

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



Peer Review Report on the Exchange of Information
on Request

PAPUA NEW GUINEA

2020 (Second Round)

Global Forum on Transparency and Exchange of Information for Tax Purposes: Papua New Guinea 2020 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE
OF INFORMATION ON REQUEST

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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 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) 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 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

2010 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum in 2010
2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015
2016 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015
AML	Anti-Money Laundering
AML/CTF	Anti-Money Laundering/Countering Terrorism Financing
CDD	Customer Due Diligence
DNFBP	Designated Non-Financial Business or Profession
DTC	Double Tax Convention
EOIR	Exchange of Information on Request
FASU	Financial Analysis and Supervision Unit
FATF	Financial Action Task Force
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
GST	Goods and Services Tax
ICA	Immigration and Citizenship Authority
IPA	Investment Promotion Authority
IRC	Internal Revenue Commission
ITA	Income Tax Act

Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
ORS	Online Registry System
PGK	Papua New Guinea Kina
ROC	Registrar of Companies
TCSP	Trust or Company Services Provider
TIEA	Tax Information Exchange Agreement
TIN	Taxpayer Identification Number

Executive summary

1. This report analyses the implementation of the international standard of transparency and exchange of information on request in Papua New Guinea (PNG) under the second round of reviews conducted by the Global Forum against the 2016 Terms of Reference. It assesses both the legal and regulatory framework as at 24 April 2020 and the practical implementation of this framework, in particular in respect of EOIR requests received and sent during the review period from 1 October 2015 to 30 September 2018. This report concludes that PNG is rated overall **Largely Compliant** with the international standard. PNG joined the Global Forum in 2015. Hence, the current report is the first assessment of the legal and regulatory framework for transparency and exchange of information on request in PNG and its implementation in practice.

Determinations and Ratings for PNG in the Second Round Report (2020)

Element	Determinations on the legal framework	Ratings on implementation
A.1 Availability of ownership and identity information	Needs improvement	Partially Compliant
A.2 Availability of accounting information	Needs improvement	Partially Compliant
A.3 Availability of banking information	Needs improvement	Largely Compliant
B.1 Access to information	In place	Compliant
B.2 Rights and Safeguards	In place	Compliant
C.1 EOIR Mechanisms	Needs improvement	Largely Compliant
C.2 Network of EOIR Mechanisms	Needs improvement	Largely Compliant
C.3 Confidentiality	In place	Compliant
C.4 Rights and safeguards	In place	Compliant
C.5 Quality and timeliness of responses	Not applicable	Largely Compliant
OVERALL RATING	Largely Compliant	

Transparency framework

2. Since joining the Global Forum in 2015, PNG has made efforts to put in place the necessary legal and regulatory framework to comply with the EOIR and Transparency standard. PNG's Companies Act provides for legal requirements to ensure the availability of legal ownership information. Further, the Income Tax Act also requires provision of legal ownership information by all types of entities and arrangements to tax authorities before commencing any business activities in PNG. From 2018, PNG has introduced a new requirement in its tax law that every new business registering with the office of the Registrar of Companies (a division of the Investment Promotion Authority (IPA)), must obtain a Taxpayer Identification Number (TIN) by registering with the Internal Revenue Commission (IRC). This would ensure the availability of information on the legal owners of companies.

3. PNG's new Anti-Money Laundering and Counter Terrorist Financing Act (AML/CTF Act) was passed in 2015 and entered into force in 2016, which led to the establishment of a dedicated AML supervisor – the Financial Analysis and Supervision Unit (FASU). The AML/CTF Act provides for the requirements of maintaining up-to-date beneficial ownership information by a wide range of AML-obliged persons. Further, a Taxpayer Identification Number has been made a specific requirement for opening a new bank account with any bank in PNG since 2018. Through these measures, it is expected that legal and beneficial ownership information on many entities and arrangements in PNG would be readily available, although some deficiencies have been identified.

4. PNG's Companies Act provides for maintenance of accounting records by all companies in line with the standard and some of them are required to get the accounts audited and file their financial statements with the Registrar of Companies (ROC) on an annual basis. Tax law obligations also require maintenance of accounting records by all legal entities and arrangements carrying on business in PNG. However, where non-corporate entities are not covered by the tax law obligations, accounting records may not always be available.

5. Banking information would generally be available in PNG in line with the standard. While the definition of beneficial ownership needs to be improved and clarified, banks and the supervisory authorities are generally conversant with the requirements of the concept of beneficial ownership. Retention requirements for banking information meet the standard.

6. Although PNG has made efforts to improve supervision of the legal requirements in respect of legal and beneficial ownership information and accounting information, supervision and enforcement are the key areas of concern.

Key recommendations

7. Since the AML/CTF Act is the only source of beneficial ownership information in PNG and it is possible that a legal person or legal arrangement may not be engaged with an AML-obliged person on an on-going basis, PNG must either ensure that all legal persons and arrangements always engage an AML-obliged person or make suitable legal changes in other legislations to ensure the availability of up-to-date beneficial ownership information on all relevant entities and arrangements. Further, while the definition of beneficial ownership in the AML/CTF Act is broadly in line with the standard, it may lead to missing out on some beneficial owners. Hence, PNG should amend either its law or the issued guidance to ensure that AML-obliged persons consistently and correctly identify beneficial owners for all relevant entities and arrangements. This affects the availability of accurate beneficial ownership information of PNG entities and of account holders in PNG banks.

8. Besides improving the legal framework, PNG must ensure that authorities supervise and enforce the existing laws adequately and effectively by applying sanctions to deter non-compliance. PNG also needs to put in place an effective system of cleaning up the databases of the tax authorities and the Register of companies to remove entities that are inactive in order to ensure compliance with the standard.

9. In respect of maintenance of accounting records with underlying documentation, the legal framework needs to be improved to ensure that even when non-corporate entities like partnerships, trusts or associations are not carrying on business and are not covered by income tax law's accounting records maintenance requirements, they keep such records.

10. Supervision and enforcement measures in respect of ensuring the availability of accounting records need to be expanded and strengthened by both – the Registrar of Companies as well as the Internal Revenue Commission (Tax Administrator). The compliance rates are low and sanctions have not been imposed systematically. PNG must ensure adequate supervision and enforcement by the authorities concerned. These efforts must also be complemented by systematically identifying and removing inactive entities to ensure that PNG is able to meet the standard.

Exchange of information on request

11. PNG has in force ten double tax conventions (DTCs), mainly in the Asia-Pacific region. During the peer review period, PNG received five requests for information and sought information in four cases. Australia, New Zealand and Indonesia were PNG's main EOI partners.

12. The competent authority has appropriate power to obtain and provide information that is the subject of a request under a DTC from any person within its territorial jurisdiction who is in possession or control of such information. PNG has amended the Income Tax Act (ITA) to introduce the necessary confidentiality provisions to ensure that tax information exchanged with treaty partners can only be used for purposes specified under the relevant international agreements.

13. PNG has further amended the Income Tax (International Agreements) Act (ITIA) to ensure that the Multilateral Convention and any other international tax treaty affecting co-operation and exchange of information that PNG is a signatory of, has the force of law in PNG.

14. These changes have been introduced in anticipation of PNG's signing and ratifying the Multilateral Convention. PNG has been invited to sign the Multilateral Convention. PNG had completed the internal processes to authorise the official concerned to sign the Multilateral Convention in late March 2020. However, due to the coronavirus outbreak and the ensuing lockdowns, the signing has had to be deferred to a later date. PNG remains committed to sign the Multilateral Convention at the earliest.

15. The volume of exchange of information was low in the first three years after PNG joined the Global Forum. None of the requests related to ownership or banking information. One request asked for underlying documents pertaining to accounting records of an entity, while most of the requests pertained to other types of information such as tax residency and taxes paid. PNG was able to respond to all the requests it received and peers were generally satisfied with the information that PNG provided. PNG's requests for information were also generally seen to be complete and meeting the standard.

Key recommendations

16. Three of the ten DTCs of PNG are not fully in line with the standard, but two relate to parties to the Multilateral Convention that PNG should sign as soon as the current pandemic allows it.

17. Finally, PNG's actual experience with EOIR has been fairly limited in practice. Nevertheless, in two cases where PNG faced some delays, PNG should have better communicated with its partners. Considering its very limited experience with EOIR, PNG needs to continue monitoring and streamlining its EOIR processes to ensure effectiveness.

Overall rating

18. Papua New Guinea's elements A.1 and A.2 have been rated Partially Compliant, elements A.3, C.1, C.2 and C.5 are rated Largely Compliant and elements B.1, B.2, C.3 and C.4 are rated Compliant with the international standard. Overall, PNG is rated Largely Compliant.

19. This report was approved at the Peer Review Group of the Global Forum on 3 July 2020 and was adopted by the Global Forum 18 August 2020. A follow-up report on the steps undertaken by PNG 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.

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	Beneficial ownership information would not be available for relevant entities and arrangements when they do not engage the services of an AML-obliged person. There is no obligation in law for all legal persons and arrangements to always engage an AML-obliged person.	PNG should ensure that up-to-date beneficial ownership information is always available on all legal entities and arrangements.
	PNG has issued binding guidance to all AML-obliged persons for carrying out customer due diligence and identification of beneficial owners based on the AML law. While the definition of beneficial owner in the AML law is broadly in line with the standard, in the case of legal persons, there is no requirement to identify the senior management person as a default beneficial owner when beneficial owners cannot be identified on the basis of ownership or control. Further, partnerships are legal arrangements in PNG and the definition of beneficial owners for legal arrangements (or unincorporated entities) applies an ownership threshold of 25% whereas all the natural persons that have a stake in the partnership (regardless of an ownership threshold) should be identified.	PNG should make suitable changes to the law or the guidance to ensure that AML-obliged persons accurately identify beneficial owners of legal persons and legal arrangements in line with the standard.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
	<p>The Associations Act does not require identification of all members or founders or beneficiaries of the association. Such information may not be available where the association does not engage an AML obliged person.</p>	<p>PNG should ensure that legal and beneficial ownership information on associations is always available.</p>
<p>Partially Compliant</p>	<p>A significant number of companies in the Companies Register are inactive and due to technical problems with the Online Registration System, the Registrar has been unable to clean up the Register by dissolving or striking-off such inactive companies. This raises concerns about the availability of beneficial ownership information as these companies are unlikely to have a bank account or any engagement with an AML-obliged person. Only recently the Registrar has started taking steps to strike-off inactive companies.</p>	<p>PNG should ensure that the process of cleaning up the Companies Register is carried out to remove inactive companies in order to ensure that all existing companies in PNG have reliable and up-to-date legal and beneficial ownership information.</p>
	<p>Although penal provisions exist for ensuring compliance under the Companies Act, the Business Names Act, the Income Tax Act and the AML/CTF Act, there is inadequate monitoring, supervision and enforcement by the authorities concerned for ensuring the availability of legal and beneficial ownership information.</p>	<p>PNG is recommended to actively supervise, monitor and sanction non-compliant legal entities and arrangements under the respective laws to ensure the availability of legal and beneficial ownership information.</p>
	<p>Although PNG's AML/CTF Act 2015 classifies acting as a nominee shareholder or arranging for someone to act as a nominee shareholder as an activity of Trust or Company Service Provider who is AML-obliged and would need to maintain identity information on whose behalf it is acting, FASU has only recently started monitoring and supervision of DNFBPs. Since there is no requirement in the Companies Act that nominee shareholding is reflected in the share register or communicated to the Registrar, close monitoring of the implementation of the requirements under the AML/CTF Act is important to meet the standard.</p>	<p>PNG should monitor the implementation of the AML/CTF Act and ensure that all persons providing nominee shareholding services are always identified and comply with their obligations of maintaining identity information on the person(s) on whose behalf they are acting.</p>

Determinations and Ratings	Factors underlying Recommendations	Recommendations
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	Accounting record keeping obligations with underlying documentation exist in line with the standard in respect of companies by the operation of Companies Act and the Income Tax Act. However, partnerships, associations and trusts that are not doing business in PNG, and are therefore not covered by the requirements of keeping accounting records as per the Income Tax Act, may not maintain accounting records as per the standard for at least five years.	PNG must ensure that accounting records as required by the standard are maintained for at least five years by all partnerships, associations and trusts.
Partially Compliant	The Registrar's monitoring and supervision of the requirements under the Companies Act for all companies to maintain accounting records with underlying documentation for the prescribed retention period, has been minimal with little, if any, application of penalties for non-compliance. Tax return filing rates across entities are very low and tax audits are also very limited. No penalties have ever been imposed under the Income Tax Act for non-maintenance of accounting records.	PNG is recommended to expand and strengthen supervision and monitoring by the authorities and to ensure that enforcement provisions and penal sanctions are effectively applied where non-compliance with the legal requirements is noted so that accounting records for all relevant legal entities and arrangements are always available in line with the standard.
	A significant number of entities are believed to be inactive by the PNG authorities and due to technical problems with the Online Registration System, the Registrar has been unable to strike-off such entities. Similar inactive entities also exist in the Tax Database and have not been filing tax returns. This raises significant concerns that accounting records of such entities may not be available in line with the standard.	PNG is recommended to review its system whereby a significant number of non-compliant or inactive entities remain on the Companies Register and in the Tax Database and clean up both these databases in order to ensure that all existing entities in PNG have reliable accounting records with underlying documentation.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Banking information and beneficial ownership information should be available for all account-holders (<i>ToR A.3</i>)		
<p>The legal and regulatory framework is in place but needs improvement</p>	<p>PNG has issued binding guidance to all AML-obliged persons for carrying out customer due diligence and identification of beneficial owners based on the AML law. While the definition of beneficial owner in the AML law is broadly in line with the standard, in the case of legal persons, there is no requirement to identify the senior management person as a default beneficial owner when beneficial owner cannot be identified on the basis of ownership or control. Further, for legal arrangements like partnerships and trusts, there is scope to clarify further on identification of their beneficial owners.</p>	<p>PNG should make suitable changes to the law or the guidance to ensure that banks accurately and consistently identify beneficial owners of legal persons and legal arrangements in line with the standard.</p>
<p>Largely Compliant</p>		
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>)		
<p>The legal and regulatory framework is in place.</p>		
<p>Compliant</p>		
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>)		
<p>The legal and regulatory framework is in place.</p>		
<p>Compliant</p>		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Exchange of information mechanisms should provide for effective exchange of information (<i>ToR C.1</i>)		
The legal and regulatory framework is in place but needs improvement	PNG's DTCs with three treaty partners contain restrictive provisions which are not in line with the standard.	PNG is recommended to ensure that all its EOI relationships allow for exchanging information in all cases.
Largely 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 but needs improvement	PNG's treaty network is relatively small. Although PNG has had an internal moratorium on negotiating DTCs and did not respond to requests for DTCs from three jurisdictions during the review period, there is no bar on negotiating TIEA. However, no jurisdiction approached PNG with a request for a TIEA.	PNG is recommended to continue to expand its treaty network and have in place an exchange mechanism with all relevant partners.
Largely 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		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
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.	
Largely Compliant	On two occasions, communication with partners suffered as correct co-ordinates of the delegated competent authorities had not been provided and status update was not provided when a response could not be provided within 90 days.	It is recommended that PNG ensure adequate communication and timely status updates in all cases where a request cannot be answered within 90 days.
	PNG has limited experience of EOIR in practice given its small treaty network. The number and complexity of requests may increase once PNG signs and ratifies the Multilateral Convention.	It is recommended that PNG monitor the implementation of its EOI framework in practice to ensure that when EOI requests are received, responses are provided in a timely manner.

Overview of Papua New Guinea

20. This overview provides some basic information about PNG that serves as context for understanding the analysis in the main body of the report.

21. PNG occupies the eastern half of the island of New Guinea in the South Pacific Ocean together with some other smaller islands. PNG is one of the most culturally diverse countries in the world with more than 800 languages spoken. More than 80% of the population is rural and comprises a large number of tribes. Agriculture, forestry, fishing and mineral resources and energy extraction are the mainstay of the economy. Since the economy is heavily reliant on global demand for commodities, GDP growth rate is fairly exposed to the global economy. PNG's GDP is estimated to be around EUR 19.7 billion. With a population of more than 8 million, per capita GDP of PNG is estimated at around EUR 2 235 which places PNG in the list of lower middle income countries.

Legal system

22. PNG is a Commonwealth Realm with the monarch of the United Kingdom being the constitutional monarch and head of state.¹ PNG has a unicameral legislature. The government is headed by the Prime Minister. The Constitution of PNG provides for three arms of the government – the legislature, the executive and the judiciary. The legislature is tasked with passing laws for the country. The executive arm is the National Executive Council, National Parliament and the Governor General who is the representative of the ruling monarch of the United Kingdom in PNG. He is the head of the executive who has the powers under the Constitution to pass legislations in PNG, after the government goes through the process of vetting and passing legislation. The National Executive Council is the Constitutional executive

1. PNG was under German and British occupations prior to the First World War. Subsequently, PNG came under Australian control and remained an external territory of Australia until it gained independence on 16 September 1975.

body tasked with providing advice to the Head of the State and Ministers who act on such advice. It is, for instance, on the advice of the National Executive Council that the Head of the State or a Minister so authorised, may sign a treaty or an international convention to bind PNG as a party.

23. There are three levels of government in PNG: the national, provincial and local-level governments. The Constitution and the Organic Law on provincial and local-level government regulate the legislative powers of the national, provincial and local-level governments. Section 9 of the Constitution of PNG sets out the hierarchy of laws in PNG. The Constitution and the Organic Laws are the supreme law of PNG and, all acts, whether legislative, executive, judicial, or statutory are valid and effective only to the extent that they are not inconsistent with the Constitution and the Organic Laws. Direct tax legislation and enforcement fall under the purview of national level government. International treaties, including EOI instruments, must be ratified by the Parliament and be included into the domestic laws to have force of law. DTCs entered into by PNG are part of PNG's Income Tax Act and hence, override other domestic laws to the extent of any conflict with their provisions except where they are in conflict with the Constitution.

24. PNG's legal system is based on the English common law. The common law principles and rules apply in PNG except when such principles and rules are inconsistent with a constitutional law or a statute; or are inapplicable or inappropriate to the circumstances of PNG; or in their application to any matter they are inconsistent with custom, as adopted by the Constitution.

25. The National Judicial System consists of the Supreme Court of Justice, the National Court of Justice, and Other Courts established under section 172 of the Constitution, including the District Courts, and Local Courts, Military Courts, Taxation Courts, Coronial Courts, Mining Warden Courts, Land Courts, Traffic Courts, Committal Courts, Grade five courts, etc. The Supreme Court is the nation's highest judicial authority and final court of appeal. The National Court and District Court deal with summary and non-indictable offences; and local courts deal with minor offences, including matters regulated by local customs.

26. The Taxation Court is at the District Court level and is presided over by a Magistrate. Appeals against the decisions of Taxation Courts go to the National Court. Taxation Courts decide issues relating to non-filing of tax returns and associated penalties or fines.

27. Tax audits and determination of tax payable fall under the purview of the Internal Revenue Commission headed by the Commissioner General of Internal Revenue. The taxpayer has the right to object to a notice of assessment issued by the Commissioner General of Internal Revenue. Such objection is raised with the Commissioner General in the first instance within 60 days after the service of notice of assessment. If dissatisfied with

the decision of the Commissioner General after the objection process, the taxpayer can appeal to the Income Tax Review Tribunal² under section 247 of the Income Tax Act within 60 days of the Commissioner General's decision. The basis of this appeal should be a question of fact and not law. If there is a question of law that the taxpayer feels has not been addressed or which the Commissioner General has overlooked at the objection stage, the taxpayer can directly appeal to the National Court. If the taxpayer is still dissatisfied with the decision of the Income Tax Review Tribunal, it can appeal the decision by way of judicial review proceedings at the National Court. If the taxpayer is still dissatisfied with the decision of the National Court, an appeal to the Supreme Court can be filed.

Tax system

28. PNG's tax system is governed primarily by the Income Tax Act (ITA) and the Goods and Services Tax Act. The Tax Administration Act lays down the procedures for enforcement of the tax laws. These Acts are further supported by other related tax administrative legislations and regulations. PNG's Internal Revenue Commission (IRC) is in charge of all matters related to taxation. The IRC is headed by the Commissioner General of Internal Revenue who reports to the Department of Treasury and the Government. The IRC administers the corporate income tax (including mining and petroleum tax), goods and services tax, withholding taxes on salary wages, dividends, royalty, management fees, interests and stamp duty on transactions.

29. PNG imposes tax based on source of income and residency of taxpayer. Thus, all residents (individuals, businesses and companies) are liable to income tax in PNG on their worldwide income with foreign tax credit offsets, while non-residents are liable to pay income tax only on their PNG sourced income. Persons other than a company are considered resident for tax purposes in PNG if they reside in PNG or have been in PNG for more than 186 days during a tax year, or are contributors to a prescribed superannuation fund or are domiciled in PNG. A company is a resident for tax purposes in PNG if it is incorporated in PNG; or if not incorporated in PNG, carries on business in PNG and has its central management and control in PNG or its voting power is controlled by PNG resident shareholders.

30. Resident companies are taxed at 30% while non-resident companies are taxed at 48%. For individuals, a progressive rate tax is applicable based

2. The Income Tax Review Tribunal is a quasi-judicial independent body set up outside of the Internal Revenue Commission where a taxpayer can make an appeal against the decision of the Commissioner General. The Review Tribunal is set up under the provisions of section 240 of the Income Tax Act.

on the level of income and number of dependents. A detailed tax chart is issued in this regard by the Commissioner General whenever there are amendments made to the schedule. For income earned from mining, petroleum and gas activities, developers are required to pay tax at the rate of 30% company income tax.

Commercial Law and Registry

31. The Companies Act, 1997 (as amended in 2014) is the primary governing law for the incorporation of companies in PNG. Besides this, the Business Names Act 2014, the Business Groups (Incorporation) Act 1966, the Associations (Incorporation) Act 1966, the Co-operative Societies Act and the Partnership Act are some other commercial laws governing businesses in PNG.

32. The Investment Promotion Authority (IPA) is the primary statutory authority for the business and corporate entities in PNG. The IPA was established under the Investment Promotion Authority Act (1992) (IPA Act) with the primary objective of promoting and facilitating business and investment in PNG. Besides this, the IPA also has certain regulatory functions in respect of businesses and corporations. The IPA is headed by a Managing Director who is appointed by the Minister of Commerce and Industry. The Managing Director administers the IPA Act 1992 and administratively heads the five main divisions of the IPA. The regulatory functions of the IPA are performed by the Intellectual Property Office and the Registrar of Companies. The five main divisions of IPA are: Corporate Services Division, Investment Servicing and Promotion Division, Intellectual Property Office, Business Registration and Certification Division (BRCD) and Securities Commission Division. The Office of the Managing Director is the Executive Services Unit and its mandate is to provide executive services for the Managing Director and act as the IPA Board's secretariat.

33. Of the five divisions, the BRCD functions as the office of the Registrar of Companies responsible for the registration of all companies and businesses in PNG. The BRCD has three units – the Accounting Standards Board (ASB), Legal and Compliance Unit (LCU) and the Foreign Certification Unit (FCU). The ASB is the accounting standards setter, the LCU carries the mandate of implementing the legal, compliance and enforcement powers of the Registrar of Companies and the FCU issues certification permitting foreign enterprises to carry on business in PNG.

34. The Registrar, as stipulated by the Business Names Act 2014, Business Groups (Incorporation) Act 1965, Associations (Incorporation) Act 1966, and the Companies Act 1997 (as amended 2014), establishes the registries and registers Business Names, Business Groups, Associations,

Local Companies and Foreign Companies (called Overseas Companies in PNG). Each piece of legislation grants the Registrar of Companies powers of supervision and compliance on statutory obligations under the relevant law.

Financial services sector

35. PNG has four licensed commercial banks – Bank South Pacific (BSP); Australia and New Zealand Banking Group (PNG) Ltd; Westpac Bank (PNG) Ltd and Kina Bank Ltd. Out of these, two are foreign banks licensed to carry out commercial operations in PNG and two are domestic banks incorporated in PNG. There are 13 licensed financial institutions and 22 savings and loans entities. Licensed financial institutions include credit providers that also provide limited deposit facilities such as term deposits and some microfinance entities. The largest bank in the country is BSP, with total assets at the end of September 2015 at PGK 23 bn (EUR 6.14 bn), or 53.5% of the total banking assets. This was followed by ANZ with 26.7% and Westpac with 16.2%. Kina Bank had 3.6% of the market share. The financial sector contributes less than 4% of GDP. Financial Institutions are regulated by the Bank of Papua New Guinea, i.e. the Central Bank of PNG. Banks and Financial Institutions Act 2000 and Banks and Financial Institutions Regulations 1982 govern all financial institutions in PNG. PNG only has a local banking system and is not an international financial centre.

Anti-Money Laundering Framework

36. PNG is a member of the Asia-Pacific Group on Money Laundering (APG) since 2008. PNG's first mutual evaluation was in 2010 which was adopted by APG in 2011. PNG had received a rating of “Non-Compliant” on Customer Due Diligence requirements and “Partially Compliant” on beneficial ownership information on legal persons and arrangements in respect of the respective FATF recommendations under this mutual evaluation report. As PNG had failed to progress or work on improving its ratings, PNG was referred to the Financial Action Task Force (FATF) International Co-operation Review Group process and “grey listed” in February 2014. Since then, PNG took measures to comply with the FATF's recommended action plan and requirements to align PNG's AML/CTF regime with international standards and was delisted in June 2016. PNG established the National Co-ordinating Committee on AML/CTF. The Anti-Money Laundering and Counter Terrorist Financing (AML/CTF) suite of laws were passed in July 2015 and gazetted in February 2016. These laws are designed to meet the FATF standards. PNG also established the Financial Analysis and Supervision Unit (FASU) within the Bank of Papua New Guinea. FASU is now PNG's Financial Intelligence Unit (FIU) and replaces the old FIU

(which used to be housed under the Royal PNG Constabulary). In addition, FASU is also the sole regulator for AML/CTF purposes of supervising financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs).³

Recent developments

37. PNG authorities have informed that the IPA has undertaken a review of the Associations Incorporation Act 1966 (AI Act) and is in the process of working on the draft of a new Associations Incorporation Act. PNG believes that the new law, once passed, will address the deficiencies in respect of identity of members and beneficial owners and maintenance of accounting records as required by the standard.

38. PNG has also informed that the Investment Promotion Authority Act, 1992 is also being examined with a view to introduce the requirements of maintaining beneficial ownership information. The IPA is working to improve the Online Registration System for all entities with a view to use the same more effectively for supervision and compliance.

39. While PNG authorities had undertaken an awareness raising campaign in 2017 to ensure that companies comply with their annual return filings with the ROC, no actions had been taken against non-compliance. Since November 2019, the ROC has worked towards the process of de-registration of non-compliant companies identified in the past. About 5 000 companies were notified for de-registration and were given a month's time for compliance. From January 2020, ROC has commenced the process of de-registering the companies that failed to respond to the notice of deregistration.

3. DNFBP is defined in the AML law in line with the FATF definition. Refer to paragraph 82 for further details.

Part A: Availability of information

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

A.1. Legal and beneficial ownership and identity information

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

41. PNG laws allow for the incorporation of local companies as well as registration of overseas companies that intend to carry on business in PNG. Further, PNG law allows for the incorporation of associations, which are legal persons in PNG. Partnerships and trusts can also be formed in PNG and are legal arrangements. Other than these legal entities and arrangements, PNG has provisions for incorporation of Business Groups under the Business Groups Incorporation Act (an Act to promote the participation of local people in the national economy) and co-operative societies under Co-operative Societies Act.

42. While PNG's Companies Act ensures the availability of legal ownership information for local companies, the Associations Act does not adequately ensure the same in the case of associations. In the case of partnerships, identity information would be available under the requirements of the Business Names Act and on account of registration with the Internal Revenue Commission (IRC) for tax purposes. Trusts are recognised under different laws but there is no one single law governing their formation. Since the formation of trusts derives from the English common law principles, trustees would ordinarily have information on the settlor and beneficiaries of the trust. PNG authorities have informed that trusts are fairly uncommon in PNG. The AML law considers the activity of acting as a trustee or arranging for someone to act as a trustee as that of a Trust or Company Service Provider (TCSP) and makes such a person AML obliged. The customer due diligence (CDD) requirements mandate the identification of the settlor, trustee, beneficiary or any other persons in similar roles or any other parties managing or controlling a trust.

43. PNG law does not permit the issuance of bearer shares. Nominee shareholding is recognised under the Companies Act and it is possible for a person to hold shares in a company on behalf of another person. However, according to the AML/CTF Act, the rendering of nominee-shareholding services is considered to be an activity that qualifies the service provider to be a Trust or Company Services Provider (TCSP) and such a person falls under the obligations of the AML/CTF Act of conducting CDD on its client and keeping beneficial ownership information about the client. While this should ensure that nominee shareholders maintain identity details of those on whose behalf they act, FASU has very recently started monitoring and enforcing the AML law for DNFBPs. Since there is no requirement under the Companies Act that nominee shareholders are identified in the share register or disclosed to the Registrar, FASU's supervision and enforcement will need to ensure that the standard is met.

44. The only source of beneficial ownership information for all legal entities and arrangements is the AML Law in PNG. The AML law is applicable to financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), including lawyers and accountants when they perform a specified set of activities, and beneficial ownership information is required to be kept in respect of all their customers. The definition of beneficial owner as incorporated in the AML law is in line with the standard as regards legal entities and provides for identification of natural persons based on direct or indirect ownership of more than 25% or through direct or indirect control and covers situations where such control is exercised through means other than ownership. However, the definition does not provide for the three-step cascade approach for identification of beneficial owners in the case of legal persons and where a natural person cannot be identified based on the ownership or control, there may be a gap in identifying beneficial owners in such situations. Since partnerships are legal arrangements, there would be a gap in identification of beneficial owners if the ownership threshold is applied whereas all the natural persons that have a stake in the partnership (regardless of an ownership threshold) should be identified.

45. The AML-obliged persons must keep information up to date. The wide scope of the coverage of the AML/CTF Act increases the likelihood that beneficial ownership information on companies should be available through a wide variety of AML obliged persons in PNG. However, DNFBPs have been brought under the scope of AML/CTF Act relatively recently from 2016 and may not be accustomed to identifying beneficial owners in line with the definition. PNG needs to ensure that all AML-obliged persons fully and consistently understand the definition together with the idea of “control through other means” and are able to identify beneficial ownership information in respect of trusts in line with the standard. Furthermore, where a legal person or an arrangement does not engage an AML-obligated person,

beneficial ownership information may not be available. This is a concern as a significant number of companies are inactive and it is unclear if all of them have a bank account or have been engaging any AML-obliged person on a continuing basis. PNG would need to clean up its Companies' Register to remove such inactive entities.

46. Supervision, oversight and enforcement are primarily the responsibility of the Registrar of Companies for legal ownership details of legal persons and arrangements. The IRC complements the Registrar in this function to a limited extent. For ensuring the availability of beneficial ownership information, the primary supervision, oversight and enforcement lies with the Financial Analysis and Supervision Unit (FASU) housed in the Central Bank. Supervision and enforcement is currently not robust enough and is a key issue identified in relation to the availability of legal and beneficial ownership information in line with the standard.

47. During the current peer review period, PNG received five requests for information but none of them related to ownership and identity information in respect of any legal entity or legal arrangement. Hence, the availability of such information could not be tested in practice for EOIR purposes.

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

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
Deficiencies identified	Beneficial ownership information would not be available for relevant entities and arrangements when they do not engage the services of an AML-obliged person. There is no obligation in law for all legal persons and arrangements to always engage an AML-obliged person.	PNG should ensure that up-to-date beneficial ownership information is always available on all legal entities and arrangements.

	<p>PNG has issued binding guidance to all AML-obliged persons for carrying out customer due diligence and identification of beneficial owners based on the AML law. While the definition of beneficial owner in the AML law is broadly in line with the standard, in the case of legal persons, there is no requirement to identify the senior management person as a default beneficial owner when beneficial owners cannot be identified on the basis of ownership or control.</p> <p>Further, partnerships are legal arrangements in PNG and the definition of beneficial owners for legal arrangements (or unincorporated entities) applies an ownership threshold of 25% whereas all the natural persons that have a stake in the partnership (regardless of an ownership threshold) should be identified.</p>	<p>PNG should make suitable changes to the law or the guidance to ensure that AML-obliged persons accurately identify beneficial owners of legal persons and legal arrangements in line with the standard.</p>
	<p>The Associations Act does not require identification of all members or founders or beneficiaries of the association. Such information may not be available where the association does not engage an AML obliged person.</p>	<p>PNG should ensure that legal and beneficial ownership information on associations is always available.</p>
<p>Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement</p>		
<p>Practical Implementation of the standard</p>		
	<p>Underlying Factor</p>	<p>Recommendations</p>
<p>Deficiencies identified</p>	<p>A significant number of companies in the Companies Register are inactive and due to technical problems with the Online Registration System, the Registrar has been unable to clean up the Register by dissolving or striking-off such inactive companies. This raises concerns about the availability of beneficial ownership information as these companies are unlikely to have a bank account or any engagement with an AML-obliged person. Only recently the Registrar has started taking steps to strike-off inactive companies.</p>	<p>PNG should ensure that the process of cleaning up the Companies Register is carried out to remove inactive companies in order to ensure that all existing companies in PNG have reliable and up-to-date legal and beneficial ownership information.</p>

	<p>Although penal provisions exist for ensuring compliance under the Companies Act, the Business Names Act, the Income Tax Act and the AML/CTF Act, there is inadequate monitoring, supervision and enforcement by the authorities concerned for ensuring the availability of legal and beneficial ownership information.</p>	<p>PNG is recommended to actively supervise, monitor and sanction non-compliant legal entities and arrangements under the respective laws to ensure the availability of legal and beneficial ownership information.</p>
	<p>Although PNG's AML/CTF Act 2015 classifies acting as a nominee shareholder or arranging for someone to act as a nominee shareholder as an activity of Trust or Company Service Provider who is AML-obliged and would need to maintain identity information on whose behalf it is acting, FASU has only recently started monitoring and supervision of DNFBPs. Since there is no requirement in the Companies Act that nominee shareholding is reflected in the share register or communicated to the Registrar, close monitoring of the implementation of the requirements under the AML/CTF Act is important to meet the standard.</p>	<p>PNG should monitor the implementation of the AML/CTF Act and ensure that all persons providing nominee shareholding services are always identified and comply with their obligations of maintaining identity information on the person(s) on whose behalf they are acting.</p>
<p>Rating: Partially Compliant</p>		

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

49. As of December 2018, the following types of companies were registered with PNG authorities:

- private companies – about 56 000 locally incorporated private companies were registered with the Registrar. Of these, 33 930 were registered with the IRC
- public listed companies – 16 public listed companies were registered with the Securities Commission and listed on PNG's stock exchange and all are registered with the IRC
- overseas companies – 1 191 overseas companies were registered with the Registrar. Out of these, 114 were registered with the IRC.

Legal ownership and identity information requirements

50. The availability of legal ownership information on companies incorporated in PNG is primarily ensured by the requirements prescribed under the Companies Act 1997. Further, the Income Tax Act has recently been amended to require that all companies registered with the Registrar must register with the IRC by obtaining a Taxpayer Identification Number (TIN) and this registration process also requires submission of the legal ownership information to the IRC. AML law also allows for the identification of legal ownership to the extent the entity has a continuous relationship with an AML-obliged person in PNG. The following table shows a summary of the legal requirements to maintain legal ownership information in respect of companies.

Legislation regulating legal ownership of companies⁴

Type	Company law	Tax law	AML law
Private Company	All	All	Some
Public/Listed Company	All	All	Some
Overseas Companies (sufficient nexus)	All	All	Some

Companies Act requirements

51. The Companies Act 1997 (as amended in 2014) is the governing law for all companies incorporated in PNG. The provisions are applicable to private as well as public/listed companies. As noted above in paragraph 32, the Business Registration and Certification Division (BRCD) of the IPA functions as the office of the Registrar of Companies and administers the Companies Act. The divisional director of the BRCD is also the Registrar of Companies and is assisted by two Deputy Registrars to perform tasks mandated under the Companies Act and the business laws that the Registrar administers.

52. Sections 11 to 15 of the Companies Act provide for the **incorporation** of new companies. Every company incorporated in PNG must have a name, one or more shares, one or more shareholders having limited or unlimited liability for the obligations of the company, and one or more directors. Section 128 of the Companies Act stipulates that directors can only be natural persons, and at least one should be ordinarily resident in PNG. This ensures that there is at all times a representative of the company in PNG.

4. “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.

53. Any person, either alone or together with another person, may apply to the Registrar of Companies for registration of a company under the Companies Act. A notice reserving a name for the proposed company must be filed with the application, so as to avoid two companies having the same name. The application for incorporation must state the number of persons named as directors of the proposed company, the number of persons named as secretaries (if any), the postal address of the company, the registered office of the company in PNG, and the address for service of documents of the proposed company in PNG.⁵ The prescribed registration form requires that names of all directors and shareholders be provided at the time of registration. Once a properly completed application has been filed, the Registrar registers the company and issues a certificate of incorporation to the company.

54. Section 65 of the Companies Act requires the Registrar of Companies to be notified of any issued share that has been **transferred** to another shareholder within one month of the date of the transfer, unless the company has a listing agreement with a stock exchange or the company is about to file its annual return under section 215 within a month from the date of such transfer. Section 215 of the Companies Act requires filing of an annual return by all registered companies with the Registrar. Among other things, the annual return requires that the names and addresses of all shareholders (including any changes to the shareholding) be provided to the Registrar by each company.

55. Sections 67 and 68 of the Companies Act require that every company maintain a **share register** in PNG that records the shares issued by the company.⁶ The names of persons who are, or who have been within the last ten years, shareholders of the company must be recorded in the share register with their latest known address. Further, the number of shares of each class of shares held by each shareholder must be recorded in the share register with all dates of issue of shares to each shareholder as well as dates of redemption of shares or transfer of shares by one shareholder to another within the previous ten years. The updated share register is expected to be maintained by the company all through its existence at its registered address.

56. Since 2013, PNG has introduced an Online Registry System (ORS) for facilitating online applications for incorporation as well as for submission

5. Section 161 of the Companies Act requires that the registered office of a company must be in PNG. Further, section 167 requires that the address for service must also be in PNG.

6. Listed companies, if their constitution expressly permits so, may keep their share register in two or more parts at different places. A notice of the location of each register must be delivered to the Registrar within one month after the share register is divided or any place where a register is kept is altered. A copy of the share registers must be maintained with the principal register.

of mandatory annual returns by incorporated companies. The ORS is running in parallel to the manual paper filing system and companies have the option of filing their incorporation application and annual returns in either form.⁷ The share register can be maintained by an authorised agent of the company who maintains all these details and is authorised to file details on the ORS on behalf of the company. Besides the annual returns on the ORS, the authorised agents are expected to update information with the ROC whenever there is a change to the shareholders, shareholdings, or secretaries of a company, on whose behalf they are authorised to act. If an agent has been authorised as a user of a company's online account on the ORS then the agent is required to file all documents for the company.

57. The Registrar maintains information on legal ownership on the ORS. The ORS is designed to maintain all filed documents that are lodged with the ROC. PNG authorities informed that since the introduction of the ORS in 2013, they have not removed any information recorded on the system. PNG authorities have confirmed that all information will be retained all through the existence of a company and for at least seven years from the date a company ceases to exist. This is in line with the retention requirements under the standard. PNG authorities have also confirmed that all pre-existing physical records filed with the ROC are also maintained manually and have not been removed. The IPA has an asset management system through which it has a warehouse that stores all files that were physically lodged with the ROC. All physical files that were lodged prior to inception of the ORS in 2013 are still maintained by the IPA.

58. For companies that cease to exist, the ROC maintains past records of such companies. There are five ways under section 366 of the Companies Act that a company can be removed from the register in PNG: (i) amalgamation/merger, (ii) a company that has ceased to carry on business and files for voluntary closure, (iii) through the Court, (iv) liquidation, and (v) deregistration (section 366(f)(g)). PNG authorities have informed that under section 372 of the Companies Act, the ROC is expected to represent a company that has ceased to exist and hence, maintains all such companies' available records to fulfil its obligations.⁸ Further, once a company ceases to exist, the liquidator

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7. As of now, about 50% of all filings is done through the ORS while 50% of filings are through paper applications and returns, which are scanned and manually entered into the online system.
 8. PNG has informed that section 372 applies to defunct companies or companies removed from the register. The Registrar can represent such a company or its liquidator for a period of seven years after it ceased to exist. During this period, those transactions that are legally binding on the de-registered company that it would have had to perform if it had continued to exist, and those non-discretionary administrative acts that are needed to complete such transactions, are

is expected to retain all company records for seven years after liquidation on behalf of the company. For companies that are struck-off, the legal ownership information submitted earlier remains in both the online and offline registry. The IPA maintains a warehouse that physically stores the oldest files submitted to it.

Tax law requirements

59. All legal entities, including companies, are required by ITA to be registered at IRC and to provide legal ownership information upon registration, update records upon changes and provide legal ownership information on a regular basis.

60. Section 10C of the ITA states that entities (and arrangements that are required to register under the Companies Act, Associations Act, Business Names Act, Business Groups Incorporation Act and Co-operative Societies Act) must **register** with the IRC for a TIN. For registration with the IRC, companies must attach a copy of their “Certificate of Incorporation” (as issued by IPA) to their TIN Registration Forms. Articles of incorporation are also required to be submitted. The TIN registration form requires the names and TIN details of the shareholders together with the details of their ownership. IRC has a TIN registration counter at the IPA to provide ready access to newly registered companies to obtain their TIN. Further, financial institutions, in particular the four main commercial banks, are required to seek TIN certificates from persons wishing to open bank accounts for their business. If the TIN is not provided, banks are required to decline the request for opening of bank accounts. This requirement has been introduced in Banking Regulations for CDD in January 2018. Banks now require TINs to be submitted by all their customers (including existing customers who have not submitted TIN in the past). PNG has further informed that it is a practice now that every company director must provide proof of government-recognised identification (either a passport or driver licence or a national identity card) before opening a company bank account for CDD purposes.

61. The ITA was amended at the end of 2017 and new section 10F requires that taxpayers advise the IRC of any changes that they have made to their business activities, address, constitution, banking details and other details as required by the Commissioner General. PNG authorities submit that this provision implies that companies can be required to update legal ownership information as required by the Commissioner General. Such updates must be made within 28 days of the changes being made by the entity or as

performed by the Registrar. For instance, Registrar may be involved in settling any outstanding liabilities, or attending to filing obligations at IRC or IPA, if any are pending.

per the time granted by the Commissioner General when such details are specifically requested. However, a formal notification from the Commissioner General requiring all taxpayers to systematically update all ownership details filed at the time of TIN application is yet to be issued. PNG should issue the notification from the Commissioner General of the IRC under section 10F of the ITA to ensure that all taxpayers update any changes to their legal ownership promptly with the IRC (see Annex 1).

62. Further, section 223 of the ITA requires annual filing of Income Tax Returns by all registered taxpayers. It states here that any person that is required by the Commissioner General to lodge an annual return shall do so in the appropriate form following a notice in the National Gazette by the Commissioner General. This is done in January every year and states the dates for lodgement for each tax type throughout the year. All classes of taxpayers so notified are required to file tax returns regardless of having taxable income or not. The notification requires all resident companies having any income from any source to file tax returns. Non-residents having any PNG-sourced income are also required to file tax returns. The tax filing form for companies seeks several details regarding transactions with shareholders and directors of a company. Hence, updated legal ownership information is available through the tax returns to the extent that a company has such reportable transactions. Nevertheless, as noted subsequently under A.2, the tax filing compliance rates are not optimal (about 10% for companies) and this could potentially affect the availability of updated legal ownership information with the tax authorities.

Foreign companies

63. PNG business laws provide for two types of registration as “Foreign Companies”. First, there are locally incorporated companies under section 14 of the Companies Act. There is a provision under the IPA Act for certifying “foreign enterprises” that carry on business in PNG. According to the IPA Act, a foreign enterprise is defined as a business entity which is wholly owned or that is 50% or more owned or controlled and managed by non-citizens. If a locally incorporated company falls under the definition of “foreign enterprise”, it is required to obtain a certificate under section 28 of the IPA Act to carry on business in PNG from the Foreign Certification Unit (FCU). Such “foreign companies”, for the purposes of this report are “local companies” incorporated in PNG and are subject to all the obligations as prescribed under the Companies Act (see above).

64. Second, foreign companies incorporated outside PNG but carrying on business in PNG are also required to obtain a certificate under section 28 of the IPA Act to carry on any business activity in PNG by filing Form 3 with the IPA. Such foreign companies must first register as “Overseas Companies”

under section 386 of the Companies Act, indicating their country of incorporation, business address in PNG and details of directors. PNG authorities informed that Overseas Companies are required to maintain their legal ownership and identity information through the IPA Online Registry System under sections 65, 67 and 164 of the Companies Act and by lodging with the FCU, any change in ownership information and variation of business activities under sections 32 and 33 of the IP Act 1992 by filing Form 5 with the IPA. Where there is a substantial change⁹ in ownership of an enterprise, the enterprise must notify the IPA within 14 days from the date of change. Failure to inform the FCU about the change in shareholding or beneficial ownership after 14 days, can lead to imposition of penalties on the foreign company and such a company could be required to obtain the certificate again. Overseas companies are also required to file Annual Returns with the ROC pursuant to section 391(1) of the Companies Act by lodging Form 52. If there is a change in shareholding or director information of an overseas incorporated company then relevant forms 10, 10A, 15 and 16 should be attached with the annual return specifying the details of changes to shareholding.

65. Registration under the Income Tax Act for the purposes of obtaining TIN requires provision of legal ownership information by all entities. Where foreign companies have any income sourced from PNG they are liable to file tax returns and hence, their legal ownership information would be available with the IRC. Section 10F of the Income Tax Act applies similarly to foreign companies as it applies to domestic companies. Hence, taxpayers are obliged to ensure the accuracy of all information submitted to the IRC and are obliged to update such information whenever there is a change, although as noted earlier, specifically in respect of legal ownership updates, the Commissioner General is yet to issue a public notification.

66. To the extent that foreign companies engage AML-obliged persons for services like maintenance of accounts or for legal purposes or to have a bank account in PNG, legal and beneficial ownership information would be available as the AML/CTF Act explicitly requires the availability of legal ownership information. This is in line with the requirements of the standard.

67. In conclusion, legal ownership information on foreign companies with sufficient nexus in PNG is required to be available in PNG under the requirements and filing obligations imposed by the Companies Act, the IPA Act, the ITA and the AML/CTF Act.

9. Substantial change would mean a change of at least 10% in the shareholding of the foreign enterprise within a year, or a change of 25% in ownership since its date of certification as a foreign enterprise in PNG.

Legal ownership information – Enforcement measures and oversight

68. Until 2014, the Registrar did not have sufficient punitive powers to sanction non-compliant companies. Accordingly, the Companies Act was amended in 2014, to provide for sanctions and penalties under sections 413 and 414 for non-compliance with the regulatory requirements under the Companies Act. Failure to comply with the requirements of maintaining the share register as prescribed under section 67 leads to the imposition of a fine of PGK 10 000 (EUR 2 550) on the company as well as on each of its director. Similar fines are imposed in case the share register is not maintained in PNG or where the share register is divided into two or more parts and the Registrar is not kept informed about the location of the parts of the register.

69. PNG authorities have informed that the Investor Service and Promotion Division (ISPD) of the IPA conducts a Business Database survey in the country on an annual basis. This exercise is aimed to ascertain businesses' facilitation of investment in the country and compliance with the foreign certification in respect of the activities that the company has registered to undertake. Foreign companies must demonstrate that they are actually conducting those activities within 6 months of doing business in PNG. In conjunction with the Business Database survey, the ROC also conducts Spot Inspections on companies to verify their compliance with the Companies Act, the IP Act and various Acts that the IPA administers.

70. PNG authorities have informed that IPA has so far conducted four organised spot-inspections in collaboration with other government agencies like the IRC and the Immigration and Citizenship Authority (ICA) under the Joint Agency Spot Check Operations (JASCO) within the last 18 months. The JASCO collaboration is a joint inspection led by the ICA that through intelligence gathering conducts spot inspections of individuals and companies and conducts joint inspections and investigations and take penal actions under each agency's laws.

71. Further, a few compliance audits for a selected group of entities have also been conducted. PNG has informed that in 2017, a total of 65 companies were identified as non-compliant under the Investment Promotion Act in terms of section 32 for non-updating of changes of shareholding and beneficial ownership in two provinces in PNG. Of the 65 companies, 44 complied and paid outstanding penalties of K 139 400 (EUR 37 000) while the remaining 21 overseas companies remained non-compliant and are being pursued by IPA. In 2018, IPA conducted spot inspections on about 220 companies in three different provinces. Non-compliance was noted in 165 cases during these spot inspections and penalties were imposed. PNG is following up with these non-compliant companies in respect of the imposed penalties. Spot inspections for 2019 was carried out in respect of 779 companies of which penalties were imposed on 420 companies for non-compliance and the ROC

is pursuing the errant companies for compliance. Non-compliance noted in these inspections pertained to different types of violations under different business laws. PNG was unable to provide specific statistics with respect to different types of violations observed in respect of non-compliance with updating ownership information with the ROC.

72. Although PNG has made some concerted efforts to supervise and enforce the legal requirements in respect of maintenance of ownership information, these supervisory efforts have not been commensurate with the number of entities that the IPA needs to monitor under different laws and especially in respect of ensuring the availability and provision of updated ownership information.

73. PNG explained that for monitoring compliance with the requirements of the IPA Act, instead of manual checks, plans had been put in place to leverage on an automated monitoring system. However, the envisaged monitoring system could not be realised. It was learnt during the on-site that an Automatic Compliance Module had been conceptualised as part of the ORS in 2013. This would have helped in the identification of companies that were not complying with the regulatory requirements of filing the required details and documents as required by the Companies Act. The Module was specifically designed to monitor the filing of annual returns with necessary details by companies. However, due to technical problems this module was never operationalised. Prior to the ORS, the Registrar's office was monitoring the compliance of companies with the Companies Act manually. Hence, pre-2013, non-compliant companies, especially those that were consistently not filing annual returns used to be identified and followed up with. If non-compliance was noted with the follow-ups, the companies were struck off from the Register. Since the new system came into effect, the entire process was automated and the Registrar's office has been unable to manually strike-off inactive companies. This has led to a significant number of companies being non-compliant and inactive. PNG estimated that about 90% of the 57 000 companies in the Registrar's ORS database were non-compliant and presumably inactive. PNG authorities informed that recently in order to address the issue of inactive companies, the Registrar's office identified and listed all non-complying companies on the website of the IPA. Within two weeks, about 8% of the companies complied by filing their annual returns. On 7 November 2019, the IPA issued a notice under section 365 of the Companies Act listing 5 000 companies that were inactive from the date of incorporation to the year 2000 to lodge their annual returns. Companies were issued notice to comply by 16 January 2020. PNG authorities have informed that the ROC is now in the process of deregistering the inactive companies that have not responded to the November notice of the ROC. Companies that have been inactive and are on the list will have to file their outstanding annual return fees from the year they defaulted under section 215 of the Companies Act inclusive of the penalties in order to be removed

from the deregistration list. Once de-registered, such companies would lose their legal personality.¹⁰

74. Under the tax law, failure to obtain a TIN under section 10C leads to a penalty of PGK 100 (EUR 25) for every month of delay in obtaining the TIN as provided for under section 10I of the ITA. Since section 10C (since January 2018) requires every new entity registering with the Registrar which may have taxable income in PNG to obtain a TIN within 21 days of commencing activity in PNG, the penalty is applicable almost since registration with the Registrar. Further, failure to comply with the requirements of section 10F to update information with the IRC attracts penalty of PGK 500 (EUR 127).

75. The Tax Authorities are not directly involved in the monitoring of the availability of legal ownership information for companies and there is no active monitoring in this regard. The reliance is primarily on registration information provided by the companies at the time of obtaining TIN and on their informing the tax authorities of any changes.

76. Overall, the monitoring and enforcement in respect of ensuring the availability of legal ownership is under the purview of the Registrar. However, actual supervision and monitoring was found to be not commensurate with the number of registered entities especially with the non-activation of the Automated Compliance Module of the ORS and no concrete actions taken to ensure that non-compliant entities file their annual returns although such actions were planned. Hence, it is recommended that PNG supervise and monitor non-compliant companies and put in place a programme to clean up the Companies Register for ensuring the availability of legal ownership information for all companies at all times. Further, penal powers should be used effectively to ensure compliance with the requirements to maintain legal ownership information.

Availability of legal ownership information in practice in relation to EOI

77. During the peer review period, PNG did not receive any request for legal ownership information on a company. Where legal ownership information is in the ORS or was filed at the time of registration with the Registrar, such information would be available. However, whether such information is up-to-date cannot be ascertained considering the significant levels of non-compliance with the requirements to file annual returns with the Registrar

10. The Companies Act, section 378, provides for restoration of a de-registered company within six years from such de-registration. However, for such re-registration, the company would need to ensure full compliance with all the provisions of the Companies Act with which it had failed to comply. This includes submission of all missing records it was required to maintain and file with the ROC.

(as noted in paragraph 73 above). Such information should be available with the companies themselves and for the purposes of exchange of information, the Competent Authority could obtain legal ownership information from companies as well in order to ensure the accuracy of such information before exchanging with the treaty partner.

Availability of beneficial ownership information

78. Beneficial ownership information on all companies incorporated in a jurisdiction should be available in that jurisdiction. In PNG, this aspect of the standard is met only through the requirements under the AML/CTF Act. The Companies Act and the Income Tax Act do not have any requirement to maintain beneficial ownership information and to provide it to the ROC or IRC.

Legislation regulating beneficial ownership information of companies

Type	Company law	Tax law	AML law
Private Company	No	No	Some
Public/Listed Company	No	No	Some
Overseas Company (tax resident)	No	No	Some

Anti-Money Laundering law requirements

79. The main AML law in PNG is the Anti-Money Laundering and Counter Terrorist Financing Act 2015 which came into effect on 20 January 2016.

80. Section 5(1) of the AML law defines “beneficial owner” to mean a natural person who a) has ultimate control, directly or indirectly, of a customer, or b) ultimately, owns, directly or indirectly, a customer. Further, section 5(3) clarifies, for the purposes of the definition of “beneficial owner”, that “control” includes control as a result of, or by means of trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights, and includes exercising control through the capacity to make decisions about financing and operating policies. Similarly, “owns” for the purposes of the “beneficial owner” definition has been clarified to mean ownership, either directly or indirectly, of 25% or more of a person or unincorporated entity.

81. The definition of beneficial ownership provided for in the AML law is broadly in line with the standard. The definition of control does, in a way, provide for control through “other means” by way of trusts, agreements, arrangements, understandings and practices regardless of their legal enforceability. PNG authorities have informed that AML-obliged persons must always record beneficial owners of their customers, failing which, as per the

requirements of section 19 of the AML/CTF Act, they cannot proceed with establishing customer relationship or must discontinue an existing relationship. Nevertheless, there is scope for further guidance. For instance, there could be situations where beneficial ownership is not established in the case of a legal person like a company based on ownership due to the threshold of 25% provided for in law or based on other type of control. In such situations, there is no provision that the AML-obliged person should record senior management personnel as beneficial owners as a default position. In other words, the three-step cascade approach is not fully provided for. Although FASU has issued guidance on beneficial ownership and customer due diligence to all financial institutions and DNFBPs in May 2019 and the guidance is binding, the guidance does not provide for the full cascade approach as recommended in the FATF guidance. Hence, it is possible that no beneficial owner be identified for a given entity and it is recommended that PNG make suitable changes to the law or the guidance in order to ensure that beneficial owners of legal persons are always identified in line with the standard.

82. The AML law imposes the obligation to maintain beneficial ownership information about their customers on Financial Institutions and DNFBPs. Section 52(e) of the AML/CTF Act defines DNFBPs to include a lawyer, notary public, other independent legal professional or an accountant when preparing for, engaging in or carrying out one or more transactions for a client concerning any of the activities of buying and selling real estate, or managing client money, securities or other funds; or managing bank, savings or securities accounts; or organising contributions for the creation, operation or management of bodies corporate; or creating, operating or managing bodies corporate or unincorporated entities; or buying or selling businesses. Section 52(f) further expands the scope of AML obligations to any person who provides any of the services that Trust or Company Service Providers (TCSPs) provide. The scope of TCSPs covers any person engaged in forming, registering or managing a body corporate; or acting as, or arranging for another person to act as a director or secretary or other office holder of a company, or a partner of a partnership, or in a similar position for a body corporate; or providing a registered office address; or acting as, or arranging for another person to act as a trustee of a trust or a similar unincorporated entity; or acting as, or arranging for another person to act as a nominee shareholder for another person. The scope of application is thus very broad.

83. All AML-obliged persons are required to carry out CDD on their customers. The law provides for simplified, standard and enhanced CDD. PNG authorities informed that standard or enhanced CDD would be performed while taking on new customers and simplified CDD would ordinarily be performed in limited circumstances where the customer concerned is not resident of a high risk country, or is considered low-risk and no money laundering or terrorist financing is suspected. Beneficial ownership information is required to be

obtained under all types of CDD. Furthermore, the AML law requires AML-obliged persons to conduct on-going CDD as well on an on-going basis in respect of existing customers. (For detailed discussion, refer to discussion under element A.3.) The AML obligations require the retention of identity information together with the supporting documentation for at least seven years.

84. PNG authorities are of the view that beneficial ownership information would be available on companies due to their interaction with at least some AML-obliged persons. Although there is no obligation in law for a company to always have a bank account, PNG authorities believe that companies would do so for conducting business in PNG. Further, they would engage an AML-obliged person such as a lawyer or an accountant or someone providing TCSP services.

85. While it is true that whenever a company has a bank account or engages an AML-obliged person, beneficial ownership information should be available in PNG, there is no legal requirement to always have a bank account or to always engage an AML-obliged person. No statistical information could be provided by PNG to suggest that all companies have a bank account. In addition, there is a significant number of inactive companies in PNG who may not be doing any business in PNG. While PNG authorities believe that most of these companies have beneficial owners who are the same as the legal owners, supporting information in this regard was not available. Furthermore, even if an AML-obliged person has been engaged by a company, unless it is an on-going relationship (like having a continuing bank account), up-to-date beneficial ownership information may not be available at all times. Hence, it is recommended that PNG ensure that suitable obligations are introduced to ensure the availability of beneficial ownership information on all companies in PNG.

Nominees

86. Nominee shareholding is permitted under PNG law. The Companies Act acknowledges that shares can be held on behalf of another person. PNG authorities were unable to provide definitive information on the extent of nominee holding of shares. There is nothing explicitly mentioned in the Companies Act that requires that any person holding shares of a company on behalf of another as a nominee must identify and disclose this either in the company's share register or with the ROC.¹¹

11. Nominee ownership can be known in some limited circumstances. For instance, section 125 read with section 124 of the Companies Act exclude persons acting as nominees from having a “relevant interest” in the company for the purposes of section 126, which deals with disclosures of share dealings of directors of a company. Under such situations, nominee shareholders would be identified and the persons on whose behalf they are acting may also be known.

87. The AML law substantially addresses the issue of identification of persons on whose behalf a nominee is holding shares. Trust or Company Service Providers (TCSPs), and any person or unincorporated entity providing one or more services that are provided by TCSPs, are covered by the scope of the AML law and are required to maintain information on their customers under CDD requirements. The definition of TCSP is broad and covers any person or an unincorporated entity which provides one or more of the services listed in the definition including “acting as, or arranging for another person to act as, a nominee shareholder for another person”. Hence, any person providing nominee services would effectively be under the obligations of the AML law. Thus, nominees would have to maintain identity information on those persons on whose behalf they are acting. Section 57 of the AML/CTF Act requires all persons rendering nominee services to register with FASU and penalties are prescribed for non-compliance.

88. However, the AML law has been put in place only since 2016 and FASU is only beginning to supervise and monitor professionals like lawyers’ and accountants’ obligations pursuant to the legislation. It was learnt during the on-site that while there are no specifically designated TCSPs, lawyers and accountants do provide one or more of the services mentioned in the list of TCSP activities. The broad definition of TCSP does not make a distinction between professional and non-professional nominees and anyone providing such services would fall under the ambit of a TCSP and should be covered by the AML requirement. However, in practice, it is likely that FASU’s oversight may extend only to professionals providing nominee shareholding services. Furthermore, since the Companies Act does not require disclosure of nominee shareholding in the share register or to the Registrar, there is a risk that nominee shareholding may go undetected. Hence, oversight over the implementation of the AML/CTF Act’s requirements in respect of nominee shareholding is crucial to meet the standard. It is, therefore, recommended that PNG effectively monitor the implementation of the AML/CTF Act and ensure that all persons providing nominee shareholding services or arranging for the provision of such services are always identified and comply with their CDD requirements and always have identity information on persons on whose behalf they are acting or have arranged nominee services.

Beneficial ownership information – Enforcement measures and oversight

89. PNG’s AML law provides for various sanctions if financial institutions or DNFBPs do not comply with their CDD requirements. Section 36 of the AML/CTF Act prescribes a fine of PGK 500 000 (EUR 127 537) on a natural person or imprisonment of up to five years or both, and of

PGK 1 000 000 (EUR 260 282) on a body corporate that intentionally fail to comply with the CDD requirements set out in the law.¹²

90. Further, section 57 of the AML/CTF Act requires all financial institutions and DNFBPs to register with FASU. Failure to register with FASU, when the activities performed by a natural person or a body corporate are among the kind of activities listed in the AML/CTF Act, is an offence punishable by a fine of PGK 25 000 (EUR 6 377) in the case of a natural person and of PGK 50 000 (EUR 12 754) in the case of a body corporate. Further, section 59 of the AML/CTF Act also requires that all financial institutions and DNFBPs registering with FASU under section 57 must provide FASU with the details of their own beneficial owners as well. Failure to disclose this information is punishable by a penalty ranging from PGK 250 000 (EUR 66 000) to PGK 500 000 (EUR 132 400) in the case of a natural person and by PGK 500 000 (EUR 132 400) to PGK 1 000 000 (EUR 264 800) in the case of a body corporate.

91. During the on-site, FASU detailed the kind of activities that it has been conducting since its inception in 2016. FASU has been holding regular meetings with financial institutions and raising awareness in respect of their AML obligations. A total of 13 sessions were conducted in 2018 for reporting entities, law enforcement agencies, general public and members of government agencies that make up the PNG National Co-ordinating Committee on AML/CTF (NCC). This close interaction and regular meetings were also acknowledged by the representatives from the Banks Association. FASU has only recently begun monitoring accountants and lawyers. An invitation to register with FASU had been sent out to accountants and lawyers. FASU informed that 49 law firms have registered with FASU in respect of the activities that have been listed in respect of lawyers. 22 accountants and accounting firms have also registered with FASU. FASU has not yet imposed any penalties on financial institutions or DNFBPs in respect of any non-compliance with CDD.

92. Interactions with the representatives of the banking sector suggested that they are regularly inspected by FASU. As per the 2018 Annual Report of FASU since 2015, FASU had carried out 13 on-site inspections on the four banks. In 2018, FASU conducted 5 on-site inspections on domestic banks of which two inspections were carried out in collaboration with AUSTRAC (Australian Transaction Reports and Analysis Centre). FASU gives a supervision report to the banks and banks are expected to address

12. If the failure is on account of recklessness, the fines are of PGK 250 000 (EUR 63 768) for a natural person and of PGK 500 000 (EUR 127 637) for a body corporate. The natural person may alternatively also face imprisonment of up to three years or may be subjected to both – fine and imprisonment.

the recommendations made. Banks are required to submit their response and action taken report on FASU's observations within 45 days from the date of the supervision report. FASU continues to monitor the banks' steps until all the observations are fully addressed.

93. While the understanding of financial institutions regarding CDD and the concept of beneficial ownership was fairly mature due to past experience with the earlier AML law¹³ as well as greater interaction with FASU, DNFBPs are fairly new to the CDD requirements and the concept of beneficial ownership. While awareness raising has been carried out by way of seminars by FASU, most of such seminars have focused on banks and not all AML-obliged persons. Further, it is not clear whether such seminars have focused on helping all types of AML-obliged persons understand the definition and process of identifying BOs and keeping such information up-to-date. As noted above in paragraph 81, while the definition of beneficial owner in the AML law provides for identifying both types of natural persons – those with ownership interest as well as those exercising control, one cannot rule out the possibility that AML-obliged persons may choose one aspect only while identifying BO and may either ignore the control aspect or the ownership aspect. Further, in the situation where no beneficial owner is identifiable based on ownership interest or control, there is no provision to identify the senior management personnel as default beneficial owner in line with the standard. These aspects need to be clarified by FASU in line with the standard. Further, it is particularly important that DNFBPs fully understand the concept of beneficial ownership and correctly and consistently identify beneficial owners of their customers. Considering the limited supervision of AML compliance by DNFBPs so far, FASU should put in place a supervisory and monitoring plan in respect of DNFBPs to ensure their understanding about beneficial ownership and their compliance with CDD obligations (see Annex 1).

Availability of beneficial ownership information in practice in relation to EOI

94. During the current review period, PNG did not receive any request for information seeking beneficial ownership information of any company. However, considering that beneficial ownership information will only be available in cases where companies have a bank account or engage an AML-obliged person on a continual basis, it cannot be concluded that up-to-date beneficial ownership information on all companies will always be available.

13. The previous AML Law was the Proceeds of Crime Act (2005) which was applicable to Financial Institutions only and did not cover DNFBPs. The Act, among other things, placed CDD and KYC obligations on Financial Institutions and Banking Prudential Standard on CDD (BPS 253) was enforced in the past by the supervisory activities of FASU.

A.1.2. Bearer shares

95. The Companies Act does not provide for the issuance of bearer shares. Companies can issue only ordinary shares in registered form in PNG.

A.1.3. Partnerships

96. Partnerships in PNG are formed under the common law principles of joint pursuit of profits where partners are wholly and severally liable for all acts of commission and omission by a partnership. Partnerships are legal arrangements in PNG and the Partnership Act governs the formation of partnerships. Section 3 of the Partnership Act defines partnership to mean “the relationship that subsists between persons carrying on a business in common with a view to profit”. The definition further makes it clear that incorporated entities, like a company or an association, would not constitute a partnership. Under PNG law, only general partnerships exist and there is no provision for limited liability partnerships. Partnerships may be formed through a written agreement but most often come into being through conduct. Section 4 of the Partnership Act provides guidance on rules for ascertaining the existence of a partnership. The rules essentially seek to clarify that a common profit motive and sharing of business profits are of primary importance in establishing the existence of a partnership and mere existence of certain joint ownership rights or sharing of gross returns do not by themselves, constitute a partnership.

97. While for the purposes of the Income Tax Act, a partnership needs to obtain a TIN and file tax returns, the partners of the partnership must also have their respective TINs and must file tax returns separately declaring their income from the partnership. The tax liability is placed on the partners of the partnership and a partnership, as an arrangement, does not pay any taxes. Hence, partnerships are fiscally transparent. However, section 124 of the ITA requires that partnerships file tax returns even when they are not liable to income tax.

98. As of 31 December 2018, there were only 238 registrations under the Business Names Act 2014 for business names used by partnerships in the ROC’s database. The PNG authorities explained that considering the general low level of awareness and the fact that many partnerships operate as small businesses in remote and under-developed parts of the country, compliance with the requirement of registering business names is low. In contrast, there were 9 907 general partnerships registered with the IRC database. There were 15 joint ventures also registered with the IRC.

Identity Information

99. Partnerships that are carrying on business in PNG are required to obtain a business name under the Business Names Act 2014. Under section 4 of the Business Names Act, while applying for a business name, the applicants are required to provide *inter alia* the true name and residential address of each person who has an ownership or other control interest in the business to be transacted under the business name. Business name registration is valid for one year and has to be renewed annually. Any changes in the information provided at the point of initial registration must be updated. Thus, the Business Names Act does provide for the availability of identity information of all partners in the case of Partnerships, just as it requires the legal ownership and identity information in the case of all other incorporated and unincorporated entities seeking to do business in PNG.

100. However, in practice, only 238 partnerships are registered with the ROC under the Business Names Act. Thus, for identity information in relation to partnerships, the Business Names Act is not the primary source of identity information although it could have been an important source of such information if it had been strictly enforced. The lack of registrations under the Business Names Act is mitigated by the registration by partnerships with the tax authorities, which has 9 907 partnerships in its database. PNG authorities have also indicated that for carrying on business in PNG, although no such legal obligation exists, a bank account would typically be opened in practice. Opening a bank account now requires having a TIN, which would imply registration with the IRC. Thus, although lack of awareness about the Business Names Act in different parts of the country does suggest a gap, it is compensated by registration with the IRC.

101. The requirement for providing the identity information on partners of a partnership is also covered under the Income Tax Act, especially at the point of applying for TIN. Every application for a TIN requires that all partners of a partnership are mentioned in the application. The income tax return to be filed by a partnership requires information on partners and their respective shares in the partnership (item 6 of IRC's tax return Form P for Partnerships). The TINs of all partners are required to be mentioned as well. Further, partners, while filing their own tax returns, must mention their participation in the partnership. Thus, the IRC database would be the primary source of identity information in relation to partnerships in PNG. PNG authorities have confirmed that in respect of partnerships that cease to exist after having registered with the IRC, identity information last submitted with the tax authorities would continue to be available for at least seven years.

102. In case of foreign partnerships that would be carrying on business in PNG, the requirements of the Business Names Act as well as the Income Tax Act apply in a similar manner. Furthermore, any foreign entity seeking

to do business in PNG, must also be registered and be granted a certificate to carry on business in PNG under sections 26 and 28 of the Investment Promotion Authority Act, 1992 by filing the relevant Form 3. The application requires the identity details of all the partners. Changes are also required to be updated under section 33 of the IPA Act by filing Form 5.

Beneficial ownership

103. Most domestic partnerships registered in the IRC database are partnerships where at least one partner is a legal person. PNG authorities have informed that out of the 9 907 partnerships in the IRC database, there are 41 partnerships that have only natural persons as partners and 9 866 that have partners with at least one legal person. The only law that requires the maintenance of beneficial ownership information is the AML/CTF Act. While the definition of beneficial ownership in the AML law is generally in line with the standard, considering that partnerships are legal arrangements in PNG, the ownership threshold of 25% could potentially leave out natural persons with a direct or indirect ownership of less than 25% from the identification as a beneficial owner. Hence, PNG is recommended to ensure that all beneficial owners of a partnership are always identified.

104. As has been noted in the discussion on companies, beneficial ownership information in the case of partnerships (including foreign partnerships doing business in PNG) would be available in PNG only if they engage an AML-obliged person, which is not mandatory. While PNG authorities have submitted that most partnerships would have a bank account as it is difficult to carry on business in PNG without a bank account, it could not be ascertained what percentage of partnerships have a bank account in PNG. Hence, although the gap, in terms of its impact in respect of relevant partnerships, may be limited in practice, there could be situations where beneficial ownership information in relation to partnerships may not always be available. PNG is recommended to ensure that up-to-date beneficial ownership information be always available on all legal arrangements.

105. As has been noted earlier, the AML/CTF Act has only recently been introduced in PNG and FASU has only recently started carrying out its supervision and enforcement activities over AML-obliged persons other than banks. In relation to partnerships, some guidance needs to be given to banks and other AML-obliged persons in relation to how they should identify the beneficial owners in the case of partnerships, especially where one or more partners are legal persons (see Annex 1).

Oversight and enforcement

106. The overall enforcement and oversight over partnerships' obligations of maintaining identity information on their partners is relatively weak. The Registrar, under the Business Names Act, has some oversight over partnerships and has the right to inspect all businesses under section 14 of the Business Names Act. Section 11 of the Act prescribes that failure to obtain a certificate of business name registration when required to do so, or providing false or misleading or incomplete information while applying for business name, or failure to amend a certificate of business name registration when required to do so are offences. If the Registrar, taking cognisance of these offences, issues a notice to a business and the business continues with the non-compliance for ten days, such a business is liable to penalty of PGK 100 000 (EUR 25 507) or imprisonment for a term not exceeding six months. If such an offence is found to be committed to intentionally defraud the public, the penalty is a maximum of PGK 200 000 (EUR 51 014) or imprisonment of a term not exceeding two years.

107. Most of the partnerships in PNG are not registered under the Business Names Act although registration of business names before conducting business in PNG is a legal requirement. With only 238 partnerships registered with the Registrar, as against 9 907 registered with the IRC, evidently compliance with the Business Names Act has not been actively monitored in PNG by the Registrar.

108. In case of partnerships that are doing business and are liable to pay taxes, the IRC has oversight over partnerships. Sanctions, as mentioned in paragraph 74 above, for not obtaining a TIN and for not updating information provided to the IRC at the time of obtaining the TIN, are applicable. IRC's Transaction Processing Division (TPD) is responsible for verifying and ensuring that the information provided in the relevant forms is up-to-date and correct. This is done at the registration stage or when the taxpayers are lodging a return or updating the IRC on changes in all types of information. TPD officials require that all supporting and required documents reflecting the change are available and submitted. The taxpayer has a duty to inform IRC of changes in partnership information. The IRC does not have an established monitoring mechanism in place to ensure that all taxpayers are informing the IRC about changes in their ownership information and duly updating the same. Nevertheless, the IRC does have adequate available data from the TIN and tax returns of other taxpayers that can be used to compare information of entities to analyse if the ownership information in its database is up-to-date information. While PNG was unable to provide specific monitoring statistics in this regard, PNG has informed that in general, given the available resources, corporate tax returns are prioritised over other entities.

109. The AML law provides a robust oversight and enforcement mechanism. Sanctions mentioned in paragraphs 89 to 90 apply in respect of availability of beneficial ownership information through CDD for partnerships as well. However, in practice, adequate supervision and monitoring of DNFBPs has not been carried out by FASU and penalties have not been applied for non-maintenance of up-to-date beneficial ownership information on their customers. FASU's supervision is only adequate in so far as bank accounts are maintained by partnerships as banks are regularly monitored by FASU.

110. PNG is recommended to actively supervise, monitor and sanction non-compliant legal arrangements under the respective laws to ensure the availability of identity of partners and beneficial ownership information on partnerships.

Availability of partnership information in EOI practice

111. During the peer review period, PNG did not receive any requests for information seeking identity or beneficial ownership information on partners of a partnership.

A.1.4. Trusts

112. It is possible to set up trusts under the common law concept of trusts in PNG. The common law obligations require a trustee to know the identity of the settlor and beneficiaries of the trust. There is no restriction for a PNG resident to be a trustee of a trust set up under foreign laws. PNG authorities have informed that trusts are not very common in PNG. As per the IPA database, there were 15 trusts denoting a business name that were registered. The IRC database has 39 trusts registered and having TINs. Interactions with the private sector during the on-site visit also suggested that trusts are not a common legal arrangement in PNG. Keeping clients' moneys in trust accounts by professionals like accountants is relatively more common.

Legal obligations

113. The Companies Act recognises the concept of trusts for holding of ordinary shares and provides for respective rights and obligations of trustees. Shareholding by a trust company is not required to be declared in the name of the trust in the share register and the beneficiary of such shares is to be recorded. The Trustees and Executors Act, 1961 provides for general guidance on the rights and obligations of a trustee with respect to the trust property and is applicable to all trusts in PNG, except where it contradicts the trust deed. Section 1 specifically states that the Act does not authorise a

trustee to do anything that the instrument creating the trust prohibits doing or prevents the trustee from doing anything that the instrument requires him/her to do. Further, Trust Accounts Act, 1961 which deals with moneys or property held by trustees as “trust accounts”, primarily deals with professionals holding clients’ moneys in trust accounts. None of these laws create any specific obligations to maintain information on the identity of the settlor, trustee(s), protector (if any), all of the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust and the common law requirements would be the primary source of requirement to maintain such information.

114. Under the AML law in PNG the same definition of “beneficial owner” applies for trusts as applicable for legal entities and legal arrangements (or unincorporated entities). As noted in paragraph 80 above, the definition requires the identification of natural persons who directly or indirectly own the customer or control the customer. The definition of ownership sets the threshold of 25% ownership in respect of legal persons as well as unincorporated entities. “Unincorporated entities” includes trusts. The definition of “control” applies similarly as for other entities. The applicability of ownership threshold in the definition of beneficial owner may lead to some gap when applied to trusts where the standard requires the identification of the settlor, the trustee(s) and all of beneficiaries or class of beneficiaries or any other natural person exercising ultimate effective control over the trust.

115. However, the CDD requirements prescribed for financial institutions as well as DNFBPs require that when dealing with customers that are unincorporated entities like trusts, the AML-obliged person should maintain the names of the trustees, the settlor and the beneficiary or persons in equivalent or similar positions and any other parties with authority to manage, vary or otherwise control the entity. PNG authorities have explained that trusts would, almost always, be created through a service provider in PNG. The AML law defines the act of being a trustee or arranging for another person to act as a trustee, as an activity of TCSP. In fact, due to the AML law’s operation, this activity itself would be considered a TCSP activity bringing any such person under the ambit of the AML obligations of carrying out CDD and maintaining beneficial ownership information on the customer. This would apply equally to any PNG resident acting as a trustee of a foreign trust. PNG authorities estimate that whenever set-up, in 90% of the cases, trusts would be set up through law firms and in the remaining 10% of the cases through accounting firms. While providing such services, such firms would perform the functions of TCSPs and hence, would fall under the purview of the AML law and would be required to carry out CDD. In situations where the settlor or the beneficiary were to be legal persons, the trustee, under its AML obligation while dealing with customers, would need to identify the beneficial owners of such legal persons as well. Furthermore, section 59 of the AML/

CTF Act requires that all financial institutions and DNFBPs maintain and keep updated the details of their own beneficial owners. Hence, the interplay of these requirements would allow the availability of beneficial ownership information on trusts in line with the standard.

116. Under the AML law, standard CDD and enhanced CDD require that in case of trusts as customers, information should be maintained on the names of the settlor, trustee(s), and the beneficiary or persons in equivalent or similar positions and any other parties with authority to manage, vary or otherwise control the entity. Simplified CDD also requires obtaining similar information except that the obligation to obtain underlying documentation for such information and verification is not mandatory. However, for every new customer, standard or enhanced CDD is mandatory. It was also learnt during interactions with banks that although they rarely come across trustees opening bank accounts in the name of trusts, their internal policies require enhanced CDD for such accounts (refer to the discussion under A.3 on CDD). They require the trustees to submit the trust deeds, which always carry the names of the settlor, the trustee and the beneficiaries.

117. PNG authorities have also informed that if a trust has taxable income, it is liable to register with the IRC as a trust, obtain a TIN and file tax returns. For obtaining the TIN, as part of the documentary requirements, the trust deed (together with any amending codicils) must be submitted. The trust deed contains the names of the settlor, the trustees and the beneficiaries. Further, as has been noted earlier, any changes to the information provided to the tax authorities at the time of applying for TIN needs to be updated by the trustees. Similar sanctions for non-compliance as applicable to all taxpayers applies for trusts under the provisions of section 101(2)(a) of the ITA. No penalty on this issue has ever been applied in practice. Hence, the PNG authorities have explained that whenever a trust is registered with the IRC, beneficial ownership information would be available with the IRC. This information is retained for seven years by the IRC even where a trust might cease to exist.

118. The requirements of standard and enhanced CDD address the requirement of maintaining beneficial ownership information on trusts. However, in practice, trusts are fairly uncommon and it could not be ascertained whether all identity and beneficial ownership information in respect of trusts would always be available based on the AML law obligations. The discussion in paragraph 114 reveals that the interplay of requirements under the law lends an element of complexity to the applicable legal requirements. PNG should issue adequate clarification and guidance to all AML-obliged persons to enable them to understand and always record the identity of the settlor, trustee(s), all of the beneficiaries or class of beneficiaries and any other natural person exercising ultimate effective control over the trust (see Annex 1). Further, it is conceivable that a trust is created under the common law principles in PNG, which has no other connection with PNG (trustees are

not resident in PNG). In that event, there may be no information about the trust available in PNG.

Oversight and enforcement

119. The primary sources of oversight and enforcement in respect of trusts are the requirements and sanctions under the ITA for non-filing of tax returns when trusts have taxable income and the AML law sanctions on AML-obliged persons for non-maintenance of identity details of the settlor, trustees and beneficiaries of a trust.

120. Sanctions, as noted in paragraph 74, are applicable under the tax law. Considering that there are only 39 trusts registered as taxpayers in the IRC database, IRC has not imposed sanctions in practice on any trusts for non-compliance.

121. The AML law prescribes for sanctions on AML-obliged persons. In practice, such sanctions have never been applied for non-maintenance of identity information in respect of settlors, trustees or beneficiaries of trusts. The conclusions above related to the enforcement of laws on companies apply to trusts.

Availability of trust information in practice

122. During the review period, PNG did not receive any request for providing information on trustees, settlors or beneficiaries of a trust from any of its treaty partners.

A.1.5. Associations

123. PNG law provides for incorporation of Associations under the Associations Incorporation Act, 1966. Associations are registered with the Registrar of Companies and may be incorporated for a variety of reasons ranging from provision of recreation or amusement, or for the promotion of commerce, industry, art, science, etc. or any other objects useful to the community. Associations are expected to apply their profits (if any) or other income in promoting their objectives and are not permitted to pay any dividends or payments in the nature of dividends to their members. Associations can hold, purchase or lease property and carry out financial transactions in their own name. Any property can be vested in the association upon its incorporation by any other person. Section 20 of the Associations Act empowers an association to act as trustee for any other association, to accept and hold on trust any property that is given to the association subject to any trust, to invest its moneys in any security in which trustees are authorised by law to invest trust funds, to open and operate bank accounts, to borrow money for the purpose of carrying out its objects and purposes, and to secure the repayment

of money by giving a mortgage, charge or security on or over all or any of the property of the association. As per the data from the IPA ORS, there were 827 associations registered in PNG as of 2019 while the IRC’s database reflected 1 750 associations having TINs as of 31 December 2018. The difference in the numbers is because IRC’s database contains associations even after they have been de-registered with the ROC.

124. It can be inferred that associations in PNG are legal persons and are relevant entities for the purposes of the EOIR Standard. This is because associations can be set up for a variety of reasons and can hold financial assets in fiduciary capacity. Associations are not barred from pursuing commercial interests. Further, its assets and liabilities can be transferred to its founders or beneficiaries in the event of dissolution and do not go to a public body or the State. Although in most cases, associations would be engaged in charitable or specific non-profit activities, they can be used for profit purposes. Hence, the standard would require the identification of all legal owners and beneficial owners of an association. In the context of an association, this would mean that all the founder members, directors or key executive members and beneficiaries of the association (and if individual beneficiaries cannot be identified then at least the class of beneficiaries) need to be identified. Further, if any of the founder members and beneficiaries of the association are other legal persons, the beneficial owners of such legal persons must also be identified. Importantly, any natural person who exercises direct or indirect control over the association through any means must be identified.

125. The procedure for incorporation involves publishing an expression of intention to apply for incorporating an association in any newspaper in PNG. Any person who has any objections to the incorporation of the association may file a notice of objections to the Registrar who would consider the objections on merits. If no objections are received or the Registrar has rejected the objections, the applicant may proceed to apply for incorporation of the association by completing and submitting a prescribed form under section 6 of the Associations Act. The application requires providing the name of the association, the objects and purpose of the association, the place(s) where the association has been formed and is carried on from, and the full name, address and occupation of the applicant. Some other documents like copy of rules or any deed related to the association is also required to be submitted. Once satisfied with the application, the Registrar can incorporate an association.

126. Associations are required to appoint a public officer who must be a natural person resident in PNG. The public officer’s details need to be communicated to the ROC.¹⁴

14. If a public officer has not been appointed within 14 days, the applicant may be recorded as the Public Officer for the association by the ROC.

127. The existing Associations Law in PNG does not impose any requirement that all the members of the association are duly identified and reported. Furthermore, there is no requirement to keep such details updated at all times. Thus, the equivalent of the founder(s), the members and beneficiaries of the association may not be identified in all cases. Under the Associations Law, legal and beneficial ownership of association would not be available to the ROC. Such details may be held by the associations themselves but there are no legal obligations on them to maintain such information and produce the same upon request. In cases where such associations cease to exist, this information may not be available. The Associations Law provides for minor penalties which range from PGK 20 to 50 (EUR 5 to 13) for certain non-compliance with the law. Since the law does not require maintenance of legal and beneficial ownership information, no penalties had ever been applied by the ROC on any association for non-maintenance of such information.

128. While the Income Tax Act does require registration and obtaining TIN if the association were carrying on business in PNG, it is not clear if the ownership and identity information would be collected. Furthermore, if an association were to be formed that is not carrying on business in PNG, it would not be required by law to obtain a TIN. In practice, the tax return filing information vis-à-vis associations was suggested that a total of 1 750 associations were registered in the IRC database and had a TIN. However, the tax return filing compliance rate was only about 3%. Finally, any changes in the membership of Associations need not be reported to the tax authorities.

129. As noted above in other sub-sections, beneficial ownership information to some extent would be available in case associations have a bank account or engage an AML obliged person. However, there is no requirement in law that associations must engage any AML-obliged person. Thus, PNG is recommended to ensure that legal and beneficial ownership information on all associations incorporated in PNG is always available.

130. Furthermore, in the case of associations, while banks would seek to identify at least one natural person as the beneficial owner while carrying out Customer Due Diligence, in the absence of clear guidance in relation to the requirements of identifying all natural persons who are the founder(s), executive members, beneficiaries, or who exercise ultimate effective control over the association, it is not clear whether banks are indeed identifying all the beneficial owners for an association as required by the Standard even if they are carrying out the due diligence on their customers. PNG authorities have informed that FASU has issued guidance to all reporting entities in this regard. As has been noted earlier in the report, the guidance needs to be elaborated so that all AML-obliged persons apply it consistently and correctly and PNG has been recommended to take steps in this regard. Further, FASU should ensure that all AML obliged persons in PNG correctly apply

the issued guidance on identification of beneficial owners in the case of associations (see Annex 1).

131. In practice, during the peer review period PNG did not receive any request for legal or beneficial ownership information in relation to associations.

Other relevant entities and arrangements: Co-operative Societies and Business Groups

132. Co-operative Societies and Business Groups are other entities that can be incorporated in PNG. Co-operative Societies can be incorporated under the Co-operative Societies (Amended) Act 1985. Co-operative Societies are to be registered with the Office of Co-operative Societies and the Registrar of Co-operative Societies reports to the Minister of Trade, Commerce and Industry. Co-operative societies are generally formed for encouraging small local businesses. Once incorporated, such societies have legal personality, i.e. they can hold property and enter into contracts and sue or be sued in a court of law. Only PNG citizens can be members of co-operative societies and registration requirements ensure that the list of all members is submitted to the Registrar at the time of registration. The Registrar of Co-operative Societies monitors the compliance with the Act.

133. Business Groups are incorporated under the Business Groups (Incorporation) Act 1996. Business Groups are customary groups of persons carrying out business in PNG. This Act is essentially to encourage local communities participate more in the national economy. Registration requirements involve the identification of the customary group and its lead member. Again, only PNG citizens can be members of Business Groups. The Registrar of Companies administers the Business Groups (Incorporation) Act and is primarily responsible for compliance with the Act.

134. As all members of Co-operative Societies and Business Groups must be natural persons, legal owners are the beneficial owners unless one acts on behalf of another person as nominee (see above the section on nominees). Considering that these entities in practice are involved only in local business, they are not considered relevant for this review.

135. In practice, PNG did not receive any request for any legal ownership or beneficial ownership information in respect of co-operative societies or business groups during the review period.

A.2. Accounting records

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

136. PNG's Companies Act places the necessary requirements of maintaining reliable accounting records with underlying documentation on all companies incorporated in PNG. Further, the Income Tax Act (ITA) requires that all persons doing business in PNG maintain reliable accounting records with underlying documentation. The requirements of the ITA extend to all relevant entities and arrangements as long as they are doing business in PNG. This could lead to the unavailability of accounting information when an entity (other than a company) or an arrangement does not qualify as doing business in PNG. The record retention periods prescribed under both laws meet the standard. Penal sanctions are provided for non-maintenance of accounting records under both laws.

137. The primary issue in relation to the availability of accounting records arises from the absence of adequate monitoring and enforcement activities carried out by the PNG authorities. The supervision carried out by the Registrar and the IRC is not sufficient to ensure the availability of accounting information. Compliance with the obligations to file annual returns under the Companies Act and income tax returns under the ITA is low. Furthermore, there is a significant number of inactive or non-compliant companies in the Companies Register as well as in the IRC database. Cleaning up of the Companies Register has been stalled since 2013 due to technical issues with the Online Registry System (ORS). Lack of monitoring and enforcement poses a material risk to the availability of reliable accounting information despite legal requirements and associated sanctions. Only very recently, the Registrar has commenced efforts to clean up the Company's Register manually since November 2019 while working on resolving the technical issues with the ORS.

138. During the current review period, PNG received one request for accounting information and did not report any issues in obtaining such information in practice. The peer was satisfied with the information received.

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

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
Deficiencies identified	Accounting record keeping obligations with underlying documentation exist in line with the standard in respect of companies by the operation of Companies Act and the Income Tax Act. However, partnerships, associations and trusts that are not doing business in PNG, and are therefore not covered by the requirements of keeping accounting records as per the Income Tax Act, may not maintain accounting records as per the standard for at least five years.	PNG must ensure that accounting records as required by the standard are maintained for at least five years by all partnerships, associations and trusts.
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	The Registrar's monitoring and supervision of the requirements under the Companies Act for all companies to maintain accounting records with underlying documentation for the prescribed retention period, has been minimal with little, if any, application of penalties for non-compliance. Tax return filing rates across entities are very low and tax audits are also very limited. No penalties have ever been imposed under the Income Tax Act for non-maintenance of accounting records.	PNG is recommended to expand and strengthen supervision and monitoring by the authorities and to ensure that enforcement provisions and penal sanctions are effectively applied where non-compliance with the legal requirements is noted so that accounting records for all relevant legal entities and arrangements are always available in line with the standard.

	<p>A significant number of entities are believed to be inactive by the PNG authorities and due to technical problems with the Online Registration System, the Registrar has been unable to strike-off such entities. Similar inactive entities also exist in the Tax Database and have not been filing tax returns. This raises significant concerns that accounting records of such entities may not be available in line with the standard.</p>	<p>PNG is recommended to review its system whereby a significant number of non-compliant or inactive entities remain on the Companies Register and in the Tax Database and clean up both these databases in order to ensure that all existing entities in PNG have reliable accounting records with underlying documentation.</p>
<p>Rating: Partially Compliant</p>		

A.2.1. General requirements

140. The legal requirements for ensuring the availability of reliable accounting records by companies is met by a combination of legal requirements under the Company Law and the Income Tax Act. However, important gaps in accounting record keeping requirements by partnerships, associations and trusts are noted in respect of whom accounting record keeping requirements would only apply where they are carrying on business in PNG and are subject to the Income Tax Act requirements in this regard.

Company Law

141. The Companies Act 1997 deals with the requirements for companies to maintain reliable accounting records. Section 188 states that the board of a company must ensure that accounting records are kept that correctly record and explain the transactions of the company, will at any time enable the financial position of the company to be determined with reasonable accuracy, and will enable the financial statements of the company to be readily and properly audited. All companies are obliged to prepare their financial statements within five months from the end of the accounting period. Financial statements must comprise a balance sheet and a profit and loss statement (in the case of a for profit company) or an income and expenditure statement (for a not for profit company).

142. The Companies Act provides for two types of companies on the basis of their reporting and audit requirements in relation to their financial statements – exempt companies and reporting companies. An “exempt” company is one which during the relevant accounting period did not have total assets

exceeding PGK 5 000 000 (EUR 1 275 370), or more than 25 shareholders or more than 100 employees, or had one or two of these conditions true and the shareholders had agreed not to appoint an auditor in respect of the financial statements. Such an exempt company is not required to get its financial statements audited or to file its financial statements together with its annual return to the Registrar. Nevertheless, they are not exempt from maintaining accounting records or preparing their financial statements.

143. In contrast, the reporting companies must have their accounts audited and file their financial statements, audit report with their annual return to the Registrar (section 215(3) Companies Act). They must also prepare cash-flow statements. Further, all foreign companies doing business in PNG and subsidiaries of foreign companies are reporting companies. Such companies must get their financial statements audited. They are required to prepare cash-flow statements as well. Section 215(3) of the Companies Act requires that these companies file a certified copy of their financial statements and their audit report with the Registrar together with their annual return. Reporting entities represent about 10% of companies.

144. For the purposes of preparing financial statements, generally accepted accounting principles need to be adhered to. The Accounting Standards Board housed in the IPA prescribed that companies are required to follow the International Financial Reporting Standard (IFRS) for preparing their accounts.

145. Section 188(3) of the Companies Act states that the accounting records must be kept in written form or in a form or manner in which they are easily accessible and convertible into written form. A company must keep accounting records for the current accounting period as well as for the last 10 accounting periods.

Companies that ceased to exist and inactive companies

146. In relation to companies that cease to exist by way of going through the liquidation process, the Companies Act provides in section 306 that the official liquidator must retain the accounts and records of the liquidation and of the company for not less than seven years after completion of the liquidation. Further, for reporting companies that have submitted financial accounts with their annual returns to the Registrar, such records remain with the Registrar even after a company ceases to exist. The Registrar may, however, authorise the disposal of any accounts and records before or after the completion of the liquidation process. The Registrar may also require that the accounts and records are retained for longer than seven years after the completion of liquidation. PNG has informed that in the past, while liquidations have taken place, Registrar has not authorised the disposal of any accounts before the prescribed retention period and there is no intention of authorising such disposal going forward.

147. The Income Tax Act does not provide for any requirement to maintain accounting records for liquidated companies. Section 364(5) of the ITA specifically waives off record retention requirement for a company that has been liquidated. Hence, the primary source of accounting records for companies that have been liquidated would be the liquidator who would be expected to comply with the requirements under the Companies Act. The liquidator maintains all historic accounting records of such companies.

148. For companies that have not been liquidated but are otherwise inactive, PNG authorities informed that they would have the requirements of maintaining all accounting records as per the Companies Act as well as the ITA. However, since such companies are inactive, they would not be filing their income tax returns with the IRC and the annual returns with the Registrar. PNG authorities informed that there is a substantial number of such inactive companies in the Companies Register as well as the IRC database. There has been no clean-up of the Register so far due to technical issues. Overall, it cannot be said that reliable accounting records for inactive companies would be readily available in PNG.

Partnerships, associations and trusts

149. Section 29 of the Partnership Act provides that “partners are bound to give true accounts and full information of all things affecting the partnership to any partner or the legal representatives of a partner”. Partners are liable for all affairs of the partnership including maintaining proper accounts. However, the Partnership Act does not have any specific provisions on how the accounts need to be maintained and for how long such accounts must be retained. Hence, the tax law obligations would be the primary mechanism for ensuring that reliable accounting records are being maintained by partnerships.

150. In the case of Associations, section 23 of the Associations Act stipulates that the committee of an incorporated association must prepare and get its accounts audited at least once every year. Such an audit may be carried out by any competent person who is not the public officer for the association or a member of the committee of the association. A fine of PGK 20 (EUR 5) is imposed for non-compliance with this requirement. There is no specific provision stipulating any retention period for such accounts.

151. In relation to trusts, the formation of trusts in PNG is primarily governed by the English Common Law on Trusts. Under common law, trustees are under a fiduciary duty to keep accounts of the trust and to allow the beneficiaries to inspect them as required.¹⁵ However, these requirements are not

15. (Pearse v. Green (1819) 1 Jac & W 135). Further, trustees should obtain “good receipt from beneficiaries when they distribute trust property” (Evans v Hickson (1861) 30 Beav 136 and Re Hulkes (1886) 33 Ch D 552).

specific enough as required by the standard and do not explicitly state that the records need to be maintained for at least five years. The Trustees and Executors Act deals with the powers, obligations and liabilities of trustees and executors holding trust property in a fiduciary capacity. However, there is no obligation in this Act to prepare, maintain and retain accounting records for trusts. The National Court may, in some circumstances, direct the trustees to prepare and submit accounts of their dealings in relation to the trust property. However, these are exceptional circumstances and not a standard norm. Thus, the only situation where a trust would have an obligation to maintain reliable accounting records would be if it has taxable income under the ITA.

Tax law

152. Under the ITA, financial records of taxpayers are to be kept in compliance with section 364. This provision states that “a person carrying on business in PNG” must keep in PNG sufficient records of its income and expenditure to enable its assessable income and allowable deductions to be readily ascertained. Such accounting records must be maintained in English and retained in PNG for a period of at least seven years after furnishing of the tax returns or accounts to which they relate. Furthermore, the retention period can be extended for a further three years at the end of the first seven years, by the Commissioner General, if the taxpayer is under audit investigation or the Commissioner General is intending on an audit investigation of the taxpayer.

153. These provisions apply to trusts whenever a trust is carrying on business in PNG. Trustees of the trust must comply with the record retention requirements under the ITA. Income of trust estate is taxable under Division 6 of the ITA. Similarly, partnerships and associations with taxable income would be covered by the accounting record keeping requirements of the ITA. Partners for partnerships and the public officer for associations are required to maintain accounting records for the 7 year retention period. The accounting records retention requirements under the ITA continue to apply to partnerships, trusts and associations even if they cease to exist and partners (for partnerships), trustees (for trusts) and public officers (for associations) must continue to maintain the available accounting records for at least 7 more years.

154. The requirement to maintain accounts in PNG and in the English language can be waived by the Commissioner General according to his/her discretion in response to an application made by a taxpayer in this regard. The PNG authorities informed that such a waiver has rarely been issued by the Commissioner General.

155. Thus, the tax law requirements would ensure the maintenance of accounting records for all relevant entities and arrangements carrying on business in PNG. However, where such entities and arrangements are not carrying on business in PNG, the requirements would not apply.

A.2.2. Underlying documentation

156. The Companies Act requires maintenance of the underlying documents as part of the accounting records. Section 188(2) specifically mentions that accounting records must contain entries of money received and spent each day and the matters to which it relates. The company must maintain a record of its assets and liabilities. Further, where the company deals in goods, records of stock bought and sold (that identify the goods as well as the buyer and sellers and relevant invoices) and a record of stock held at the end of the year as well as records of stock held during the year must be maintained. Where the company deals in services, a record of services provided together with relevant invoices is required to be maintained.

157. Under the ITA, “records” that must be maintained include books of accounts (in physical, mechanical or electronic format) recording receipts of payments of income or expenditure and also vouchers, bank statements, invoices, tax invoices, credit notes, debit notes, receipts and such other documents necessary to verify the entries in the books of accounts. The provisions of the ITA extend to all persons carrying on business in PNG and hence, the requirements to keep underlying documents for accounting records apply to companies, overseas companies, partnerships, associations, trusts, business groups and co-operative societies as long as they are carrying on any business in PNG and have taxable income.

158. The Companies Act together with the ITA ensure that underlying documentation is kept for most relevant entities and arrangements, but the same gap identified above exists for associations and trusts which would not carry on any business in PNG.

Oversight and enforcement of requirements to maintain accounting records

Oversight by the Registrar

159. Section 215 of the Companies Act requires that all companies incorporated in PNG and registered with the Registrar file an annual return with the Registrar. Information that must be reported in the annual returns is prescribed under Schedule VI of the Companies Act. For reporting companies, audited financial statements are required to be submitted with the annual returns.

160. Section 188(5) of the Companies Act provides for penal sanctions for non-maintenance of accounting records by the board of a company. Every director of a non-compliant company is subject to a penalty of PGK 10 000 (EUR 2 550) under such circumstances. Further, for reporting companies, in case the financial statements are not completed and signed within the time allowed (five months from the end of the accounting period), every director

is liable upon conviction to a penalty of PGK 100 000 (EUR 25 507). In the case of exempt companies, for the same offence, the penalty is PGK 10 000 (EUR 2 550).

161. During the on-site visit, it was learnt that more than 90% of all companies in PNG are exempt companies. Hence, the requirement to file audited financial statements annually with the Registrar is inapplicable to most companies. Even among the reporting companies, less than 10% of them had filed financial statements with their annual returns in 2019 till the date of the on-site (July 2019) (although compliance within Reporting Companies was between 30-40% in the preceding three years). The following table gives the numbers for Annual Return filing by exempt and reporting companies as per the information from the Registrar's office.

Annual filing with the Registrar of Companies

	2016	2017	2018	2019 ^a
Annual Returns (without financial statements filed by "Exempt Companies")	8 814	9 154	6 392	1 872
Percentage of filings over total companies in the exempt category	17%	17%	12%	3%
Annual Returns with financial statements filed by "Reporting Companies"	1 921	1 411	1 408	351
Percentage of filing in the Reporting Companies Category	33%	41%	36%	6%
Percentage of filings over total companies (exempt + reporting)	18%	18%	14%	4%

Note: a. For 2019, the data is not for the full year and only till July 2019.

Source: Registrar's office.

162. PNG explained that in 2016 and 2017, the filing rates were higher because an Automated Compliance Module had been built into the Online Registry System. This Module was supposed to monitor the compliance by all companies in relation to their annual return filing. Since the Module was introduced recently, efforts were made to raise awareness about this system and to alert companies to ensure compliance with their regulatory filing requirements. However, due to technical errors, the Module was never activated and the awareness programme was halted. This has resulted in a decline in the filing rates (and better results are expected for 2019 with late filings).

163. The Registrar informed that from April 2019 till June 2019 (till the time of the on-site visit), the Registrar's office had undertaken a monitoring and supervision programme over companies. During this period,

779 companies were visited by IPA officials. Out of these, non-compliance with annual return filing requirements were noted in 182 companies and penalties were issued in these cases. PNG authorities have informed that penalties under section 188 of the Companies Act were applicable. It is not clear in how many cases such penalties were imposed as a result of this exercise. In earlier years, IPA officials have conducted similar inspections under the Joint Agency Spot Check Operations exercise as discussed in paragraph 69.

164. The Registrar informed that the ORS was meant to ease the compliance monitoring through the Automated Compliance Module. Prior to 2013, the Registrar was monitoring inactive companies and non-compliant entities manually. At that time, a regular programme of striking off companies that were inactive or non-compliant was being followed. However, since the introduction of the ORS, the process of striking-off of companies was to be carried out through the system. Due to technical problems and inability to enforce the contract with the system developer, the Registrar has been unable to clean the registry and strike-off and liquidate inactive or non-compliant companies. Hence, since 2013, inactive and non-compliant companies have not been struck-off. Very recently, since January 2020, the Registrar has started the process of striking-off inactive companies with the first set of 5 000 inactive companies that were issued notice to comply.

165. The requirements under the Companies Act to maintain accounting records have been minimally supervised. The Registrar does not have any oversight on accounting record keeping requirements for exempt companies and minimal supervision over the reporting companies. The number and frequency of checks in this regard by the Registrar compared to the total number of companies in PNG is not adequate. There is lack of clarity on whether companies are complying with their record retention obligation of ten years. Further, in respect of inactive companies, there is no clarity whether the directors of such companies are complying with the accounting record keeping requirements even if the company is not performing any economic activity. It is recommended that the Registrar undertake the necessary steps to clean the Register.

Oversight by the Tax Authorities

166. Besides the supervisory activities of the Registrar, the other key oversight mechanism for ensuring maintenance of accounting records is the supervision by the tax authorities. Under the ITA, non-compliance with the requirement to maintain and retain accounting records with the relevant underlying documentation for a period of at least seven years is an offence leading to a penalty of PGK 500 (EUR 127) to PGK 5 000 (EUR 1 275). This applies to all types of legal persons and arrangements that are carrying on business in PNG. Section 223 authorises the Commissioner General to notify

the types of taxpayers who are required to file tax returns. In general, most companies are required to file tax returns. Section 124 of the Income Tax Act requires all partnerships as well to file tax returns even when they are fiscally transparent. However, the income tax return filing rate by local companies is only about 10%, i.e. of the 48 500 companies in the IRC database, only about 4 800 have been filing tax returns. As of 31 December 2018, the tax return filing rates for partnerships was 2%, for trusts was 26%, for associations was 3% and for companies (both local and foreign) was 18%, business groups was 1%, co-operative societies was 1% and joint ventures was 7%. PNG tax authorities are of the view that a significant number of the entities in their database are inactive and need to be de-registered.

167. PNG authorities have reported some efforts that have been initiated to track non-filers or taxpayers that have been under-reporting incomes. The IRC, through its Revenue Risk Intelligence Section has started monitoring non-filers through the use of a Risk Base Audit tool (RBA). The team to develop and use the RBA tool was formalised in 2016. The team, on average, has been working on 100 taxpayers a month by looking at their different tax accounts and comparing the incomes declared. The tool seeks to compare information on GST against information on income. Non-filers of tax returns under the Income Tax are now being identified against filings under GST regulations for a start. PNG authorities have informed that the tool has only been fully completed in 2019. Hence, statistics to report on the impact of this work are currently not available. IRC is working to improve this area and recruitment and more work in developing audit tools is a focus for the agency. The IRC should collaborate with the Registrar to ensure consistency in the databases and remove inactive entities in order to suitably monitor the tax return filing rates (see Annex 1).

168. PNG provided the following statistics for the tax audits carried out in relation to different types of legal persons and arrangements:

Tax audits

	2016	2017	2018	2019
Company audits (Large Taxpayers and SMEs)	298	445	283	445
Partnerships	70	108	66	108
Trusts	0	0	0	0
Associations	0	0	0	0

Source: PNG Authorities.

169. The table shows that the number of tax audits carried out in PNG is minimal compared to the number of taxpayers in the IRC database. As against 33 000 companies in the tax database, tax returns are filed by 3 000

to 6 000 companies as per the data given by PNG. Out of these, 300 to 450 have been audited (which include corporate income tax audits as well as GST audits and Salary and Wage audits). The IRC has 48 tax auditors currently engaged in the functions of corporate income tax audits, salary and wage audits and GST audits. PNG authorities have reported that about 90% of all audits are field or on-site audits while about 10% are desk-based audits. Specifically for corporate income tax, about 20 audits have been conducted annually. Tax auditors carry out audits in teams which specialise in different types of taxes. PNG authorities have informed that they are looking to expand tax audits of all types and increase the number of auditors and internal planning and policy work is currently going on in this regard. Priority is given to companies and partnerships over trusts (which are few) and associations (which do not carry significant economic activities).

170. While tax audits involved examination of accounting records, PNG did not report imposition of any penalties for non-maintenance of accounting records as required under section 364 of the ITA.

171. Overall, despite having penal provisions and enforcement powers, neither the Registrar nor the tax administration have carried out adequate supervision and monitoring of the requirements to maintain reliable accounting records. It is recommended that PNG ensure that supervisory authorities carry out adequate and commensurate monitoring of the requirements to maintain reliable accounting records.

Availability of accounting information in EOIR practice

172. During the peer review period, PNG received one request for accounting information. The requesting treaty partner had sought information on a PNG corporation that had entered into export transactions with the partner's company. Underlying documents like the contract, free on board value of goods exported, type of products, number of containers, price, quantity and names of couriers were requested. PNG was able to provide the requested information and in its peer inputs, the requesting jurisdiction expressed satisfaction with the response provided.

173. Despite PNG's ability to provide the requested information in the one case where such information was requested, considering the very limited oversight and supervision by the Registrar and the IRC and high number of inactive and non-compliant entities in PNG, it is difficult to conclude that reliable accounting records will always be available for all relevant entities and arrangements in PNG. **Hence, PNG is recommended to ensure that it enhances its oversight and supervision over all legal entities and arrangements to ensure that they are maintaining reliable accounting records with underlying documentation for the legally required retention period.**

A.3. Banking Information

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

174. The EOIR standard requires that banking information should be available for all account holders. Banking information should include all records pertaining to the accounts as well as to related financial and transactional information, including information regarding the legal and beneficial owners of the accounts.

175. In this regard PNG's legal framework requires banks to maintain the necessary banking information and beneficial ownership information on all their account holders in line with the standard. These requirements derive from PNG's AML/CTF Act 2015. The Financial Analysis and Supervision Unit (FASU), the financial intelligence unit housed within PNG's Central Bank, is in charge of ensuring that the requirements are systematically met by all financial institutions in PNG.

176. Banking records' retention period is in line with the standard. Banks are also required to maintain up-to-date beneficial ownership information in line with the standard although FASU needs to provide clear guidance on how to identify beneficial owners in respect of all legal entities and arrangements or make suitable amendments to the law.

177. Non-compliance with the CDD requirements is punishable by way of penalties. While the legal and regulatory framework is in place, there is need for further monitoring, supervision and enforcement to ensure that banking information with beneficial ownership information on all account holders is always available.

178. During the current review period, PNG received one request for banking information. PNG was able to provide the information requested.

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

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
Deficiencies identified	PNG has issued binding guidance to all AML-obliged persons for carrying out customer due diligence and identification of beneficial owners based on the AML law. While the definition of beneficial owner in the AML law is broadly in line with the standard, in the case of legal persons, there is no requirement to identify the senior management person as a default beneficial owner when beneficial owner cannot be identified on the basis of ownership or control. Further, for legal arrangements like partnerships and trusts, there is scope to clarify further on identification of their beneficial owners.	PNG should make suitable changes to the law or the guidance to ensure that banks accurately and consistently identify beneficial owners of legal persons and legal arrangements in line with the standard.
Determination: The element is in place but certain aspects of the legal implementation of the element need improvement		
Practical Implementation of the standard		
Rating: Largely Compliant		

A.3.1. Record-keeping requirements

Availability of banking information

180. The AML/CTF Act contains the relevant record keeping requirements. Section 47 requires banks, in relation to every transaction conducted by or through them, to keep such records as are reasonably necessary to enable that the transaction can be readily reconstructed at any time. In particular, the bank must maintain details of the nature of the transaction, the date of the transaction, the amount and the currency involved, parties to the transaction, type and identity of any account with the financial institution that is involved in the transaction; and all details pertaining to a transaction

involving the use of bearer instruments. The bank must maintain all these records for at least seven years from the date of completion of the transaction.

181. Section 48 stipulates that in respect of every case in which a financial institution is required to identify and verify the identity of a person or unincorporated entity to fulfil the CDD requirements, it must keep copies of relevant documentary evidence that was used to carry out the verification process or, if it is not practicable to retain such information physically, at least the information to obtain such documentary evidence at any time must be readily available. Such records must be kept for a period of at least seven years after the end of the business relationship with the customer. Since 2018, banks are required to obtain TIN of all their customers before opening a bank account. A new customer must first register with the tax authority and obtain TIN before it can open a bank account. This means that foreign legal persons not registered with IRC (i.e. not having a TIN) would not be able to open a bank account in PNG. Such foreign legal persons must approach the Commissioner General for obtaining a TIN as per the provisions of section 10C.

182. Section 49 requires that banks keep all records relating to the establishment of the business relationship with a customer and all other customer records like account files, business correspondence and any other document obtained during the course of a business relationship with a customer that are necessary to establish the nature and purpose of activities relating to the business relationship with the customer. Again such records must be kept by the financial institution for at least seven years after the business relationship with the customer comes to an end.

183. Interactions with the private sector revealed that compliance officers have a good understanding of the obligations to maintain banking information. Banks were aware of their obligation to maintain all transaction records for a minimum of seven years from the date the transaction was executed. Further, they were aware that CDD/KYC documents, records, correspondence and files for their customers must be maintained for at least seven years from the date of termination of the relationship with their customers. Banks have been maintaining such information even in the past under the earlier AML law, which was in force, prior to January 2016.

Beneficial ownership information on account holders

184. The AML/CTF Act prohibits anonymous accounts (section 37).

185. As discussed above in A.1 (paragraphs 80 and 81), section 5 of the AML/CTF Act defines **beneficial owner** to mean *a natural person who has ultimate control, directly or indirectly, of a customer; or who ultimately owns, directly or indirectly, the customer.* The terms “control” and “owns” for the

purposes of the definition have been defined as well. The definition of control does bring out the idea of control through means like control over finances and through special relationships. The definition is broadly in line with the standard, although it does not follow the cascade approach for identification of beneficial owners in the case of legal persons like companies. There could be some situations where all beneficial owners based on control or ownership are not systematically identified. As noted under A.1 for legal arrangements like partnerships, the ownership threshold of 25% may lead to exclusion of some natural persons with ownership in the partnership from being identified as beneficial owners. Further, as discussed under A.1, for trusts and similar arrangements, although the CDD requirements specifically mention that the settlors, the trustees and the beneficiaries must be identified, PNG would benefit from explicitly clarifying the operation of the law and emphasising the need to identify the natural persons as beneficial owners in all cases of trusts or similar legal arrangements.

186. The definition has been introduced for the first time under the AML/CTF Act 2015, which came into effect on 4 February 2016. Since then, while FASU has been conducting awareness and outreach programmes across PNG and FASU has issued guidance to financial institutions on customer due diligence and beneficial ownership, banks have their own internal KYC and CDD policies which vary across banks. Hence, it is recommended that PNG make suitable changes to the law or the guidance to ensure that banks accurately and consistently identify beneficial owners of legal persons and legal arrangements in line with the standard.

187. Division 2 of the AML/CTF Act deals with customer due diligence obligations placed on financial institutions and covers ongoing CDD, simplified CDD, standard CDD and enhanced CDD requirements. Section 20 requires every financial institution to conduct CDD on its customers, on any beneficial owner of the customer as well as on any person or unincorporated entity acting on behalf of a customer.

188. Section 17(1) of the AML/CTF Act relates to ongoing due diligence, by a financial institution, in respect of its business relationships. Section 17(2)(a) requires a financial institution to maintain current and up-to-date information and records related to its customers and beneficial owners. Section 17(2)(b) requires a financial institution to ensure that transactions carried out on behalf of its customers are consistent with its knowledge of the customer, the customer's commercial or personal activities and risk profile, and where necessary, source of funds. There is, however, no specific timeframe mentioned in the AML law within which banks must carry out due diligence. PNG should require that CDD is carried out on a time-bound regular basis in order to ensure that beneficial ownership information on bank account holders is accurate and up-to-date (see Annex 1).

189. Sections 23 to 25 of the AML/CTF Act deal with standard CDD. Standard CDD is required to be carried out in all cases where a new customer relationship is being formed; or if a customer intends to enter a transaction of more than PGK 20 000 (EUR 5 101) through one transaction or multiple transactions that appear to be linked (or electronic transactions exceeding PGK 2 500 (EUR 638)); or for an existing customer if there is doubt about the veracity of past customer information; or if there is any ML/TF doubts arising during the course of the relationship with the customer. In the case of a natural person, standard CDD requires details like full name, address, date of birth, place of birth. In the case of a body corporate, corporate name, address of the registered office, proof of incorporation, identities of directors, provisions governing the authority to bind the body corporate and such information as is necessary to understand the ownership and control of the body corporate are required for standard CDD. For unincorporated entities like trusts or similar legal arrangements, standard CDD requires the name of the trustees, the settlor and the beneficiary or beneficiaries, or persons in equivalent or similar positions and any other parties with the authority to manage, vary or otherwise control the entity. Documentary evidence like government issued IDs, certificates of incorporation and trust deeds are needed to support and substantiate all the details provided under standard CDD.

190. Sections 26 to 29 of the AML/CTF Act provide for enhanced CDD in respect of customers that are residents of high risk countries; or are involved in high risk businesses; or are politically exposed persons; or are not physically present for the purposes of identification; or have ML/TF risks. Enhanced CDD, besides the identity requirements of standard CDD, requires information about the source of assets or the wealth of a customer; and in the case of an insurance policy, the beneficiary of which is a body corporate or an unincorporated entity, the identification of the beneficial owners of such a beneficiary.

191. Although the AML/CTF Act provides for simplified CDD under section 21, it was learnt during discussions with FASU and with the representatives from the banking sector that they generally do standard or enhanced CDD for most of their customers. Simplified CDD is undertaken generally in the case of low income individuals or in the case of listed companies. For all other types of customers, standard or enhanced CDD is carried out.

192. Section 18 of the AML/CTF Act permits a financial institution to rely on the CDD performed by a third party if there is no suspicion of money laundering or terrorist financing, and the financial institution is satisfied that the third party being relied upon will be able to provide, without delay, all the information regarding the identity and verification of the person on whom CDD is to be carried out. Moreover, such third party must not be located in a

jurisdiction that is considered to be of high risk and must not be able to claim legal professional privilege or any other confidentiality when it comes to providing the CDD documentation when requested. The ultimate responsibility for the accuracy of the information remains on the financial institution, which relies on a third party.

193. Discussions with the compliance officers from the four major banks suggested that they were well aware of the meaning of beneficial owner. All banks had their own internal guidelines on identification of beneficial owners. It was learnt that although guidance on beneficial ownership and CDD has been issued by FASU in May 2019, the guidance did not yet incorporate the three-step cascade approach for identification of beneficial owner of legal persons.

Enforcement provisions to ensure the availability of banking information

194. Section 36 of the AML/CTF Act provides that any person who breaches the record keeping requirements stipulated for CDD is guilty of a crime punishable with a penalty of PGK 500 000 (EUR 127 537) or an imprisonment not exceeding five years or both for a natural person; or a penalty of PGK 1 000 000 (EUR 255 073) for a body corporate.¹⁶ Under section 37, similar penalties are imposable if a person intentionally opens or operates an anonymous account or an account in a false name. However, as noted in paragraph 91 above, FASU has not yet imposed any penalties on banks.

195. FASU conducted five on-site visits on the four existing banks during 2018 and 2019. During discussions, it was learnt that the issues identified generally pertained to risk assessment policies of banks, fulfilment of reporting obligations, training and raising of awareness of AML/CTF risks among employees, and policies and procedures adopted by banks for carrying out AML obligations. Representatives from the banks confirmed that they generally received recommendations and action points from FASU during these on-sites. Banks are expected to act upon the supervisory report prepared by FASU and correct the identified issues and report back to FASU in reasonable time. FASU takes up the previous report and its recommendations at the time of subsequent inspection and banks are expected to have acted upon them. In general, banks satisfactorily follow-up with the recommendations given to them by FASU. FASU has been carrying out detailed inspection on each of the four banks at least once every two years.

16. If non-compliance is found to be out of recklessness (i.e. it is not found to be intentional), in the case of a natural person the penalty imposable is PGK 250 000 (EUR 63 768) or an imprisonment not exceeding three years or both; and a penalty of PGK 500 000 (EUR 127 537) in the case of a body corporate.

Availability of banking information in EOI practice

196. During the peer review period, banking information was requested in one case. PNG was requested to provide details of banking transactions and other financial information which was relevant to assist the treaty partner in determining the financial position of the taxpayer. PNG was able to obtain and exchange the requested information to the satisfaction of the requesting peer.

Part B: Access to information

197. 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).

198. PNG’s Competent Authority is the Commissioner General of the Internal Revenue Commission (IRC). The Competent Authority has broad powers to obtain and provide information that is in possession or control of any person within PNG. The primary source of these powers is the Income Tax Act, 1959. The same powers are provided by the Tax Administration Act 2017.

199. In the current review period, PNG received five requests from its treaty partners. PNG was able to access and provide all the information requested. Some of the information requested (like tax registration number and income details) was already available with the IRC, while for other documents, the IRC used its access powers to obtain information from different information holders.

200. 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

B.1.1 and B.1.2. Ownership, identity, banking and accounting information

201. Section 61 of the Tax Administration Act, 2017 provides that the Commissioner General must use the powers available under the Tax Administration Act or under any law to meet PNG's obligations to obtain and exchange information pursuant to a tax treaty or a mutual administrative assistance agreement. Even if the person holding the position of the Competent Authority is a person other than the Commissioner General, all the powers of the Commissioner General are granted to the Competent Authority to ensure that PNG is able to comply with its obligations under EOI agreements. The Commissioner General delegated the Competent Authority powers to the Assistant Commissioners who head the three divisions of Legal Services, Large Taxpayer Office, and Case Selection and Intelligence (which houses the EOI Unit).

202. Section 366 of the ITA states that the Commissioner General may, by notice in writing, require a person, whether a taxpayer or not, including a person employed in the Public Service or by an authority constituted by or under a law of PNG to furnish him/her with such information as he/she may require. Further, the Commissioner General has the powers to compel any person to attend and give evidence before any officer authorised by him/her concerning that person or any other person's income or assessment. The Commissioner General can require the production of all books, documents and other papers in any person's custody or control relating to any income or assessment.

203. Further, section 365 of the ITA grants powers to the Commissioner General, or any official authorised by him/her to enter any premises and have full and free access to all computers, books, documents, records, papers and other information storage devices for any purposes of the ITA. The section allows such official to seize, retain and remove for inspection or make copies of any such documents or electronic information.

204. Sections 58 and 59 of the Tax Administration Act 2017 mirror these powers. The exercise of these powers are not appealable in a court of law. In practice, officials who have been authorised by the Commissioner General to exercise these powers, have special identity cards which clearly mention these relevant sections.

205. A combined reading of all the legal provisions suggest that the PNG Competent Authority has wide ranging powers to access and obtain information for EOI purposes from any person in PNG.

Accessing information generally

Accessing information in the hands of the tax authorities

206. Information that is held within the IRC is readily accessible and available to the Commissioner General (the Competent Authority for EOI) as there are no bars in providing such information for the purposes of PNG's EOI obligations under international treaties.

Accessing information from another government agency

207. Most of the information held by the Registrar in relation to legal ownership of legal persons and arrangements registered with the IPA is publically available online on the ORS. The Competent Authority is able to access all such information without needing to approach the Registrar.

208. Furthermore, the access powers granted to the Commissioner General under section 366 of the ITA are sufficient to obtain any information held by another government agency. However, in order to expedite access to such information, the IRC is entering into memorandum of understanding with relevant government agencies. Such MoUs have been entered into with FASU (in September 2017) and PNG Customs (in May 2013). Further, the IRC is in the process of negotiating similar MoU with ten other government agencies including the ICA and the IPA for obtaining information in possession of these governmental agencies. The MoU with the IPA has been finalised and will be operationalised once signed. These MoUs ensure that the relevant government authorities expedite information sharing with the IRC when requested and also provide any information that could have tax implications spontaneously to the IRC as and when such information comes to their notice. The CA office informed that subsequent to the MoUs, it has become much quicker to access information held with their partner government agencies.

Accessing information from a taxpayer or third party

209. Powers under section 366 of the ITA are wide enough to obtain all information in possession of any person who holds the required information or exercised control over such information and is able to obtain such information.

210. During the review period PNG received one request for accounting information and was able to respond to the request effectively by collecting the information from the concerned company.

Access powers mainly used in EOI cases

211. Section 366 of the ITA is the primary power used by the IRC to obtain information for the purposes of EOI. However, the PNG authorities informed that they can potentially use the search and seizure powers as well in cases where non-compliance with section 366 is noted.

Accessing beneficial ownership information

212. As discussed under A.1 and A.3, the only source of information on beneficial ownership is the AML law. PNG authorities informed that if the information is available with an AML obliged person, section 366 would be able to access such information. Further, such information can be obtained through FASU which can share the information obtainable from AML-obliged persons with IRC under its MoU with IRC.

Accessing banking information

213. The Competent Authority uses the wide powers given by section 366 of the ITA to obtain banking information. Seeking information on accounts is one of the routine domestically used powers of the IRC. PNG authorities confirmed that seeking any information from banks does not require them to seek any court orders or initiate any special procedure. The usual time required for seeking information from banks is between two to three weeks. PNG authorities informed that they are able to obtain bank information even if only the account number is available. Subsidiarily, the IRC has an MoU with FASU based on which IRC can also obtain all banking information that it may require. FASU has wide-ranging powers to obtain banking information on all account holders in PNG. However, FASU informed that if the IRC were to exchange such information obtained from it with a treaty partner, IRC would need to seek FASU's approval before exchanging such information, which would take at most a week. PNG authorities have informed that IRC's powers are wide enough to obtain all information on its own and it is unlikely that IRC would have to specifically go through FASU to obtain information.

214. During discussions with representatives from the Banks Association at the on-site, it was learnt that banks routinely provide all banking information sought by the IRC during domestic audits. Bankers were of the view that vis-à-vis requests under section 366 from the IRC, they were obliged to comply and provide the requested information also in cases of EOIR.

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

215. Section 61 of the Tax Administration Act specifically allows the Commissioner General or the Competent Authority to use all powers available under the Act or any other law to obtain and exchange information to meet PNG’s obligations under its tax treaties. Thus, the information gathering powers of the Competent Authority for exchange of information are not restricted in any way even if there is no domestic tax interest. PNG authorities confirmed that in all the five requests that they received during the review period, they did not have any domestic tax interest but were able to obtain and exchange information without any difficulty.

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

216. Section 322 of the ITA provides for a penal sanction of PGK 500 (EUR 127) to PGK 5 000 (EUR 1 275) for obstructing an IRC official from performing his/her duty under section 366 of the ITA. Further, the notice under section 366 gives the information holder 30 days to provide the information and a further fine of PGK 50 (EUR 13) is applicable for every day delay in providing the sought information. PNG authorities informed that there is awareness among the public about the wide-ranging powers of the IRC and the levels of compliance in response to notices from IRC is generally high.

217. During the review period, PNG did not have to use any enforcement provisions to compel the production of information and information-holders complied in response to IRC’s notices under section 366. Procedures for such sanctions have been initiated domestically on some occasions in cases of domestic audits but PNG’s experience has been that invariably compliance is noted in response to all notices issued by IRC and eventually there has never been a need to impose any sanctions.

B.1.5. Secrecy provisions

Bank secrecy

218. Section 52 of the Banks and Financial Institutions Act 2000 provides for confidentiality and secrecy of banking information and disclosing it would be an offence. However, section 52(6) makes a specific exemption in this regard and states that “it is not an offence where the disclosure of protected information or the production of protected document is under compulsion or obligation of law”. Hence, the powers of the IRC under section 366 of the ITA allow access to banking information as such information would have to be provided by the bank under obligation of law. In the one case for

banking information relating to an EOI request, PNG was able to obtain and provide the requested information from the bank concerned without encountering any difficulties on account of bank secrecy.

Professional secrecy

219. Professional secrecy in relation to lawyers is provided for in Professional Conduct Rules 1989. Article 9 of the Rules deals with Confidentiality and provides that a lawyer shall not disclose any information about his/her clients to any person without the express consent of the client. However, article 9 provides for an exception to this rule and states that the information shall be disclosed if required by law, rule of court or court order. Section 59(5) of the Tax Administration Act provides that the Commissioner General's administrative summons for the provision of information is to be provided regardless of "professional legal privilege" or "contractual duties related to confidentiality". This provision activates the "exceptions" in section 9 of the Professional Conduct Rules 1989.

220. PNG authorities are convinced that the IRC's powers under section 366 would ensure that all information can be obtained from all professionals as the professional secrecy carves out an exception to the confidentiality and since the Competent Authority would be seeking information under law, professional secrecy would not be an impediment. Furthermore, lawyers are AML-obliged persons in PNG and are under the direct supervision of FASU if they are engaged in certain activities, as discussed in A.1. FASU has comprehensive powers to obtain all information from AML-obliged persons under the AML law. Information so obtained can be shared with the IRC under the MoU between the two agencies.

221. During the on-site discussions with the members of the PNG Law Society, one lawyer expressed tentativeness about professional secrecy under the Professional Conduct Rules being over-ridden by the request for information. However, other lawyers were more circumspect about this and noted that they were unsure about how they would handle such a situation as none of them had faced a situation where information had been sought from them by the IRC.

222. In practice, during the review period, PNG did not encounter any situation or case where information had to be obtained from lawyers. However, PNG should suitably clarify the access powers of the Competent Authority to all stakeholders to ensure that professional secrecy does not act as any impediment to the access powers of the Competent Authority (see Annex 1).

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.

223. PNG law does not require notifying the person who is the subject of a request for information (i.e. person whom the investigation or inquiry concerns in the requesting jurisdiction), neither before the information is exchanged (prior notification) nor after the information is exchanged (time-specific post-exchange notification). There is no other right such as right to inspect files, appeal against an EOI notice in relation to EOI requests or the processing of such requests. PNG authorities confirmed that while seeking and obtaining information from any person in PNG, tax authorities do not disclose the purpose of seeking the information.

224. There are no specific provisions relating to appeal over EOI notices. Section 61 of the Tax Administration Act provides that the Commissioner General must use all powers available under the Act or any other law of PNG to collect and provide information requested by a treaty partner under a tax treaty or a mutual administrative assistance agreement. Section 59 of the Tax Administration Act provides for the powers of Administrative Summons, which can be used to collect any information from any person, whether or not liable to tax, in PNG. Similarly, section 58 provides for the powers to enter and search for any information at any premises or property for obtaining and seizing any information, documents, records, electronic devices, etc. While taxpayers have the right to appeal against tax decisions taken by the tax administrator, sections 58 and 59 are specifically excluded from the definition of a “tax decision” and hence, cannot be appealed against. Thus, a notice issued by the Competent Authority to obtain information does not fall under the ambit of an appealable decision.

225. PNG did not encounter any problems in accessing information due to any rights or safeguards of taxpayers leading to delays or court proceedings. PNG was able to access and provide the requested information in all five cases.

226. 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

Part C: Exchanging information

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

C.1. Exchange of information mechanisms

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

228. PNG has signed 10 DTCs, all of which are in force, with Australia, Canada, China, Fiji, Indonesia, Korea, Malaysia, New Zealand, Singapore and the United Kingdom.

229. Most of PNG’s treaties have been negotiated in the 1980s and 1990s and do not contain the latest EOI provision as stated in the 2012 OECD Model DTC. PNG’s DTCs with Fiji, Singapore and the United Kingdom restrict EOI in their scope. The DTC with Singapore restricts the exchange of information to information relevant for the purposes of the DTC. Further, the DTCs with Fiji and the United Kingdom limit the information to be exchanged only to the information available at the disposal of the tax authorities. In addition, except for the DTC with New Zealand (which was signed in 2012 and entered into force in 2014), none of the DTCs contain paragraphs 4 and 5 of the model DTC, although this has not affected EOIR in practice.

230. PNG received approval from its National Executive Council to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. PNG had requested the Co-ordinating Body to be invited to sign the Multilateral Convention in June 2016. After the Co-ordinating Body raised some concerns regarding PNG’s legal framework for ensuring the confidentiality and appropriate use of exchanged information, PNG carried out the necessary legislative changes in January 2019 and the Co-ordinating Body

invited PNG to sign the Multilateral Convention. PNG had planned to sign the Multilateral Convention in March 2020. However, due to the lockdowns imposed in the wake of the coronavirus pandemic, the signing has had to be deferred. PNG authorities have affirmed that PNG is committed to signing the Multilateral Convention shortly and ratify the same. Once done, the deficiencies in the EOI relationships existing as of now, would be resolved, except for Fiji which is not a Party to the Multilateral Convention.

231. To sum up, three of PNG's existing DTCs (with Fiji, Singapore and the United Kingdom) are not fully in line with the standard. PNG has not renegotiated its DTCs or protocols with its treaty partners due to its internal moratorium on DTCs as it is examining the implications of BEPS reports on its DTCs. While PNG's exchange of information mechanisms have some deficiencies, in practice PNG has effectively exchanged information in the five requests received during the review period (see paragraph 286 under C.5) and PNG maintains that in respect of most of the deficiencies, it would adopt an interpretation in line with the standard. Furthermore, PNG is committed to signing and ratifying the Multilateral Convention shortly and that would enable an alternative EOI mechanism fully in line with the standard for almost all the existing treaty partners (except Fiji). On balance, considering that PNG has made concerted efforts to sign the Multilateral Convention, the deficiencies in the three DTCs are unlikely to significantly impair PNG's ability to exchange information, PNG's commitment to interpret its DTCs in line with the standard and the fact that most of EOI exchanges of PNG have taken place and are likely to take place with its closest neighbours with whom it has not encountered any difficulties in applying the exchange mechanisms in line with the standard, the table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
Deficiencies identified	PNG's DTCs with three treaty partners contain restrictive provisions which are not in line with the standard.	PNG is recommended to ensure that all its EOI relationships allow for exchanging information in all cases.
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement		
Practical Implementation of the standard		
Rating: Largely Compliant		

C.1.1. Foreseeably relevant standard

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

233. All of PNG’s DTCs have the word “necessary” instead of “foreseeably relevant” in the EOI article. The only exception is the DTC with New Zealand. PNG’s EOI manual mentions that “older treaties often use the word “necessary” for “foreseeably relevant” and these terms are considered equivalent”. The EOI manual correctly notes that the term “foreseeably relevant” is “intended to provide for information to be exchanged to the widest possible extent, but excludes “fishing expeditions” or requests that are unlikely to be relevant to the tax affairs of a given taxpayer. It covers information in respect of all persons (e.g. not limited to persons that are resident in either contracting state or nationals thereof), in both civil tax matters and criminal tax matters, such as fraud and evasion. The obligation to exchange information that is “foreseeably relevant” pursuant to a treaty is mandatory.” Accordingly, PNG’s interpretation of the term “is necessary” is in line with the international standard.

Clarifications and foreseeable relevance in practice

234. PNG requires that the requesting jurisdiction provides sufficient information to demonstrate the foreseeable relevance of the information requested. PNG authorities require that the requesting jurisdiction be specific in its requests like stating identity information details, transaction details, period of transactions and any other relevant information that will assist in gathering information in a timely and cost effective manner to respond.

235. In the period under review, PNG did not need to seek clarifications in any cases from its treaty partners. PNG has not declined any request for information on grounds of foreseeable relevance.

Group requests

236. PNG’s procedures to deal with group requests are similar to those used for dealing with an individual request and are detailed in PNG’s EOI Work Manual (see element C.5 for details). Chapter 4 of the EOI manual states that “‘Group Requests’ should be dealt with in the same manner attending to single requests and in a timely manner as specified and in accordance to the EOI standards as set out by the Global Forum”.

237. The EOI manual prescribes the method of handling a group request. It makes reference to paragraph 5.2 of the Commentary to Article 26 of the OECD Model Convention and requires that the following information must

be provided by the requesting jurisdiction: (i) a detailed description of the group, (ii) the specific facts and circumstances that have led to the request; (iii) an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law supported by a clear factual basis; and (iv) a showing that the requested information would assist in determining compliance by the taxpayers in the group. If such information is provided, the request may be considered a valid group request. Thus, PNG's EOI manual suitably addresses Group Requests and guides the EOI official handling such requests on what to look out for in the process. PNG is working on further updating the EOI manual to provide more tailored examples on group requests.

238. During the review period, PNG did not receive any group requests. PNG authorities, however, confirmed that they would treat foreseeable relevance in the same way as they do for individual requests. Even if the requesting jurisdiction is unable to identify individual taxpayers, if there is reasonable information available to identify a group of taxpayers, the request will be processed.

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

239. The relevant EOI Articles of PNG's DTCs with Fiji, Singapore and the United Kingdom do not contain the words "exchange of information is not restricted by Article 1" (which states that the DTC is applicable to the residents of the two contracting states). Thus, the scope of persons in respect of whom information can be exchanged are residents of either of the two contracting states. Hence, in relation to these DTCs, PNG is of the view that the exchange of information could be restricted by Article 1 of the DTC.

240. The other seven DTCs permit the exchange of information for all domestic tax purposes of the Contracting States and are not restricted by the scope of Article 1, permitting exchange of information in relation to all persons. Furthermore, for these other DTCs, the exchange of information is not limited to the purposes of the agreement and extends to enforcement and administration of the domestic laws of the contracting states. Hence, these other DTCs are in line with the standard.

241. During the review period, PNG had received requests from Australia, New Zealand and Indonesia, DTCs which explicitly do not restrict EOI to residents. No problems were noted in relation to these cases. In all these cases, information was sought on non-residents and not PNG residents and PNG obtained and provided such information in all cases. Further, PNG's EOI manual states that information would be exchanged in respect of all persons and is not restricted to the residents of the contracting states. However,

since PNG did not receive or send requests to treaty partners with whom the treaties have a restrictive language, it could not be ascertained whether the relevant treaty partners would exchange information in respect of all persons. It is recommended that PNG ensure that information in respect of all persons can be exchanged under all its EOI relationships. It is nevertheless noted that except for Fiji, this issue would be resolved once the Multilateral Convention has been signed and ratified by PNG as the UK and Singapore are parties to the Multilateral Convention.

C.1.3. Obligation to exchange all types of information

242. Three DTCs do not provide for EOI to all types of information. First, the DTCs with the United Kingdom and Fiji restrict the scope of exchange of information only to information that is available at the disposal of the Contracting States under their respective taxation laws in the normal course of administration. Hence, under these DTCs only the information that is available with the tax authorities themselves would be exchanged.

243. Second, the agreement with Singapore limits the exchange of information only to “such information as is necessary for carrying out the provisions of this Agreement.” Hence, the EOI article does not permit the exchange of information for the purposes of domestic laws of the Contracting States. Singapore is a member of the Global Forum and has been reviewed. Singapore, in its own review, had informed that it had reached out to its relevant treaty partners requesting for renegotiation of the treaties not in line with the standard, but had not heard back from the treaty partners. PNG has an internal moratorium on DTC negotiations and has hence, not sought to renegotiate the treaty with Singapore (see element C.2 below).

244. Further, except for the DTC with New Zealand, PNG’s DTCs do not contain paragraph 5 of Article 26 of the OECD Model Tax Convention. However, absence of paragraph 5 may not be an impediment to effective EOIR considering that Singapore, the UK, Canada, Australia, Indonesia and Malaysia have already had their reviews and none of the jurisdictions has raised any reservations in relation to exchanging information with a treaty partner where paragraph 5 is not included in the EOI article.

245. In practice, PNG exchanged banking information in respect of one of the requests from New Zealand. However, the New Zealand treaty has paragraph 5. In the other requests, banking information or information held by a nominee or a person in a fiduciary capacity was not sought. Hence, the impact of absence of paragraph 5 could not be ascertained in practice. However, PNG has assured that this will not impede in obtaining and exchanging the requested information under any circumstances. With the signing and entry

into force of the Multilateral Convention, these deficiencies would stand addressed in respect of all treaty partners except Fiji.

C.1.4. Absence of domestic tax interest

246. Contracting states must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting state. This requirement is explicitly mentioned in paragraph 4 of Article 26 of the OECD Model Tax Convention. Only one of PNG's DTCs (with New Zealand) has this provision. However, PNG authorities have informed that regardless of absence of an explicit provision in this regard, they interpret the treaties liberally and would be able to obtain and exchange information with their treaty partners. PNG's domestic law does allow obtaining and exchanging information for meeting PNG's commitments under its international treaties.

247. Of the 10 treaty partners (after excluding New Zealand with whom the treaty contains paragraph 4) Singapore, Australia, Canada, Indonesia, Malaysia and the United Kingdom have been reviewed in the second round by the Global Forum. Similarly, China and Korea have been reviewed under the first round of reviews and are currently being reviewed under the second round. All these jurisdictions have reported that they would not insist on having paragraph 4 in the treaties to exchange information without domestic tax interest. Fiji is not a Global Forum member.

248. In practice, for all the requests that PNG received from its treaty partners during the review period, PNG obtained and exchanged information even in the absence of a domestic tax interest. For the requests from Australia and Indonesia, PNG authorities informed that they obtained and provided information even when PNG authorities had no domestic interest in any of these cases. Hence, absence of paragraph 4 in PNG's treaties is unlikely to be an impediment to effective EOIR.

C.1.5 and C.1.6. Exchange information relating to both civil and criminal tax matters and in absence of dual criminality principles

249. PNG's DTC with Singapore restricts the exchange of information for the purposes of the DTCs. This could affect exchange of information on criminal tax matters. Further, the DTC with the United Kingdom provides that information may be exchanged for the purposes of the DTC or the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes covered by the DTC. This limitation could be interpreted to mean that criminal tax matters are not covered by this DTC as detection of fraud and evasion are not explicitly covered. This wording is in contrast to the wording in the DTC with Fiji (which is otherwise very

similarly worded to the United Kingdom DTC) which mentions “prevention or detection of fraud or evasion” besides mentioning legal tax avoidance. However, the United Kingdom has been reviewed by the Global Forum and it is noted that the United Kingdom receives and provides information in criminal tax matters. PNG has informed that it will be able to provide information in both civil and criminal tax matters under its United Kingdom treaty as it interprets the wording of Article 27 of the DTC to cover both civil and criminal tax matters as long as they are pertaining to the taxes covered by the agreement.

250. In all other DTCs, there is no bar on exchange of information for criminal tax matters as they provide for exchanging information necessary for carrying out the provisions of the domestic laws of the contracting states concerning taxes covered by the respective DTCs.

251. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested jurisdiction if it had occurred in the requested jurisdiction. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle. None of the DTCs concluded by PNG applies the dual criminality principle to restrict the exchange of information.

252. In practice, there were no instances during the review period where information was sought from PNG on a criminal tax matter. However, PNG authorities have advised that they would be able to provide information in both civil and criminal tax matters under their treaties and would not apply a double criminality condition.

C.1.7. Provide information in specific form requested

253. There are no restrictions in any of the DTCs signed by PNG on the provision of information in any specific form requested. During the peer review period, PNG was not asked to provide information in any specific form. However, PNG authorities confirmed that if information is required in any specific form, they would be able to provide it as requested.

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

254. All PNG’s DTCs are in force and have been given effect through domestic law.

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	10
In force	10
In line with the standard	7
Not in line with the standard	3
Signed but not in force	0
In line with the standard	0
Not in line with the standard	0
Among which – Bilateral mechanisms (DTCs/TIEAs) not complemented by multilateral or regional mechanisms	10
In force	10
In line with the standard	7
Not in line with the standard	3
Signed but not in force	0
In line with the standard	0
Not in line with the standard	0

255. The Income Tax (International Agreements) Act 1987 (ITIA) has been amended to include sub-section 2B to section 2¹⁷ of the ITIA and reads “Subject to the Constitution and to Section 2, the provisions of the Multilateral Convention on Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) (as amended), the Convention on Mutual Administrative Assistance in Tax Matters (MAC) (as amended) and any other international tax treaty affecting co-operation and exchange of information or mutual administrative assistance agreements, that Papua New Guinea is signatory to, have the force of law according to their tenor.” The ITIA is a sessional law and these changes were part of PNG’s 2019 budget amendments. With this change, the ITIA now has the necessary provisions to ensure that international agreements providing for exchange of information and other forms of administrative co-operation, including the Multilateral Convention, are effectively implemented, and have the force of law, in PNG. This amendment was brought about in anticipation of PNG signing the Multilateral Convention. The amendment ensures the prevalence of the terms of an international exchange agreement, including the Multilateral Convention, over any inconsistent provisions in the ITA or in any Act imposing tax in PNG.

256. PNG was cleared by the Co-ordinating Body and invited to sign the Multilateral Convention in April 2019. The IRC had made the necessary

17. Section 2 of the ITIA incorporates the ITA into the ITIA and provides for reading the ITA as one with the ITIA.

arrangements for signing when PNG had to undergo significant internal political changes which led to a new government and a new Minister in-charge. The IRC had to go through the entire process of seeking approvals under the new regime. In February 2020, PNG’s Ambassador to Belgium had been authorised to sign the Multilateral Convention and PNG was in talks for a suitable signing date in March 2020, but the OECD headquarters closed its premises due to the outbreak of the Covid-19 pandemic. PNG authorities plan to proceed with the signing once the pandemic situation stabilises and allows physical movement of people.

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

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

257. PNG has a fairly small treaty network with ten treaty partners of which all agreements are in force. PNG’s key trading partners are Australia, New Zealand, China, Indonesia, Korea and Malaysia. PNG has DTCs with all these key trading partners.

258. Three Global Forum members have in the last few years expressed interest in entering into Double Tax Avoidance Agreements with PNG. Another member approached PNG for negotiating a protocol to an existing DTC. However, since 2016, PNG has had an internal moratorium on DTCs and has not negotiated any DTCs with any jurisdiction. The government decided to wait for the completion of the BEPS project so that all BEPS reports could be considered in totality and future DTCs could be negotiated after examining the benefits of the DTCs for PNG as well as their consistency with the BEPS project. PNG has explained that the government is examining the benefits of DTCs to PNG as well as considering the BEPS reports and till a decision is reached, PNG will not enter any DTCs or protocols.

259. However, the moratorium does not preclude entering TIEAs with interested jurisdictions and PNG confirmed that it will be willing to negotiate TIEAs with all interested jurisdictions. No peer reported having approached PNG for a TIEA and PNG not entertaining such a request.

260. As noted above in paragraph 230 PNG is ready to sign the Multilateral Convention. In June 2016, PNG formally applied to the Co-ordinating Body seeking an invitation to sign the Multilateral Convention. However, there was one concern raised by the Co-ordinating Body that PNG legislation at that time did not ensure that information received by PNG could not be shared with non-tax authorities. PNG was asked to amend its legislation in this regard. In January 2019, the Income Tax (2019 Budget) (Amendment) Act 2018 amended section 9 of the ITA by inserting a new Subsection 8 that

reads “(8) Notwithstanding Subsection (4), any information obtained by the Papua New Guinea competent authority from the competent authority of a country¹⁸ with which Papua New Guinea has entered into a tax treaty or mutual administrative assistance agreement may be disclosed only to the extent permitted under the treaty or agreement.” PNG submitted its request once again to the Co-ordinating Body together with the updated legislation. The Co-ordinating Body has accepted the updated legislation and PNG was expecting to sign the Multilateral Convention in March 2020 but the signing has had to be delayed in the wake of the lockdowns arising from the coronavirus pandemic. PNG is expecting to sign the Multilateral Convention at the earliest and put it into force.

261. Considering the relatively small treaty network of PNG, but noting that PNG is committed to signing and implementing the Multilateral Convention shortly, PNG is recommended to continue expanding its treaty network and ensure that EOI mechanisms exist with all relevant partners.

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

Legal and Regulatory Framework		
	Underlying Factor	Recommendations
Deficiencies identified	PNG’s treaty network is relatively small. Although PNG has had an internal moratorium on negotiating DTCs and did not respond to requests for DTCs from three jurisdictions during the review period, there is no bar on negotiating TIEA. However, no jurisdiction approached PNG with a request for a TIEA.	PNG is recommended to continue to expand its treaty network and have in place an exchange mechanism with all relevant partners.
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement		
Practical Implementation of the standard		
Rating: Largely Compliant		

18. Section 3 of PNG’s Interpretation Act 1975, which is used to interpret all PNG legislation and relevant instruments made under those laws, defines “country” to include a state, province, territory or similar division of a country. In light of this, “country” will cover dependencies and overseas territories.

C.3. Confidentiality

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

263. PNG's EOI agreements contain the confidentiality provisions for safeguarding all information exchanged with the treaty partners and treating such information as secret as per the domestic laws of the contracting states. Such information is to be shared only with authorities engaged in the administration of taxes covered by the DTCs. Such confidentiality also extends to other information exchanged between the Competent Authorities. PNG has amended its laws to ensure that information received under an EOI mechanism is treated as confidential and is disclosed only to the extent permitted by the agreement.

264. 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

265. All of PNG's DTCs contain the provision on confidentiality as contained in Article 26(2) of the OECD Model DTC and generally read as

any information received by the Competent Authority of a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of the State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes to which this Agreement applies. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

There are minor drafting variations across different DTCs and some of them like those with, Australia, Canada, Fiji and Singapore do not carry the last sentence permitting disclosure of information in public court proceedings or in judicial decisions. However, PNG has confirmed that this will not impact the interpretation of the provision under these treaties and PNG will continue to interpret it in line with the standard.

266. PNG has informed that there is no legal provision that allows a taxpayer to access information held by the IRC. There have not been any instances where a taxpayer has challenged the decision of the Competent Authority to exchange information.

267. Section 9 of the ITA governs the domestic secrecy provisions in relation to the tax information available with the IRC. All officials of the IRC are strictly prohibited from divulging or communicating any information acquired by them to anyone except for the purposes of performing their duty. Any violations of these provisions may result in imposition of fine of PGK 10 000 (EUR 2 550) or imprisonment of 12 months. The Code of Ethics and Conduct issued as Commission Administrative Order 1-07 by the IRC requires adherence to the law and specifically prohibits IRC employees from disclosing information obtained in confidence. Violation of the Code may be considered a separate offence under the Criminal Code, punishable by imprisonment for an IRC official for unduly disclosing information. In addition to civil and criminal legal consequences, breaches of the IRC contract of employment and administrative orders can lead to termination of employment, reduction in classification, re-assignment of duties, reductions in salary or reprimands.

268. However, section 9(4) of the ITA carves out certain exceptions to this general rule of secrecy and confidentiality and allows IRC officials to share information with certain other public authorities like the FASU, Central Bank, National Statistics Office, and EITI Secretariat. In order to ensure that these exceptions do not affect the confidentiality requirements under EOI mechanism, PNG has brought in a legislative amendment in January 2019 through which a new section 9(8) has been inserted in the ITA, which reads “Notwithstanding Subsection (4), any information obtained by the Papua New Guinea competent authority from the competent authority of a country with which Papua New Guinea has entered into a tax treaty or mutual administrative assistance agreement may be disclosed only to the extent permitted under the treaty or agreement.” This new provision now effectively prevents exchanged information from being disclosed by the PNG Competent Authority to anyone other than in accordance with the terms of an international exchange instrument, including the Multilateral Convention.

269. The EOIR standard provides 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. None of the DTCs permit the sharing of information for other than tax purposes. In the period under review PNG reported that there were no requests where in the requesting

partner sought PNG’s consent to utilise the information for non-tax purposes and similarly PNG did not request its partners to use information received for non-tax purposes.

C.3.2. Confidentiality of other information

270. PNG’s DTCs cover the confidentiality requirements for other¹⁹ information by extending the secrecy and confidentiality to “any information” received or exchanged between the contracting states. PNG authorities have informed that all the other information received from a treaty partner’s competent authority is considered to be sensitive and confidential and is protected from disclosure by the secrecy provisions protecting tax information.

Confidentiality in practice

271. In practice, PNG has put in place necessary measures to ensure confidentiality of all information exchanged under the EOI mechanisms. At the time of hiring, all employees including contractors are sworn to the Secrecy Oath prior to their engagement in IRC. This applies to all work including the protection and use of data/information received through EOI. Internal policies relating to confidentiality and secrecy are a part of induction training for officers. Departure policies are in place and access to computer systems is immediately cut-off once an employee leaves the organisation. Further, the provisions of section 9(2) of the ITA governing confidentiality and secrecy continue to govern an ex-employee in relation to any information acquired during her/his employment with the IRC.

272. The IRC has policies and procedures in place to fulfil legal requirements of confidentiality with respect to information exchanged under tax treaties. These measures include strictly confining access to the information to officers on a “need to know” basis, clearly marking the information as information exchanged under a treaty and describing the applicable restrictions, and also confining the authority to release information to a small number of tax officers. The EOI unit is housed in premises shared with some other divisions of the IRC. However, access to the floor on which the EOI unit is housed is restricted through biometric authentication of authorised personnel only. PNG’s EOI unit follows a clean desk policy. CCTV cameras are installed for full-time surveillance of the work area. PNG authorities informed that there are plans to shift the EOI unit to a separately gated office with even more

19. “other information” refers to all requests for 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.

limited access. The EOI Unit has a separate shared drive for the Unit whereby access is restricted to the EOI officers only. Here all electronic information is stored and maintained including case registers and various EOI cases as well as data received. A data warehouse was recently established that enabled the Unit to store bulk data received. Access to the data warehouse is also restricted to certain section of IRC and to certain officers only.

273. The IRC's access authorisation and data transmission policies extend to communications between the competent authorities. All email communication with other competent authorities is by way of secure email. The confidentiality of EOI information is emphasised in the EOI manual as well.

274. The IRC has a policy of record retention for ten years. Subsequently, based on a disposal policy, hardcopy documents that are not needed are shredded. For computer hardware, unrequired and damaged hardware is destroyed through a process overseen by a committee. All digital files are backed up and retained in servers until they are no longer required. Their removal is governed by approval from the Commissioner General.

275. The IRC's Internal Audit Department is tasked with monitoring breaches of confidentiality. Efforts are made to detect any breaches at an early stage itself. Any reported data breach is registered and assessed. In case there is a major breach of confidentiality, investigations are carried out and a report is put up to the Assistant Commissioner concerned and the Legal Department for further action against any employee or individual found responsible for the breach.

276. In relation to cyber security and breaches through attacks on the IT systems, IRC is working on developing standard operating procedures. IRC informed that firewalls at different levels of the IT system have been put in place and bandwidth usage is monitored to detect any warning signs of a possible breach. PNG should put in place a systematic policy to prevent and handle confidentiality breaches related to IT systems and network (see Annex 1).

277. During the current review period, no issues arose on account of confidentiality of the EOI processes. PNG informed that no major data breaches were reported during the review period. Focus has been on preventive and prompt corrective actions in order to handle data security issues.

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.

278. PNG’s EOI mechanisms provide for the rights and safeguards of taxpayers and third parties in line with the standard. All of the DTCs signed by PNG contain Article 26(3)(c) of the OECD Model DTC. The contracting states are not under an obligation to exchange information “which would disclose trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.”

279. In practice, the PNG competent authority has never been confronted with any of these issues. PNG authorities have informed that they take a liberal view on this issue and if they find that the requested information is foreseeably relevant to the treaty partner and the treaty partner’s domestic laws ensure the confidentiality of such information, they may still proceed to obtain and exchange such information even though the EOI mechanisms do not oblige them to exchange such information.

280. 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.4.1. Exceptions to provide information

282. With regard to attorney client privilege, PNG has informed that it takes a strict interpretation as discussed in the commentary to Paragraph 3 of Article 26 of the OECD Model DTC. Protection would be confined only to such information as professional advice given by the attorney to the client in a professional capacity. Section 9 of the Professional Code of Conduct Rules, 1989 provides for confidentiality. However, the Code of Conduct Rules make a categorical exception that if such information is needed by law, rule of court or court order, professionals must provide such information to the public authorities. PNG authorities have informed that in any case, attorney client privilege will not extend to other types of information that such legal professionals might come to acquire as part of their regular work with clients like due diligence requirements and beneficial ownership information or other documents reflecting their business affairs. PNG authorities have confirmed that as long as the information requested by a treaty partner is foreseeably relevant, they will be able to obtain and exchange the same and attorney-client privilege would be invoked only for very specific types of information.

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.

283. During the review period from 1 October 2015 to 30 September 2018, PNG received five requests for information from three EOI partners. PNG made four requests for information during the review period.

284. The organisation of the EOI unit and the resources employed are adequate. PNG has put in place complete and coherent procedures for handling EOIR. Peers were generally very satisfied with the timeliness and quality of responses that they received from PNG.

285. As of now, the EOIR experience of PNG is very limited both in terms of number of requests and complexity of the requested information. Once the Multilateral Convention is signed and ratified, the number of requests may increase and PNG should suitably prepare for the same.

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

Legal and Regulatory Framework		
This element involves issues of practice. Accordingly, no determination has been made.		
Practical Implementation of the standard		
	Underlying Factor	Recommendations
Deficiencies identified in the implementation of EOIR in practice	On two occasions, communication with partners suffered as correct co-ordinates of the delegated competent authorities had not been provided and status update was not provided when a response could not be provided within 90 days.	It is recommended that PNG ensure adequate communication and timely status updates in all cases where a request cannot be answered within 90 days.
	PNG has limited experience of EOIR in practice given its small treaty network. The number and complexity of requests may increase once PNG signs and ratifies the Multilateral Convention.	It is recommended that PNG monitor the implementation of its EOI framework in practice to ensure that when EOI requests are received, responses are provided in a timely manner.
Rating: Largely Compliant		

C.5.1. Timeliness of responses to requests for information

287. Over the period under review from 1 October 2015 to 30 September 2018, PNG received five requests for information. PNG counts the number of requests by the number of letters received or sent (in case of outgoing requests). If through one letter, the treaty partner requests for information on multiple taxpayers, it is still counted as one request. In case the requested jurisdiction seeks further information on a request that has not yet been fully satisfied, such a request letter is not counted as a separate request and is considered part of the original request and treated as one request. The information requested in these requests²⁰ related to banking information (1 case) and other types of information (5 cases; e.g. information on taxes paid in PNG for confirmation of tax credit, export details, residential details and postal address of taxpayers). The entities for which information was requested is broken down to companies (1 case) and individuals (4 cases). PNG's most significant EOI partner for the period under review (by virtue of the number of exchanges with them) was New Zealand, followed by Australia and Indonesia.

288. PNG provided the requested information within 90 days in three cases. PNG explained that these requests related to information already at the disposal of the competent authority (e.g. tax information such as residency status of a person).

289. PNG provided two responses within a year. In the one request from Australia received in 2018, PNG explained that a significant delay occurred due to Australia's email being sent to a senior official, who had delegated the authority to answer EOI requests to another official. This caused a three-month delay in the request actually reaching the EOI unit. Contact details of the Competent Authority have since been updated. While the letter was sent in August 2018, due to the internal delay in PNG, the EOI unit got the letter in November 2018. Upon receiving the EOI request the EOI unit sent two status updates to Australia in January 2019 and in March 2019. The request had sought information on the residency of a taxpayer. PNG authorities informed that the IRC had to seek certain details from the Immigration and Citizenship Authority (ICA) to address the request. However, they encountered some delays in obtaining this information from the ICA, which delayed the exchange of information. IRC is in the process of signing an MoU with the ICA to streamline the process of obtaining information for EOI purposes. A full response was provided to Australia in May 2019 and the request was closed. Australia, in its peer inputs, has expressed satisfaction with the information received.

290. The other case in which information was provided within a year was in relation to a request from New Zealand where information about the

20. Please note that some requests entailed more than one information category and some requests entailed more than one entity type.

assets of an individual had been sought for the purposes of recovery by the New Zealand Tax Authorities. Tax registration details, current residential and postal address in PNG of the taxpayer, residential or commercial property ownership in PNG, details of current employer, directorship or shareholding details, and banking and financial information details were sought by New Zealand. PNG was able to obtain and provide all the required information and New Zealand has expressed full satisfaction with the quality of information that it received. PNG was able to provide banking information with all underlying documentation while answering the request. New Zealand has noted in its peer inputs that the delay in providing the information was possibly due to the comprehensiveness of the information that was obtained and provided. New Zealand has also informed that PNG proactively identified and provided them with the taxpayer's bank statements even though New Zealand was not aware of the existence of such statements and had not requested the same. This additional information proved useful to the New Zealand Tax Authorities in deciding their debt recovery and collection options. PNG gathered and provided all information together, even though it could have provided partial information in batches. PNG has explained that in this case employment contract of an individual was required and there was some delay in obtaining the same from the third party information holder.

291. In the period under review, PNG did not need to seek clarifications in any case from its treaty partners.

292. The timeliness of answering EOI requests appears in line with the standard (once EOI requests reach the EOI unit) but the limited number of requests received does not permit drawing a final conclusion on timeliness.

Status updates and communication with partners

293. Status updates had to be provided only in two cases as full responses were provided by PNG in the other three cases within 90 days. In relation to the request from Australia, status updates were provided after a delay of five months. However, this delay was attributable to the request reaching the EOI unit late. Subsequently, PNG provided regular status updates to Australia before providing the complete response in May 2019. In relation to the other request from New Zealand, status updates were not provided. While in its peer inputs, New Zealand attributed the non-provision of status updates by PNG to the wide variety of information that was requested and the fact that it was New Zealand's first request to PNG, PNG acknowledged that it should have provided status update in this case and promised to do so in all cases going forward.

294. PNG's EOI manual prescribes the provision of status updates to treaty partners in all cases where a request cannot be answered within 90 days. It is recommended that PNG always provides status updates when a full response cannot be provided within 90 days.

295. Australia noted some difficulty in reaching the PNG Competent Authority through email. This was due to the delay in its request reaching the EOI unit. The problem arose as the email from Australia was directed to a senior official who had delegated the Competent Authority powers to another official. Since then, this problem has been resolved as PNG has updated the contact details of the Competent Authority and shared the same with the Global Forum secure site for competent authorities. Peers were overall very satisfied with the accessibility of the PNG Competent Authority and the co-operation and information that had been provided by PNG in response to their requests.

296. PNG has informed that it has been exchanging information spontaneously with treaty partners. One peer reported having received information spontaneously from PNG during the review period.

C.5.2. Organisational processes and resources

Organisation of the competent authority

297. In PNG, the exchange of information function under DTCs is centralised in a single unit called the Exchange of Information (EOI) unit. The Commissioner General of the IRC is the Competent Authority for EOI in PNG. The Competent Authority powers have been delegated to the Assistant Commissioners who head the three divisions of Legal Services, Large Taxpayer Office and Case Selection and Intelligence. The EOI Unit is housed under the Case Selection and Intelligence Division of the IRC.

Resources and training

298. The EOI unit comprises a Director and a Team Leader with four case officers. All the officials have substantial experience working for the IRC with the Director having more than 25 years of experience. Almost all the officials have degrees in Commerce, Accountancy or Law. The EOI Unit is supported by the Information Technology Division, the Legal Services Division, the Large Taxpayer Office, SME Audits Division and the Case Selection and Intelligence Domestic Taxes Unit for the different types of needs that may arise in the performance of EOI functions. Considering the limited workload currently, EOI officials have been engaged in other domestic tax work like intelligence gathering for bringing unregistered domestic taxpayers into the tax net. EOI work, however, remains priority work for them.

299. PNG received technical assistance from the Australian Tax Office on EOI, including training to the officials in the EOI unit. Furthermore, EOI officials have benefitted from trainings conducted by the Global Forum.

300. PNG authorities have informed that with the signing of the Multilateral Convention and its coming into force, the number of requests may increase. The PNG IRC feels that the EOI Unit is currently adequately staffed and trained to handle the increase in the expected workload in the short to medium term once the Multilateral Convention is in force and remains committed to increase resources if the workload increases substantially. Moreover, PNG is anticipating the need for more staff and capacity building as it prepares for automatic exchange of information. In this respect, PNG in April 2019 has undergone a pre-assessment of its information and security management for AEOI. Work on this is currently in its initial stages.

Incoming requests

Competent authority's handling of the request

301. When a request for information is received by the Competent Authority, the same is forwarded to the Director. The request is then recorded as a case. Case registering, tracking and monitoring is done manually from an excel sheet maintained by the team leader. Information to track work includes date of receipt of the request by the Competent Authority, date when the EOI request was received by the EOI unit, date when information was collected/obtained, dates when responses were sent, case officers, type of request, reference number used and requesting jurisdiction. Each case is allocated to two officers and the Director and team leader are both responsible for monitoring the performance and ensuring timely response.

302. PNG's EOI manual details the steps to be carried out for processing an incoming request. Within seven days of receipt of the request by the EOI unit, an acknowledgement of the EOI request is sent to the requesting jurisdiction from the email address of the Competent Authority. The Director of the EOI unit examines the request to check if it fulfils the conditions set under the applicable EOI provision of the applicable treaty, has been signed by the Competent Authority of the requesting jurisdiction, the information requested is of a nature which can be provided under the legal instrument and the relevant laws of the requesting jurisdiction, and sufficient information is given to understand the request and to identify the person. PNG relies on the declarations from the requesting jurisdiction in checking the incoming request. Foreseeable relevance of the request is sought to be established at this stage. If some part of the request is found to be incomplete or unclear, a clarification is to be sought from the requesting jurisdiction within 60 days of receiving the request. In practice, no clarifications were requested during the review period. If part of the request is clear, the same is proceeded with during the pendency of clarification from the requesting jurisdiction for the unclear portion. PNG's CA may refer to the General and Legal Aspects of Exchange of Information of the OECD manual while examining the validity

of a request. All communication with the requesting jurisdiction is done through the secure email of the PNG Competent Authority.

303. Once a request has been accepted as valid and foreseeably relevant, efforts are made to obtain the information and exchange it within 90 days. In case all information cannot be obtained, whatever information has been obtained is exchanged first. In the case of New Zealand's first request in 2016 which was responded to within one year, this was not done as PNG was still understanding the EOI processes. However, since then, PNG endeavours to provide partial responses based on the information gathered. PNG monitors the status of pending requests through manual monitoring of the time elapsed since the receipt of requests. As per the EOI manual, status updates must be provided in cases where information could not be provided within 90 days (but the authority has done so only in one of the two applicable cases).

304. For information that is available with the tax administration, the same must be obtained and exchanged within 90 days, which has been done in three cases during the review period. Where information has to be obtained from government authorities in possession of such information, a notice under section 366 of the ITA is issued seeking the information. Usually a response is received within 30 days. If not, a follow-up reminder is sent to the public authority and the tax administration is establishing memoranda of understanding with the most relevant authorities. Where information is to be obtained from a taxpayer or a person that is the subject of the enquiry, notice under section 366 of the ITA is issued. Although 30 days are granted for responding to the notice, if no information or correspondence is received from such a person within seven days, a reminder is issued. PNG authorities confirmed that in most cases, a response within the time granted in the notice is received. Similar procedure is followed for obtaining information from banks.

305. PNG authorities informed that the same procedure would be followed in case the requested information is for criminal tax investigations in the requesting jurisdiction. However, during the review period, PNG did not receive any such request.

Verification of the information gathered

306. Once the information has been obtained, the case worker and the Team Leader carry out a verification process. It is verified that all the information requested has been provided by the information holder(s). Further, it is verified that all the information sought in the request from the treaty partner has been obtained. Once the verification process has been carried out, information is exchanged through the Competent Authority.

Practical difficulties PNG experienced in obtaining the requested information

307. PNG's experience with EOI was fairly limited during the review period. PNG's IRC encountered some difficulties in obtaining information from the ICA in one of the cases. Since then, IRC has entered an MOU with the ICA to ensure that requests made by IRC to ICA for any information are handled on priority basis. IRC is in the process of entering into MoUs with other government agencies as well in order to ensure that IRC's requests for information are handled on priority basis by other government agencies.

Outgoing requests

308. The process to prepare and send a request for information to a treaty partner is detailed in the EOI manual. The Large Taxpayer Office, SME Audits Division and Case Selection and Intelligence (Domestic Tax) Unit are the main divisions and unit within the IRC that carry out tax investigations and audits. Hence, outgoing requests originate from these divisions. These divisions request the EOI unit to seek information from treaty partners. An EOI unit officer works with these divisions to prepare the requests for information. Requests are prepared in softcopy and are then encrypted. The Competent Authority intimates the treaty partner's Competent Authority of PNG's intention to send a request for information. Upon receiving an acknowledgement from the other CA, encrypted requests are sent to the other jurisdictions through PNG's CA's email. PNG's CA follows up with the other CA to ensure that the encrypted email can be opened. The case is recorded as an outgoing request in the internal database. While receiving the response through email, PNG acknowledges the receipt of information. The received information is provided to the tax auditor and the case is considered complete. The EOI unit maintains details of each outgoing request in softcopy as well as in hardcopy.

309. During the peer review period, PNG sent four requests for information. All the requests were sent to Australia. Peer inputs suggest that all the requests were generally of good standard. Clarification was sought by the treaty partner in one case on whether PNG had exhausted all means domestically for obtaining the information. The clarification was promptly provided by PNG.

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

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

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, the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, it should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be stated in the text of the report. A list of such recommendations is reproduced below for convenience.

- **Element A.1.1:** PNG should issue the notification from the Commissioner General under section 10F of the ITA to ensure that all taxpayers update any changes to their legal ownership promptly with the IRC (paragraph 61).
- **Element A.1.1:** Considering the limited supervision of AML compliance by DNFBPs so far, FASU should put in place a supervisory and monitoring plan in respect of DNFBPs to ensure their understanding about beneficial ownership and their compliance with CDD obligations (paragraph 93).
- **Element A.1.3:** In relation to partnerships, some guidance needs to be given to banks and other AML-obliged persons in relation to how they should identify the beneficial owners in the case of partnerships, especially where one or more partners are legal persons (paragraph 105).
- **Element A.1.4:** PNG should issue adequate clarification and guidance to all AML-obliged persons to enable them to understand and always record the identity of the settlor, trustee(s), all of the beneficiaries or class of beneficiaries and any other natural person exercising ultimate effective control over the trust (paragraph 118).
- **Element A.1.5:** FASU should ensure that all AML-obliged persons in PNG correctly apply the issued guidance on identification of beneficial owners in the case of associations (paragraph 130).
- **Element A.2:** The IRC should collaborate with the Registrar to ensure consistency in the IRC's and ROC's databases and remove inactive entities in order to suitably monitor the tax return filing rates (paragraph 167).

- **Element A.3:** There is no specific timeframe mentioned in the AML law within which banks must carry out due diligence. PNG should require that CDD is carried out on a time-bound regular basis in order to ensure that beneficial ownership information on bank account holders is accurate and up-to-date (paragraph 188).
- **Element B.1.5:** PNG should suitably clarify the access powers of the Competent Authority to all stakeholders to ensure that professional secrecy does not act as any impediment to the access powers of the Competent Authority (paragraph 222).
- **Element C.3:** PNG should put in place a systematic policy to prevent and handle confidentiality breaches related to IT systems and network (paragraph 276).

Annex 2: List of Papua New Guinea’s EOI mechanisms

	EOI partner	Type of agreement	Signature	Entry into force
1	Australia	DTC	24 May 1989	29 Dec 1989
2	Canada	DTC	16 Oct 1987	01 Jan 1990
3	China (People’s Republic of)	DTC	14 Jul 1994	16 Aug 1985
4	Fiji	DTC	29 Apr 1998	27 Jan 1999
5	Korea	DTC	23 Nov 1996	21 Apr 1998
6	Indonesia	DTC	12 Mar 2010	5 Mar 2014
7	Malaysia	DTC	20 May 1993	01 Jan 2000
8	New Zealand	DTC	29 Oct 2012	10 Feb 2014
9	Singapore	DTC	19 Oct 1991	01 Jan 1993
10	United Kingdom	DTC	17 Sep 1991	01 Jan 1992

Annex 3: Methodology for the review

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

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 24 April 2020, PNG's EOIR practice in respect of EOI requests made and received during the three year period from 1 October 2015 to 30 September 2018, PNG's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by PNG's authorities during the on-site visit that took place from 1-5 July 2019 in Port Moresby, Papua New Guinea.

PNG joined the Global Forum in 2015. This review is the first one conducted by the Global Forum on PNG.

Review	Assessment team	Period under review	Legal framework as of	Date of adoption by Global Forum
Round 2	Ms Anne Margaret Gormley (Ireland), Mr Yoon Kim and Ms. Wang Su An (Korea), and Mr Puneet Gulati (Global Forum Secretariat)	1 October 2015 to 30 September 2018	April 2020	August 2020

List of laws, regulations and other materials received

Companies Act 1997 as amended in 2014

Tax Administration Act 2017

Income Tax Act

Income Tax (International Agreement) (2019 Budget) (Amendment) Act 2018

Income Tax (2019 Budget) (Amendment) Act 2018
Business Names Act, 2014
Associations Incorporation Act, 1976
Associations Incorporation Regulation
Anti-Money Laundering and Counter Terrorist Financing Act 2015
Investment Promotion Authority Act 1992
Partnership Act
Trustees and Executors Act 1961

Authorities interviewed during on-site visit

The PNG Internal Revenue Commission
The Investment Promotion Authority
Financial Analysis and Supervision Unit
Bank of Papua New Guinea
Members/AML officers of the four banks
Lawyers invited through the PNG Law Society

Annex 4: Papua New Guinea’s response to the review report²¹

The peer review process has been long and arduous for PNG. We participated in the mock peer review exercise in 2017 as part of the technical assistance that we received from the Global Forum Secretariat; this process greatly assisted us to prepare for the official launch of our peer review proper. It enabled us to collate relevant information and populate the peer review questionnaire well ahead of time. At the outset, we would like to thank the Global Forum, particularly the assessment team, for the work that they have done, in close consultation with the country team, which resulted in a peer review report that correctly outlines our country position in terms of PNG’s legal and regulatory framework, and the practical implementation of this framework, as at the cut-off date. Papua New Guinea accepts the Report.

PNG is committed to effectively implementing the international tax standards of transparency and exchange of information for tax purposes. This is evident by the fact that we have already taken relevant steps to implement EOIR since joining the Global Forum. This includes the setting up of a dedicated International Team within our tax administration who handles incoming and outgoing requests for information with our treaty partners. We have had invaluable support from relevant partners, including other jurisdictions, who have supported us in our journey towards implementing EOIR. With their assistance, our EOI team has the necessary tools to assist them in their role, including a robust EOI manual, modeled after the Global Forum model.

We note the key recommendations contained in the Report and assure that PNG is committed to taking the relevant steps to address those gaps that have been identified by the assessment team. We are committed to ensuring that those recommendations which require changes and attention at the administrative level will be addressed as a matter of priority within the next 12 months. Ongoing activities, such as the data cleansing exercise carried out by our Companies Office, the regular oversight and monitoring of financial

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

institutions by our FIU, and the drive by the tax administration towards signing the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC), demonstrate PNG's commitment to addressing the gaps identified in our legal and regulatory framework and the practical implementation of the standard. With regard to the MAC, PNG is working towards signing it in August 2020. We will keep the Global Forum updated with regard to this agenda.

We look forward to continued cooperation between the relevant stakeholders in country to achieve effective implementation of the Standard, as well as improved cooperation with the Global Forum and other relevant partners.

PNG will endeavor to take the necessary steps to action the recommendations made in the Report, and acknowledge that some of these will require continued support from the Global Forum, which we hope will be forthcoming.

To conclude, PNG would like to thank everyone who has assisted us throughout this peer review process:

- The Global Forum, for assisting us throughout the mock exercise from 2017 up until the official launch of the peer review proper in 2019;
- The assessment team, for their hard work and dedication throughout the whole process;
- the Asian Development Bank, for their assistance during the mock exercise and for providing EOIR specific training for our officials; and
- Our closest neighbor, Australia, for their assistance in getting us started on our EOIR journey.

The peer review process has resulted in the relevant state agencies (Internal Revenue Commission, Investment Promotion Authority and the Financial Analysis and Supervision Unit) fostering closer ties. We will use this as a springboard to launch into taking relevant actions per the key recommendations.

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report on the Exchange of Information
on Request PAPUA NEW GUINEA 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 Papua New Guinea.



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