 2019, the court had set a time limit for the presentation of accounts in 8 cases.

193. In conclusion, Macau (China) has not provided sufficient evidence that the requirements to maintain accounting records and underlying documentation are implemented in practice by entities which are not Group A taxpayers and therefore the 2013 in-box recommendation has been transformed to ensuring effective enforcement of the requirement that comprehensive underlying documentation is kept for all entities for a minimum of five years.

Availability of accounting information in EOIR practice

194. During the three-year review period, Macau (China) received five requests related to accounting information, including underlying documentation. Of these requests, one concerned a Group B taxpayer, one concerned a Group A taxpayer and three concerned offshore companies. No issue in this respect was reported by peers.

A.3. Banking information

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

195. The 2013 Report concluded that the laws of Macau (China) ensure that detailed records of CDD and all transaction records are kept by financial institutions. In practice, the AMCM sufficiently exercised its monitoring and enforcement powers to support the relevant bank record-keeping obligations. Therefore, the element was found in place, and the practical implementation rated as “Compliant” with the EOIR standard. No change to these conclusions is proposed following this round of peer review. The EOIR standard now requires beneficial ownership to be available on account holders. The AML law and supervision by AMCM appear sufficient in this respect too.

196. Macau (China) received two requests for banking information during the three-year period under review, and provided information on deposits and interest held by foreign residents in Macau bank accounts, and copies of bank statements. Macau (China) has not received any request for information on the beneficial ownership of account holders.

197. 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

A.3.1. Record-keeping requirements*Legal obligations on record-keeping*

198. Banks are subject to Macau’s AML regime, as well as to obligations under commercial and financial legislation. The supervisory authority for banks with respect to the AML obligations is AMCM.

199. Anonymous accounts are prohibited in Macau (China). Pursuant to the FSA, credit institutions should verify the identity of the customers, record

the identity of all customers who make significant transactions and refuse to serve those who decline to provide evidence of their identity. Opening of accounts, deposits in cash or other valuables and the hiring of safe deposit boxes can only be conducted in the name of customers identified by name, address and official proof of identity (Art. 106). Further, under AML/CFT Guideline for Financial Institutions (paragraph 6.5), institutions should never establish business relationship with a customer who provides a fictitious name or insists on anonymity. When a numbered account is requested to offer additional protection for the identity of the account holder, the identity should be known to a sufficient number of staff to exercise proper due diligence.

200. As described in detail in A.1 above, record-keeping obligations are set in Law No. 2/2006 (“Prevention and suppression of the crime of money laundering”), AML/CFT Regulation No. 7/2006 and the AML/CFT Guideline. Law No. 2/2006 envisages the duty to keep records for a reasonable period of time (Art. 7). AML/CFT Regulation No. 7/2006 further specifies that all financial institutions are required to keep for at least five years identity documents obtained in the course of conducting CDD and written information concerning certain operations (Art. 6). In addition, Paragraph 12.1 of the AML/CFT Guideline requires that financial institutions maintain, for at least five years from the date of completion of the transactions notwithstanding that the customers may have terminated the account relationship with the institutions subsequent to the transactions, all necessary records on the transactions, both domestic and cross-border. Such records should be sufficient to permit reconstruction of individual transactions, including the amounts and types of currency involved, if any, so as to provide, if necessary, evidence for prosecution of criminal activity. Paragraph 12.2 further requires that institutions should also maintain, for at least five years after the termination of the business relationship or the date of the occasional transaction, all records obtained through CDD measures, account files and business correspondence, and results of any ongoing review, monitoring or analysis undertaken (e.g. inquiries to establish the background and purpose of complex, unusual large transactions).

201. In addition, banks are commercial enterprises and as such are subject to the provisions of the Commercial Code and thus required to keep books, correspondence, documentation and other items recording the exercise of their enterprise (Art. 49).

202. The legal framework is therefore in place to ensure record-keeping. In practice, identity information and transaction records for bank customers in Macau (China) are maintained in a decentralised manner. Such information is held by each bank for its own customers.

Beneficial ownership of bank accounts

203. Paragraph 8.1.1 of the AMCM AML Guideline requires that financial institutions identify, verify and record the identity of customers and the related beneficial owners using reliable and independent source documents, data or information. For the definition of beneficial ownership of account holder, see paragraph 124 above.

204. With justification through an adequate analysis of risks, institutions may apply simplified CDD measures, where identification and verification of beneficial owners and/or persons authorised to act on behalf of the customers are not required (Paragraph 8.1.5 AMCM AML Guideline). The simplified measures should be commensurate with the lower risk identified. In particular, it can be applied for those customers, namely government and public bodies, state-owned enterprises, listed companies, and regulated financial institutions, which are established or incorporated in jurisdictions where AML/CFT measures similar to those outlined in the Guideline are adequately adopted.¹⁷ This does conform to the standard.

205. Paragraph 5.8 of the Guideline provides that financial institutions may rely upon some third parties, e.g. introducers, intermediaries or other members of the same financial group to perform the customer due diligence measures, subject to conditions (see paragraph 127 under A.1).

206. The EOIR Standard requires that information on the identity of the legal and beneficial owners and other relevant persons be “adequate, accurate and up-to-date”. Whilst the EOIR standard does not contain a specific time criterion on how frequently ownership information should be updated, domestic legislation should provide sufficient guidance to ensure that the information is up to date. Paragraph 8.1.3 of the AMCM AML Guideline requires institutions to carry out regular and ongoing review of existing CDD records to ensure that these records remain up-to-date and relevant on the basis of materiality and risk. Paragraph 7 of the Industry Guidance on AML/CFT Controls issued by the AMCM (No. 022/B/2016-DSB/AMCM) requires banks to draw up a formal action plan for periodic review and update of customer information and produce regular reports to keep track of the progress of relevant updates. Timeframes for periodic update of customer information should be set, in particular for legal persons and arrangements, on a risk-sensitive basis.¹⁸ Besides setting a timeframe, certain banks may choose to apply triggering events for updating customer records for low-risk personal customers only. In all cases, the factors determining the period of review or

17. Simplified CDD is not permitted when there is ML/TF suspicion, or where specific higher-risk scenarios apply.

18. https://www.amcm.gov.mo/files/banking_sector/rules_and_guideline/notices_and_guidelines/cir_022_b_2016_dsb_eng.pdf.

what constitutes a trigger event (e.g. unusual transactions, transactions in large amount or transaction patterns not commensurate with customer background) should be clearly defined in the banks' policies and procedures. Banks should maintain an adequate audit trail to show that their staff has updated customer information upon any triggering events. The Macau authorities indicated during the onsite visit that in practice the updating of the information is commonly done annually for high-risk clients, mostly every three years for medium risks clients and mostly every five years for low-risk clients which are companies. Since banks have not been provided with clear and mandatory guidelines as to the frequency of the updates, Macau (China) should continue monitoring the ongoing due diligence by banks (see Annex 1).

207. In practice, banking professionals met during the onsite visit demonstrated awareness of their AML related obligations, including those related to beneficial ownership.

Enforcement measures and oversight

208. The AMCM supervises the compliance of banks with their legal and regulatory obligations, including the duty to adopt CDD measures and to keep, maintain and update all the CDD records. The AMCM has an on-site inspection team of 8 employees and an off-site supervisory team of ten employees which together oversee the operations of the 29 banks (27 local banks and two offshore banks) in Macau (China).¹⁹

209. The AMCM may issue notices or guidelines to require banks to establish systems and controls for the effective compliance with the prescribed requirements. The AMCM may also carry out inspection at banks to assess the effectiveness of implementation of relevant controls. Where banks are found to have contravened the requirements to conduct appropriate customer due diligence measures, the AMCM may, depending on the implications of the violations, issue warning letters or initiate administrative proceedings against the banks.²⁰

210. The breadth, depth and frequency of on-site examinations is driven by the bank's overall risk profile. Based on the assessed level and trend of risks in the bank as well as findings and issues of concerns identified in the ongoing supervision, risk-based onsite inspections are carried out at authorised financial institutions.

19. The two offshore banks ceased activities in mid-2017 with the liquidation and revocation of their bank licences completed by February 2018.

20. Paragraph 13.3 of the Guideline provides that any non-compliance with the requirements of the AMCM AML Guideline will constitute an administrative offence, punishable by the penalty measures established in Chapter II of Part IV of the FSA.

211. During on-site inspections, the AMCM team reviews the policies and procedures and conducts on-site sample testing of new account openings and of existing bank accounts to assess compliance with the guidelines on CDD, record-keeping and on-going monitoring of client relationships. Interviews are also conducted with the persons responsible for management of such records within the banks to ensure that they possess sufficient AML/CFT knowledge. Steps are routinely taken to verify the ability of the banks to obtain customer identity information where they have relied upon third party introduction of customers. Furthermore, where a file indicates that the customer is acting on behalf of another person, further checks are conducted to ensure that the bank has carried out sufficient due diligence (including obtaining adequate proof of identification) to identify the beneficial owner for whom the customer is acting.

212. From 2014 to 2018, the AMCM conducted 42 on-site inspections at banks. The AMCM imposed only one financial penalty in recent years as compliance by banks has been very high.²¹ Following a review, the AMCM sends a report of findings to the relevant bank which could include issues for improvement, even where these are not considered as non-compliance. In the same period, the AMCM raised 411 issues for correction in written advices and four warning letters, requesting banks to take appropriate corrective measures. The relevant bank is required to submit a timeframe for action to address these issues and submit progress reports to the AMCM periodically until the issue is rectified.

213. The programme of inspections is supplemented by the provision of AML/CFT training to banking professionals. Every year, two seminars are conducted to banks, one of which is jointly delivered by the AMCM and the Financial Intelligence Office while the other one is jointly organised by AMCM and the Macau Association of Banks. The main findings in suspicious transaction reports are shared as well as international developments regarding AML/CFT issues.

214. Finally, thematic reviews are also conducted across banks periodically. Any concerns identified through such reviews are subject to regular follow-ups until the issue is resolved. During the review period, thematic reviews were conducted by the AMCM and the scope included the review of compliance with CDD (including identification of BO) and record keeping requirements.

215. In essence, the laws of Macau (China) ensure that detailed records of customer due diligence and all transaction records are kept by financial

21. A fine of MOP 500 000 (EUR 56 450) was imposed on a bank for its violation of the record keeping requirement in 2015.

institutions. In practice, the AMCM sufficiently exercises its monitoring and enforcement powers to support the relevant bank record-keeping obligations.

Availability of banking information in EOI practice

216. Macau (China) received two requests for banking information during the three-year period under review, and provided information on deposits and interest held by foreign residents in Macau bank accounts, and copies of bank statements. Macau (China) has not received any request for information on the beneficial ownership of account holders.

Part B: Access to information

217. 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).

218. The 2013 Report concluded that Macau’s tax authority has the necessary powers to obtain relevant information from any institution or person who holds the information and has measures to compel the production of such information. This includes information on companies and other relevant entities held by Macau’s registrars and information on bank accounts and offshore institutions held by the Monetary Authority. In practice, the FSB holds some information in its own tax database, such as accounting information from tax returns and tax inspections, salary information, and moveable and immoveable property ownership which could be relevant for responding to EOI requests. The FSB also has direct access to ownership information held at the commercial registry. In cases where other information is required, the FSB’s information gathering power is exercised by issuing a written request to produce the information, where non-compliance can be sanctioned with significant penalties. No domestic tax interest is required.

219. Since the 2013 Report, Macau (China) has adopted a new version of the EOI Act that regulates the exercise of the competent authority’s access powers for EOI purposes (the 2017 EOI Act). Under both the tax regulations and the EOI Act, the competent authority has powers to collect information from various sources, including that held by banks and other financial institutions (including offshore institutions) and is authorised to carry out

unannounced onsite inspections at the taxpayer’s premise and collect all relevant information. However, the 2017 EOI Act introduced a limitation in that “[t]he information used for exchange on request is limited to the information *with respect to a period up to* the year in which the request was received by the Macao SAR from five [tax] years prior to that year” (Art. 5(3)). Macau (China) is recommended to ensure that this provision does not impede effective exchange of information.

220. Existing bank secrecy provisions in the law of Macau (China) are overridden when information is sought by the FSB in order to answer an EOI request. The 2013 Report noted that the scope of legal professional privilege under the laws of Macau (China) is broadly interpreted by both legal practitioners and governmental authorities and the scope is wider than the exemption set out under the international standard. The 2013 Report therefore concluded that there is uncertainty as to the FSB’s power to override such privilege to obtain the protected information, which could prevent effective EOI, and recommended changes. The relevant provisions have not changed since then; however, Macau’s authorities and the Macau Lawyers Association now stated that the provisions will be interpreted in accordance with the EOIR standard. Since no practice is available to confirm or refute this information, Macau (China) should monitor the application of the relevant provisions to ensure that the scope of legal professional privilege under the laws of Macau (China) is not interpreted in a manner which could prevent access by Macau’s competent authority to information that is necessary for effective EOI.

221. During the three-year review period, Macau’s competent authority obtained information from a bank, government agencies (IPIM and the Commerce and Moveable Property Register) and, on three occasions, an onsite investigation has been conducted to collect the requested information.

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

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
Deficiencies identified	The 2017 EOI Act introduced a limitation in that “[t]he information used for exchange on request is limited to the information with respect to a period up to the year in which the request was received by the Macao SAR from five [tax] years prior to that year”. Access and exchange would therefore not be available for other information, even when it is available in Macau (China).	Macau (China) should ensure that its competent authority has access to all information available.
Determination: The element is in place, but needs improvement		

Practical Implementation of the standard		
	Underlying Factor	Recommendations
Deficiencies identified	Doubts remain as to the interpretation of the scope of the legal professional privilege in practice and whether the legal professional privilege can be relied upon to prevent access by Macau's competent authority to all information obtained by a lawyer, whether from the client or third parties, during the course of his/her legal profession.	Macau (China) should monitor the application of the legal professional privilege to ensure that its scope is not interpreted in a manner which could prevent access by Macau's competent authority to information that is necessary for effective EOI.
	The 2017 EOI Act has not been applied during the review period and therefore the assessment of its implementation in practice was not possible.	Macau (China) should monitor the application of the new EOI law to ensure it conforms to the standard.
Rating: Largely Compliant		

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

Legal powers

223. Macau (China) uses the powers granted for domestic purposes to answer EOI requests. The Administrative Procedures Code provides for a general power for authorities to collect information from entities and individuals (Arts. 85 to 98). In addition, the tax laws contain special provisions enabling the Financial Services Bureau (FSB) to conduct inspection of entities and to collect information and tax-related documents (Arts. 62-63 CTL, Arts. 51 to 57 Salary Tax Regulation, Arts. 30 to 35 ITR).

224. The FSB can obtain information from other government agencies and services (Art. 63 CTL, Art. 32 ITR, Art. 54 CTL). Importantly, this means that the FSB can obtain information on companies and on companies' shareholders from the Commercial Registrar and details of associations and foundations from the Identification Services Bureau.

225. Information that has not been filed with government agencies ("unknown information") can be requested from the taxpayer or third parties. For this purpose, the FSB can issue an official notice. The taxpayer or third parties must reply to the notice within 15 days (Art. 17 CTL). If the taxpayer or third parties do not furnish the information requested in the notice, the FSB can undertake an onsite inspection of their premises (Art. 2(g) Decree Law No 30/99/M called "Organic Law"; Arts. 62(1) and 62(3)(a) CTL).

226. The procedure for onsite inspections of financial and non-financial entities is regulated under the Organic Law of FSB (Ar. 2(g) of Decree-Law No 30/99/M) and the CTL (Art. 62). The FSB can approach the person holding the information (the “investigated target”) for inspection at any time. During inspection, the requested party has to co-operate and provide the information or documents as required. Tax inspectors can also request information about any relevant entities or arrangements from persons who have commercial dealings with that entity or arrangement. Failure to comply with such a request would be classified as a refusal to provide documents or information related to accounting documents and trigger a penalty (Art. 65 CTL).

227. If the requested information cannot be collected in the course of the inspection, the FSB can issue a written notice containing the list of documents and information to be provided (Administrative Procedure Code, Art. 73). Failure to comply with the notice is sanctioned with a penalty (see below). The CTL does not provide the FSB with search and seizure powers to collect tax relevant information.

Time limitation to access powers

228. The 2017 EOI Act contained a limitation clause: “[t]he information used for exchange on request is limited to the information *with respect to a period up to* the year in which the request was received by the Macao SAR from five years prior to that year” (Art. 5(3)). Subsequently, new legislation was passed in Legislative Assembly on 16 December 2019 and will enter into force on 25 January 2020, which amends this clause. The new wording reads as follows (unofficial translation): “The information involved in exchange of information on request is limited to those with respect to the year in which the request was received by the Macao SAR and the five tax years prior to that year”. Macau’s authorities confirmed that the revised provision covers *any information (whatever its date) relevant* “to the year in which the request was received by the Macao SAR and the five tax years prior to that year”. In other words, if information which is for instance eight years old is relevant to the tax assessment related to up to five tax years prior to the year in which the request was received, it will be provided. Therefore, the new revision expands the scope of the information which will be exchanged by clarifying that the limitation applies to information relevant to five tax years and not only to documents created in the five calendar years.

229. This limitation clause applies only to the information requested for the purpose of exchange and does not apply to the access rights of the FSB more generally. However, Macau (China) maintains that such limitation is implicit in domestic affairs, in that Article 49 of Commercial Code requires commercial entities to keep books, etc. for a period of five years. In addition, Article 55 of Complementary Tax Regulation provides that the time limit for

tax assessment is five years after the respective taxable period. These mean that the taxpayer has to keep the documents relevant for the tax assessment of taxable periods up to five years, including documents that date before the 5-year period but are relevant for the taxable income in the last 5-year period. This applies even if the information is available in Macau (China).

230. Macau (China) is recommended to ensure that Article 5(3) of the 2017 EOI Act does not impede effective exchange of information.

Access to banking information

231. The same domestic access powers apply to obtain banking information for EOI purposes. In addition to the domestic law, the EOI Act provides some specific deadlines and sanctions applicable to financial institutions.

232. Upon receipt of an EOI request, the FSB informs the respective financial and offshore institutions to submit the necessary information for the information exchange, within a stipulated period no shorter than five working days from the date of receipt of notice of information provision (Art. 8(3)). The same applies, whether the information relates to transactions or beneficial ownership of an account holder. In the event that the institution fails to respect the deadline set, it may request an additional period of five working days, provided that it offers legitimate justification (Art. 8(4)). The Macau (China) authorities reported that so far no extension request was made.

233. The level of detail the request of the foreign tax administration should contain is clarified in the FSB's Circular Note No 02/DIR/2011.²² An EOI request must contain sufficient elements which allow the identification of the person subject of the request, although it is not necessary to include a name and/or address. For instance, to the extent that the name and/or address of the bank account holder is unknown, the number of the bank account will be considered as an appropriate identification element for EOI purposes.

234. To date, incoming EOI requests received by Macau (China) have included the name and/or address of the person who is the subject of the request and the information was requested directly from the concerned banks. The DAIJ confirmed that it would process an incoming EOI request even if it was only provided with the bank account number as identification of the relevant person. In such instance, where no other identification elements are provided, the DAIJ would issue notices to request information to all the banks operating in Macau (China) or could contact the AMCM who would contact all banks.

22. www.dsfgov.mo/tax/tax_communication.aspx?lang=en.

235. Overall, Macau’s authorities noted that banks in Macau (China) are very co-operative in seeking the requested information. Representatives of the banking sector confirmed that they usually need a couple of weeks to gather the information requested by the FSB.

Ability to obtain and provide information in practice

236. In practice, the DAIJ within the FSB is responsible for gathering information for EOI purposes. Its practice has not changed since the 2013 Report. The FSC issued a set of “Procedural Directives on the Implementation of the Exchange of Information” in September 2012 (the Directives) which sets out practical steps for handling an incoming EOI request. The guidance includes instructions on, and timeframes for, obtaining information from different channels for EOI. In all cases, the Directives instruct that internal information gathering be carried out first (i.e. collection of any relevant known information on the FSB database), in conjunction with the preparation of notices for the collection of “unknown information”.

237. The range of “known information” in the FSB database is quite wide, and includes identity information of the initial owners of local and foreign entities that are registered as industrial taxpayers; and accounting information that is submitted with annual complementary tax returns as well as accounting documents collected through tax assessments and inspections already carried out. The Directives provide a maximum period of seven days for the collection of such internal information. In practice, the FSB was able to collect internally some of the information to answer EOI requests.

238. Regarding information held by other governmental authorities, the FSB has direct online access to the commercial registration database, which means that the DAIJ can obtain ownership information on private companies and partnerships within a day. A wide range of corporate information is available through this channel, such as the entities’ constitutional documents, transfer of ownership documents, including identification documents of the shareholders/members. This source of information is regularly used by the FSB in the context of domestic tax administration. To obtain information from other public authorities, the FSB issues a written circular to the relevant government authority requesting the provision of such information within ten days.

239. During the period under review, the DAIJ has formally requested information in three instances from other governmental authorities, i.e. IPIM and the Commerce and Moveable Property Register, to respond to an EOI request and was able to obtain the information in under 90 days.

240. Information that is neither on the FSB database nor that of other governmental authorities would be collected from taxpayers or third parties.

The FSB can either issue a written notice to request the taxpayer to provide information or arrange for a tax inspection at the premises of the taxpayer or at the FSB office. Notices are generally sent by registered mail by the DAIJ to prevent dispute on the date of receipt and include the information that needs to be provided to the tax authority, as well as the consequence (penalty) if not being able to comply.

241. When obtaining information from a taxpayer, the DAIJ would generally request the person to provide the relevant information and notify him/her, at the same time, that a tax inspection would be conducted if the information is not provided by the date of the scheduled inspection. The standard prior notice given for a tax inspection is seven days.

242. In addition, the DAIJ would usually specify in the notice the information to be examined or obtained during the tax inspection, to minimise the possibility that the information is not available during the inspection. The Directives state that the collection of information through tax inspections should be completed within 14 days.

243. For three EOI requests processed by Macau (China) during the review period, the DAIJ conducted on-site tax inspections to obtain the requested information.

244. To obtain information held by banks and financial institutions, the DAIJ would issue a written notice in the same form as that provided to a taxpayer when obtaining information relating to a third party. The Directives advised that the institutions be given a timeframe of ten days to deliver the requested information. In accordance with the EOI Act (Art 6(3)), an extension of five days may be requested by the financial institution where it provides a reasonable explanation. During the period under review, the DAIJ has requested a bank for information in one case and was able to respond to the EOI request.

B.1.2. Use of information gathering measures absent domestic tax interest

245. 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.

246. The 2009 EOI Act expressly enabled the FSB to provide, in response to EOI requests, both information under its responsibility (i.e. relevant for domestic tax purposes) and information kept by banks and offshore institutions, when such information is not otherwise available to it (i.e. it is not relevant for domestic tax purposes).

247. This provision was given more details in the 2017 EOI Act. Article 5 provides that the FSB can exchange, pursuant to an EOI request under an international agreement, information, including: (i) information which is in the possession of FSB (either directly or obtained through an audit or inspection procedure); (ii) information held by other public departments; (iii) information held by financial and offshore institutions. Information that is available to other public sectors and entities specifically includes: (1) information about the identity of the holders and beneficial owners of entities which are legal persons; (2) information from accounting records and documentation of legal persons; and (3) other information which is considered to be of foreseeable relevance to exchange of information on request. The 2017 EOI Act explicitly refers to the information on beneficial owners, which, as confirmed by Macau's authorities intends to facilitate the access to this type of information.

248. The provision of information is not conditional upon the existence of a domestic tax interest in the information or assistance requested by the foreign tax administration. In practice, Macau (China) provided information for which it has no domestic tax interest at least once (with the gathering of some travel documents).

B.1.3. Effective enforcement provisions to compel the production of information

249. Compliance with official notices and requests by the FSB is ensured through a system of fines.

250. Refusal to provide documents or information related to accounting documents is subject to a fine of between MOP 1 000 and MOP 2 000 (EUR 113 to EUR 226, Art. 65). The same penalties apply when the person subject to inspection does not submit information requested in an FSB notice within 15 days from receipt of the notice or does not furnish information about a company with which he/she has commercial dealings (Art. 65(3)). Offences that are not specifically sanctioned are subject to a default fine of between MOP 50 and MOP 500 (EUR 5.6 to EUR 56; Art. 66L). These fines are quite low but the authorities confirmed that they are the ones that apply in the domestic tax framework.

251. Refusal to provide information related to an EOI request or to a request from the FSB is subject to a fine of between MOP 6 000 and MOP 60 000 (EUR 677 and EUR 6 774) (Art. 14 of the EOI Act). This penalty may be applied to the breach of the deadlines for the provision of information, as well as if the information provided is found to be incorrect or incomplete on purpose. The liability also applies when the offender is a legal person (Art. 16-17 of the EOI Act).

252. Further, the EOI Act adds additional penalties against financial or offshore institutions which fail to provide information related to an EOI request within the set deadline. The fine ranges between MOP 6 000 and MOP 60 000 (EUR 677 and EUR 6 774) (Art. 14 of the EOI Act). In the case of a repeated breach, the minimum limit of the fine is raised by one quarter and the maximum limit remains unchanged. The liability also applies when the offender is a legal person (Art. 16-17 of the EOI Act).

253. During the review period, the FSB has not needed to impose fines in the EOI context. In 2019, there was one EOIR case for which it is proposed to impose a fine due to failure to maintain documents for the prescribed period.

254. The payment of a fine does not relieve the offenders from the obligation to provide information, but the FSB cannot apply to a magistrate for a search warrant. Since there are no criminal tax offences in Macau (China), the police has no search and seizure powers for criminal tax issues.

B.1.4. Secrecy provisions

Bank secrecy

255. Bank confidentiality is protected under Article 78 of the FSA. Those who breach the duty of confidentiality under the FSA are liable to disciplinary, civil and criminal action (Art. 81). These provisions apply also to offshore financial institutions (Arts. 28 OSL and 34 Decree Law 25/87/M).

256. Bank secrecy may be waived with the customer’s consent or by a court order (Art. 80 FSA). The FSA also provides for a number of exceptions to the duty to protect the confidentiality of bank information. Whilst none of the exceptions applies for exchange of information purposes, Article 79(2) provides that the disclosure of information may be allowed for specific legal provisions. The Macau authorities clarified that the reference to “specific legal provisions” extends to the EOI Act, in particular Article 20 of this Act, which states that if FSB requires financial institutions and offshore institutions to provide information in accordance with the requirement of this law, the obligation to protect the confidentiality is waived.

257. During the period under review, the DAIJ has received one request for banking information and was able to obtain this information from the banks in under 90 days. In the domestic context, Macau’s tax authorities cannot override bank secrecy to obtain information for domestic tax administration or investigations.

Professional secrecy

258. The confidentiality of information shared by a client with his/her lawyer is protected by the Code of Deontology of Macau’s lawyers, approved by the Executive Ruling 121/GM/92 (Arts 5 to 8). Similarly, the confidentiality of information shared with an accountant or an auditor is protected under the Code of Conduct of Macau’s accountants and auditors, approved by Administrative Regulation 36/2004 (Art. 7). Article 20 of the EOI Act, which sets the exemption from the duty of secrecy, explicitly waives the duty of confidentiality for “other public services and bodies, as well as financial and offshore institutions” when a request for information is made under the provisions of the EOI Act and for relevant professionals, such as auditors, accountants or lawyers.

259. For auditors and accountants, professional privilege does not attach to information required to be furnished to competent authorities under any law or when so requested by a court (Art. 7(4)(2) Administrative Regulation 36/2004). Auditors have a statutory duty to follow up and facilitate the request by the FSB to examine the documentation of the statutory audit and its legal certification, and the accounts documents and tax returns of their clients (Art. 42, Statute of Auditors). To date, the FSB has not approached an auditor/accountant to obtain information for EOI purposes.

260. For lawyers, legal professional privilege, as defined in the Macau Lawyers’ Code of Deontology (Executive Ruling 121/GM/92, Art. 5), covers (i) matters that are communicated directly to/by the lawyer’s client, (ii) matters that are communicated upon the instructions of his/her client for the purpose of conducting his/her professional legal activities, and (iii) any other facts that come into the lawyer’s knowledge by virtue of the conduct of his/her professional legal activities. Under Macau’s laws, professional legal activities include judicial representation, the provision of advice on matters of law and voluntary representation. The 2013 Report found confirmation of this broad scope of legal professional privilege from both Macau’s authorities and legal profession. According to their interpretation, legal privilege applies not only to communications between the lawyer and his/her client, but also to information obtained by the lawyer from third parties upon the instructions of his/her client in relation to any professional legal activity (including non-advisory activities). The 2013 Report concluded that the Code of Deontology does not expressly provide for exceptions to legal professional privilege for tax administration purposes; and it was considered by both Macau’s authorities and legal professionals that the FSB would not generally have the power to obtain such privileged information for domestic tax or EOI purposes.

261. Whilst the Lawyers’ Code of Deontology has not changed, the interpretation provided to the existing provisions has evolved. In particular, the Macau Lawyers Association commented that in practice lawyers will

interpret the existing provisions to comply with the EOIR standard. Macau's authorities explained that international law ranks above domestic legislation in Macau (Art. 1(3) CC). Therefore, it is in any case arguable that the scope of domestic legal professional privilege is subject to the commitment as set under international agreements as to allow the FSB to obtain information for EOI purposes (and fulfil Macau's international obligation), where the relevant EOI agreement explicitly defines legal professional privilege as set out in Article 7(3) of the Model TIEA. In the light of these provisions, the scope of the legal professional privilege should not be interpreted in a way that may prevent the access by the FSB to gather information necessary to make effective the EOI process.

262. To date, the FSB has not needed to make a request for information to lawyers for EOI purposes. Within the domestic context, Macau's tax authorities have also not approached lawyers to obtain information since they have not been in sole possession of the relevant information. Although no obstacle to EOI has been experienced to date as regards this issue, Macau (China) should monitor that the scope of legal professional privilege under the laws of Macau (China) is not interpreted in a manner which could prevent access to information by the DAIJ that is necessary for effective EOI.

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.

263. The 2013 Report noted the need in Macau (China) to notify the holder of the information of the request or to notify the Macau taxpayer to whom the requested information relates of the purpose, source and content of the information requested. When a notification was issued, the person had the right to lodge an appeal against the administrative decision to exchange information when the information is claimed to be incorrect, with the possibility to suspend the exchange. The prior notification requirement could be waived when any party required so or when a particular relevant public interest was involved. In practice, whether or not the requesting party asked for the waiver, the Macau authorities had not issued any notification to the taxpayer.

264. The 2017 EOI Act replaced the 2009 EOI Act and clarified the provision on notification and appeal rights. The prior notification requirement can be waived when the requesting party requires so, or when a particularly relevant public interest is involved. In practice, the FSB has applied the exception to notification of the interested party in all cases processed to date, both when such exception is requested by the requesting party and on its own initiative.

265. The 2013 Report concluded that the element was in place and the practice has been rated as “Compliant”. The new EOI Act does not effect this conclusion but the functioning of the new provision should be monitored. 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		
	Underlying Factor	Recommendations
Deficiencies identified	The 2017 EOI Act restricted the possibilities of exception to the notification of the subject of the request but its application in practice could not be tested as the change took place only four months before the end of the review period.	Macau (China) is recommended to monitor the implementation of the new provision on notification to ensure it does not unduly delay exchange of information.
Rating: Compliant		

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

266. The 2017 EOI Act replaced the 2009 EOI Act and clarified the provision on pre-exchange notification and appeal rights. There is no post-exchange notification procedure in Macau (China).

Notification and exceptions to prior notification

267. The EOI Act requires the FSB to notify the natural or legal persons to whom the information relates,²³ before exchanging the information, of the purposes of collecting the information, its sources and content, except in any of the following circumstances: (1) other Contracting Parties to International Agreements declare that the information in question shall not be directed to the natural or legal persons to whom the information relates; or (2) the exchange of information on request aims at protecting the public interest of significant importance (Art. 9(1)).

268. When the exception to notification applies, the notice to request information from a financial or offshore institution contains an express

23. The 2013 Report noted that the wording of the law was not clear as it referred “the interested parties” but the Macau authorities had explained that this term referred to the person to which the requested information relates. This point is clarified in the new provision.

prohibition for the information holder to inform the person concerned of the request (Art. 8(5)).

269. In practice, the DAIJ has not notified the interested parties when processing any of the requests received during the review period, either upon the request of the EOI partner, or at their own initiative. The 2009 EOI Act indicated that the notification could be waived at the request of any of the parties, while the 2017 now specifies that it will be waived only if the requesting party so requests. The old law applied during the review period and at that time the competent authority considered that it was more efficient to not notify anyone, except in exceptional circumstances (that did not occur) but the tax inspector may have informed verbally the person during required inspections.

270. The competent authority indicated during the onsite visit that since the law changed, notifications are to be sent each time the requesting authority does not require for a waiver to the notification. However, since the law refers to the request of the foreign authority without setting any further conditions, the waiver would be applied mechanically without questioning the reason for the request, which would cover all the cases envisaged by the EOIR standard.

271. The authorities indicated that since the entry into force of the 2017 EOI Act they usually inform the concerned persons before exchanging the information through the tax inspection office. During the onsite visit, the authorities indicated that the notification applies to “interested parties”, meaning those named in the request, which are Macau taxpayers and information holders, with the exception of foreign taxpayers (to which the right to notification in the EOI Act does not apply). In practice, even if the requesting party does not require a waiver, Macau (China) does not notify the taxpayers concerned in writing. Yet, the taxpayer is informed verbally during the inspection. However, if the requesting party requested that Macau (China) does not inform the concerned persons, the tax inspectors will not disclose the purpose of the inspection.

Appeal rights

272. Article 9(3) of the EOI Act allows the person notified of the decision to exchange information to appeal this decision, with suspensive effect. Appeal is available only when there is an error in the information to be provided. The appeal process has not changed since the 2013 Report. No judicial appeals have been brought in the context of EOI requests received during the review period since no notification was issued.

Holding period

273. Where a notification is issued, the recipient must be provided reasonable time to decide whether to lodge an appeal. The Directive states that the collected information cannot be sent to the requesting jurisdiction until the end of the prescribed holding period. Where the interested party is a Macau resident/taxpayer that lives or is located within Macau (China), including a foreign incorporated entity that has appointed a representative in Macau (China), the holding period is 30 days. Where the interested party is a Macau resident that lives or is located outside of Macau (China), then the holding period is 60 days.

274. The existence of holding periods without exception for very urgent cases could call into question the usefulness of EOI. On the other hand, the requesting party can easily ask for a waiver to notification, which would apply to cases where the request is of an urgent nature, i.e. where the requesting jurisdiction considers that the holding period would unduly delay the exchange and undermine the chance of success of the investigation conducted by the requesting jurisdiction.

275. The competent authority recently informed its EOI partners of the change in the legal framework and practice of the competent authority concerning the notification rights and accompanying holding period (through the Global Forum secure site for competent authorities). The 2017 EOI Act entered into force at the end of the review period and no request was received between its entry into force and the end of the review period. The implementation in practice of the new provision could therefore not be assessed. Macau (China) should monitor the implementation in practice of this new law and practice to ensure that exchange of information is not unduly delayed.

Part C: Exchanging information

276. Sections C.1 to C.5 evaluate the effectiveness of Macau’s network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all Macau’s relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether Macau’s network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Macau (China) can provide the information requested in an effective manner.

C.1. Exchange of information mechanisms

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

277. The 2013 Report concluded that Macau’s network of EOI mechanisms was “in place” and its implementation in EOIR was rated “Compliant” with the international standard. However, Macau’s authorities were recommended to commence negotiations to amend the agreement with Cabo Verde, which contains additional language restricting the exchange of banking information, to bring it to the standard. Macau’s authorities reported that they have made contacts requesting to amend the relevant DTC with Cabo Verde. Whilst no progress has been achieved on the DTC, Cabo Verde has now signed the MAC which will enter into force on 1 May 2020. The recommendation is removed from the box of recommendations.

278. There have been some changes in the network of the bilateral exchange of information agreements since the last review. Macau (China) has signed treaties with Argentina, Guernsey, Hong Kong (China), Ireland, Japan, the United Kingdom and Viet Nam, as well as new protocols with Portugal and China. Further, the network of EOI relationships has expanded when China has extended the application of the multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC) to Macau (China). The MAC has entered into force in Macau (China) in September 2018. The EOI network of Macau (China) grew from 16 in 2013 to 136 jurisdictions today. At present, Macau (China) has bilateral agreements that provide for exchange of

information with 23 jurisdictions, 19 of which are in force. Three of them are now complemented by the MAC, whilst the DTC with Hong Kong (China) was just signed in November 2019.

279. 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

280. The 2017 EOI Act covers exchange of information on request, automatic exchange of information and spontaneous exchange of information. Macau (China) commenced automatic exchanges of information in 2018.

C.1.1. Foreseeably relevant standard

281. Macau (China) has signed agreements providing for international exchange of information (EOI) with 23 jurisdictions: 6 double taxation conventions (DTCs) and 17 taxation information exchange agreements (TIEAs). Seven of these agreements have been signed after the 2013 Report was adopted, i.e. TIEAs with Argentina, Guernsey, Ireland, Japan and the United Kingdom, and the DTC with Hong Kong (China) and Viet Nam.

282. In addition, China has extended the application of the Convention on Mutual Administrative Assistance in Tax Matters (MAC) to Macau (China).

283. The TIEAs signed by Macau (China), including the five TIEAs signed since 2013, provide for the exchange of information that is foreseeably relevant to the administration and enforcement of the internal laws of the contracting parties. The term “foreseeably relevant” is used also in the second Protocol to the DTC with China (in force) and the DTC with Viet Nam, as well as the protocol with Portugal. The DTCs with Cabo Verde, Portugal and Mozambique use the term “necessary” in place of “foreseeably relevant”. Macau’s authorities interpret these terms pursuant to the Commentary to Article 26 of the OECD Model Tax Convention, where the term “as is necessary” is recognised to allow for the same scope of exchange as does the term “foreseeably relevant”.

284. The EOI provision of the DTC with Cabo Verde contains an additional paragraph 6, which provides for the taxpayer and the bank to be identified “in concrete” (*em concreto*) by the requesting authorities. The meaning of this clause is not clear (see the 2013 Report, paragraph 336) and

Macau (China) was therefore recommended to clarify, through an official interpretation or statement, that it will reply to an EOI request by Cabo Verde also when it does not contain the name and address of the taxpayer or of the bank concerned, provided that it is possible to identify them (e.g. because the request contains a bank account number). Macau’s authorities advised that the FSB’s Circular Note No. 02/DIR/2011 applies also for the interpretation of the DTC with Cabo Verde – see B.1 above. Furthermore, Macau (China) approached Cabo Verde to suggest amendment to the wording of the DTC to bring it in line with the international standard. Agreement to such amendment has yet to be reached by the parties, but the Multilateral Convention will offer an alternative EOI relationship once in force in Cabo Verde.

285. In practice, so long as the requesting jurisdiction has an EOI agreement in force with Macau (China), and a tax purpose is stated in the EOI request, the DAIJ would prima facie rely upon the requesting jurisdiction’s assurance that the condition of “foreseeable relevance”, “usefulness” or “necessary” (as applicable) is satisfied.

286. So far, there has not been any request being declined because it did not meet the foreseeable relevance criteria. The Macau authorities indicate that most of the requests received were straightforward. Clarifications have been requested by Macau (China) in relation to one EOI request to ascertain the tax nature of the request.

287. None of the EOI mechanisms listed above explicitly exclude the possibility of group requests. Macau (China) would follow the general instruction guidelines (Procedural Guidelines on EOI on request) to handle the group requests. However, no group requests have been received in the period under this review.

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

288. For exchange of information to be effective, it is necessary that a jurisdiction’s obligations to provide information are not restricted by the residence or nationality of the person to whom the information relates or of the person in possession or control of the information requested. All of Macau’s DTCs contain the sentence indicating that the exchange of information is not restricted by Article 1 (Persons Covered). Equally, all of Macau’s TIEAs and the MAC contain a provision concerning jurisdictional scope which is equivalent to Article 2 of the OECD Model TIEA.

289. During the review period, all requests related to residents in either Macau (China) or the requesting jurisdiction. The Macau authorities indicate that outside the period it has happened that they received a request related to the resident of a third country and the information was provided.

C.1.3. Obligation to exchange all types of information

290. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. The MAC and all the TIEAs concluded by Macau (China) do not allow the requested jurisdiction to decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or fiduciary capacity, or because it relates to ownership interests in a person. As a consequence, they all meet the standard. A provision containing wording akin to Article 26(5) is also included in the Protocol to the DTC with China and the DTC with Cabo Verde. Macau's other bilateral agreements do not contain such a provision. It is Macau's policy to include wording akin to Article 26(5) in all new DTCs it negotiates.

291. The absence of this wording does not automatically create restrictions on exchange of banking information. Macau's authorities confirmed that the absence of this wording would not prevent them exchanging banking and other protected information.

292. There may be, however, such limitations in place in the domestic laws of some of these treaty partners (i.e. Mozambique). In these cases, the absence of a specific provision requiring exchange of banking information may serve as a limitation. The 2013 Report therefore concluded that Macau (China) should continue to renegotiate its older DTCs to include Article 26(5) of the OECD Model Taxation Convention. The Macau authorities have reported that the negotiations with Mozambique to update the DTA are in progress.

293. The tax treaty signed with Cabo Verde contains language akin to Article 26(5) of the OECD Model Tax Convention but it also includes two further paragraphs that may restrict the effectiveness of the exchange (see C1.1).

C.1.4. Absence of domestic tax interest

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

295. During the review period, there was one request regarding banking information, which was related to taxpayers that are not in Macau (China) and there was no domestic tax interest in obtaining the requested information.

C.1.5. and C.1.6. Civil and criminal tax matters

296. The principle of dual criminality provides that assistance can only be given if the conduct being investigated (and giving rise to the information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. All of the EOI agreements concluded by Macau (China) provide for the exchange of information in both civil and criminal tax matters. None of the EOI agreements concluded by Macau (China) applies the dual criminality principle to restrict the exchange of information. In practice, most EOI requests received to date were in relation to civil matters. Macau (China) answered one request related to a criminal tax case.

C.1.7. Provide information in specific form requested

297. There are no restrictions in the exchange of information provisions in Macau's exchange of information agreements that would prevent Macau (China) from providing information in a specific form, as long as this is consistent with its own administrative practices. Macau (China) has not been requested to provide information in a specific form to date.

C.1.8. and C.1.9. Signed agreements should be in force and be given effect through domestic law

298. For effective exchange of information a jurisdiction must have exchange of information arrangements in force. Where exchange of information agreements have been signed, the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

299. The ratification process in Macau (China) takes on average around two to three months following the signing of the EOI agreement (for more details on the ratification process in Macau (China), see the 2013 Report paragraphs 359 and 360).

300. In total, 19 of the 23 EOI agreements which Macau (China) has concluded are in force (see Annex 2 for signing and entry into force dates). Macau (China) has ratified three EOI agreements that are not yet in force and has notified its EOI partners of this. Therefore, Macau (China) has taken all reasonable action to expedite the bringing into force of those agreements, which are anyway complemented by the MAC. The last one is the treaty signed with Hong Kong (China) in November 2019 and the ratification process is in progress.

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	136
In force	120
In line with the standard	120
Not in line with the standard	0
Signed but not in force	16
In line with the standard	16
Not in line with the standard	0
Among which – Bilateral mechanisms (DTCs/TIEAs) not complemented by multilateral or regional mechanisms	4
In force	3
In line with the standard	3
	[China, Mozambique, Viet Nam]
Not in line with the standard	0
Signed but not in force	1
In line with the standard	1
	[Hong Kong (China)]
Not in line with the standard	0

301. Pursuant to Macau’s laws, it is not necessary to incorporate international law into domestic law for its effective application. Once international tax treaties are duly ratified by the Chief Executive, they are published in the Official Gazette (Arts. 3(6) and 5(1) of Publication of Laws Act Once published in the Gazette, such agreements immediately and automatically become part of Macau’s legal order.

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

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

302. The 2013 Report recommended that Macau (China) continues expanding its treaty network, by establishing agreements to the standard with all its relevant partners and bringing them into force expeditiously. Historically, the policy of Macau (China) with respect to expanding its EOI network has been to focus on jurisdictions with which it has significant economic and cultural relations, e.g. mainland China and Hong Kong (China) which are its main trading partners, Portuguese speaking countries, as well as those jurisdictions which are either Global Forum, G20 or OECD members. Since then, the treaty network has significantly expanded, primarily with the extension of the territorial application of the Convention on Mutual Administrative Assistance in Tax Matters (MAC) to Macau (China).

303. Over the recent years, in anticipation that China will extend the application of the MAC to Macau (China), Macau (China) did not actively pursue the conclusion of new TIEAs. The MAC entered into force in September 2018, significantly expanding the network of exchange of information partners to reach 136 EOI partners.

304. It can therefore be concluded that Macau (China) has taken action to expand its treaty network. The recommendation made in the 2013 Report is therefore removed.

305. Comments were sought from jurisdictions participating in the Global Forum in the course of the preparation of this report, and no jurisdiction advised the assessment team that Macau (China) had refused to negotiate or conclude an EOI agreement with it. However, Macau (China) is recommended to continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

306. 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.

307. All exchange of information provisions in Macau's EOI instruments contain confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the agreements. While each of the articles might vary slightly in wording, these provisions generally contain all of the essential aspects of Article 26(2) of the Model Tax Convention. These are supported by confidentiality obligations under the domestic law as well as practical guidance in the Confidentiality Directives which are issued to DAIJ staff members who handle EOI matters.

308. The 2013 Report concluded that Macau (China) has the element in place and is "Compliant" with the relevant requirements. There have been no material changes that would alter this determination and rating. This section provides an update which supports this conclusion. 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.3.1. Information received: disclosure, use and safeguards

309. The 2013 Report concluded that Macau (China) has the element in place and is “Compliant” with the relevant requirements. All new exchange of information relationships have confidentiality provisions modelled on Article 26(2) of the OECD Model Tax Convention . Pursuant to these provisions, information provided by foreign tax authorities can only be used for the purpose for which they are required and can be disclosed only in judicial proceedings.

310. Domestic legislation subjects all staff of the FSB to the confidentiality obligation set out in Decree Law 87/98/M (General Principles for Public Administrative Staff) which states that “The obligation of confidentiality means to keep professional secrecy on the undisclosed facts which are known during the course of their duties” (Article 279(7)). The EOI Act contains an explicit authorisation to send information to foreign competent authorities in application of an EOI agreement.

311. In addition, the 2017 EOI Act – in the same way as the 2009 EOI Act – requires employees and agents of the FSB (as well as any other civil servants) to keep confidential, even after the termination of their functions, the facts of which they acquire knowledge in the exercise of their functions, including information obtained through EOI. Information exchanged is subject to the rules of confidentiality and other safeguard measures provided in international agreements, including provisions limiting its use (Art. 19).

312. The unauthorised disclosure of confidential documents is punishable by disciplinary penalties, including official warning, financial sanctions and/or suspension or removal from employment (Arts. 300 to 307) and/or criminal sanctions up to three years of imprisonment or a fine (Art. 348 of Criminal Code).

313. Accordingly, treaty obligations are supported by confidentiality provisions under Macau’s domestic laws.

314. The 2016 Standard clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI agreement provides for the authority supplying the information to authorise the use of information for purposes other than tax purposes and where tax information may be used for other

purposes in accordance with their respective laws. In the period under review, Macau (China) reported that there were no requests where in the requesting partner sought Macau’s consent to utilise the information for non-tax purposes and similarly Macau (China) did not request its partners to use information received for non-tax purposes.

C.3.2. Confidentiality of other information

315. The confidentiality provisions in the agreements and in Macau’s domestic law do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all requests for 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.

316. The 2017 EOI Act allows for the disclosure of information relating to an EOI request to the natural or legal persons to which the information relates of the purposes of collecting the information, i.e. that the information is collected for tax purposes, but the authorities do not provide details on the foreign investigation. Information relating to the request, however, does not need to be disclosed to a person concerned by the information whenever the counterparty or public interest so requires (Art. 9(1); see B.2 above). Taxpayers do not have access to the EOI files, including the request for information letter, but only to the information related to them that will be exchanged, in a view to detect errors in that information.

Confidentiality in practice

317. In practice, there have been no reported cases of breach of confidentiality by a FSB employee during the review period. A number of safeguards are applied. The FSB issued the “Directives on Protecting the Confidentiality of Documents Relating to the Exchange of Information on Tax Matters” in 2012 (the Confidentiality Directives) to provide practical guidance on the handling of EOI matters. They explain the confidentiality obligations of FSB employees under the law and set out practical safeguards that should be taken to ensure confidentiality in handling EOI matters.

318. In terms of physical security of EOI information, the DAIJ is located in the FSB building. Customer counters for dealing with taxpayer queries are separate from the FSB staff offices, access to which is restricted. Staff members are issued with security passes and visitors must be registered and accompanied by a staff member at all times. CCTV cameras are also installed throughout the offices for monitoring security. All EOI requests are only

kept in paper format in a locked cabinet to which only the Head of DAIJ has access. The office in which the filing system is located is also locked when unattended. The NITI also operates a clean desk policy.

319. EOI related documents in electronic format, such as information collected for responding to an EOI request, are stored on moveable storage devices such as USB keys, removable hard disks, CDs or DVDs. These devices are also stored in the locked cabinet. The Confidentiality Directives instruct NITI staff to permanently remove or delete all EOI materials from their computer once the electronic records have been processed.

320. In terms of process, incoming EOI requests are addressed to the Director of the FSB as competent authority. The mail is opened by the FSB Director, then stamped with a confidential marker and re-directed in a sealed envelope via internal mail to the DAIJ, where it is assigned to a particular NITI member. The details and progress of an incoming EOI request, such as the name of the requesting jurisdiction, a general description of the request and the steps taken to assist with the EOI request, are logged on a spreadsheet to which only the members of the NITI have access on the shared computer drive.²⁴

321. When collecting information to assist with an incoming EOI request, information provided by other authorities and departments in paper format is stamped as confidential and delivered manually in a sealed envelope. Any information delivered electronically by other governmental departments is encrypted. The same applies to information received in an EOI request and information that would be received as answer to a Macau (China) EOI request abroad. The “confidential” stamp is insufficient to ensure that the information will not be used for purposes not covered by the relevant EOI agreement, and to prevent comingling with Macau (China) domestic data. Now that NITI is separate from the audit team, Macau (China) should consider stamping EOI information in a way that clearly set its treaty protection (see Annex 1).

322. Responses to EOI requests are sent via courier or tracked postal mail.

323. A Human Resource Security Policy has been established to assure that all the employees of FSB fully understand their responsibilities and roles in terms of information security, in the purpose of minimising the risk of theft, fraud or misuse of any Information Technology facilities. New employees have to submit a statement of their assets and liabilities to the Macau

24. Every employee has a personal Information Technology login account, with specific access rights to certain scope of the information systems, defined by the top hierarchy. Employees are required to uniquely identify and authenticate themselves to the operating systems via the logon screen, before accessing to applications and information. User access activities are logged, reported, reviewed and escalated regularly to identify and resolve incidents.

Commission Against Corruption. A review of employees’ background is performed every five years, or earlier if one gets promoted or changes duties or if any special situation arises. The Public Administration and Civil Service Bureau (SAFP) provides a “Fundamental Training Course for Civil Servants”, which is compulsory for all new public official of Macau (China). This course covers “confidentiality of personal data”. Besides, the FSB advises new comers to study the shared material of policies and procedures and that they should be aware of making immediate report to Information Security Officers in case of system malfunctions, potential security weaknesses and security incidents.

324. Considering that EOI is largely paper-based and volume is low, the practical measures are sufficient to ensure the confidentiality of information exchanged.

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.

325. The agreements concluded by Macau (China), including the new instruments signed since 2013, ensure that the contracting parties are not obliged to provide information which would disclose trade, business, industrial, commercial or professional secrets or trade process or to make disclosures which would be contrary to public policy.

326. The 2017 EOI Act also contains language concerning professional privilege which is in line with the standard. However, concern is noted in relation to the broad interpretation of the scope of legal professional privilege under the laws of Macau (China) (see above, section B 1.5 of this report).

327. Macau’s competent authority has so far never relied upon the above-mentioned provisions in its EOI agreements to decline the provision of assistance to an EOI request.

328. The 2013 Report concluded that this element is in place and the practice was rated as “Compliant”. No material changes have been identified to alter this conclusion. 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.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.

329. There are no legal restrictions on the ability of Macau's competent authority to respond to requests in an effective manner. Under the EOI Act, the Chief Executive initiates the provision of assistance for incoming EOI requests. Competence for dealing with EOI requests is delegated to Macau's tax authorities, the Financial Services Bureau (FSB). The day-to-day EOI activities are carried out by the DAIJ within the FSB. A range of information relevant to EOI is already available internally to the DAIJ through the taxpayer database and the FSB's direct access to the commercial register (i.e. ownership information). Any other information that is needed from taxpayers and third parties to respond to EOI requests is collected by the DAIJ itself. Since September 2012, the procedures for dealing with EOI matters are formalised in a set of Procedural Directives, which is used for training new DAIJ members.

330. Macau (China) received six EOI requests from four EOI partners during the three-year review period (from 1 October 2014 to 30 September 2017). This includes one request in which the provision of information was declined for legitimate reasons. Whilst the number of requests received by Macau (China) during the review period was limited, peer feedback is positive. Macau (China) has committed resources and formalised its EOI handling procedure that would allow it to effectively exchange information in a timely manner, in the absence of a significant increase in the number of incoming EOI requests. The 2013 Report, in light of its relatively new and limited EOI experience to date, recommended that Macau (China) monitors the practical implementation of the organisational processes of the EOI Unit and the level of resources dedicated to EOI purposes to ensure both are adequate for effective EOI. Whilst recognising the improvements made, this report concludes that the new system has not been sufficiently tested in practice and therefore maintains this recommendation.

331. 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	Macau (China) 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.	Macau (China) should monitor the practical implementation of EOIR, in particular taking account of any significant changes to the volume of incoming EOI requests, to ensure that it remains effective.
Rating: Largely Compliant		

C.5.1. Timeliness of responses to requests for information

332. In total, Macau (China) has received six requests during the review period,²⁵ of which two concerned ownership information, five concerned accounting information, and two concerned banking information. Some other types of information were also requested, such as information on tax residency, staffing and business purpose of a company, customs documentation, etc. The requests related to offshore companies in Macau (China), domestic companies and natural persons. None of the requests was related to bearer shares, partnerships, trusts or foundations. China, India and Portugal are the main EOI partners of Macau (China).

333. There are no specific legal or regulatory requirements in place which would prevent Macau (China) responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request (subject to the application of the new notification process, see Section B.2 above).

334. There was one request during the review period that was declined, because the information requested related to a tax year, which preceded the time frame enabled by the tax treaty. The peer agreed with the decision.

335. Of the five other requests received, the information was provided within 180 days in four cases (respectively within 103, 105, 106 and 127 days) and within one year in one case. For the last request, notwithstanding that the requesting authority asked Macau (China) to provide the information within a year, Macau (China) answered the request within 9 months. The Macau authorities were very busy during that period with the preparation of the new EOI Act and related AEOI work. Also, the answer was provided after some clarifications were provided by the requesting authority (see below). In that

25. Macau (China) counts each request with multiple taxpayers as one request, i.e. if a partner jurisdiction requests information about several persons in one request, Macau (China) counts that as one request.

case, not all the requested information could be provided as some types of information (other than on ownership, accounts or banking information) were not available in Macau (China).

336. During the period under review, there was one in-bound request that involved the need for clarification, mainly to seek (1) the tax purposes for which the information requested was sought; (2) a statement that the request was in conformity with the laws and administrative practices of the Applicant Party, that if the information requested was within the jurisdiction of the Applicant Party then the competent authority of the Applicant Party would be able to obtain the information under its laws or in the normal course of administrative practices and that the request was in conformity with the Agreement; and (3) a statement that the Applicant Party had pursued all means available within its jurisdiction to obtain the information requested, except those that would give rise to disproportionate difficulties. After due clarification, the matters were sorted out, and the exchange was carried out smoothly. No negative peer input has been received on this matter and the partner appreciated that a face-to-face meeting was organised to clarify the matter.

337. The authorities indicate that it takes them more time to answer requests that arrive in the second half of the year because of the higher frequency of bank holidays that makes it difficult to approach companies (or sometimes to get internal approvals). The response time of the information holder contributes to the biggest portion of the response time. Accounting records take the longest to obtain, especially as commercial documents are usually kept in paper format rather than electronically. The authorities nonetheless point to the fact that in the three cases where the partner set a deadline to get the information, they have always met this deadline. Internally, the most time-consuming task is Chinese/English translation. There are no pending cases.

Status updates and communication with partners

338. The DAIJ uses Excel databases to monitor its EOI activities, which are kept on the shared computer drive of the DAIJ only. One file is used to track the timeliness of progress of the EOI requests. Although there are no automatic reminders of key dates, such as when to provide an acknowledgement of receipt or the 90-day update or response, the spreadsheet clearly indicates the time passed and time remaining at each stage of the EOI process. In addition, the Procedural EOI Directives clearly indicates that requests for clarifications should be sent within 60 days of receipt of the request and a status update sent after 90 days if no information can be provided within this deadline.

339. However, Macau (China) has not systematically provided an update of the status of the request, where its competent authority has been unable

to obtain and provide information within 90 days of receipt of a request. No status update has been provided for the five cases that ran over a period of 90 days (respectively 103, 105, 106, 127 days and nine months). Partners indicate they sometimes receive status updates from the Macau authorities (either within the review period, or for more recent requests). The competent authority explained that in practice, when a request was approaching the 90-day limit, the staff focused on preparing the reply instead of preparing a status update and replied in around 103 to 127 days. The Macau authorities has also indicated that the procedure has been reviewed and staff are now required to follow up with a status update when dealing with requests. Macau (China) should systematically provide an update or status report to its EOI partners in situations when the competent authority is unable to provide a substantive response within 90 days (see Annex 1).

340. Macau (China) has no written feedback received from nor sent to EOI partners. However, Macau’s authorities reported that the channels of communication are open and co-operation has been satisfactory. Partners indicate communicating with Macau (China) through post mail, emails and phone. It happened once that a request sent by email was not received by the competent authority but the reason of the failed delivery could not be ascertained (the request was resent after the review period and answered). Macau (China) uses primarily registered post.

C.5.2. Organisational processes and resources

Organisation of the competent authority

341. The FSB is the government branch that collects and executes the tax information in regards to EOI. The FSB is under the direct supervision of the Secretary for Economy and Finance of the Macau government. The competent authority of Macau (China) in regards to EOI is the Chief Executive of the Macau government.

342. Pursuant to the EOI Act, the Chief Executive of Macau (China) is ultimately responsible for international exchange of tax information. Whilst the FSB is the delegated competent authority to receive, deliver and process EOI requests, it is the competence of the Chief Executive to formally accept or decline EOI requests made or received by Macau (China) (Art. 8 of the EOI Act). The FSB is also responsible for negotiating EOI agreements, which are then signed by the Chief Executive. In practice, the contact details of the Director and the head of department of the FSB, as delegated competent authority, are made available to counterpart competent authorities through the Global Forum Competent Authorities secure database. The email address of the FSB which is designated for EOI matters is also made available on the FSB website.

Resources and training

343. Within the FSB, the day-to-day handling of EOI cases is conducted by the Department of Public Auditing, Tax Investigation and Appeals (DAIJ). Until 2017, EOI matters were handled by staff from its Tax Inspection Division in addition to their daily tasks. Due to the substantial developments of international standards, in the course of 2017, the Tax Inspection Division has established the International Tax Information Centre (NITI) to specifically handle international tax matters, including EOI on request and automatic, DTA negotiation and anti-BEPS practices. Its tasks involve the drafting of related legislation. NITI has 10 full time staff, assisted by one international tax advisor.

344. The staff in the Centre have to follow the EOI procedural guidelines where each EOI case have to report at each phase of the EOI procedure (see below).

345. Staff under NITI attends the annual training programme on EOI under the OECD Outreach Programme held in China. Staff under NITI also attends in China one to three seminars per year on international tax matters covering topics such as transfer pricing and the exchange of intelligence for tax collection. Sometimes, staff under NITI also join internationally organised related workshops (such as trainings organised by the OECD); they will then organise sessions within FSB to inform the other staff in FSB about matters discussed in these seminars and meetings. EOI training is also carried out “on-the-job”, with more experienced staff assisting less experienced members with the conduct of EOI cases. All staff under NITI are also required to familiarise themselves with the written training materials described below.

346. Since the EOI requests received are not many, the current number of personnel in the Centre, and the proportion of time devoted by the respective staff to EOI, has been sufficient to handle the EOI requests. Macau’s authorities reported that if needed in the future, especially with the recent entry into force of the MAC in Macau (China), Macau (China) is willing to commit additional financial and other resources as necessary to ensure effective EOI in practice.

Incoming requests

347. The working methods of the DAIJ have not changed since the previous review period and are detailed in the 2013 Report.

348. In summary, on receiving an EOI request, the Director of the FSB forwards it to the DAIJ. In practice, each EOI request is assigned to any of the two staff in NITI and the Center for Complementary Tax Group A

(NICA). NICA is a centre under DAIJ which is responsible for tax audit of both Group A and Group B taxpayers. The 10 staff in NITI and 12 staff in NICA have the competence to work on EOI cases, and are focused on international tax matters. NITI has the responsibility for validating incoming EOI requests and preparing reports to recommend assistance with EOI requests for Chief Executive approval, notifying and communicating with counterpart competent authorities (such as to seek further clarification in relation to EOI requests, where necessary). NICA is mainly involved in the information gathering and data analysis process in the EOI. The report includes an analysis of the request and sets a way forward strategy for collecting the information. Should there be any difficulties in analysing the request, the two staff can discuss the case with the other staff in NITI and NICA. All staff involved are strictly bound by the confidentiality of the EOI request and cannot discuss or disclose with the other staff not responsible in the EOI matters or not in NITI and NICA.

349. The two staff from NITI and NICA are then responsible for drafting notices to request information from other governmental departments, taxpayers and third parties, as well as administrative tasks related to EOI. Where EOI information is required to be collected from third parties, the two staff have to carry on the information collection process, by ways as referred in the report they presented, such as the issuance of notices to the concerned public authority or conduct onsite inspection directly to the concerned person, if necessary. Tax inspections (where needed) are conducted by the NITI and NICA officers themselves. The authorities indicated that they most of the time perform a site visit to verify the information or take copies of documents, especially as this is not burdensome considering the size of the jurisdiction.

350. Upon receipt of the requested information, the designated NITI and NICA staff analyse the relevance of the information collected as compared to the EOI request. The relevant information obtained is then compiled into a format that is presentable to the requesting jurisdiction. If the information collected does not correspond to the EOI request, or the designated staff do not understand the information provided, they return to the information holders to ask for further information.

351. The procedure followed by the DAIJ for handling incoming and outgoing EOI requests is formalised in the Procedural Directives. These Directives were issued in September 2012 and then amended in December 2019 to reflect the replacement of the EOI Act with a new Act in 2017, in particular with respect to the handling of incoming group requests and to take into account the restructuring of the DAIJ and creation of NITI.

352. There were no major difficulties faced in obtaining information in order to respond to requests from EOI partners.

Outgoing requests

353. Macau (China) has never sent a request for information to an EOI partner. Whenever such occurs, the process will be carried out by its EOI staff according to the respective laws and norms, and approval will be sought from the Chief Executive of Macau (China), through the Secretary for Economy and Finance.

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

354. There were no aspects of Macau's laws that appear to impose restrictive conditions on exchange of information.

Annex 1: List of in-text recommendations

The Global Forum may identify issues 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. A list of such recommendations is reproduced below for convenience.

- **Element A.1:** Macau (China) passed legislation to abolish bearer shares and ensure the availability of information on all shareholders in Macau companies, but certain doubts remain as to whether the owners of all such shares have been identified. Macau (China) should therefore supervise the implementation of the law to ensure all companies complied with it (see paragraphs 147 and 149).
- **Element A.1:** Auditors, accountants and tax advisers have not been provided with clear and mandatory guidelines as to the frequency of the due diligence updates, and therefore Macau (China) should monitor the ongoing due diligence by these professionals (see paragraph 115).
- **Elements A.1 and A.3:** Whilst financial institutions are under duties to keep beneficial ownership information, the regulatory framework does not specify the frequency of reviews of the existing records. Macau (China) should therefore continue monitoring the ongoing due diligence by banks (see paragraphs 128 and 206).
- **Element A.2:** Although there are only 45 foundations registered with the Identification Services Bureau, Macau (China) should still clarify that the accounts required to be kept are in line with the international standard (see paragraph 166).
- **Element C.2:** Macau (China) is recommended to continue to conclude EOI agreements with any new relevant partner who would so require (see paragraph 305).

- **Element C.3:** Now that NITI is separate from the audit team, Macau (China) should consider stamping EOI information in a way that clearly sets its treaty protection (see paragraph 321).
- **Element C.5:** Macau (China) should systematically provide an update or status report to its EOI partners in situations when the competent authority is unable to provide a substantive response within 90 days (see paragraph 339).

Annex 2: List of Macau’s EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Argentina	TIEA	05/09/2014	06/11/2015
2	Australia	TIEA	12/07/2011	18/05/2012
3	Belgium	DTC	19/06/2006	Ratified by Macau (China)
4	Cabo Verde	DTC	15/11/2010	25/11/2012
5	China (People’s Republic of)	DTC	27/12/2003	27/12/2003
		Protocol on EOIR	26/04/2011	08/10/2012
6	Denmark	TIEA	29/04/2011	15/10/2011
7	Faroe Islands	TIEA	29/04/2011	17/12/2011
8	Finland	TIEA	29/04/2011	09/12/2011
9	Greenland	TIEA	29/04/2011	19/04/2012
10	Guernsey	TIEA	03/09/2014	26/04/2015
11	Hong Kong (China)	DTC	25/11/2019	Not yet ratified
12	Iceland	TIEA	29/04/2011	20/01/2012
13	India	TIEA	03/01/2012	16/04/2012
14	Ireland	TIEA	12/09/2016	06/03/2018
15	Jamaica	TIEA	05/10/2012	Ratified by Macau (China)
16	Japan	TIEA	13/03/2014	22/05/2014
17	Malta	TIEA	30/05/2013	Ratified by Macau (China)
18	Mozambique	DTC	15/06/2007	11/01/2011
19	Norway	TIEA	29/04/2011	18/12/2011
20	Portugal	DTC	28/09/1999	29/09/1999
		Protocol	21/06/2018	Ratified by Macau (China)

	EOI partner	Type of agreement	Signature	Entry into force
21	Sweden	TIEA	29/04/2011	15/01/2015
22	United Kingdom	TIEA	03/09/2014	20/05/2015
23	Viet Nam	DTC	16/04/2018	03/10/2018

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).²⁶ The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

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

The Multilateral Convention was extended to Macau (China) by China. It entered into force on 1 September 2018. Macau (China) can exchange information with all other Parties to the Multilateral Convention, except of China and Hong Kong (China).

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), Brunei Darussalam, Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension

26. 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.

by the Netherlands), Cyprus,²⁷ Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, 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), 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, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Morocco, Nauru, Netherlands, New Zealand, Nigeria, Niue, North Macedonia, Norway, Pakistan, Panama, Peru, Poland, Portugal, Romania, Qatar, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, 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 the following jurisdictions, where it is not yet in force: Armenia, Benin, Bosnia and Herzegovina, Burkina Faso, Cabo Verde, Gabon, Kenya, Liberia, Mauritania, Mongolia, Montenegro, Oman, Paraguay, Philippines, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010)

27. 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.

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 EOI instruments signed, laws and regulations in force or effective as at 3 January 2020, Macau's EOIR practice in respect of EOI requests made and received during the three year period from 1 October 2014 to 30 September 2017, Macau's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Macau's authorities during the on-site visit that took place from 28 to 31 August 2018 in Macau.

List of laws, regulations and other materials received

Constitutional and Administrative Law

Basic Law (31 March 1993)

Corporate laws

Civil Code (Codigo Civil, DL No. 39/1999, amended by Decree Law No. 48/1999)

Commercial Code (DL No. 40, August 1999, amended by Law No. 6, April 2000)

Commercial Registration Code (Código do Registo Comercial, Decree Law No. 56/99/M)

Financial System Act (Decree Law No. 32/1993)

Offshore Regime of Macao (Decree Law No. 58/1999)

Repeal of Legal Regime of the Offshore Services (Law no. 15/2018)

Elimination of Bearer Shares and Changes to the Commercial Code (Law no. 4/2015)

Taxation laws and regulations

- Direct Tax on Profits, Complementary Law (Imposto Complementar de Rendimentos, Law No. 21/1978)
- Tax on Industrial Business (Contribuição Industrial, Law No. 15/1977)
- Stamp Duty Regulations (Law No. 17/88/M)

Anti-money laundering and counter-terrorism financing laws and regulations

- Prevention and Suppression of the Crime of Money Laundering (Law No. 2/2006)
- Preventive measures for the crimes of money laundering and financing of terrorism (Administrative Regulation No. 7/2006)
- Guidelines of the DSAJ on Money Laundering and the Financing of Terrorism
- Instructions of the FSB for Prevention and Suppression of Money Laundering and Financing of Terrorism for Auditors, Accountants and Tax Consultants in MSAR
- Macao Trade and Investment Promotion Institute (IPIM)
- Guidelines of the IPIM on Preventive Measures on Anti-Money Laundering and Combating the Financing of Terrorism
- Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT) Notice and Guideline for Financial Institutions of the AMCM

Information exchange for tax purposes laws

- Information Exchange Act for Fiscal Purposes (Troca de Informações em Matéria Fiscal Law No. 20/2009)
- Legal Regime for the Exchange of Tax Information (Law no. 5/2017)

Authorities interviewed during on-site visit

- Financial Services Bureau (FSB)
- Commerce and Movable Property Registry (CR)
- Identification Services Bureau (DSI)
- Macao Trade and Investment Promotion Institute (IPIM)

Monetary Authority of Macau (AMCM)
 Financial Intelligence Office (GIF)
 Union of Associations of Professional Accountants of Macau (UAPAM)
 The Macau Association of Banks (ABM)
 Macau Lawyers Association (AAM)
 Committee of Registry Auditors and Accountants (CRAC)

Current and previous review(s)

During the first round of reviews, the Global Forum evaluated Macau (China) against the 2010 standard twice: i) the 2011 Report evaluated Macau's legal and regulatory framework and concluded that essential elements of the standard were in place, but in certain aspects the legal implementation needed improvement; ii) the 2013 Report evaluated the implementation of the EOIR standard in practice over the period from 1 July 2009 to 30 June 2012, and assigned an overall rating of Largely Compliant to Macau (China).

Summary of reviews

Review	Assessment team	Period under review	Legal framework as of	Adoption by Global Forum
Round 1 Phase 1	Ms Helen Ritchie (United Kingdom); Ms Mary Antoinette Musilek (Spain); Ms Francesca Vitale and Ms Maria Francisca Villaman (Global Forum Secretariat)	n.a.	June 2011	October 2011
Round 1 Phase 2	Ms Helen Ritchie (United Kingdom); Ms Mary Antoinette Musilek (Spain); and Ms Doris King (Global Forum Secretariat)	1 July 2009 to 30 June 2012	22 August 2013	November 2013
Round 2	Ms Agathe Testori (Switzerland); Mr Fida Muhammad (Pakistan); Ms Anzhela Cedelle and Ms Gwenaëlle Le Coustumer (Global Forum Secretariat)	1 October 2014 to 30 September 2017	3 January 2020	March 2020

Annex 4: Macau’s response to the review report²⁸

Following to the adoption of the first round peer review in 2013 with the overall rating of Largely Compliant, the approval of the second round with the same rating level demonstrates that Macau (China) continues meeting the international standards on the exchange of information upon request (EOIR).

Considering the fact that Macau (China) is a small open economy with tourism and gaming industry as its main economic pillar, the number of EOI requests received has remained low throughout the years. However, Macau (China) will continue taking each and every incoming request seriously and seeking ways to fully comply with international agreed standards on the EOIR mechanism. Indeed, our work on the EOI mechanism has not stopped over the past few years. In June 2015, the law to abolish bearer shares was approved and no company is allowed to issue bearer shares nowadays. In addition, the new exchange of information law was approved in 2017 to extend the application further to automatic as well as spontaneous exchange of information and was amended in 2019 for the application of automatic exchange of CbC reports.

Macau (China) welcomes the recommendations as suggested in the report and will continue seeking ways to improve the status in terms of the availability of ownership information on beneficial owners, the availability of accounting underlying documents of the non-Group A taxpayers or the procedures on handling the incoming requests. It is apparent that some improvements still need to be made following this latest peer review assessment. However, by working closely with our peers and with the support of the Global Forum on Transparency and Exchange of Information for Tax Purposes, Macau (China) is confident that such recommendations will be fully implemented, reflecting its strong commitment towards the international standard on EOIR.

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

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report on the Exchange of Information
on Request MACAU, CHINA 2020 (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 160 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 2020 Peer Review Report on the Exchange of Information on Request of Macau, China.



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