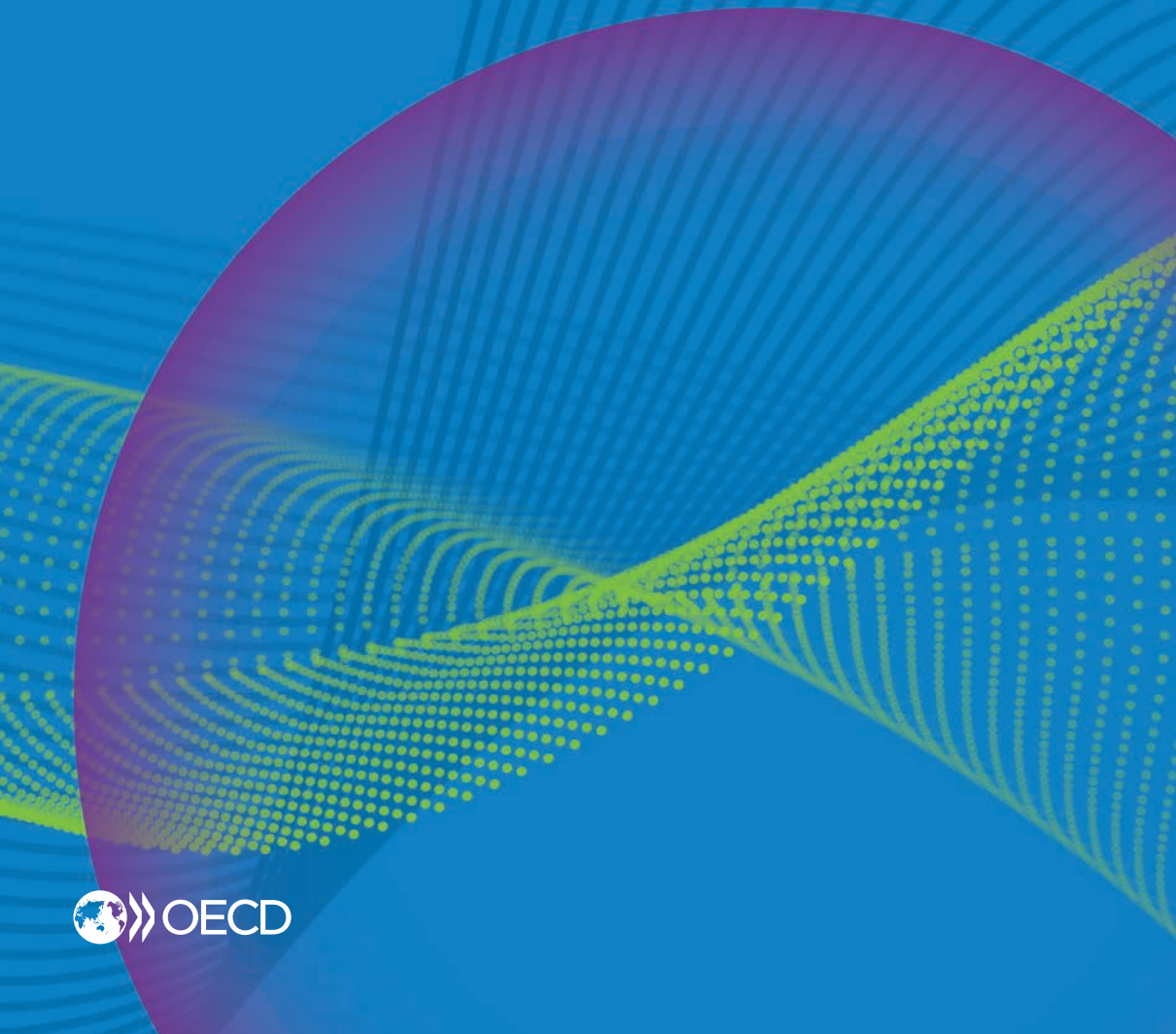
GLOBAL FORUM ON
TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

ANTIGUA AND BARBUDA

2021 (Second Round, Phase 1)



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Global Forum on Transparency and Exchange of Information for Tax Purposes: Antigua and Barbuda 2021 (Second Round, Phase 1)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

BETTER POLICIES FOR BETTER LIVES

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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/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

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

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

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

More information

All reports are published once adopted by the Global Forum. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published reports, please refer to www.oecd.org/tax/transparency and http://dx.doi.org/10.1787/2219469x.

Abbreviations and acronyms

2016 TOR	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015
2017 EOI Manual	Exchange of Information Manual, as revised in 2017
ABSTA	Antigua and Barbuda Sales Tax Act
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
CA	Companies Act
CARICOM	Caribbean Community
CDD	Customer Due Diligence
CMTSPA	Corporate Management and Trust Services Providers Act
DTC	Double Tax Convention
EOIR	Exchange Of Information on Request
FATF	Financial Action Task Force
FSRC	Financial Services Regulatory Commission
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
IBC	International Business Company
IBCA	International Business Corporations Act
IFA	International Foundations Act
ILLC	International limited liability company
ILLCA	International Limited Liability Companies Act

IRD	Inland Revenue Department
ITA	International Trusts Act
MLFTG	Money Laundering and Financing of Terrorism Guidelines for Financial Institutions
MLPA	Money Laundering Prevention Act
MLPR	Money Laundering (Prevention) Regulations
MoU	Memorandum of Understanding
Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
NPC	Non-profit company
ONDCP	Office of National Drug and Money Laundering Control Policy
TAPA	Tax Administration and Procedures Act
TIE Act	Tax Information Exchange Act 2002
TIEA	Tax Information Exchange Agreement
XCD	Eastern Caribbean Dollar

Executive summary

1. This report analyses the implementation of the international standard of transparency and exchange of information on request in Antigua and Barbuda on the second round of reviews conducted by the Global Forum. Because of the COVID-19 pandemic, the onsite visit that was scheduled to take place in March 2020 was cancelled. The present report therefore assesses the legal and regulatory framework in force as at 29 March 2021 against the 2016 Terms of Reference (Phase 1).

2. The present report concludes that Antigua and Barbuda has the legal and regulatory framework in place that generally ensures the availability, access and exchange of all relevant information for tax purposes in accordance with the standard, but needs improvements in several areas. The assessment of the practical implementation of the legal framework of Antigua and Barbuda will take place separately at a later time (Phase 2 review).

3. In 2014, the Global Forum evaluated Antigua and Barbuda in a combined review against the 2010 Terms of Reference for both the legal implementation of the EOIR standard, as well as its operation in practice. The report of that evaluation (the 2014 Report, also referred to as the First Round Report) concluded that Antigua and Barbuda was rated Partially Compliant overall (see Annex 3 for details). In 2017, Antigua and Barbuda was rated Provisionally Largely Compliant overall on the basis of the Fast-Track review.

Comparison of determinations and ratings for First Round Report and determinations for Second Round Phase 1 Report

	First Round Report (2014)		Second Round Report (2021)
Element	**Determination**	**Rating**	**Determination**
A.1 Availability of ownership and identity information	In place	Largely Compliant	Needs improvement
A.2 Availability of accounting information	Not in place	Non-Compliant	Needs improvement
A.3 Availability of banking information	In place	Compliant	Needs improvement
B.1 Access to information	In place	Largely Compliant	Needs improvement
B.2 Rights and Safeguards	In place	Compliant	In place

Element	First Round Report (2014)		Second Round Report (2021)
	Determination	Rating	Determination
C.1 EOIR Mechanisms	In place	Compliant	In place
C.2 Network of EOIR Mechanisms	In place	Compliant	In place
C.3 Confidentiality	In place	Largely Compliant	In place
C.4 Rights and safeguards	In place	Compliant	In place
C.5 Quality and timeliness of responses	Not applicable	Largely Compliant	Not applicable
OVERALL RATING	PARTIALLY COMPLIANT		Not applicable

Note: The three-scale determinations for the legal and regulatory framework are In place, In place but certain aspects of the legal implementation of the element need improvement (Needs improvement), and Not in place. The four-scale ratings on compliance with the standard (capturing both the legal framework and practice) are Compliant, Largely Compliant, Partially Compliant, and Non-Compliant.

Progress made since the previous review

4. Antigua and Barbuda made progress in compliance with the standard since the 2014 Report.

5. The 2014 Report concluded that the legal and regulatory framework for ensuring the availability of accounting information was not in place as it was not clear whether the accounting obligations applicable to international business companies (IBCs) and ordinary trusts not carrying on business in Antigua and Barbuda covered underlying documentation and a minimum record retention period of five years. In addition, there were no penalties for non-compliance with the obligation to keep accounting records for a large number of entities. This peer review recognises improvements by Antigua and Barbuda to clarify the accounting obligations applicable to IBCs.

6. Further, Antigua and Barbuda became a Party to the multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention), which entered into force on 1 February 2019.

Key recommendations

7. In light of the standard as strengthened in 2016, this review has focused on additional criteria, which resulted in new recommendations. Also, some legislative changes, made since the 2014 Report, require clarifications.

8. Several deficiencies have been identified with respect to the availability of legal and beneficial ownership information for entities which ceased to exist and when such entities reinstated.

9. Whilst multiple sources of beneficial ownership information exist in Antigua and Barbuda, it is not always clear how various requirements, which sometimes coexist in the same act, fit together and whether the system as a whole is adequate. With respect to the Anti-Money Laundering/Combating Countering the Financing of Terrorism (AML/CFT) framework, whilst the principal elements required by the standard with respect to the identification of the beneficial owner(s) of legal entities are present, there is no specific guidance on how to apply a 25% threshold and identify beneficial owners of legal entities under the three-step approach. Clear guidance to be followed for identifying all beneficial owners for the purpose of an annual attestation on beneficial ownership and control are also absent. In addition, whilst the AML and company laws of Antigua and Barbuda require the beneficial ownership information to be available with respect to legal arrangements, several deficiencies have been found in the approach taken to the determination of beneficial owners for partnerships, trusts and international foundations. These concerns raise doubts as to whether beneficial ownership information for all relevant entities and arrangements is available to the competent authorities.

10. Doubts remain as to whether the AML framework ensures that beneficial ownership information is available for all bank account holders. Whilst the standard requires the identification of the person behind a nominee (nominator and beneficial owners) to always be identified, the identification requirements in Antigua and Barbuda for a customer who acts in a professional capacity on behalf of another person are limited to taking "reasonable measures". Further, although banks may have their own internal policies for customer due diligence, there is no guidance on how frequently banks should update legal and beneficial ownership information on account holders. Finally, the guidance provided in Antigua and Barbuda on the identification of beneficial owners of bank accounts applicable to legal entities do not specifically indicate that the controlling ownership interest applies to a person who controls the company acting directly or indirectly, and acting individually or jointly, and there is no specific guidance on how to identify beneficial owners of legal entities under the three-step approach.

11. Following the changes made after the adoption of the 2014 Report, accounting records now must be maintained by international business companies (IBCs) for a minimum of five years from the date on which the transaction took place; however, there is no requirement to maintain such records for at least five years after an IBC ceases to exist. Further, the legal framework does not ensure that an agent in Antigua and Barbuda is in possession of, or has control of, or has the ability to obtain, the accounting records of IBCs.

12. Access to information by the competent authority was amended but the new Section 5A on the authority to obtain information from residents, which was inserted in the Tax Information Exchange Act 2002 (TIE Act), refers only to persons in possession of the requested information, without mentioning the information in the custody or control of the person. The sanctions, correspondingly, are limited to persons "in possession" of the requested information. This raises doubts as to whether the access powers of the competent authorities in Antigua and Barbuda are ensured in accordance with the standard.

Next steps

13. Overall, Antigua and Barbuda has a legal and regulatory framework in place that generally ensures the availability, access and exchange of all relevant information for tax purposes in accordance with the standard, but needs improvements in several areas. Antigua and Barbuda has achieved a determination of "in place" for five elements (B.2, C.1, C.2, C.3 and C.4) and "in place but needs improvement" for four elements (A.1, A.2, A.3 and B.1). The rating for each element and the Overall Rating will be issued once the Phase 2 review is completed.

14. This report was approved at the Peer Review Group of the Global Forum on 20 May 2021 and was adopted by the Global Forum on 18 June 2021. Unless the Phase 2 review is organised by then, a follow up report on the steps undertaken by Antigua and Barbuda to address the recommendations made in this report should be provided to the Peer Review Group no later than 30 June 2022 and thereafter in accordance with the procedure set out under the 2016 Methodology, as amended on 11 December 2020.

Summary of determinations, ratings and recommendations

Determinations	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place but needs improvement	Whilst Antigua and Barbuda clarified that domestic and non-profit companies would have to update their filings in accordance with the direction of the Registrar and the court respectively, they are not otherwise legally obliged to provide ownership information to the authorities when their dissolution is declared void by the court or when a company is restored in the registry after being struck off. In addition, there is no time limit for the restoration of domestic and non-profit companies after the strike off, except for specific circumstances where a company was struck off by the Registrar because it was not carrying on business or in operation and which can be restored to the register by the court – subject to a limitation period of 20 years from the publication of a notice in the Gazette. Further, there is no time limit for the revival of an International Business Company after being dissolved and the restoration once struck off, nor is there an explicit obligation to maintain and provide ownership information at that time.	Antigua and Barbuda is recommended to ensure the availability of ownership information when the dissolution of a domestic or non-profit company or an International Business Company is declared void and upon restoration following the strike off from the register, as well as establishing a time limit for their restoration following the strike off and for the revival of International Business Companies following their dissolution.

Determinations	Factors underlying recommendations	Recommendations
	With respect to the AML/CFT framework, whilst the principal elements required by the standard with respect to the identification of beneficial owner(s) of legal entities are present, the law does not specifically indicate that the controlling ownership interest of 25% applies to any person who controls the company acting directly or indirectly, and acting individually or jointly. Further, there is no specific guidance on how to identify beneficial owners of legal entities under the three-step approach.	Antigua and Barbuda is recommended to ensure that the definition of the beneficial owner(s) in the AML/CFT framework is in line with the standard and the information on beneficial owner(s) of legal entities is available in all cases in accordance with the standard.
	In the absence of clear guidance to be followed for identifying all beneficial owners for the purpose of an annual attestation on beneficial ownership and control, doubts remain as to whether beneficial ownership information for all relevant legal entities is available to the competent authorities. Whilst the annual attestation is required, there is no specific guidance on how to identify beneficial owners, or how to identify the natural person who owns or exercises control (including control through other means). It is not clear if the "person" is interpreted as an "individual" in all circumstances. Further, the question remains as to whether the 5% threshold includes direct or indirect ownership.	Antigua and Barbuda is recommended to ensure that the definition of the beneficial owner(s) for the purpose of the annual attestation on beneficial ownership and control is in line with the standard and the information on beneficial owner(s) is available in all cases in accordance with the standard.
	Whilst the AML and company laws of Antigua and Barbuda set the requirement to obtain the beneficial ownership information with respect to legal arrangements, the determination of beneficial owners for partnerships largely follows the definition of companies and in the absence of clear guidance to be followed for identifying the beneficial owners of partnerships, doubts remain as to whether beneficial ownership information is available to the competent authorities. Furthermore, since there is no obligation for partnerships to engage in a relationship with an AML obliged person and/or the service provider at all times, there is no certainty that the beneficial ownership of all relevant partnerships is available in Antigua and Barbuda.	Antigua and Barbuda is recommended to ensure that beneficial ownership information in line with the standard is available in respect of partnerships.

Determinations	Factors underlying recommendations	Recommendations
	The obligation for trustees to have information on trust settlors and beneficiaries stems from common law and, in the case of international trusts and professional trustees, also from the company and AML requirements that apply to the Antigua and Barbuda trustee. However, the company law which requires an annual attestation on beneficial ownership applies only to international trusts and does not explicitly require identification of the settlor, trustee(s), protector (if any), and all of the beneficiaries or class of beneficiaries as required under the standard. Under the AML framework, the verification of identity does not extend to the settlor(s) and protector(s), contrary to the requirement of the standard. More generally, there is no obligation for all trusts to engage in a relationship with an AML obliged person at all times.	Antigua and Barbuda is recommended to ensure that identity and beneficial ownership information in line with the standard is available in respect of trusts.
	The company and AML obligations imposed on the Antigua and Barbuda foundation council member require that information on the identity of the founders, members of the foundation council, as well as any beneficial owners of the foundation or persons with the authority to represent the foundation is available to the competent authorities and up to date. However, the definition of beneficial ownership in the context of international foundations does not fully meet the standard. In particular, the beneficiaries (where applicable) do not appear to be covered.	Antigua and Barbuda is recommended to ensure the availability of information on the beneficiaries of international foundations.

Determinations	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place but needs improvement	The accounting records of International Business Companies must be kept at the service provider's office or such other place or places within or outside Antigua and Barbuda. The legal framework does not ensure that a person in Antigua and Barbuda is in possession of, or has control of, or has the ability to obtain, such information.	Antigua and Barbuda should ensure that accounting records of International Business Companies are kept in Antigua and Barbuda, or ensure that a person in Antigua and Barbuda is in possession of, or has control of, or has the ability to obtain, such information.
	There are no penalties for non-compliance with the obligation to keep accounting records applicable to international trusts, international foundations and international limited liability companies, including after they cease to exist.	Appropriate sanctions for instances of non-compliance with the obligation to keep accounting records should be established for international trusts, international foundations and international limited liability companies.
	Whilst accounting records must be maintained by international business companies (International Business Companies) for a minimum of five years from the date on which the transaction took place, there is no requirement to maintain such records for at least five years after the International Business Company ceased to exist. This concern also applies to certain type of partnerships. Further, it is not clear whether the accounting obligations applicable to ordinary trusts not carrying on business in Antigua and Barbuda cover underlying documentation and a minimum record retention period of five years. Moreover, there are no penalties for non-compliance with the obligation to keep accounting records.	Antigua and Barbuda should amend and clarify its laws to ensure that there are clear and comprehensive legal obligations requiring International Business Companies (and certain type of partnerships) which ceased to exist and ordinary trusts not carrying on business in Antigua and Barbuda to keep reliable accounting records; meeting the requirements of the Terms of Reference in all cases for at least five years and indicating who will be the person that will be responsible for keeping the accounting books and the underlying documentation. In addition, appropriate sanctions for instances of non-compliance should be established.

Determinations	Factors underlying recommendations	Recommendations
	The law of Antigua and Barbuda allows for corporate mobility of International Business Companies and international limited liability companies. Such companies may become re-domiciled in a foreign jurisdiction. There is no specific requirement concerning the retention of accounting records in such circumstances.	Antigua and Barbuda is recommended to ensure that all accounting information is consistently available in relation to International Business Companies and international limited liability companies that re-domicile out of Antigua and Barbuda for a minimum period of five years.
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place but needs improvement	Regulation 4(3)(e) and (f) of the Money Laundering (Prevention) Regulations provide that where the customer acts or appears to act for another person, reasonable measures must be taken for establishing the identity of that person, and where the customer acts in a professional capacity as attorney, notary public, chartered accountant, certified public accountant, auditor or nominee of a company on behalf of another person, reasonable measures must be taken for the purpose of establishing the identity of that person on whose behalf the customer acts. This does not conform to the standard that requires the identification of the person behind a nominee (nominator and beneficial owners) to always be identified, the "reasonable measures" referring to the verification of the identity.	Antigua and Barbuda is recommended to ensure that accurate identity information on the nominator(s) and beneficial ownership information is available in respect of nominees where they act as the legal owners on behalf of any other person.
	Although banks may have their own internal policies for customer due diligence, there is no guidance in Antigua and Barbuda on how frequently banks should update legal and beneficial ownership information on account holders.	Antigua and Barbuda is recommended to ensure that banks keep up-to-date legal and beneficial ownership information on all accounts.

Determinations	Factors underlying recommendations	Recommendations
	The guidance provided in Antigua and Barbuda on the identification of beneficial owners of bank accounts applicable to legal entities do not specifically indicate that the controlling ownership interest applies to a person who controls the company acting directly or indirectly, and acting individually or jointly. Further, there is no specific guidance on how to identify beneficial owners of legal entities under the three-step approach. This may lead to beneficial ownership information in respect of bank accounts not being available in line with the standard in all cases.	Antigua and Barbuda is recommended to ensure that suitable guidance on identifying beneficial owners of legal entities is provided to all banks so that beneficial owners are correctly identified as required under the standard.
	Whilst banks are required to identify natural persons who ultimately own or control the trust-client as part of their customer due diligence measures, the verification of identity does not extend to the settlor(s) and protector(s), contrary to the requirement of the standard.	Antigua and Barbuda is recommended to ensure that banks are required to verify the identity of settlor(s) and protector(s) of the trusts which have an account with a bank in Antigua and Barbuda as required under the standard.
	The determination of beneficial owners for partnerships under the AML laws follows the definition of companies, including taking a 25% threshold in ownership or control. This approach is not necessarily in accordance with the form and structure of partnerships.	Antigua and Barbuda is recommended to ensure that beneficial ownership information in line with the standard is available in respect of partnerships.
	There is no applicable definition and guidance in respect of foundations that may come from foreign jurisdictions and open accounts in Antigua and Barbuda to identify their beneficial owners in line with the standard.	Antigua and Barbuda is recommended to ensure that beneficial ownership information is determined in line with the standard in respect of all foundations having a bank account in Antigua and Barbuda.

Determinations	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is in place but needs improvement	Section 5A on the authority to obtain information from residents, which was inserted in the Tax Information Exchange Act in 2020, refers only to persons in possession of the requested information, without mentioning the information in the custody or control of the person, contrary to the other sections of the law and the standard, which covers both possession and control. The sanctions, correspondingly, are limited to persons "in possession" of the requested information and do not refer to information in the "custody or control".	Antigua and Barbuda is recommended to align the specific powers to obtain information from residents (Section 5A) with the general access powers under the Tax Information Exchange Act to cover persons in possession, custody or control of the requested information, so as to ensure that the specific powers are not interpreted to limit the general access powers. Antigua and Barbuda is also recommended to ensure that sanctions are applicable against a person in control of the requested information that would fail to provide it.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place		

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

Overview of Antigua and Barbuda

15. This overview provides some basic information about Antigua and Barbuda that serves as context for understanding the analysis in the main body of the report.

16. Antigua and Barbuda is an independent twin-island nation located in the Eastern Caribbean Sea. Its total population is approximately 98 000.

17. Antigua and Barbuda is a CARICOM member state and a member of the Organisation of Eastern Caribbean States. Antigua and Barbuda's official currency is the East Caribbean Dollar (XCD), which is currently pegged to the United States Dollar (USD) at XCD 2.70 to USD 1.

18. Antigua and Barbuda's economy is based primarily on tourism and to a lesser extent other sectors like agriculture, construction, manufacturing and financial services. Antigua and Barbuda's primary trading partners are the United States and the European Union. In 2019, a GDP per capita was about USD 17 790 (over XCD 48 000).[1]

Legal system

19. Antigua and Barbuda is a common law jurisdiction based on the English Common Law.[2] The hierarchy of laws is as follows: (a) acts of Parliament, creating statutes, laws, primary legislation, (b) statutory instruments, secondary legalisation, (c) judicial precedent and (d) common law. EOI agreements that Antigua and Barbuda enters into become part of the domestic law upon ratification and have equal status as any law passed by the Parliament of Antigua and Barbuda.

20. Antigua and Barbuda is a constitutional democracy with a British-style parliamentary system of government comprising the legislative, executive and judicial branches.

1. World Bank.
2. Antigua and Barbuda achieved independence from the United Kingdom on 1 November 1981 and is now a self-governing, sovereign member of the Commonwealth of Nations.

21. The legislative branch is represented by a bicameral Parliament comprising a 17-member House of Representatives, responsible for introducing legislation, and a 17-member Senate, which reviews and gives assent to proposed legislation. The Prime Minister is the leader of the majority party in the elected House and is responsible for appointing other members of Parliament to his/her cabinet, which forms the executive branch.

22. The judiciary comprises the Magistrate's Court for summary offences and the High Court for major offences. The Eastern Caribbean States Supreme Court, which is responsible for the administration of justice in the Organisation of Eastern Caribbean States, hears appeals. The final appellate court is the UK Privy Council. The Director of Public Prosecutions is responsible for all criminal prosecutions and has right of appeal on matters of law and sentencing.

Tax system

23. Antigua and Barbuda's tax system comprises both direct and indirect taxes,[3] which are administered and collected by the Inland Revenue Department (IRD) and the Customs Division.

24. Direct taxes are imposed by way of corporate income tax (25%), property tax and unincorporated business tax. Individuals and companies resident in Antigua and Barbuda generally pay income tax on their worldwide income. Non-residents are assessable and chargeable to tax on sources of income arising in Antigua and Barbuda, in like manner and to the like amount, as such non-resident persons would be assessed and charged if they were resident in Antigua and Barbuda and in receipt of such income. In addition, there is a withholding tax on certain payments made to non-residents which regarded as income derived from Antigua and Barbuda (Section 28 of the Income Tax Act Cap. 212).

25. The Antigua and Barbuda Tax Information Exchange Act 2002 (TIE Act) is the legislation pursuant to which Antigua and Barbuda provides assistance under its EOI agreements. The TIE Act, as amended in 2011, provides Antigua and Barbuda's Competent Authority with the necessary powers to comply with the terms of the EOI agreements that Antigua and Barbuda enters into.

3. Indirect taxes are taxes levied on the acquisition or consumption of goods and services. The Antigua and Barbuda Sales Tax (ABST) is levied on consumption and imports. Rates are tiered, ranging from zero to 15%. Other indirect taxes include stamp duties and excise taxes. Other non-tax revenue streams are Medical Benefits, Education Levy and Social Security, which are charged directly against income. These are administered by statutory authorities established under their own legislative provisions.

Financial services sector

26. In 1982, legislation was enacted under the International Business Corporations Act (IBCA), to make Antigua and Barbuda a choice offshore jurisdiction for businesses, including offshore banking and insurance. In 2007, the offshore sector was further developed through the introduction of the International Trusts Act (ITA), International Foundations Act (IFA) and the International Limited Liability Companies Act (ILLCA). These offshore entities are regulated by the Financial Services Regulatory Commission (FSRC), a statutory authority established in accordance with the IBCA.

27. The FSRC also regulates and supervises the other sectors of the financial system as a Single Regulatory Unit and as such oversees the administration of the Insurance Act, the Money Services Business Act, the Corporate Management and Trust Service Providers Act (CMTSPA), the Co-operative Societies Act, the Financial Institutions (Non-Banking) Act, and the Interactive Gaming and Interactive Wagering Regulations.

28. The Eastern Caribbean Central Bank is responsible for regulating, licensing and supervising all domestic banks pursuant to the Banking Act.

29. As noted in the 2014 Report, as at 31 December 2012, there were 14 international banks with total asset size of about USD 2.3 billion (over XCD 6.2 billion), three international insurance companies, one international trust, nine interactive gaming, six interactive wagering and about 4 587 other international business corporations, of which 2 390 were active. There were 21 international trusts registered pursuant to the ITA and no international limited liability companies or international foundations.

30. As at 31 December 2020, Antigua and Barbuda's financial sector included 8 domestic banks, 8 international banks, 21 insurance companies, 1 international insurance company, 4 Money Service Businesses which provided money transfer services, 4 pay day lending companies, 1 development bank and 7 credit unions, with total assets in excess of USD 4.3 billion (over XCD 11.6 billion).[4] There are no international trusts, no ILLCs, nor any international foundations registered.[5]

4. The drop in the numbers of international banks (14 down to 8) between the 2014 Report and 31 December 2020 has been attributed by Antigua and Barbuda to the fact that 5 international banks were placed in voluntary or involuntary liquidation. The voluntary factors leading to closure included the phenomenon of derisking having a negative impact. One international bank ceased operations in Antigua and Barbuda when its operations was acquired by another international bank domiciled in another country.

5. The significant variant in the registration of international trusts (21 down to 0 between the 2014 report and 31 December 2020) emanated from the market exit

31. Overall, the financial services sector is varied in terms of the assets size of the various types of Financial Institutions operating in Antigua and Barbuda. The total size of the financial sector, excluding domestic banks, is about USD 2.4 billion (over XCD 6.5 billion) relative to balance sheet assets and USD 1 billion (about XCD 2.7 billion) in relation to off balance sheet assets/assets under administration and management. This is largely attributable to International Banks, which constitute the offshore sector. One International Bank accounted for about 60% of the total figure in relation to on-balance sheet activities. As of 31 December 2020, there were six domestic banks with assets totalling USD 1.9 billion (over XCD 5.1 billion).

Anti-Money Laundering framework

32. The regulatory framework for the financial services sector is complemented by Antigua and Barbuda's Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) regime, which is applicable to a wide range of "financial institutions", the definition of which includes banks, company service providers, trust businesses; and attorneys, accountants and notaries who conduct any financial activity as a business. The Director of the Office of National Drug and Money Laundering Control Policy (ONDCP) serves as the Supervisory Authority for financial institutions under the Money Laundering Prevention Act (MLPA).

33. The most recent Mutual Evaluation Report by the Caribbean FATF was published in July 2018.[6] Antigua and Barbuda was rated "Largely Compliant" on Recommendations 10 (Customer due diligence), 24 (Transparency and beneficial ownership of legal persons) and 25 (Transparency and beneficial ownership of legal arrangements), and "Partially Compliant" on Recommendation 22 (DNFBPs: Customer due diligence). Antigua and Barbuda achieved a low level of effectiveness in Immediate Outcome 3 (Supervision) and a moderate level of effectiveness in the Immediate Outcome 5 (Legal persons and arrangements). The Mutual Evaluation Report issued recommendations in particular to address the deficiencies identified in the application of CDD measures and identification of the ultimate beneficial owner(s).

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of a corporate service provider who previously provided authorised services as a trustee of international trustees. Antigua and Barbuda further explained that this licensed activity is not currently being provided by the present cadre of licensed corporate service providers.

6. Mutual Evaluation Report "Anti-money laundering and counter-terrorist financing measures: Antigua and Barbuda", July 2018: https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/CFATF-MER-Antigua-and-Barbuda.pdf.

Recent developments

34. The key changes in the legal and regulatory framework since the previous EOIR report include:

- The Law Miscellaneous Provisions (Amendment) Act, No. 20 of 2016, was enacted to amend the existing First Schedule of the MLPA by expanding the list of Financial Institutions subject to the AML regime. Amongst others, company service providers pursuant to the CMTSPA; Attorneys-at-law (who conduct financial activity business); Notaries (who conduct financial activity business); Accountants (who conduct financial activity business); International Trust as defined in the ITA; International Foundations as defined in the IFA; ILLCs as defined in the ILLCA were added.
- The Law Miscellaneous Provisions (Amendment) Act, No. 20 of 2016, also inserted the definition of "beneficial owner" in several laws (Insurance Act 2007; ITA; IFA; ILLCA; CMTSPA; Co-operative Societies Act 2010; Money Services Business Act 2011; and the International Banking Act 2016).
- The Law Miscellaneous Provisions (Amendment) Act, No. 4 of 2017, which, amongst other changes, strengthened confidentiality provisions and the supervisory powers of the FSRC to request any record from IBCs through a written notice. If a corporation fails to satisfy the request made pursuant to Section 130A of the IBCA, it could be struck off the register of IBCs.
- The Law (Miscellaneous Amendments) (No. 2) Act, No. 14 of 2017, was enacted to mandate the submission of an annual attestation on beneficial ownership and control, as well as introducing relevant penalties.
- The Tax Administration and Procedure Act, No. 12 of 2018 (2018 TAPA) was enacted to harmonise, rationalise and simplify the operation of tax administration and procedure in Antigua and Barbuda's tax laws.
- The Law Miscellaneous Provisions (Amendment) Act, No. 26 of 2018, was enacted to address unfair tax practice and possible ring-fencing by the removal of tax exemptions for certain entities and making them subject to income tax pursuant to the Income Tax Act Cap. 212.

35. Other notable developments, as already noted above, include the entry into force of the Multilateral Convention. It was signed by Antigua and Barbuda on 27 July 2017 and entered into force on 1 February 2019.

Antigua and Barbuda can exchange information with all other Parties to the Multilateral Convention.

36. Finally, Antigua and Barbuda commenced AEOI exchanges in 2018.

Part A: Availability of information

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

A.1. Legal and beneficial ownership and identity information

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

38. The law of Antigua and Barbuda provides for the recognition and creation of a wide range of entities and arrangements, which includes domestic and non-profit companies, international business companies (IBCs), international limited liability companies (ILLCs), partnerships, ordinary and international trusts and international foundations.

39. The 2014 Report concluded that the rules requiring availability of legal ownership information in respect of all relevant entities and arrangements in Antigua and Barbuda were in place and in line with the standard. Legal ownership information was available through a combination of obligations imposed under Antigua and Barbuda's company and tax laws, as well as Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) legislation.

40. This report recognises the changes made in the relevant rules and concludes that the existing regulatory framework ensuring the availability of legal ownership meets the standard but requires some improvements. The gaps have been identified with respect to the domestic companies and IBCs which cease to exist and recommendations are made to address them.

41. With respect to the effectiveness in practice, the 2014 Report recommended Antigua and Barbuda to put in place an oversight programme to ensure the compliance of the obligations to maintain ownership and identity information for all relevant entities and arrangements and exercise its enforcement powers as appropriate to ensure that such information is available in practice. The Phase 2 rating was Largely Compliant. The present

review assesses only the legal and regulatory framework in Antigua and Barbuda. Implementation of the standard in practice will be dealt with in the Phase 2 review.

42. Further, the standard was strengthened in 2016 and beneficial ownership information as regards relevant entities and arrangements is required to be available. Through a combination of various laws Antigua and Barbuda ensures that beneficial ownership information is available for all relevant entities and arrangements. However, this report has identified several areas where improvement is recommended. The implementation of these rules in practice will be reviewed in due course.

43. The conclusions are as follows:

Legal and Regulatory Framework: in place, but needs improvement

Deficiencies/Underlying factor	Recommendations
Whilst Antigua and Barbuda clarified that domestic and non-profit companies would have to update their filings in accordance with the direction of the Registrar and the court respectively, they are not otherwise legally obliged to provide ownership information to the authorities when their dissolution is declared void by the court or when a company is restored in the registry after being struck off. In addition, there is no time limit for the restoration of domestic and non-profit companies after the strike off, except for specific circumstances where a company was struck off by the Registrar because it was not carrying on business or in operation and which can be restored to the register by the court – subject to a limitation period of 20 years from the publication of a notice in the Gazette. Further, there is no time limit for the revival of an International Business Company after being dissolved and the restoration once struck off, nor is there an explicit obligation to maintain and provide ownership information at that time.	Antigua and Barbuda is recommended to ensure the availability of ownership information when the dissolution of a domestic or non-profit company or an International Business Company is declared void and upon restoration following the strike off from the register, as well as establishing a time limit for their restoration following the strike off and for the revival of International Business Companies following their dissolution.
With respect to the AML/CFT framework, whilst the principal elements required by the standard with respect to the identification of beneficial owner(s) of legal entities are present, the law does not specifically indicate that the controlling ownership interest of 25% applies to any person who controls the company acting directly or indirectly, and acting individually or jointly. Further, there is no specific guidance on how to identify beneficial owners of legal entities under the three-step approach.	Antigua and Barbuda is recommended to ensure that the definition of the beneficial owner(s) in the AML/CFT framework is in line with the standard and the information on beneficial owner(s) is available in all cases in accordance with the standard.

Deficiencies/Underlying factor	Recommendations
In the absence of clear guidance to be followed for identifying all beneficial owners for the purpose of an annual attestation on beneficial ownership and control, doubts remain as to whether beneficial ownership information for all relevant legal entities is available to the competent authorities. Whilst the annual attestation is required, there is no specific guidance on how to identify beneficial owners, or how to identify the natural person who owns or exercises control (including control through other means). It is not clear if the "person" is interpreted as an "individual" in all circumstances. Further, the question remains as to whether the 5% threshold includes direct or indirect ownership.	Antigua and Barbuda is recommended to ensure that the definition of the beneficial owner(s) for the purpose of the annual attestation on beneficial ownership and control is in line with the standard and the information on beneficial owner(s) is available in all cases in accordance with the standard.
Whilst the AML and company laws of Antigua and Barbuda set the requirement to obtain the beneficial ownership information with respect to legal arrangements, the determination of beneficial owners for partnerships largely follows the definition of companies and in the absence of clear guidance to be followed for identifying the beneficial owners of partnerships, doubts remain as to whether beneficial ownership information is available to the competent authorities. Furthermore, since there is no obligation for partnerships to engage in a relationship with an AML obliged person and/or the service provider at all times, there is no certainty that the beneficial ownership of all relevant partnerships is available in Antigua and Barbuda.	Antigua and Barbuda is recommended to ensure that beneficial ownership information in line with the standard is available in respect of partnerships.
The obligation for trustees to have information on trust settlors and beneficiaries stems from common law and, in the case of international trusts and professional trustees, also from the company and AML requirements that apply to the Antigua and Barbuda trustee. However, the company law which requires an annual attestation on beneficial ownership applies only to international trusts and does not explicitly require identification of the settlor, trustee(s), protector (if any), and all of the beneficiaries or class of beneficiaries as required under the standard. Under the AML framework, the verification of identity does not extend to the settlor(s) and protector(s), contrary to the requirement of the standard. More generally, there is no obligation for all trusts to engage in a relationship with an AML obliged person at all times.	Antigua and Barbuda is recommended to ensure that identity and beneficial ownership information in line with the standard is available in respect of trusts.

Deficiencies/Underlying factor	Recommendations
The company and AML obligations imposed on the Antigua and Barbuda foundation council member require that information on the identity of the founders, members of the foundation council, as well as any beneficial owners of the foundation or persons with the authority to represent the foundation is available to the competent authorities and up to date. However, the definition of beneficial ownership in the context of international foundations does not fully meet the standard. In particular, the beneficiaries (where applicable) do not appear to be covered.	Antigua and Barbuda is recommended to ensure the availability of information on the beneficiaries of international foundations.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

The Phase 2 recommendation issued in the 2014 Report is reproduced below for the reader's information.

Deficiencies/Underlying factor	Recommendations
During the review period, Antigua and Barbuda did not have a regular oversight programme in place to monitor the compliance of the obligations to maintain ownership and identity information and penalties for non-compliance were unenforced in practice. Antigua and Barbuda plans to commence the oversight programme for service providers in 2014.	Antigua and Barbuda should put in place an oversight programme to ensure the compliance of the obligations to maintain ownership and identity information for all relevant entities and arrangements and exercise its enforcement powers as appropriate to ensure that such information is available in practice.

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

44. The law of Antigua and Barbuda recognises the following types of companies:

- domestic companies – private and public companies[7] with limited liability incorporated under the Companies Act (CA). Such companies are formed for the purpose of carrying on a trade or business for gain and conduct their business in or from Antigua and Barbuda.[8]

7. Public companies are domestic companies where any part of their issued shares or debentures are or were part of a distribution to the public.
8. No association, partnership, society, body or other group consisting of more than twenty persons may be formed for the purpose of carrying on any trade or

- non-profit companies (NPCs) – private companies without share capital incorporated under the CA. These companies are restricted to carrying on businesses of a non-profit nature, such as charitable, educational, scientific, literary, artistic or sporting activities.[9]
- international business companies (IBCs) – incorporated under the International Business Corporations Act (IBCA) and formed for carrying out international trade or business from Antigua and Barbuda, defined under the IBCA as international banking,[10] international trust business, international insurance, international manufacturing or other international trading or commercial activities, in any currency that is foreign in every country of the Caricom region.

Number of companies registered in Antigua and Barbuda

Category	31 December 2012	31 December 2020
Domestic Companies (Private and Public Companies with limited liability)	12 035	3 024
Non-Profit Companies – Private Companies without share capital	143	165
International Business Companies	4 587, of which 2 390 were active	17 377, of which 1 055 were active
Foreign ("external") companies (tax resident)	Not available	488

Legal ownership and identity information

45. The regulatory requirements with regard to providing, keeping and updating legal ownership and identity information in respect of companies were analysed in paragraphs 41 to 149 of the 2014 Report. These laws largely remain the same with some changes made to further strengthen the availability of legal ownership information. The overall regulatory framework

business for gain in Antigua and Barbuda, unless it is incorporated under the CA. Similarly, no external company shall begin or carry on business in Antigua and Barbuda until it is registered under the CA.

9. The list of permitted activities is spelt out in Section 328(2) of the CA.

10. Since 2016, the activities of international banks are regulated under International Banking Act, No. 6 of 2016, which provides that "international banking" means the carrying on from within Antigua and Barbuda of banking in any currency that is foreign in every country of the CARICOM Grouping; but the keeping of external accounts for residents in any foreign currency under exchange control licence or regulation is not carrying on international banking by virtue of that activity alone.

continues to meet the standard, subject to the recommendations made with respect to the companies which cease to exist.

46. The following table shows a summary of the legal requirements to maintain legal ownership information in respect of companies:

Companies covered by legislation regulating legal ownership information

Type	Company law	Tax law	AML law
Domestic Companies (Private and Public Companies with limited liability)	All	All	Some
Non-Profit Companies – Private Companies without share capital	All	All	Some
International Business Companies	All	Some	All
Foreign companies (tax resident)	Some	All	Some

Note: The table shows each type of entity and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All" means that every entity of this type is subject to requirements on the availability of ownership information), whether or not the legislation meets the standard. "Some" means that an entity is covered by these requirements if certain conditions are met.

47. A summary of the main features of the legal framework which ensure the availability of the legal ownership information is presented below.

48. Key requirements concerning domestic and non-profit companies are as follows:

- Under the CA, the registration of domestic and non-profit companies is handled by the Registrar for Intellectual Property and Commerce (the Registrar) which includes the maintenance of the articles of association of the companies and the details of the beneficiaries (in respect of non-profit companies) for at least 6 years (see paragraphs 46-48 of the 2014 Report). Both domestic and non-profit companies are required to file their annual returns indicating the names and other details of the shareholders along with any changes to the membership of the company to the Registrar (see paragraphs 49-52 of the 2014 Report). The companies themselves or through an agent have to maintain the details of the shareholders (legal ownership information) under the CA (see paragraphs 63-64 of the 2014 Report).
- In addition, the Tax Law also still requires that the details of the shareholders be mentioned in the annual tax return, as long as the domestic or non-profit company has economic activity in Antigua and Barbuda (see paragraph 59 of the 2014 Report).

- Further, the CMTSPA and AML also continue to ensure that whenever a company engages a company service provider, the service provider is obligated to conduct customer due diligence (CDD) to know the identity of the client (company) and ultimate natural person(s) controlling or owning the client (company) (see paragraphs 74-85 of the 2014 Report for more details).

49. Key requirements concerning IBCs include:

- The FSRC continues to be the regulator in charge of administration and maintaining all the documentation filed by the IBCs, including the information on the articles of association (see paragraphs 46-48 of the 2014 Report).
- Under the IBCA, the IBCs have to maintain a register of shareholders at their registered office (see paragraphs 65-67 of the 2014 Report).
- Further, it is mandatory for the IBCs to engage a company service provider/agent domiciled in Antigua and Barbuda (see paragraph 86 below). As mentioned above, the CMTSPA and AML Law also continue to ensure that whenever a company engages a company service provider, the service provider is obligated to conduct due diligence to know the identity of the client (company) and ultimate natural person(s) controlling or owning the client (company) (see paragraphs 74-85 of the 2014 Report for more details).
- While the Tax Law requires an annual return to be filed with the details of the shareholders of a company, it is unlikely to ensure the availability of legal ownership information consistently in respect of IBCs, since almost all their activities are exempt from tax in Antigua and Barbuda (see further below).

50. Key requirements concerning foreign companies include:

- Any foreign company must register with the Registrar before it can carry on a business in Antigua and Barbuda and must file annual returns (see paragraphs 56-58 of the 2014 Report for more details).
- To get involved in economic activity in Antigua and Barbuda, it also must register with the Inland Revenue Department (IRD) (see paragraph 59 of the 2014 Report).

51. These requirements are unpacked below with the relevant changes made since the 2014 Report acknowledged.

Companies Law requirements

Company ownership and identity information required to be provided to government authorities

52. In Antigua and Barbuda, the incorporation of legal persons is regulated by:

- the CA for the domestic companies and NPCs
- the IBCA for IBCs.

53. The Registrar is responsible for administering the CA. One of its functions is to maintain a register of domestic and non-profit companies containing the names of every company that is incorporated, continued[11] or registered under the CA. It also keeps a record of all company documents it receives under the Act (Section 494 of the CA).

54. The FSRC is responsible for the supervision, regulation and administration of IBCs. The Chief Executive Officer of the FSRC (the Director) maintains registers of IBCs containing the name of every corporation that is incorporated or continued[12] under the IBCA, and keeps copies of all documents filed by IBCs.

55. All documents filed with the Registrar and the Director must be kept for six years from the date of receipt (Section 507 of the CA, Section 331 of the IBCA).

Domestic companies and non-profit companies (NPCs)

56. Legal ownership information is available with the Registrar. All domestic companies and NPCs are included in the registry, which consists of (i) the Companies Registry and (ii) the Registry of Friendly Societies.

57. Under Section 5 of the CA, all domestic companies and NPCs must register and provide their Articles of Incorporation[13] to the Registrar at the

11. A "continued" company under the Companies Act is one that was incorporated or registered under the previous Companies Act and subsequently recognised as a valid and existing company under the current Companies Act (dating 1995). This is done by the company applying to the Companies Registrar for a certificate of continuance.
12. Continued companies under the IBCA and the ILLCA are companies that are originally formed under another law, and subsequently come under the provisions of the IBCA or the ILLCA through a certificate of continuance or certificate of transfer of domicile respectively.
13. The Articles of Incorporation must include general information on the company, such as name, classes and any maximum number of shares the company is

time of incorporation, which must be signed by all the founders (Section 4 of the CA). At the time of filing, the company must also provide to the Registrar the address of its registered office and the names of all the directors. Any changes in the above information must be advised to the Registrar within 15 days of the change happening (Sections 6, 77 and 176 of the CA). If the change is made among directors but no notification is made in accordance with Section 77 of the CA, any interested person, or the Registrar, may apply to the court for an order to require a company to comply with the notification requirement. Also, if the company or other body corporate fails to send any return, notice or document to the Registrar as required pursuant to the CA, the Registrar may strike the company from the Register (Section 511 of the CA).

58. Further, under Section 194(1) of the CA, all companies (including NPCs) must file annual returns to the Registrar.[14] A director or officer of the company must certify the contents of every return made and the company and every director and officer who is in default is guilty of an offence (Sections 194(2) and 194(3) of the CA). Every person who is guilty of an offence under the CA is, if no punishment is provided elsewhere in the CA for that offence, liable on summary conviction to a fine of XCD 5 000 (USD 1 850) (Section 533 CA).

59. The annual return should include among other information:

- name of company
- address of registered office/principal office
- class of shares, number of shares issued and outstanding
- whether any share transfers have been effected during the last financial period, and if so the name of transferor, name of transferee, number of shares and date of transfer
- names, addresses and occupations of all shareholders.[15]

60. Any changes in share ownership of a company (including NPCs) must be evidenced by lodging at the Registry a copy of the share transfer instrument bearing the signature of the transferor and naming the transferee. No transfer of stock or shares of a company is valid unless the instrument of transfer is presented to the Registrar and duly registered and a copy thereof is registered by him/her in the Companies Registry (Section 195A of the CA).

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authorised to issue, number of directors, and restrictions on the business that the company may undertake.

14. Not later than the first day of April in each year after its incorporation or continuance under the CA. The information should be as of 31 December of the preceding year.

15. The Companies (Amendment) Regulations 2007 No. 35.

61. Regarding NPCs, the CA was amended by the Companies (Amendment) Act 2017, No 11 of 2017, by inserting a new section (Section 336A), which sets additional filing requirements for NPCs (along with the general annual returns made by all companies under Section 194(1) of the CA). Accordingly, an NPC must file yearly with the Registrar a report containing the following: (a) any monetary donation made to the company and the amount thereof; (b) the name, current address and occupation of the members and directors; (c) the purpose for which the donations were applied; (d) the amount of any loan obtained by the company, the lender and the terms of re-payment; (e) the employees of the company and their duties and place of residence; (f) the beneficiaries of the company. In 2020, the scope of the reporting has been revised and narrowed down, in particular the requirement to report the beneficiaries has been repealed (Companies (Amendment) Act 2020, No 17 of 2020). Where no report is filed after the due date, the NPC is liable to pay the sum of XCD 1 000 (USD 370) for each month of delay. Where there is a failure to file a report for a period of six months or more, the Registrar may revoke the incorporation after giving notice to the company not less than 14 days of the intention so to do (see further paragraph 131 below). A director or officer of the NPC who knowingly refused to file the report is guilty of an offence and is liable on summary conviction to a fine not exceeding XCD 5 000 (USD 1 850).

62. The Registrar views its duties as one of repository of information. The Registrar issues a "Certificate of Good Standing" to companies, which is required domestically to open a bank account, obtain loans and financing from financial institutions and for other official purposes, such as applying for permits and licences. This certificate has a validity of 12 months, after which it has to be re-issued by the Registrar. As the certificate is issued only to companies that have complied with all their filing obligations, the Registrar takes the opportunity to enforce the filing of outstanding annual returns whenever they are requested by companies to issue such certificates. Antigua and Barbuda authorities indicate that traditionally, companies were struck off from the Register if they failed to comply, rather than applying financial penalties.

63. The Registrar has certain powers of investigation under the CA through the Attorney General's Chambers and the ability to penalize those proffering false statements in accordance with Section 518 of the CA and Section 11 of the Business Names Act.

64. Under Section 530(1) of the CA any person who makes or assists in making a report, return, notice or other document sent to the Registrar and that contains an untrue statement of a material fact or omits to state a material fact required, or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made, is guilty of an offence and liable on a summary conviction to a fine of XCD 5 000

(USD 1 850) or to imprisonment for a term of two years, or to both. Further, Section 533 of the CA sets a general offence provision in that every person who is guilty of an offence under the CA or the regulations is (if no punishment is provided elsewhere in the CA for that offence), liable on summary conviction to a fine of XCD 5 000 (USD 1 850). A prosecution for an offence under the CA or the regulations may be instituted at any time within two years from the time when the subject matter of the prosecution arose (Section 536 of the CA).

65. The effectiveness of these enforcement provisions will be reviewed in Phase 2 (see Annex 1).

International business companies (IBCs)

66. All IBCs incorporated under the IBCA are included in the Register of IBCs maintained by the Director of IBCs (Section 318 of the IBCA). No legal ownership information is available with this authority.

67. Under Section 5 of the IBCA, as amended by the Law (Miscellaneous Amendment) Act 2020, No 3 of 2020, the following categories of persons, who hold a licence under the Corporate Management and Trust Services Providers Act 2008 (CMTSPA), are permitted to incorporate an IBC (a) any two citizens of Antigua and Barbuda, one of whom is entitled to practice as an Attorney-at-Law in Antigua and Barbuda; (b) a corporation that was incorporated under the IBCA; or (c) a body corporate authorised by a resolution of the House of Representatives.

68. An IBC can be incorporated by making an application to the Director of IBCs and filing Articles of Incorporation, which must include general information, such as corporation name, number of directors, and the classes and maximum number of shares that the corporation is authorised to issue (Section 6 of the IBCA). Antigua and Barbuda explained that incorporation certificates do not disclose the names of founders/shareholders. However, the application by an IBC to carry out international banking activity (or other licensable activity – see the following paragraph) necessitates the disclosure of shareholders with ownership interests of 5% or more (Section 8 of the IBA).

69. Further and unlike the regime envisaged under the CA for the domestic sector, the IBCA does not require the legal ownership information to be reported on an annual basis to the Register of IBCs (however, see the sub-section on beneficial ownership information which is reported annually for any shareholders with ownership interests of 5% or more). The transfer of shares does not need to be notified to the Register of IBCs. However, all IBCs must submit changes made among their directors to the FSRC within 15 days after changes occurs (Section 74 of the IBCA). Further, the International

Business Corporation Regulations Statutory Instrument, No. 41 of 1998, provides that no licensed institution[16] shall make a change to its directors or direct or indirect, legal or beneficial owner of 5% or more of a class of shares in that institution, without prior approval from the FSRC. In addition, the legal ownership information is available through the corporate management and trust service providers and is held by corporations themselves (see the relevant sections below).

70. In instances of non-compliance, the general offences section applies, i.e. Section 356 of the IBCA, which stipulates that every person who, without reasonable cause contravenes a provision of the IBCA is guilty of an offence and, if no punishment is provided elsewhere in the IBCA for that offence, is liable on summary conviction to a fine of XCD 5 000 (USD 1 850). Further, under Section 353(1) of the IBCA, a person who makes or assists in making a report, return, notice or other document (a) that is required by the IBCA or the regulations to be sent to the Director, and appropriate official or any other person, and (b) that contains an untrue statement of a material fact, or omits to state a material fact required in the report, return, notice or other document or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made, is guilty of an offence and liable on summary conviction to a fine of XCD 5 000 (USD 1 850) or to imprisonment for a term of six months or to both. Under Section 353(3) of the IBCA, when an offence under Section 353(1) is committed by a body corporate and a director or officer of that body corporate knowingly authorised, permitted or acquiesced in the commission of the offence, the director or officer is also guilty of the offence and liable on summary conviction to a fine of XCD 5 000 (USD 1 850) or to imprisonment for a term or six months or to both. Under Section 358 of the IBCA, a prosecution for an offence under the IBCA or the regulations may be instituted at any time within two years from the time when the subject matter of the prosecution arose.

71. The effectiveness of these enforcement provisions will be reviewed in Phase 2 (see Annex 1).

Foreign companies

72. A firm or body of persons, whether incorporated or unincorporated, that is formed outside Antigua and Barbuda, is known in Antigua and Barbuda as an "external company" and must register with the Registrar to carry on business in Antigua and Barbuda (Section 340 of the CA).

16. A "licensed institution" is defined under the IBCA Regulations 1998 as an IBC licensed by the FSRC to engage in international banking, international trust or international insurance business.

73. Section 338 of the CA defines the following as "carrying on business" in Antigua and Barbuda:

- the business of the company is regularly transacted from an office in Antigua and Barbuda established or used for the purpose
- the company establishes or uses a share transfer or share registration office in Antigua and Barbuda, or
- the company owns, possesses or uses assets situated in Antigua and Barbuda for the purpose of carrying on or pursuing its business, if it obtains or seeks to obtain from those assets, directly or indirectly, profit or gain whether realised in Antigua and Barbuda or not.

74. The registration and reporting requirements to the Register and the FSRC, which are described below, will only apply if the foreign company carries on business in Antigua and Barbuda within the meaning of Section 338 of the CA. Doubts remain whether this would cover all companies which have a sufficient nexus to Antigua and Barbuda in accordance with the standard, including by being resident there for tax purposes (for example by having its place of effective management or administration in Antigua and Barbuda, without being considered to be carrying on its business there).

75. In order to be registered, the external (foreign) company must file certain information with the Registrar, which includes general information such as company name, jurisdiction of incorporation, date and manner of its incorporation; the business that the company will carry on in Antigua and Barbuda; the address of the registered or head office of the company outside Antigua and Barbuda; the address of the principal office of the company in Antigua and Barbuda; the names, addresses and occupations of the directors of the company (Section 344(1) of the CA). In order to register, an external company must file with the Registrar a statement in the prescribed form setting out the particulars of its corporate instruments, which includes its Articles of Incorporation. No information is specifically required on legal ownership, unless available in the corporate instruments of the company, which depends on the applicable foreign law. In any event, the information in the Articles of Incorporation could be historical, as the company may have existed for many years before starting business in Antigua and Barbuda.[17] Further, Sections 344(2) and 346 of the CA provide that the information provided shall be accompanied by a statutory declaration by a director of the company that verifies on behalf of the company

17. In accordance with Section 355(1) of the CA, the fundamental changes (within the meaning of Division K of Part 1 of the CA) to the corporate instrument must be notified to the Registrar thirty days after the change, failing which the registration of an external company ceases to be valid 60 days after the change. However, such changes do not include the change of shareholders.

the particulars set out in the statement; a copy of the corporate instruments of the company; a statutory declaration by an attorney-at-law; the prescribed fees; and a power of attorney that will empower some person named in the power and resident in Antigua and Barbuda.

76. After registration, external companies must file annual returns with the Registrar (Section 356 of the CA), containing information on the name of the company, financial year, address of registered or head office, company number, address of principal office (if any), date of registration, fundamental changes in corporate structure (if any), share capital: class of shares, number issued and outstanding, amount (if any), shares purchased by the company in the last financial period and the cumulative total or/and if any shares have been redeemed by the Company in the last financial period.[18] Under Sections 356(2) and 356(3) of the CA, a director or officer of the external company must certify the contents of any return made. The Registrar may strike off the register an external company that neglects or refuses to file a return required under this section. No legal ownership information is provided to the Registrar in the annual returns.

77. The transfer of ownership is carried out by a written instrument of transfer signed by the transferor and naming the transferee in accordance with the Model General By-Law of a Company Incorporated or Continued under the CA (Company Regulations 2007, Fourth Schedule Regulation 29).

78. General provisions on sanctions set in Sections 530, 533 and 536 of the CA (see paragraph 64 above) apply to external companies.

79. Further, the Law (Miscellaneous Amendments) (No. 2) Act 2017, No 14 of 2017, introduced the submission to the FSRC of an annual attestation on beneficial ownership and control by legal entities and arrangements, which applies to all companies, including external companies (Section 194A of the CA). These provisions are further discussed in paragraph 188 et seq. However, the reporting requirement does not ensure the provision of legal ownership information in all cases.

80. To sum up, no information is specifically required on legal ownership at the point of registration of an external (foreign) company in Antigua and Barbuda with the Registrar, unless available in the corporate instruments of the company, which depends on the applicable foreign law, and may be historical and thus out of date. However, the information provided in the statement at the point of registration needs to be accompanied by a statutory declaration by an attorney-at-law who is subject to the AML requirements of knowing its clients and retaining the relevant documents. This information, however, will be limited to the stage of registration and will not extend to

18. Form 24 of the Companies Act Regulations.

the entire time the foreign company has a sufficient nexus to Antigua and Barbuda. The newly introduced annual attestation on beneficial ownership and control, which is provided to the FSRC, whilst being periodic does not seem to ensure the provision of legal ownership information in all cases. Finally, doubts remain as to whether the legal ownership information would be available for all companies, which have a sufficient nexus to Antigua and Barbuda in accordance with the standard. Whether the legal ownership information on foreign companies having sufficient nexus with Antigua and Barbuda is always available will be considered in Phase 2 (Annex 1, see also further observation on the legal ownership information available for foreign companies, as envisaged by tax law, in paragraphs 112 and 116 below).

Company ownership and identity information required to be held by companies

Domestic companies and NPCs

81. A domestic company or NPC should at all times have a registered office in Antigua and Barbuda (Section 175(1) of the CA). The CA requires companies to prepare a list of shareholders who are entitled to receive notice of a meeting, arranged in alphabetical order and showing the number of shares held by each shareholder (Section 123(1) of the CA).

82. Section 177(1) was amended in 2020, to specifically stipulate that a company shall prepare and maintain at its registered office records containing identity and legal ownership information of its shareholders, clients and directors. Companies are obliged under Section 177(2) of the CA to maintain at their registered offices a register of members showing:

- name and latest known address of each person who is a member[19]
- in the case of a company with share capital, a statement of the shares held by each member

19. According to Section 371(3) CA, a "member" in relation to a company means an incorporator of the company and any other person who agrees to become a member of the company and whose name is entered in the company's register of members. Further, under Section 105(1) of the CA, the following persons are shareholders in a company: (a) a person who is a member of the company under Section 371(3); (b) the personal representative of a deceased shareholder and the trustee in bankruptcy of a bankrupt shareholder; (c) a person in whose favour a transfer of shares has been executed but whose name has not been entered in the register of members of the company or, if two or more such transfers have been executed, the person in whose favour the most recent transfer has been made. In relation to a non-profit company, "member" refers to a member of the non-profit company in accordance with the provisions of the CA and by-laws of the company (Section 327 of the CA).

- date on which each person was entered on the register as a member, and the date on which any person ceases to be a member.

83. A company should prepare and maintain a register of substantial shareholding, i.e. anyone owning shares entitled to exercise 10% or more of the voting rights, in the company in accordance with Sections 181 to 185 of the CA. The Registrar may require the company to furnish this register within 14 days and the company and every officer of the company who is in default of such a request is guilty of an offence.

84. Section 177(7) stipulates that a company may appoint an agent to prepare and maintain the register, and such a register may be kept at its registered office or at another place within Antigua and Barbuda, and a copy thereof is registered by the agent in the Companies registry.

85. The sanctions envisaged by Sections 530, 533 and 536 of the CA, as described above, apply.

International business companies (IBCs)

86. Section 128(1) of the IBCA provides that a corporation must at all times have a registered office in Antigua and Barbuda and the resident agent is responsible for the records and registers to be kept at the registered office. As the provision of registered agent services and registered offices is a regulated activity under the CMTSPA, this would also imply a requirement of engaging a service provider.

87. Section 130(1) of the IBCA, as amended by Law (Miscellaneous Amendments) Act 2020, No. 3 of 2020, provides that a corporation shall prepare and maintain at its registered office records containing identity and legal ownership information of its shareholders, clients and directors. Further, Section 130(2) of the IBCA indicates that an IBC is required to maintain at its registered office a register of shareholders showing:

- name and the latest known address of each person who is a registered shareholder
- statement of the shares held by each registered shareholder
- date on which each person was entered on the register as a shareholder and the date on which any person ceased to be a shareholder.

88. A corporation may appoint an agent to maintain the registers; but the registers must be maintained at the registered office of the corporation or at some other place in Antigua and Barbuda (Section 130(5) of the IBCA).

89. Further and in addition, the IBCA requires corporations to prepare a list of their shareholders who are entitled to receive notice of a meeting, arranged in alphabetical order and showing the number of shares held by each

shareholder (Section 111(1) of the IBCA). In addition to maintaining a register of shareholders, an IBC is required to hold annual general meetings and for each of these meetings prepare a list of its shareholders and the number of shares held by each shareholder (Sections 102 to 110 of the IBCA).

90. Section 111 of the IBCA further requires that changes of shareholdings are registered as the records of shareholders and the number of shares, at the said office. Antigua and Barbuda explained that the transfer will not be effective without such a registration as according to Section 27(1) of the IBCA, shares in a corporation must be in registered. In addition, and as noted earlier in this report, the International Business Corporation Regulations, Statutory Instrument, No 41 of 1998, provides that no licensed institution shall make a change to its directors or direct or indirect legal or beneficial owner of 5% or more of a class of shares in that institution, without prior approval from the FSRC.

91. The sanctions envisaged by Sections 353, 356 and 358 of the IBCA, as described above, apply for the breach of these obligations. Further, Section 130A of the IBCA, as amended in 2014, Section 335 of the IBCA, as amended in 2017, and Section 6A of the IBCA, as amended in 2010, further secure the record-keeping obligations.

Foreign companies

92. The CA does not impose any obligation on an external company to maintain information on its shareholders.

Company ownership information held by service providers

93. Corporate management and trust service providers in Antigua and Barbuda are regulated under both the CMTSPA and the Money Laundering (Prevention) Act (MLPA). The regulation of service providers through these acts is an avenue through which legal ownership information of relevant entities and arrangements is available.

94. Many legal persons and arrangements conducting business from or in Antigua and Barbuda will have some involvement with a licensed service provider through either a one-off transaction or an on-going business relationship and it is through these instances that the relevant regulatory requirements under the CMTSPA and the AML laws are triggered and ownership information of relevant entities is made available.

95. Most of the offshore sector entities (IBCs, ILLCs, international trusts and international foundations)[20] will in practice get involved with a licensed

20. Whilst there is no direct legal requirement to engage with a licensed service provider for international trusts and international foundations, they would do

service provider (see the details concerning the licensing requirements in paragraph 97). It is mandatory for IBCs and ILLCs to engage the services of an agent licensed under the CMTSPA (see paragraphs 86 and 287). In addition, only licensed service providers may provide nominee shareholders for external companies and IBCs, or act as custodians for IBC bearer shares.

Corporate Management and Trust Service Providers Act (CMTSPA)

96. The CMTSPA regulates a broad range of services as set by Section 2, including, the administration of corporate management for profit or reward in or from within Antigua and Barbuda; the conduct or the carrying on of corporate management and trust services in or from Antigua and Barbuda, including on-line corporate management services; the management and administration of IBCs, external companies and ILLCs; the provision of registered agent/office or officers/managers for IBCs, external companies and ILLCs; the provision of directors/officers, nominee shareholders, and the preparation and filing of statutory documents for IBCs, external companies and ILLCs; and the provision of asset management services not otherwise regulated by the FSRC or other Authority.

97. A service provider that offers a regulated service must be licensed under the CMTSPA, unless it qualifies for exemption.[21] Antigua and Barbuda has advised that as at 31 December 2020, 19 service providers were licensed, including 4 which were authorised to offer trustee and asset management services. As at 31 December 2020, there were also six exempt service providers under the CMTSPA (compared to one as at 31 December 2012), exempted

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so in practice. This arises from the requirement that they must have at least one Antigua and Barbuda domiciliary as trustee/foundation member, combined with the fact that the provision of such services is a regulated activity under the CMTSPA.

21. Section 4 of the CMTSPA allows a service provider to apply to the FSRC for exemption if the services carried out fall under one of the following categories: (a) services provided in or from within Antigua and Barbuda but which are otherwise regulated by the FSRC or by another Authority; (b) services provided as an incorporator, registered agent, director, manager or officer of (i) not more than 12 entities during any calendar year, where the person does not have a significant interest in any of them, or (ii) any entity in which the person has an equity interest of 10% or more; (c) acting as trustee of no more than three international trusts registered under the International Trust Act, 2008 and (d) acting as a non-resident director, manager or officer of affiliated entities. A person shall not claim an exemption on the basis of (a), (b)(i), (c) or (d), if services rendered include the management or other control of assets of one or more entities and the aggregate value of the assets exceeds XCD 30 000 (USD 11 100).

from paying the annual licence fee and annual on-site examination. Such exempt service providers manage a total of 40 entities.

98. Section 5 of the CMTSPA creates a requirement for physical presence for service providers. Whilst Antigua and Barbuda clarified that this requirement applies both to licensed and exempt service providers, Section 5 does not make it explicit. This section seems to provide the "requirements for a licence", stipulating that: "no person shall carry on the business of corporate management service provider in or from within Antigua and Barbuda unless that person has a valid licence under this Act for such purpose and that person has physical presence within Antigua and Barbuda".[22] The following requirements apply to a licensed service provider. Where a licensed service provider is instructed by a client to provide corporate management services, he is required to conduct such due diligence as may be necessary to establish the identity and business background of a client (Section 18(1) of the CMTSPA). To this end, the licensee must obtain from the client (a) details of the client's principal place of business, business address, telephone and facsimile, telex numbers and electronic address of the principal or professionals concerned with the client; (b) details of the client's current home address, telephone and facsimile numbers and electronic address; (c) copies of passport or identity card, drivers licence and an original utility bill or bank statement; (d) two sources of reference to provide adequate indication on the reputation and standing of the client (Section 18(2) of the CMTSPA).

99. Further, a licensed service provider must keep the names and addresses of the beneficial owners of entities for which it provides corporate management and trust services under Section 18(3)(b) of the CMTSPA. Following the amendments introduced by the Law (Miscellaneous Amendment) Act, No 3 of 2020, a licensed service provider must also keep the identity and legal ownership information of the shareholders, clients and directors of the licensee (Section 18(3)(c) of the CMTSPA).

100. The CMTSPA was amended by the Law (Miscellaneous Amendments) Act 2016, No 20 of 2016, to specify that the name and addresses of the "basic and beneficial owner" of entities for which corporate management and trust services are provided must be accurate and updated on a timely basis (Section 18(3)(b) of the CMTSPA). However, no further guidelines have been provided in this regard.

101. A licensed service provider must maintain and hold the records required by Section 18 in Antigua and Barbuda (Section 18(5) of the CMTSPA).

22. The term "physical presence" means a permanent address and physical office space within Antigua and Barbuda.

102. Section 19 requires that, in addition to the requirement of Section 18(2), a licensed service provider must, in respect of each client, maintain for a period of six years (the duration was added by the amendment introduced by the Law (Miscellaneous Amendment) Act, No 3 of 2020) adequate information on a file to enable them to comply with their obligation under the CMTSPA, the MLPA, the Prevention of Terrorism Act, the ILLCA or any other law in force in Antigua and Barbuda. Section 18(4) of the CMTSPA, specifies that where the service provided to a client is for any reason discontinued, the record kept for that client shall continue to be maintained for a period of six years from the date of the discontinuation of such services.

103. The breach of these obligations amounts to an offence and is liable on summary conviction to a fine not exceeding XCD 5 000 (USD 1 850) (Section 27(7)(b) of the CMTSPA).

104. These provisions are enforced by the FSRC, which maintains a general review of corporate management and trust service providers in Antigua and Barbuda (Section 14 of the CMTSPA).[23] In the performance of its functions, the FSRC may at all reasonable times require a licensee to produce for examination the books, records, and other documents that the licensee is required to maintain pursuant to Sections 18 and 19. In cases where a service provider's file is found to be incomplete or inaccurate, the service provider has three months to rectify the issue. If, after three months, the issue has not been rectified, the Supervisory Authority for AML/CFT is notified for follow-up action.

105. A service provider that is exempt from licensing under the CMTSPA is not subject to the due diligence, record keeping and record retention obligations under Sections 18 and 19 of the CMTSPA, described above,

23. Under Section 14 of the CMTSPA, the functions of the FSRC are: (i) To maintain a general review of corporate management and trust service providers in Antigua and Barbuda; (ii) To conduct, from time to time or whenever it considers it necessary and at the expense of the licensee, on-site and off-site examinations of the businesses of the licensee for the purpose of ensuring that (i) the provisions of the CMTSPA, the ILLCA, the IFA, the CA, the IBCA, the MLPA and the Terrorism Prevention Act and any other Act that confers jurisdiction on the FSRC are being complied with; (ii) the licensee is in sound financial position and is carrying on its business in a satisfactory manner; (iii) In the performance of its functions under the CMTSPA the FSRC may at all reasonable times: (a) require a licensee to produce for examination such of its books, records and other documents that the licensee is required to maintain pursuant to Sections 18 and 19; (b) require a licensee to supply such information or explanation, as the FSRC may reasonably require for the purpose of enabling it to perform its functions under the CMTSPA.

but is still subject to the AML requirements discussed below in this report. Furthermore, the Law (Misc. Amendments) (No. 2) Act, 2017 was passed to strengthen the effectiveness of existing laws. Antigua and Barbuda clarified that an exemption holder, whilst not being subject to other filing requirements under the CMTSPA, remains obligated to submit beneficial ownership attestations to the FSRC under Section 18A of the CMTSPA. Whilst Section 18A of the CMTSPA does not explicitly cover the identity of its legal owners, Antigua and Barbuda noted that one cannot perform an efficient effective identification and verification of the identity of beneficial owners without determining the ownership structure of the client.

106. To ensure compliance with legal obligations, exempt service providers are monitored through offsite surveillance. Antigua and Barbuda explained that a risk based supervision is applied to all licensed corporate service providers, and to lesser extent to the exemption holders. Notwithstanding the exemption, the service provider is not discharged from keeping the documentation necessary to have established the exemption in accordance with the CMTSPA. They are obligated to provide documents to the FSRC to confirm adherence to statutory obligations. Antigua and Barbuda also noted that at all times the licensing authority of CMTSP, the FSRC, is knowledgeable of all service providers and in approving the exemption must be fully satisfied by conducting its own due diligence that the exemption should be approved. The effectiveness of the provisions regulating the activities of exempt service providers to ensure the availability of ownership information will be reviewed in Phase 2 (see Annex 1).

107. To sum up, pursuant to Sections 18, 18A and 19 of the CMTSPA, all licensed service providers are required to obtain and retain ownership information of all clients (such as IBCs under their management, including those IBCs which have been struck off the register), for a period of six years, including in the instances of the discontinuance of their services to their clients. With the exception of Section 18A of the CMTSPA and the AML-related requirements, which are described in the next section, these obligations will not apply to the exempt service providers.

The Money Laundering (Prevention) Laws

108. The MLPA, alongside the Money Laundering (Prevention) Regulations 2007 (MLPR) and the Money Laundering and the Financing of Terrorism Guidelines for Financial Institutions (MLFTG), are governing the AML obligations of "financial institutions" operating from or within Antigua and Barbuda, defined broadly to include all persons whose regular occupation or business is in the provision of corporate services. It is an important source of ownership and identity information in Antigua and Barbuda. As explained above, all offshore entities (IBCs, ILLCs, international trusts and

international foundations) are required to engage the services of at least one corporate service provider in Antigua and Barbuda which is subject to the AML obligations, whether or not the service provider is exempted from licensing under the CMTSPA (see further paragraphs 97 and 105). The sub-section below provides a summary of the provisions which are of relevance for identifying legal ownership information. A more detailed analysis of the AML framework is provided in the context of beneficial ownership.

109. The MLPA and MLPR oblige corporate service providers to obtain and record identification information of all customers who seek to form a business relationship with them. This includes obtaining information on the identity of the principal where the customer is acting in the capacity of an agent, and the identity of the ultimate natural persons who own or control the customer or principal where the customer or principal is a legal person or trust. Identity information obtained must be verified using reliable, independent source documents, data or information. A copy of the evidence and information as to where the evidence may be obtained must be kept for a period of six years from the date the business relationship ends.[24] If the financial institution is unable to obtain satisfactory evidence of the customer's identity, it must not proceed with the business relationship with the customer, or may only do so under the direction of the FSRC.

110. Where a customer is acting in the capacity of an agent, the service provider has the option of accepting a written assurance from the customer that evidence of the principal's identity has been recorded under the procedures maintained by the customer, but only if the service provider has reasonable grounds to believe that the agent is regulated by a local or overseas regulatory authority. In such situations the agent must be based in a country whose laws contain provisions of a similar or higher standard of those contained in the MLPA. Even so, the principal service provider remains liable for any customer due diligence that is not performed.[25] Under Section 5 of the MLPR, the service provider should immediately obtain from the third party the necessary information concerning the elements of the customer due diligence and satisfy itself that, upon request, copies of identification data and other relevant documentation will be made available, without delay, from the third party.

111. Section 17(C) of the MLPA empowers the Supervisory Authority to impose sanctions for breaches of the MLPA discovered during an onsite examination. These sanctions include written warnings, written agreement or memorandum of understanding, directions to cease and desist conduct, directions regarding any employee of the institution or board member

24. Section 12B of the MLPA and regulations 4 and 5 of the MLPR.
25. Regulation 4 of the MLPR.

and administrative financial penalties in accordance with the MLPR. Administrative penalties as set out in Regulation 3(8) of the MLPR cannot exceed XCD 100 000 (USD 37 000) for failure to comply with the requirements of the regulations directives or guidelines issued by the Supervisory Authority. Section 17E also provides sanctions for a financial institution or director, manager or employee of a financial institution who breaches any provision of Part III of the MLPA ("Anti-Money Laundering Supervision"). These sanctions include on summary conviction a fine not exceeding XCD 500 000 (USD 185 000) or a term of imprisonment not exceeding six months and on conviction on indictment a fine not exceeding XCD 1 000 000 (USD 370 000).

Tax Law requirements

112. All persons operating a company, business, trade, profession or service involved in economic activity in Antigua and Barbuda must register with the Commissioner of Inland Revenue for the allocation of an identification tax number within 30 days of commencement of the economic activity (Section 75A of the Income Tax Act). Persons covered include relevant domestic companies, external companies, partnerships and trusts. As at 31 December 2020, the number of companies registered with the IRD was as follows: domestic companies (3 024); NPCs (165); external companies (498); partnerships (1 424); international banks (8) and domestic banks (8).

113. IBCs are generally exempted from all duties and taxes in Antigua and Barbuda and do not need to register with tax authorities. However, pursuant to the amendment by way of the Law (Miscellaneous Provisions Amendment) Act of 2018, which aimed at repealing all ring-fencing and preferential tax regimes, an IBC can have the option to conduct business in Antigua and Barbuda, provided it receives permission from the FSRC and files its incorporation information with the Registrar. As a result, the registration of such an IBC will be captured in the IBC registry, as well as the Companies Registry (Section 4A of the IBCA). A company that registers and conducts business with residents of Antigua and Barbuda is liable to the taxation provisions under the Income Tax Act. Antigua and Barbuda has not provided the number of IBCs that have so far registered with the IRD.

114. International trusts, international foundations and ILLCs are generally exempted from taxes and duties in Antigua and Barbuda, with the limited exceptions described in paragraph 60 of the 2014 Report. In such cases, unless the tax is paid by another person, the international trust, international foundation or ILLC would need to file a tax return with the Antigua and Barbuda authorities.

115. The registration with the IRD is only required where a person operates a company, business, trade, profession or service involved in economic activity in Antigua and Barbuda, as understood by Section 75A of the Income Tax Act. It is not clear whether the tax registration will be required for all companies which have a sufficient nexus to Antigua and Barbuda in accordance with the standard (including being resident for tax purposes, for example, by reason of having its place of effective management or administration in Antigua and Barbuda). Whether the legal ownership information on foreign companies having sufficient nexus with Antigua and Barbuda is always available in practice will be considered in Phase 2 (Annex 1).

116. The corporate registration form issued by the Inland Revenue (formerly, Form F15, and now Corporate Body Enterprise Registration Form, CB001) requires full disclosure of the identity of all shareholders where the enterprise is a company; and full disclosure of the identity of all partners in the case where the enterprise is a partnership (see further in the section on partnerships below). For enterprise ownership (shareholders), all shareholders are required to be named. A shareholder could be an individual or a legal person. The following information is required: tax identification number; owner name: for individuals (last and first name) and for legal persons (trade name); ownership start date and number of shares; percentage of shares; and ownership end date. For each shareholder, the Individual Registration Form (F16) must be completed. Further analysis will be carried out in the section which focuses on beneficial ownership.

117. Whenever there are changes to the shareholders, these must be reported to the IRD using the same corporate registration form. These must be notified to the Commissioner of Inland Revenue immediately, and in every case, no later than submission of the next annual return. Antigua and Barbuda was not able to provide the source of this obligation. The practice in this regard will be reviewed in Phase 2 (see Annex 1).

118. All domestic, external and non-profit companies (IBCs are not included unless registered with the IRD as explained earlier in this report) have to file annual returns (containing updated shareholder information) with the Registrar of Companies.

119. The IRD is not legally empowered to carry out any specific enforcement procedures to ensure that all changes in ownership of domestic and external companies are reported. However, if a domestic/external company is selected for a tax audit, the shareholder information is verified as part of the profile of the legal entity by the tax auditor. In addition, if the competent authority receives information or intelligence that suggest that changes in shareholders have not been reported by the company, it may also trigger an investigation into the company to verify the changes and appropriate penalty may be imposed on the company and its officers. The provision of false or

misleading information can be sanctioned under Section 81 of the 2018 TAPA (on summary conviction to a fine not exceeding XCD 10 000 [USD 3 700]) or Section 11 of the TIE Act (on summary conviction to a fine not exceeding XCD 5 000 (USD 1 850) or to imprisonment for a term not exceeding six months or to both). Enforcement procedures to ensure that persons register when required to do so will be reviewed in Phase 2 (see Annex 1).

Companies that ceased to exist and inactive companies

120. Different procedures and document retention rules apply to various types of legal entities in Antigua and Barbuda. The key requirements are set by the CA and the IBCA, which are examined below.

Requirements set by the CA

121. The CA sets general rules which apply equally to domestic and non-profit companies.

Document retention for companies which cease to exist

122. A company can be wound up either by the court, or voluntarily (Section 370(1) of the CA).

123. The circumstances in which a company can be wound up by the court are set out by Section 377 of the CA and include the situation where the company does not commence its business within a year from its incorporation, or suspends its business for a whole year.[26] An application to the court for the winding up of a company shall be by petition presented either by (a) the company; (b) a creditor, including a contingent or prospective creditor, of the company; (c) a contributory; or (d) the trustee in bankruptcy to, or personal representative of, a creditor or contributory (Section 379(1) of the CA).

124. When the court makes an order for a winding up, a copy of it should be lodged with the Registrar, who should make an entry thereof in the records relating to the company (Section 385(1) of the CA). For the purposes

26. A company may be wound up by the Court if: (a) the company has by special resolution resolved that the company be wound up by the Court; (b) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year; (c) the company is unable to pay its debts; (d) an inspector appointed under Division B of Part V of the CA has reported that he is of the opinion (i) that the company cannot pay its debts and should be wound up; or (ii) that it is in the interests of the public or of the shareholders or of the creditors that the company should be wound up; or (e) the Court is of the opinion that it is just and equitable that the company should be wound up (Section 377 of the CA).

of conducting the proceedings in winding up a company, the court may appoint a liquidator (Section 391 of the CA). Where a winding-up order has been made or a provisional liquidator has been appointed, the liquidator, or the provisional company's liquidator, as the case may be, shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled (Section 396 of the CA). When the affairs of a company have been completely wound up, the court, if the liquidator makes an application in that behalf, makes an order that the company be dissolved from the date of the order, and the company is dissolved accordingly and a copy of the order is lodged by the liquidator with the Registrar who shall record the minute of the dissolution of the company (Section 425 of the CA).

125. A voluntary winding up is deemed to commence at the time of passing of the resolution for voluntary winding up (at the general meeting), as envisaged by Section 429 of the CA. Liquidator(s) can be appointed by a company in general meeting (Section 433 of the CA). The final meeting is called by the liquidator with the subsequent notification of the Registrar (Section 438 of the CA). If, when a company is wound up, whether by order of the court or voluntarily, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter, every officer of the company who was knowingly a party to the default of the company is guilty of an offence, unless he/she shows that he/she acted honestly and that in the circumstances in which the business of the company was carried on the fault was excusable (Section 468(1) of the CA). The practice in this regard will be reviewed in Phase 2 (see Annex 1).

126. According to Section 477(1) of the CA, when a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidation may be disposed of as follows:

a. in the case of a winding up by the court in such manner as the court directs

b. in the case of a members' voluntary winding up, in such way as a general meeting of the company by ordinary resolution directs, and in the case of a creditors' voluntary winding up, in such manner as the committee of inspection or, if there is no such committee, as a meeting of the creditors of the company, by resolution directs.

127. Further:

- After five years from the dissolution of the company no responsibility rests on the company, the liquidators or any person to whom the

custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein (Section 477(2) of the CA).

- Provision may be made by rules made under Section 486 of the CA for enabling the court to prevent, for such period (not exceeding five years from the dissolution of the company) as the court thinks proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to the court (Section 477(3) of the CA).

128. To sum up, in respect of the winding up of companies, the CA does not allocate responsibility for document retention regarding ownership information. The retention and disposal of books and papers is at the discretion of the court, a general meeting of members, the committee of inspection or creditors, which are not prohibited by law to set record retention requirements for a period of less than five years. Similarly, there is no retention requirement with respect to the companies struck off from the register (see further below). However, Antigua and Barbuda notes in this context that whilst such possibility exists, the requirements of Section 477(2) of the CA mean that if the period set is below five years, the relevant persons may leave themselves open to potential action by third parties until the five-year period expires. Further, the lack of an explicit retention requirement for five years or more is partly mitigated by the ownership information recorded by the Registrar. In addition, the authorities of Antigua and Barbuda explained that the legal and beneficial ownership information will be available with the liquidator who in practice is typically a certified accountant and subject to the AML laws, as amended in 2016. Whilst indeed these circumstances may mitigate the potential gap, Antigua and Barbuda should introduce an explicit document retention requirement in respect of companies which have been wound up or struck off the register; clarify the rules regarding who the nominated persons to retain records are and that the records should be kept for a minimum period of five years; and sanctions should be envisaged for the breach of these duties (see Annex 1).

Restoration rules

129. Wound up companies may be revived by the court. Where a company has been dissolved (otherwise than pursuant to Section 483 of the CA, which allows the Registrar to strike off the company's name from the register if it has reasonable cause to believe that a company is not carrying on business or in operation – see below) the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit,

declaring the dissolution to have been void, and there upon such proceedings may be taken as might have been taken if the company had not been dissolved (Section 482(1) of the CA).

130. Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, it may be struck off the register (Section 483 of the CA). Subsequently, if the company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on an application made by the company or member or creditor before the expiration of twenty years from the publication in the Gazette of the notice may, if satisfied that the company was at the time of the striking off carrying on business or in operation or otherwise that it is just that the company should be restored to the register, order the name of the company to be restored to the register, and upon a copy of the order being delivered to the Registrar for registration the company is deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off (Section 483(6) of the CA).

131. In addition, the Registrar may strike off the Register a company or other body corporate in certain circumstances set out in Section 511 of the CA.[27] Where a body corporate is struck off the register, the liability of the body corporate and of every director, officer or shareholder of the body corporate continues and may be enforced as if it had not been struck off the register (Section 512 of the CA). Where a company or other body corporate is struck off the register under Section 511, the Registrar may, upon receipt of an application in the prescribed form and upon payment of the prescribed fee, restore it to the register and issue a certificate in a form adapted to the circumstances (Section 511(5) of the CA).

132. Antigua and Barbuda clarified that a domestic company would have to update its filings in accordance with the direction of the Registrar and the court respectively, but domestic companies are not otherwise legally obliged to provide ownership information to the authorities when the dissolution of a company is declared void by the court or when a company is restored

27. If (a) the company or other body corporate fails to send any return, notice, document or prescribed fee to the Registrar as required pursuant to the CA; (b) the company is dissolved; (c) the company or other body corporate is amalgamated with one or more other companies or bodies corporate; (d) the company does not carry out an undertaking given under Section 515(a)(i) of the CA: if required by the Registrar to dissolve or change its name to a dissimilar name within six months after the filing of the articles by which the name is acquired; or (e) the registration of the body corporate is revoked pursuant to the CA.

in the registry after being struck off. In addition, there is no time limit for the restoration of domestic companies after being struck off the register by the Registrar (Section 511(5) of the CA), except for specific circumstances where a company was struck off by the Registrar because it was not carrying on business or in operation and which can be restored to the register by the court – subject to a limitation period of 20 years from the publication of a notice in the Gazette (Section 483(6) of the CA). In the case of dissolved and struck off companies, there is a risk that an adequate retention of ownership information will not be ensured as there is no explicit obligation to maintain and provide ownership information at that time. Since the retention period after dissolution is five year, any reinstatement after that date does not allow checking whether there was a change of ownership. As noted in paragraph 121, these rules apply equally to domestic and non-profit companies. Therefore, **Antigua and Barbuda is recommended to ensure the availability of ownership information when the dissolution of a domestic or non-profit company is declared void and upon restoration following the strike off from the register, as well as establishing a time limit for the restoration following the strike off.**

Special provisions for external companies

133. Along with the general rules applicable to domestic and non-profit companies, the CA envisages some special provisions for an "unregistered company", which includes (a) an external company; (b) any partnership, whether limited or not, or association consisting of more than seven members; or (c) any body corporate not incorporated or continued under the CA, and any unincorporated body (Section 487(1) of the CA). External companies may not be wound up voluntarily, except in some circumstances which include if the company is dissolved or has ceased to have a place of business in Antigua and Barbuda or has a place of business only for the purpose of winding up its affairs or has ceased to carry on business (Section 488(1) of the CA).

134. When an external company ceases to carry on its business in Antigua and Barbuda, the company shall file a notice to that effect with the Registrar, who shall thereupon cancel the registration of the company under the CA (Section 352(1) of the CA). If an external company ceases to exist and the Registrar is made aware of that circumstance by evidence satisfactory to him, the Registrar may cancel the registration of the company under the CA (Section 352(2) of the CA). Where the registration of an external company has been cancelled under Section 352, the Registrar may revive the registration of the external company under the CA if the company files with him such documents as he may require and pays the prescribed fee (Section 353(1) of the CA). Antigua and Barbuda clarified that the Registrar will require the filing of missing annual reports. Further, under Section 353(2) of the CA,

a registration of an external company is revived when the Registrar issues a new certificate of registration to the company. Registration or revival of registration under the CA of an external company retroactively authorises all previous acts of the company as though the company had been registered at the time of those acts, except for the purposes of a prosecution for any offence under Division B ("External Companies") of the CA.

135. In addition, according to Section 351 of the CA, subject to such regulations as the Minister may make in that behalf, the Minister may suspend or revoke the registration of any external company for failing to comply with any requirements of Division B ("External Companies") of the CA, or for any other prescribed cause; and the Minister may, subject to those regulations, remove a suspension or cancel a revocation. The rights of the creditors of an external company are not affected by the suspension or revocation of its registration under the CA.

136. To sum up, where an external company ceases to carry on business in Antigua and Barbuda, it must file a notice with the Registrar and its registration will be cancelled. The Minister may also suspend or revoke the registration of any external company. As with other companies, the cancellation of registration may be revived and the suspension or revocation of the registration can be removed. No time limitation is set by the law and external companies are not obliged to provide legal ownership information to the authorities upon their revival or removal of the suspension or revocation of the registration. This is mitigated by the fact that external companies shall file with the Register a fully executed power of attorney. This power of attorney should empower a resident in Antigua and Barbuda to act as the attorney of the company for the purposes prescribed by Section 346 of the CA. Antigua and Barbuda clarified that the power of attorney referred to in Section 346 is executed by an actual attorney at law who is a financial institution under the First Schedule of the MLPA. Accordingly, such an attorney must act in accordance with the AML laws and will be under the duty to maintain legal and beneficial ownership information related to external companies for six years by virtue of the AML laws.

Requirements set by the IBCA

137. The winding up of IBCs is regulated by Part IV of the IBCA.

Document retention for IBCs which cease to exist

138. According to Section 284(1) of the IBCA, except with the prior written approval of the appropriate official,[28] a corporation may not be voluntarily liquidated and dissolved except:

- A corporation that has not issued any shares may be dissolved at any time by resolution of all the directors under Section 291 of the IBCA.
- A corporation that has no property and no liabilities may be dissolved by special resolution of the shareholders or, if it has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote (Section 292 of the IBCA).
- A corporation may liquidate and dissolve by special resolution of the shareholders under Section 294 of the IBCA.

139. IBCs can be dissolved by the Director of IBCs who issues a certificate of dissolution under Section 327 of the IBCA and the corporation will cease to exist from the date shown in its certificate of dissolution, as in the circumstances described by Sections 291 and 292 of the IBCA above (Sections 293 and 298 of the IBCA).

140. Under Section 299 of the IBCA, the act of liquidation and dissolution may optionally involve the court. For instance, where a corporation (a) has not commenced business within three years after the date shown in its certificate of incorporation; (b) has not carried on its business for three consecutive years; or (c) has not had its name restored to the register within two years after the date on which it was struck off under Section 335 of the IBCA,[29] the Director may dissolve the corporation by issuing a certificate of dissolution under Section 299 of the IBCA or he may apply to the court for an order dissolving the corporation, in which case Section 304 of the IBCA applies (see below).

141. In certain circumstances, the court's participation is mandatory. For instance, when a corporation receives the approval of the appropriate official to its voluntary winding up, the corporation must apply to the court for an order dissolving the corporation (Section 285(1)(a) of the IBCA).

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28. The conditions for granting such an approval are set in Section 284(2) and 284(3) of the IBCA.
29. In which case, under Section 336 of the IBCA, where a corporation is struck off the register, the liability of the corporation and of every director, officer or shareholder of the corporation continues and may be enforced as if it had not been struck off the register. However, Antigua and Barbuda clarified that the corporation cannot carry on business.

142. Antigua and Barbuda clarified that in practice when the Director dissolves the corporation, it will give instructions to ensure that the corporation complies with the record retention provision under the AML laws. The court, under Section 304(i) of the IBCA, in connection with the dissolution or the liquidation and dissolution of a corporation, may make any order it thinks fit, including an order disposing of or destroying the documents and records of the corporation. Under Section 308(1)(h), a liquidator may make financial provision in respect of the custody of the documents and records of the corporation after dissolution. When approving the final accounts rendered by a liquidator, the court must make an order directing the custody or disposal of the documents and records of the corporation (Section 309(4)(b) of the IBCA).

143. Under Section 311 of the IBCA, a person who has been granted custody of the documents and records of a dissolved corporation remains liable to produce those documents and records for six years following the date of the company's dissolution or until the expiry of such other shorter period as may be ordered by the court under Section 309(4) of the IBCA. Antigua and Barbuda clarified that the failure to adhere to such an order would be a matter that must revert to the Court by way of an application supported by an affidavit, with the grounds being contempt of court.

144. To sum up, in respect of the dissolution and winding up of IBCs, the law does not allocate responsibility for document retention regarding ownership information. The allocation of custody of the documents and records is at the discretion of the Director of IBCs or the court, and the court may oblige record retention requirements for a period of less than 5 years. Antigua and Barbuda maintains that in practice such directions will be made by the Director and the court respectively with a due account of the AML retention requirements. However, the obligations of service providers under the CMTSPA and AML laws, which require that the records kept for clients shall continue to be maintained for a period of six years from the date of the discontinuation of such services (as described in paragraphs 102 and 109), will allow retrieving the legal and beneficial ownership information. Whilst the IBCA does not include an explicit provision ensuring that an engagement with a service provider continues through those entities' entire lifecycle and not only at incorporation, Antigua and Barbuda explains that in practice this will be the case (see further paragraph 86). The effectiveness of the provisions ensuring the availability of ownership information with respect to IBCs which have ceased to exist will be reviewed in Phase 2 (see Annex 1).

Restoration rules

145. A dissolved IBC retains certain liabilities and may be revived:

- Notwithstanding the dissolution of a corporation (a) a civil, criminal or administrative action or proceeding commenced by or against the

corporation before its dissolution may be continued as if the corporation had not been dissolved; (b) a civil, criminal or administrative action or proceeding may be brought against the corporation within two years after its dissolution as if the corporation had not been dissolved; and (c) any property that would have been available to satisfy any judgment or order if the corporation had not been dissolved remains available to satisfy the judgment or order (Section 312(2) of the IBCA et seq.).

- When a corporation has been dissolved under Part IV of the IBCA, any interested person may apply to the Director to have the corporation revived (Section 315(1) of the IBCA). If the Director approves the application for the revival of a corporation, articles of revival in the prescribed form may be sent to the Director, who must thereupon issue a certificate of revival for the corporation in accordance with Section 327 (Section 315(2) of the IBCA). A corporation is revived on the date shown in its certificate of revival; and thereafter the corporation, subject to such reasonable terms as may be imposed by the Director and to any rights acquired by any person after the dissolution of the corporation, has all the rights and privileges and is liable for the obligations that it would have had if it had not been dissolved (Section 315(3) of the IBCA).

146. Furthermore, under Section 335(1) of the IBCA, the Director of IBCs may strike a corporation off the register in certain circumstances.[30] Where a corporation is struck off the register, the liability of the corporation and of every director, officer or shareholder of the corporation continues and may be enforced as if it had not been struck off the register (Section 336 of the IBCA). Further, when a corporation is struck off the register, the Director of IBCs may, upon receipt of an application in the prescribed form and upon payment of the prescribed fee, restore it to the register and issue a certificate in a form adapted to the circumstances (Section 335(5) of the IBCA).

147. To sum up, IBCs are not legally obliged to provide ownership information to the authorities upon restoration following dissolution and strike off. However, Antigua and Barbuda clarified that the Director will require the filing of missing annual reports. The Circular of the FSRC No. 3 of 2020 ("Reinstatement of IBCs and the Immobilisation of Bearer Shares"),

30. If (a) the corporation fails to send any return, notice, document or prescribed fee to the Director as required pursuant to the IBCA; (b) the corporation is dissolved; (c) the corporation is amalgamated with one or more other corporations or bodies corporate; (d) the corporation does not carry out an undertaking given under Section 339(a)(i) of the IBCA or (e) the registration of the corporation is revoked pursuant to the IBCA.

with effect from August 2020, specifically advises that "in the case of older companies or companies that have been inactive for extended periods, consideration will be given to confirming the beneficial ownership and control status as part of the reinstatement process. In this regard, a completed attestation of beneficial ownership and control must accompany these reinstatement requests". The practice will be reviewed in Phase 2 (see Annex 1). Further, there is no time limit for the revival of an IBC after being dissolved and the restoration of an IBC once struck off, nor is there an explicit obligation to maintain and provide ownership information at that time. **Antigua and Barbuda is recommended to ensure the availability of ownership information and to establish a time limit for the revival and restoration of IBCs following their dissolution and strike off respectively.**

Inactive companies

148. Domestic companies and NPCs have no legal obligation to engage an AML-obliged person and therefore up-to-date ownership information may not be available for those which are inactive. Antigua and Barbuda explained that in practice all domestic companies and NPCs will generally engage the services of an attorney at law. The registered office of the company will be at the office of the attorney at law. The records are therefore maintained and retained by such attorneys who are subject to the AML regime and will be retained accordingly. Antigua and Barbuda explained that it would consider a domestic company or an NPC inactive when they are struck off the register, but was not able to provide their numbers.

149. No IBC can be incorporated without a corporate service provider in accordance with Section 5(3) of the CMTSPA. The service provider is responsible for an annual attestation of beneficial ownership information and maintaining ownership for a minimum period of six years after termination of the client relation, in accordance with CMTSPA. Annual attestations as required by Section 18A CMTSPA cover all clients, including IBCs, regardless of their status, unless they have been dissolved. In accordance with Section 130A of the IBCA or Section 14 of the CMTSPA, the FSRC may request any records, inclusive of an IBC's ownership information. Antigua and Barbuda informed that there were 17 377 IBCs of which 1 055 were active as at 31 December 2020. Antigua and Barbuda explained that an "inactive" IBC is one which has been struck off the register for non-payment of fees or for not meeting some other requirements of the IBCA. The status of 16 322 IBCs which are not "active" is not clear.

150. An inactive company is unable to operate, transact or conduct business in Antigua and Barbuda. In addition, inactive companies may not request a certificate of good standing which assist in business dealings in Antigua and Barbuda and are prohibited from filing any documents with the

FSRC (see further paragraph 62). Financial institutions require a copy of the certificate of good standing from companies as part of the required documentation to open accounts. It is unclear however if the certificate will be requested periodically for existing clients of financial institutions. The effectiveness of enforcement and supervision with respect to inactive companies will be reviewed in Phase 2 (see Annex 1).

Corporate mobility

151. The outward mobility of IBCs is permitted. Under Section 128 of the IBCA, a corporation must at all times have a registered office and a resident agent in Antigua and Barbuda and the resident agent is responsible for the records and registers to be kept at the registered office (see further paragraph 86). However, this obligation discontinues when an IBC ceases to be a corporation under the IBCA by making an application to the FSRC that the IBC be continued in another country as if it had been incorporated under the laws of that country (Sections 184, 185 and 187 of the IBCA). As noted earlier in this report with respect to the IBCs which cease to exist, the obligations of service providers under the CMTSPA and AML laws, which require them to continue maintaining the records kept for clients for a period of six years from the date of the discontinuation of such services, will allow retrieving the legal and beneficial ownership information (see paragraph 144 above). Further, all documents filed with the FSRC will be kept for six years from the date of receipt (Section 331 of the IBCA; see paragraph 55 above).

Nominees

152. Nominee shareholding is allowed in Antigua and Barbuda.

153. The business of providing nominee shareholders for external companies, IBCs and ILLCs[31] is regulated under the CMTSPA and the service providers must be licensed under the CMTSPA (Sections 2, 5 and 6) and are subject to the requirements set in that act. The CMTSPA requires such nominee shareholders to conduct CDD on their clients; this will include obtaining, verifying and recording information on the identity and addresses of clients and their beneficial owners (Sections 18 and 19). The breach of these obligations amounts to an offence and is liable on summary conviction to a fine not exceeding XCD 5 000 (USD 1 850) [Section 27(7)(b)]). Further and in addition, following the 2017 amendment, service providers are also required to submit an annual attestation on beneficial ownership and control on their

31. In the context of an ILLC, which does not have share capital, the provision of nominee shareholders refers to the scenario where the interest of a member in the ILLC is held through a nominee.

clients (see paragraphs 188 and 189). These requirements would not cover nominees in other types of companies.

154. In addition, service providers, if they are acting in the course of business, also fall within the definition of "financial institution" under the MLPA and are required to comply with the relevant AML obligations. More details on these obligations are available below in the section on beneficial ownership information available through service providers. This applies only where the nominee is a professional service provider in Antigua and Barbuda, to the exclusion of non-professionals and nominees not subject to the laws of Antigua and Barbuda.

155. Domestic public companies, when preparing their register of substantial shareholders, will identify some nominee shareholders. Sections 181 to 184 of the CA require every person who has a substantial shareholding in a company (defined as having at least 10% of the unrestricted voting right), "whether directly or through nominees", to give notice in writing to the company stating his/her name and address and giving full particulars of the shares held directly or through the nominee (naming the nominee) by virtue of which he/she is a substantial shareholder. The person is required to do so within 14 days after becoming aware of being a substantial shareholder. If the person ceases to be a substantial shareholder, he/she must give notice in writing to the company stating his/her name and the date on which he/she ceased to be a substantial shareholder of the company, giving full particulars of the circumstances. The breach of such obligations constitutes an offence under Section 185 of the CA.

156. Otherwise, the provision of nominee shareholders for domestic companies (whether on a professional basis or not) is not regulated. Whether such service providers are subject to the due diligence requirements prescribed by the CMTSPA and the AML laws will depend on whether they meet the criteria for regulation in other respects (for example, if they are also a "financial institution" for the purpose of AML laws).

157. The 2014 Report identified a potential gap in situations where a person in Antigua and Barbuda is acting as nominee for another person and the nominee is not subject to the CMTSPA or the MLPA.[32] The in-text recommendation invited Antigua and Barbuda to ensure that this potential gap does not impede any exchange of information in practice, and to monitor the availability of this information on an on-going basis.

158. Since the 2014 Report, Antigua and Barbuda amended the CA,[33] by inserting a new Section 194A ("Annual attestation on beneficial ownership

32. Paragraph 99.
33. Law (Miscellaneous Amendments) (No. 2) Act 2017.

and control") which stipulates that a company must submit an attestation report annually to the FSRC on the beneficial ownership and control of the company, which must include, where there is a nominee, the name and address of the ultimate beneficial owner for whom a person holds the shares or their ownership interest.

159. Any company that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of XCD 5 000 (USD 1 850) and for a further penalty of XCD 5 000 (USD 1 850) for each day of default. The administrative penalty shall be recovered as a civil debt by the Company Registry.

160. As a result of this amendment, where there is a nominee, information regarding the name and address of the ultimate beneficial owner for whom a person holds the shares or their ownership interest should be reported to and maintained by the government authority (FSRC) within a central registry. Antigua and Barbuda reported that, as a result, such information is available on an ongoing basis and accessible to the competent authorities. However, if the nominator is not an individual, this requirement would cover its beneficial owners but not the nominator itself. The lack of specific disclosure requirements for nominees may raise issues in practice. Whilst the regulatory framework has been strengthened, the implementation in practice and whether the in-text recommendation has been addressed will be reviewed in Phase 2 (see Annex 1).

Conclusion

161. Ownership and identity information of domestic companies, non-profit companies and IBCs is made available through a combination of obligations imposed by company, tax and AML laws on either the entity itself or its service provider. The gaps in the regulatory framework have been identified with respect to the companies that cease to exist and a recommendation has been made to address them. This report has not reviewed the implementation in practice, which will be assessed in Phase 2, including in particular the issue of whether the legal ownership information on foreign companies having sufficient nexus with Antigua and Barbuda is always available.

Beneficial ownership information

162. The standard was strengthened in 2016 to require that beneficial ownership information be available for all legal entities and arrangements. Antigua and Barbuda has access to beneficial ownership information through various mechanisms, most importantly:

- First, beneficial ownership information is available under the AML framework which comprises a wide range of financial institutions. Further and in addition to the AML requirements, under the Tax Administration and Procedure Act 2018, a bank or financial institution is also required to keep account of all transactions with a client, including the client's identity and beneficial owner.
- Second, beneficial ownership information is available through a central registry held by the FSRC and an annual attestation on beneficial ownership and control, which is submitted by all domestic companies, NPCs, IBCs and other persons.
- Third, beneficial ownership information with respect to external companies and IBCs is available through corporate management and trust service providers under the CMTSPA. Service providers are also AML-obliged persons and are required to submit an annual report on beneficial owners of their clients.

163. Whilst multiple sources of beneficial ownership information are available in Antigua and Barbuda, it is not always clear how various requirements, which sometimes coexist in the same act, fit together and whether the system as a whole is adequate. This review has identified some gaps and makes recommendations accordingly.

Companies covered by legislation regulating beneficial ownership information

Type	Company law	Tax law	AML law
Domestic Companies (Private and Public Companies with limited liability)	All	Some	Some
Non-Profit Companies – Private Companies without share capital	All	Some	Some
International Business Companies	All	Some	All
Foreign companies (tax resident) [a]	Some	None	All

Note: a. Where a foreign company has a sufficient nexus, then the availability of beneficial ownership information is required to the extent the company has a relationship with an AML-obligated service provider that is relevant for the purposes of EOIR (Terms of Reference A.1.1 Footnote 9).

Anti-Money Laundering Law requirements

164. The AML/CFT framework, which sets the requirements concerning the availability of beneficial ownership information in Antigua and Barbuda, consists of the Money Laundering (Prevention) Act 1996 (MLPA), as amended; the Money Laundering (Prevention) Regulations 2007 (MLPR),

as amended; and the 2002 Money Laundering and Financing of Terrorism Guidelines for Financial Institutions (MLFTG), as amended.[34]

165. The AML/CFT framework comprises a wide scope of financial institutions, which are listed in the First Schedule, Section 2 of the MLPA, as expanded in 2016 to include company service providers pursuant to the CMTSPA; and attorneys-at-law, notaries and accountants who conduct financial activity business.[35] In 2017, the First Schedule was further expanded to include: an agent licensed under the Antigua and Barbuda Citizenship by Investment Act; the industrial societies; and wealth management and investment advising.[36]

166. The business activities that trigger the AML obligations are widely defined and, in addition to traditional banking and financing activities, include:

- trust business
- company service providers
- attorneys-at-law (who conduct financial activity as a business)
- notaries (who conduct financial activity as a business)
- accountants (who conduct financial activity as a business)
- international trust as defined in the International Trust Act 2007
- international foundations as defined in the International Foundations Act 2007
- International Limited Liability Companies as defined in the International Limited Liabilities Act 2007
- an agent licensed under the Antigua and Barbuda Citizenship by Investment Act.

167. Accordingly, the list of AML obliged persons in Antigua and Barbuda includes a wide range of operators, including banks, company service providers, and attorneys, accountants and notaries who conduct any financial activity as a business. All the laws and regulations that create such financial

34. As updated on 12 June 2017, the Guidelines in both Parts I and II are assumed to be generic, applying across all categories of business activities listed in the First Schedule to the MLPA, whether or not they are financial institutions in the traditional sense, unless there are clear indications that the guidance is specific to a particular category of financial institution.
35. Law Miscellaneous Provisions (Amendment) Act, No. 20 of 2016.
36. Money Laundering (Prevention) (Amendment) Act, No. 6 of 2017.

institutions are subject to the AML/CFT regime, in that they are subject to regulatory oversight and examination by the Office of National Drug and Money Laundering Control Policy (ONDCP).

168. While the coverage of the AML framework is broad and the engagement with an attorney-at-law takes place at the point of incorporation,[37] there is no obligation for all types of entities and arrangements to have a relationship with an AML-obliged person at all times. Such engagement in practice is ensured through: (i) banks, but there is no legal requirement to have a bank account in Antigua and Barbuda; (ii) service providers, which will be frequently engaged, in particular with respect to IBCs and ILLCs (as explained in paragraph 86 above); (iii) domestic companies, which file annual financial returns in accordance with Section 149 of the CA, which includes an audit report and thus engage an accountant who will be captured under the First Schedule of the MLPA. Whilst IBCs also prepare annual financial returns for an annual meeting of the shareholders, this is done only if required by the Articles of Incorporation or by-laws.[38] The practice will be assessed in Phase 2.

Definition of beneficial ownership

169. The term "beneficial owner" is not defined by the MLPA and the MLPR. However, Regulation 4(3)(h) of the MLPR, as amended by the MLPR (Amendment) 2017, No 43 of 2017, requires that the identity of beneficial owners is established through

> (a) determining the identity of the natural persons who ultimately have a controlling ownership interest in a legal person; and
>
> (b) to the extent that there is doubt under (a) as to whether the person with the controlling ownership interest is the beneficial owner or where no natural person exerts control through ownership interests, the identity of the natural persons exercising control of the legal person through other means; and
>
> (c) where no natural person is identified, the identity of the relevant natural person who holds the position of senior managing official.

170. The cascading approach set by Regulation 4(3)(h) appears to meet the standard, but raises some questions on its practical interpretation and application. Some further guidance is provided through the "customer identification" and "evidence of identity" requirements.

37. Section 4 of the CA (domestic companies), Section 346 of the CA (external companies) and Section 5 of the IBCA, as amended by the Law (Miscellaneous Amendment) Act 2020, No 3 of 2020.

38. Section 142 of the IBC.

Identification and verification of clients and beneficial owners

171. The MLPR establishes an obligation to obtain and record identification information of customers who seek to form a business relationship or undertake certain categories of one-off transactions. Regulation 4(3) of the MLPR, as amended by the MLPR (Amendment) 2017, No 44 of 2017, requires that, as soon as is reasonably practicable after contact is first made between the AML-obliged person and the client or in respect of an existing business relationship, at an appropriate time, the client produces satisfactory evidence of his/her identity, or those measures specified in the procedures shall be taken in order to produce satisfactory evidence of client's identity. The CDD procedures must be completed before or in the course of establishing a business relationship or conducting a one-off transaction (Section 4(3)(aa) of the MLPR).

172. Such identity information must be verified using reliable, independent source documents data or information (Regulation 4(3) of the MLPR).

173. Whilst the principal elements required by the standard with respect to the identification of beneficial owner(s) of legal entities are present, the law does not specifically indicate that the controlling ownership interest of 25% applies to any person who controls the company acting directly or indirectly, and acting individually or jointly. Further, there is no specific guidance on how to identify beneficial owners of legal entities under the three-step approach. The identity and verification requirements set for partnerships, trusts and foundations are examined in detail below and also under Element A.3.

174. Against this background, **Antigua and Barbuda is recommended to ensure that the definition of the beneficial owner(s) in the AML/CTF framework is in line with the standard and the information on beneficial owner(s) is available in all cases in accordance with the standard.** The application in practice will be assessed in Phase 2.

Timing of updates

175. Section 3 of the MLPR (Amendment), No. 43 of 2017, amends the definition of "customer due diligence" to require CDD measures be applied to existing customers on the basis of materiality and risk; also at such appropriate times taking into account whether and when these measures had previously been applied to the customer and the adequacy of the data collected.

176. Further, Regulation 5(1b) of the MLPR stipulates that documents, data or information collected under the customer due diligence process are kept up-to-date and relevant by undertaking reviews of existing records.

An appropriate time to review records is when a transaction of significance takes place, when customer documentation standards change substantially, or when there is a material change in the way that the account is operated. If a financial institution becomes aware at any time that it lacks sufficient information about an existing customer, it should take steps to ensure that all relevant information is obtained as soon as possible. These provisions do not establish a precise timeline for updating the information, but this deficiency is largely compensated by obligations under various company laws (described below). Antigua and Barbuda should ensure that financial institutions keep up-to-date legal and beneficial ownership information on all customers (see Annex 1).

Simplified CDD measures

177. Regulation 4(3)(a) of the MPLR, as amended in 2017, specifically indicates that the CDD requirements must be implemented using a risk based approach, taking into account the risk posed by a customer; country or geographic region; product, service, transaction or delivery channel; and taking into consideration the results of the country's National Risk Assessment and the updates thereto or an adequate analysis by the financial institution of the risk of money laundering and terrorist financing that relate to it. Where the risk is determined to be low, the institution may apply appropriate simplified CDD measures, consistent with any guidelines issued by the Supervisory Authority. The simplified measures should be commensurate with the risk factors. The application of the risk-based approach is detailed in the MLFTG (as updated on 12 June 2017).

178. The MLPA and MPLR do not elaborate in which circumstances the simplified CDD applies, nor specify that in the context of the simplified CDD the identification of beneficial owners should remain mandatory, whilst the verification can be lighter. The lack of guidelines raises some questions on its practical interpretation and application of the requirements to establish beneficial owners which will be assessed in Phase 2 (see Annex 1).

CDD previously conducted by a person introducing the customer (introduced business rules)

179. Regulation 4(5)(a) to (d), (f) of the MLPR requires that institutions (a) immediately obtain from the third party the necessary information concerning the elements of the CDD; (b) satisfy itself that, upon request, copies of identification data and other relevant documentation will be made available, without delay, from the third party, (c) satisfy itself that the third party is regulated and supervised to standards established in this jurisdiction or that of the foreign jurisdiction if higher, relating to customer identification, record keeping, regulation and supervision, (d) satisfy itself that the third party has

measures in place to comply with the requirements of CDD; and (f) retain ultimate responsibility for ensuring compliance with CDD requirements, particularly the identification and verification of customers.

180. Regulation 4(5)(e) of the MLPR requires that financial institutions relying on third parties should not rely on a third party based in a country which inadequately applies the FATF requirements. In addition, regulation 6(1)(a) requires financial institutions to pay special attention to business relationships and transactions with persons from countries which insufficiently apply international standards relating to AML/CFT.

181. These rules correspond with the standard and the entity in Antigua and Barbuda remains ultimately responsible for ensuring compliance with CDD requirements, particularly the identification and verification of customers.

Retention rules

182. Sections 12 and 12A of the MLPA set out the primary legal authority for the maintenance of records and include the requirement to maintain customer generated financial transaction documentation which encompasses account files and correspondence relating to the customer for the minimum retention period applicable to the document. Section 12B defines a "minimum retention period" in relation to the document which relates to the opening of an account with the institution as the period of six years after the day on which the account is closed; or in any other case the period of six years after the day on which the transaction takes place.

183. Regulation 5 of the MLPR provides additional requirements. Records must be maintained for at least six years after the date of closure of the account and be able to be produced in a timely manner when requested by supervisory and other competent and authorised domestic authorities (Regulation 5(1)). The records that must be maintained are set out in Regulation 5(2) and include CDD information required in Regulation 4, records of business correspondence and transaction records. Regulation 5(1c) which was inserted by the MLPR (Amendment) Regulations 2017, No 43 of 2017, addresses the treatment of results of any analysis undertaken and requires that it be maintained for the minimum retention period.

184. The retention period therefore corresponds with the requirements of the standard.

Enforcement and sanctions

185. The FSRC established in 2013 as the prudential regulator is responsible for the regulatory and supervisory functions for the financial services businesses. Further, the ONDCP established in 2003 is also referred to as the Financial Intelligence Unit of Antigua and Barbuda pursuant to Section 1B of the ONDCP (Amendment) Act, No. 9 of 2017. The ONDCP is a hybrid Financial Intelligence Unit with analytical, investigative and supervisory functions. The Director of the ONDCP is the Supervisory Authority for AML/CFT. This role is carried out by the Financial Compliance Unit and covers all AML-obliged persons.

186. Under Section 17(C) of the MLPA, the Supervisory Authority may impose sanctions for breaches of the MLPA discovered during an onsite examination. These sanctions include written warnings, written agreement or memorandum of understanding, directions to cease and desist conduct, directions regarding any employee of the institution or board member and administrative financial penalties in accordance with the MLPR. Administrative penalties as set out in Regulation 3(8) of the MLPR cannot exceed XCD 100 000 (USD 37 000) for failure to comply with the requirements of the regulations, directives or guidelines issued by the Supervisory Authority. Criminal offences are set in Regulation 3(2) of the MLPR: a person who contravenes the MLPR commits an offence and is liable (i) on a summary conviction to a fine of XCD 300 000 (USD 111 000); (ii) on conviction on indictment, to a fine of XCD 500 000 (USD 185 000), or to imprisonment for a term not exceeding two years, or to both. Section 17E also provides sanctions for an AML-obliged entity or its director, manager or employee who breaches any provision of Part III of the MLPA ("Anti-Money Laundering Supervision"). These sanctions include on summary conviction a fine not exceeding XCD 500 000 (USD 185 000) or a term of imprisonment not exceeding six months and on conviction on indictment a fine not exceeding XCD 1 000 000 (USD 370 000).

187. The Antigua and Barbuda authorities indicate that as part of examinations, the FSRC and ONDCP verify that ownership information, including beneficial ownership information, is accurate and up to date. In addition, FSRC ensures that shareholder registers are properly kept by the IBCs and that beneficial ownership information is available. In instances where a CSP's file is found to be incomplete or inaccurate, a written report is provided to the service provider noting the deficiencies. The service provider has three months to rectify the issues and provide a status update to the FSRC on how the issues are being rectified. The FSRC conducts a follow up off site review to ensure that records are maintained in the matter outlined. In addition, the information is forwarded to the ONDCP for follow up monitoring. Supervision and enforcement will be assessed in the Phase 2 review.

Companies Law requirements

Ownership information held by legal entities

188. The Law (Miscellaneous Amendments) (No. 2) Act 2017, No 14 of 2017, was enacted to strengthen the effectiveness of the maintenance and retention of beneficial ownership information in Antigua and Barbuda. This Law introduces the submission to the FSRC of an annual attestation on beneficial ownership and control by the following legal entities and arrangements:

- companies incorporated under the CA (Section 194A)
- IBCs operating under the IBCA (Section 6A)
- insurance companies regulated by the Insurance Act, 2007 (Section 14A)
- co-operative societies regulated by the Co-operative Societies Act, 2010 (Section 21A)
- licensees under the Money Services Business Act, 2011 (Section 14A)
- trust corporations under the International Trust Act, 2007 (Section 18A)
- foundations under the International Foundations Act, 2007 (Section 18A)
- ILLCs under the ILLCA (Section 18A)
- corporate management and trust service providers under the CMTSPA with respect to their clients (Section 18A) (considered in a separate sub-section below).

189. The reporting requirements include but are not limited to:

i. the name and address of any person who owns 5% or more of the total voting rights of the company

ii. for domestic companies and IBCs, where there is a nominee, the name and address of the ultimate beneficial owner for whom a person holds the shares or their ownership interest

iii. the name and address of any person who controls the company acting directly or indirectly, and acting individually or jointly

iv. the name of all of the directors and officers.

190. There is no specific guidance on how to identify beneficial owners, or how to identify the natural persons who own or exercise control (including control through other means). It appears that the annual attestation on beneficial ownership and control relies upon the cumulative approach for identifying beneficial owners. Antigua and Barbuda has not provided a clear explanation as to whether the law sets the cascading or cumulative approach. Whilst both are acceptable under the standard, the lack of clarity raises concerns about the consistency of information collected.

191. The definition of beneficial owner raises several questions. Antigua and Barbuda clarified that the interpretation of beneficial ownership is made in accordance with the FATF guidance and that the "person" in the context described by the paragraph above is interpreted as an "individual". Such interpretation is also supported by the standalone definition of a "beneficial owner", which is included in the ITA, IFA, ILLCA, CMTSPA, as explained in the next paragraph, and in the annual beneficial ownership attestation form approved by the FSRC on 16 February 2018 to be filled in by service providers. However, some of the relevant acts contain conflicting provisions. For instance, the ITA defines the term "person" as "a natural person or a body corporate or incorporate" for the purpose of the act, which may affect the interpretation of "person" in the context of beneficial ownership in Section 18A. Further, the question remains as to whether the 5% threshold includes direct or indirect ownership. The requirements are the same for legal entities and arrangements and thus there is no applicable definition of beneficial owner or guidance in respect of legal arrangements.

192. The interpretation of the requirements for identifying beneficial owners is further complicated by the fact that all of the above laws, excluding the CA and IBCA, had a standalone definition of a "beneficial owner" introduced by the Law (Miscellaneous Amendments) Act 2016, No 20 of 2016,[39] as follows:

> "the natural person or persons who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or legal arrangement".

193. Whilst this definition contains the principal elements required by the standard with respect to the identification of beneficial owner(s) of legal persons, it is not clear (i) which threshold applies for identifying such owners, if any, and (ii) whether "ultimately" is interpreted as meaning any person who controls the company acting directly or indirectly, and acting individually or jointly. In addition, it is not clear whether a beneficial owner always needs to be identified, i.e. in case no person meets the definition. Finally, it is not clear whether this definition should be read in conjunction with the reporting requirements explained above.

39. The definition of a "beneficial owner" was introduced into the following acts: The Insurance Act 2007; The International Trust Act 2007; The International Foundations Act 2007; The International Limited Liability Companies Act 2007; The Co-operative Societies Act 2010; The Corporate Management and Trust Service Providers Act 2008; The Money Services Business Act 2011; and The International Banking Act 2016.

194. Antigua and Barbuda explains that the annual reporting requirements and the definition of a "beneficial owner" should be read together and interpreted in the light of the FATF standard. However, in the absence of clear guidance to be followed for identifying all beneficial owners for the purpose of an annual attestation on beneficial ownership and control, doubts remain as to whether beneficial ownership information for all relevant entities is available to the competent authorities. The identity and verification requirements set for partnerships trusts and foundations are examined in detail below. **Antigua and Barbuda is recommended to ensure that the definition of the beneficial owner(s) for the purpose of the annual attestation is in line with the standard and the information on beneficial owner(s) is available in all cases in accordance with the standard.** The application in practice, which as explained by Antigua and Barbuda helps to address some of the legal deficiencies identified above, will be assessed in Phase 2.

195. The annual attestation is submitted to the FSRC, which acts as a central registry. The CEO of the FSRC serves as the Registrar of the annual attestation of beneficial and identity information. The first attestations had to be provided for 2018 by the end of June 2019.

196. Further, the Law (Miscellaneous Amendments) (No. 2) Act 2017, No 14 of 2017, introduces a special sanction provision into the relevant acts. Any entity that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of XCD 5 000 (USD 1 850) and for a further penalty of XCD 5 000 (USD 1 850) for each day of default. The administrative penalty will be recovered as a civil debt to the Company Registry. In addition to this sanction, other liability provisions which are included in the respective acts may also apply.

197. In particular, any company that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of XCD 5 000 (USD 1 850) and for a further penalty of XCD 5 000 (USD 1 850) for each day of default (Section 194A of the CA). Further, under Section 530(1) of the CA any person who makes or assists in making a report, return, notice or other document that is required by the CA to be sent to the Registrar or to any other person and that contains an untrue statement of a material fact or omits to state a material fact required or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made, is guilty of an offence and liable on a summary conviction to a fine of XCD 5 000 (USD 1 850) or to imprisonment for a term of two years, or to both. A prosecution for an offence under the CA or the regulations may be instituted at any time within two years from the time when the subject matter of the prosecution arose (Section 536 of the CA).

198. Further, under Section 353(1) of the IBCA, a person who makes or assists in making a report, return, notice or other document (a) that is

required by the IBCA to be sent to the Director of IBCs, and appropriate official or any other person, and (b) that contains an untrue statement of a material fact, or omits to state a material fact required in the report, return, notice or other document or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made, is guilty of an offence and liable on summary conviction to a fine of XCD 5 000 (USD 1 850) or to imprisonment for a term of six months or to both. Under Section 358 of the IBCA, a prosecution for an offence under the IBCA or the regulations may be instituted at any time within two years from the time when the subject matter of the prosecution arose.

Ownership information held by service providers

199. As described in the context of legal ownership, corporate management and trust service providers in Antigua and Barbuda are regulated under both the CMTSPA and the MLPA.[40] The regulation of service providers through these acts is an avenue through which not only legal but also beneficial ownership information of relevant entities and arrangements is made available.

200. The circumstances in which offshore sector legal entities may become involved with a licensed service provider are described in the section on legal ownership. Where a licensed service provider is instructed by a client to provide corporate management services, it is required to conduct such due diligence as may be necessary to establish the identity and business background of a client.

Corporate Management and Trust Service Providers Act (CMTSPA)

201. In accordance with the CMTSPA, corporate management and trust service providers in Antigua and Barbuda are required to establish identity and ownership information (including beneficial ownership) of all clients:

- Where a licensee is instructed by a client to provide corporate management and trust services, the licensee shall conduct such due diligence as may be necessary to establish the identity and business background of the client (Section 18(1)) and collect the information listed in Section 18(2).[41]

40. The AML rules applicable to all corporate management and trust service providers acting in their profession capacity has been described above in the subsection on AML Law requirements above.

41. A licensee shall obtain from a client (a) details of the client's principal place of business, business address, telephone and facsimile, telex numbers and electronic address of the principal or professionals concerned with the client; (b) details of

- Then, Section 18(3) of the CMTSPA requires that a licensee keeps the names and addresses of the beneficial owners of entities for which it provides corporate management and trust services. Following the amendments introduced by the Law (Miscellaneous Amendment) Act, No 3 of 2020, also the identity and legal ownership information of its shareholders, clients and directors needs to be stablished.
- Correspondingly, under Section 18(3), a licensee must keep the following records: (a) the information obtained pursuant to Section 18(1) and Section 18(2), as described above; (b) the names and addresses of the beneficial owners of entities for which it provides corporate management and trust services; and (c) the identity and legal ownership information of its shareholders, clients and directors.
- In addition to the requirement of Section 18(2), a licensee shall, in respect of each client, maintain adequate information on a file to enable it to comply with its obligation under the CMTSPA, the MLPA, the ILLCA or any other law in force in Antigua and Barbuda requiring a licensee to comply with these laws (Section 19).

202. Where the service provided to a client is for any reason discontinued, the record kept for that client must continue to be maintained for a period of six years from the date of the discontinuation of such services.[42] A licensee must maintain and hold these records in Antigua and Barbuda (Section 18(5)).

203. Concerning the definition of a beneficial owner, previously the CMTSPA defined the term "beneficial owner" as a person who enjoys the benefits of ownership of property or an interest in property but who may not necessarily be registered or listed as the legal owner of the property or interest (Section 2). This definition was amended by the Law (Miscellaneous Amendments) Act 2016, No 20 of 2016, which introduced the following definition of a "beneficial owner":

> "the natural person or persons who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or legal arrangement".

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the client's current home address, telephone and facsimile numbers and electronic address; (c) copies of passport or identity card, drivers licence and an original utility bill or bank statement; (d) two sources of reference to provide adequate indication on the reputation and standing of the client (Section 18(2) of the CMTSPA).

42. Section 18(4), with similar requirement replicated in Section 18(3)(b) and Section 19 as a result of the changes made by the Law (Miscellaneous Amendment) Act 2020, No 3 of 2020.

204. In addition and as analysed above, under Section 18A of the CMTSPA, a corporate management and trust provider is also under an obligation to submit annually an attestation report to the FSRC on the beneficial ownership and control of their clients and could be sanctioned if this requirement is not fulfilled. More specifically, the report must include the following:

- the name and address of any person who owns 5% or more of the [*sic*] their clients
- the name and address of any person who controls the clients acting directly or indirectly, and acting individually or jointly
- the name of all of the directors and officers
- any other information as the FSRC may determine.

205. The Annual Attestation Beneficial Ownership Form for service providers explicitly states that the term "beneficial ownership" should be interpreted in accordance with the definition above (as introduced by Section 7(1) of the Law (Misc. Amendment) Act 2016). This clarification, however, does not help to address the question whether the 5% threshold includes direct or indirect ownership. In the absence of clear guidance to be followed for identifying all beneficial owners, doubts remain as to whether beneficial ownership information for all relevant entities and arrangements is available to the competent authorities. The identity and verification requirements set for partnerships trusts and foundations are examined in detail below. **Antigua and Barbuda is recommended to ensure that information on beneficial owner(s) of legal entities is available in all cases in accordance with the standard.** The application in practice will be assessed in Phase 2.

206. Beneficial ownership information needs to be kept up to date. The Law (Miscellaneous Amendments) Act 2016, No 20 of 2016, amended the CMTSPA to specify that the name and addresses of the basic and beneficial owner of entities for which corporate management and trust services are provided must be accurate and updated on a timely basis (Section 18(3)(b)). Whilst no further guidelines are provided on the frequency of updates, this is mitigated by the requirement imposed on service providers to submit an annual attestation on beneficial ownership and control of their clients under Section 18A of the CMTSPA, as described above.[43]

43. A corporate management and trust service provider shall submit annually an attestation report to the FSRC on the beneficial ownership and control of their clients, which shall include the following: (a) the name and address of any person who owns 5% or more of the [sic] their clients; (b) the name and address of any person who controls the clients acting directly or indirectly, and acting individually or jointly; (c) the name of all of the directors and officers; and (d) any other information as the FSRC may determine (Section 18A(1) of the CMTSPA).

207. To sum up, pursuant to Sections 18, 18A and 19 of the CMTSPA, all service providers are required to obtain and retain beneficial ownership of all clients for a period of up to six years after the date of the discontinuance of their services to their clients. Whilst the existing framework satisfies the standard, some improvements are necessary to ensure that the definition of a beneficial owner and its application is sufficiently clear.

Tax law requirements

208. Under the Tax Administration and Procedure Act 2018, a bank or financial institution is required to keep account of all transactions with a client, including the client's identity, to include the beneficial owner (Section 23). The term "beneficial owner" means the natural owner or person who ultimately owns or controls a client and or natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or legal arrangement. No further guidelines are provided on the application of this definition.

209. Pursuant to the Tax Administration and Procedures Act 2018, tax evasion is a criminal offence and because it constitutes a serious crime based on the penalty of a fine not exceeding XCD 100 000 (USD 37 000) or to a term of imprisonment of five years, such crime constitutes a predicate offence for AML/CFT.

Beneficial ownership information – Enforcement measures and oversight

210. Enforcement and oversight is conducted by the FSRC and ONDCP. As part of examinations, the FSRC and ONDCP verify that ownership information, including beneficial ownership information, is accurate and up-to-date. In addition, FSRC ensures that shareholder registers are properly kept by the IBCs and that beneficial ownership information is available. In instances where a CSP's file is found to be incomplete or inaccurate, a written report is provided to the service provider noting the deficiencies. The service provider has three months to rectify the issues and provide a status update to the FSRC on how the issues are being rectified. The FSRC conducts a follow up off site review to ensure that records are maintained in the matter outlined. In addition, the information is forwarded to the ONDCP for follow up monitoring. The application in practice will be assessed in Phase 2.

A.1.2. Bearer shares

211. Whilst the Companies Act does not permit the issuance of bearer shares by domestic companies (Section 29(2)), IBCs were historically permitted to issue bearer shares (until 2020).

212. The Antigua and Barbuda authorities have taken steps to immobilise bearer shares. Antigua and Barbuda has established a requirement, in 2010, for bearer shares to be deposited with a custodian, converted to registered shares, or cancelled. A custodian may be a licensed custodian if it has a physical presence in Antigua and Barbuda, or a recognised custodian if it is located outside of Antigua and Barbuda, and needs to meet the requirements and obligations under the 2010 amendments of the IBCA and the CMTSPA. Licensed and recognised custodians need to be licensed or approved by the FSRC under the CMTSPA.

213. All deposits of bearer shares with licensed and recognised custodians must be accompanied by a written notice setting out the name and address of every beneficial owner of the bearer share, any other person having an interest in the bearer share, and every company management and trust service provider of the company that issued the bearer share (Section 139F of the IBCA). Antigua and Barbuda clarified that the reference to a "person" needs to be interpreted such that it refers to a "natural person". If there is a change in the beneficial ownership of a bearer share, the company or the former beneficial owner must within seven days of the change send a notice (a resolution of directors and shareholders) to the custodian that includes the following information: (a) name and address of the new beneficial owner; (b) name and address of any other person having an interest in the bearer share; and (c) the circumstances under which the change in beneficial ownership occurred (Section 139H of the IBCA). Both the custodian and the company are required to provide a copy of this notice to all of the company's service providers. The transfer of beneficial ownership is not effective until all the above requirements have been met.

214. During the previous peer review, the FSRC reported that, as at 31 October 2013, 95% of the bearer shares issued by IBCs had been deposited with a licensed custodian before the expiry of the transition period provided under the IBC Act. The remaining 5% of the bearer shares, which were not deposited with a licensed custodian on time, are considered "disabled". These remaining bearer shares were held by two service providers that were not licensed to perform custodian services. The FSRC issued notices to these two service providers informing that the bearer shares that were in their custody were disabled. The effect of holding a "disabled" bearer share is that the holder will not have any entitlement to vote, distribution and to a share in the assets of the IBC in the event that the IBC is being wound up or upon its dissolution. In addition, according to Section 139B of the IBCA, any transfer

or purported transfer of an interest in the "disabled" bearer share is void and has no effect. The rights to holding the bearer share cannot be reactivated even if the bearer share is subsequently deposited with a custodian. Antigua and Barbuda further clarified that the disabling of shares does not affect the associated capital rights which can be redeemed. Where a share is disabled, the owner is deprived of the legal right to exercise shareholder privileges but the ownership value of the share is maintained.

215. The 2014 Report observed that while the above mechanisms ensure that the bearer share owners are properly identified, Antigua and Barbuda did not conduct any on-site visit of the licensed service providers during the review period. It was therefore recommended that Antigua and Barbuda monitor the implementation of the oversight programme planned in 2014 and exercise its enforcement powers as appropriate to ensure that the legal obligations to maintain information identifying the owners of all bearer shares is being complied with and the information is fully available in practice (paragraph 106 of the 2014 Report). As this report does not evaluate the practice, the implementation has not been reviewed.

216. In the meantime, the Law (Miscellaneous Amendment) Act 2020, No 3 of 2020, amended various sections of the IBCA, coming into force on 30 March 2020. In particular, Section 27(1) was amended to ensure that shares must be in a registered form only. Antigua and Barbuda clarified that this amendment intended to address a loophole in the existing legislation and ensure that bearer shares could not be issued. The authorities of Antigua and Barbuda further clarified that bearer shares deposited with a custodian are bearer share in name only as the legislation requires a registration process for all bearer shares deposited with a custodian. Further and as observed above, Section 130(1) created a legal requirement for IBCs to maintain identity and legal information on a wide group of persons, including its shareholders, clients and directors. Whilst the legislation does not single out the holders of "disabled" bearer shares, it is the understanding of Antigua and Barbuda that the legal requirement for IBCs to maintain identity and legal information on their shareholders includes information on any owners holding "disabled" bearer shares. Finally, Sections 136(1), 140(2) and 344 were amended to remove bearer shares from the IBCA. The effectiveness of these measures in practice will be assessed in Phase 2 (see Annex 1).

A.1.3. Partnerships

Types of partnerships

217. In Antigua and Barbuda, partnerships are generally governed by common law principles. Partnerships include any trade or undertaking, upon a contract in writing with such person that the lender shall receive a rate of

interest varying with the profits, or shall receive a share of the profits. There are no statutory provisions specifically governing partnerships. While there is a Partnership Act Cap. 306, this is an 1888 statute that simply sets out types of arrangements that are not deemed to constitute partnerships (see paragraph 107 of the 2014 Report). However, if the number of partners reaches 20, the entity must register as a company under the CA (Section 3 of the CA).[44]

Identity information

218. The Income Tax Act requires all persons who operate a company, business, trade, profession or service involved in economic activity in Antigua and Barbuda to register with the IRD for tax purposes.[45] This includes both domestic and foreign partnerships that carry on a business in Antigua and Barbuda.

219. All partnerships are required to file the corporate registration form containing the identification details of the partners of the partnership with the IRD when the partnership is formed in Antigua and Barbuda.[46] This obligation is also applicable to any partnerships formed outside Antigua and Barbuda but carrying on a business in Antigua and Barbuda. The precedent partner[47] or a representative[48] must file an annual return of the income of the partnership and include the names and addresses of the other partners in the partnership together with the amount of the share of the said income to which each partner was entitled for that year. Antigua and Barbuda explained that a

44. Where the partnership is a legal person incorporated under the CA, Section 177 of the CA will apply and it requires them to maintain at their registered offices a register of members. A company may appoint an agent to prepare and maintain the register, and such a register may be kept at its registered office or at another place within Antigua and Barbuda (Section 177 of the CA).
45. Sections 2 and 75A of the Income Tax Act "Trade" is defined as every trade, manufacture, adventure or concern in the nature of trade, and economy activity" is defined as any activity for which a charge is made.
46. Formerly, Form F15, and now Corporate Body Enterprise Registration Form, CB001; see http://forms.gov.ag/ird/pit/F15_Non_Individual_Enterprise.pdf.
47. The partner who of the partners resident in Antigua and Barbuda (i) is first named in the agreement of partnership, or (ii) if there is no agreement, is named singly or with precedence to the other partners in the usual name of the firm, or (iii) is the precedent acting partner, if the partner named is not an acting partner (Section 18(2)(a) of the ITA).
48. Where no partner is resident in Antigua and Barbuda, the return shall be made and delivered by the attorney, agent, manager, or factor of the firm resident in Antigua and Barbuda (Section 18(2)(b) of the ITA).

partner could be a physical person or a legal person. As at 31 December 2020, 1 424 partnerships were registered with IRD.

220. In addition, every partner (individual or corporate) in a partnership must file annual tax returns, giving details of the partnership income and the apportionment of the partnership income among each of the partners.[49] Partnerships themselves are not required to file annual returns as they are treated as tax transparent entities for tax purposes and any income derived through the partnership is taxed in the hands of the partners.

221. Except the annual filing to the IRD, there are no statutory obligations on partners or on partnerships to maintain information on the partners. When the partnership ceases to exist, the identity information will be available with the IRD.

Oversight and enforcement

222. Section 18(3) of the Income Tax Act sets that any person who refuses, fails or neglects to deliver any return required under the provisions of this section shall be guilty of an offence against this Act. Section 82 provides for a penalty for such a failure.

223. The competent authority advised that it does not carry out any specific enforcement procedures to ensure that all changes in partners in partnerships are reported. However, if a partnership is selected for tax audit, the identity of the partners of the partnership are verified as part of the profile of the partnership by the tax auditor. In addition, if the competent authority receives information or intelligence to suggest that changes in the partnership have not been reported, it may also trigger an investigation to verify the changes and appropriate penalty may be imposed.

224. The 2014 Report observed that Antigua and Barbuda did not apply a penalty under Section 82 of the Income Tax Act in relation to partners of partnerships that failed to file a return. It contained an in-text recommendation that Antigua and Barbuda should put in place enforcement procedures to ensure that changes in partnerships are reported to its authorities (paragraph 112 of the 2014 Report). The implementation of this recommendation will be reviewed during Phase 2 (see Annex 1).

225. Further penalties for the failure to comply with the requirement of filing a tax return, filing returns that are incomplete, incorrect or submitted after the time required, or any other failures are envisaged by Section 24 of

49. Antigua and Barbuda was not able to provide the link to the tax return, which does not appear to be available on https://ird.gov.ag/ at the time of the review.

the 2018 TAPA and sanctions set in Section 83(2)of the TAPA. The implementation in practice will be reviewed in Phase 2 (see Annex 1).

Beneficial ownership

226. Beneficial ownership information on partnerships will be made available through the AML framework and company law requirements; however, some deficiencies in the laws and applicable guidance, does not give certainty that the beneficial ownership of all relevant partnerships is available in Antigua and Barbuda.

227. Regulation 4(3)(h) of the MLPR, as amended by the Money Laundering (Prevention) (Amendment) Regulations 2017, No 43 of 2017, requires the identification of beneficial ownership with respect to the clients of the AML-obliged persons which are legal persons, trusts or other legal arrangements. Measures must be taken to determine who are the natural persons that ultimately own or control B (which stands for the partnership), and reasonable measures must be taken to understand the ownership and control structure of B. Where there is doubt that the person with the controlling ownership interest is the beneficial owner or where no natural person exerts control through ownership interests of the legal person or legal arrangement, A (which stands for the AML-obliged person) should identify the natural person (if any) exercising control through other means. Where, however, no natural person who ultimately has a controlling ownership interest is identified, A should identify the relevant natural person who holds the position of senior management official.

228. With respect to partnerships, the MLFTG specifically requires verification of all partners of the firm who are relevant to the application and have individual authority to operate the account or otherwise to give relevant instructions. In the case of a limited partnership, the identity of the general partner should be verified (Section 2.1.39B). The MLFTG further explains that (i) where partnerships and unincorporated businesses are well known, reputable organisations, with long histories in their industries, and with substantial public information about them and their principals and controllers, the standard evidenced for publicly quoted companies will be sufficient to meet the financial institution's obligations; (ii) other partnerships and unincorporated businesses should be treated as private companies and thus the AML-obliged persons will need to verify the identity of appropriate beneficial owners holding 25% or more of the shares. Where a principal owner is another corporate entity or trust, measures should be taken to look behind that company or trust and establish the identities of its beneficial owners or trustees, unless that company is publicly quoted. The AML-based retention rules described earlier in this report, ensure that the relevant information is retained for the period required by the standard.

229. The determination of beneficial owners for partnerships under the AML laws thus follows the definition of companies, including taking a 25% threshold in ownership or control. This approach is not necessarily in accordance with the form and structure of partnerships.

230. With respect to the company law requirements, and as described above, the Law (Miscellaneous Amendments) (No. 2) Act 2017, No 14 of 2017, introduced an annual attestation on beneficial ownership and control for various entities. Antigua and Barbuda explained that the duty that applies to domestic companies incorporated under Section 194A of the CA will equally apply to partnerships (which could operate as an incorporated domestic company or as an unregistered company with up to 20 partners). Furthermore, the corporate management and trust service providers will be under obligation to report on their clients, which may include partnerships (Section 18A of the CMTSPA).

231. The reporting requirements include but are not limited to:

i. the name and address of any person who owns 5% or more of the total voting rights of the company (or of the [*sic*] their clients for the service providers)

ii. where there is a nominee, the name and address of the ultimate beneficial owner for whom a person holds the shares or their ownership interest

iii. the name and address of any person who controls the company acting directly or indirectly, and acting individually or jointly

iv. the name of all of the directors and officers.

232. The CMTSPA (but not the CA) further defines the term "beneficial owner" as follows:

> "the natural person or persons who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or legal arrangement".

233. The company law applies a 5% threshold in ownership or control, which is not necessarily in accordance with the form and structure of partnerships. It also provides no guidance for the identification of beneficial owners in respect of partnerships, nor for situations where one or more partners is a legal entity or legal arrangement (domestic or foreign). Neither the definition itself, nor the reporting form for the service providers provided by Antigua and Barbuda are adapted for the purpose of partnership and contains references to "companies" and "IBCs" throughout. The practical implementation

of the obligation to identify the beneficial ownership of partnerships by service providers pursuant to the CMTSPA will be assessed in the Phase 2 review (see Annex 1).

234. There is no obligation under tax law to report information on the beneficial ownership of partnerships to the IRD (with the exception of the obligation to identify the partners, described in paragraph 220 above).

Conclusion

235. The income tax obligations imposed on relevant partnerships ensure that the identity information on the partners is available to Antigua and Barbuda's authorities during its lifecycle and is retained after the partnership ceases to exist. The system of oversight, which ensures that information identifying the partners of partnerships is available in all cases in practice, will be reviewed in the Phase 2 review (Annex 1).

236. Whilst the AML and company laws of Antigua and Barbuda set the requirement to obtain the beneficial ownership information with respect to legal arrangements, the determination of beneficial owners for partnerships largely follows the definition of companies and in the absence of clear guidance to be followed for identifying the beneficial owners of partnerships, doubts remain as to whether beneficial ownership information is available to the competent authorities. Furthermore, since there is no obligation for partnerships to engage in a relationship with an AML obliged person and/or the service provider at all times, there is no certainty that the beneficial ownership of all relevant partnerships is available in Antigua and Barbuda. **Antigua and Barbuda is recommended to ensure that beneficial ownership information in line with the standard is available in respect of partnerships.**

A.1.4. Trusts

237. The law of Antigua and Barbuda provides for the creation of ordinary trusts and international trusts.

238. International trusts are a component of Antigua and Barbuda's offshore services sector and are formed and regulated under the ITA. An international trust must have at least one trustee who is a domiciliary of Antigua and Barbuda, and may not have an Antigua and Barbuda domiciliary as settlor or beneficiary. It may not manufacture a product or provide goods or services for sale anywhere within the Caribbean region, or otherwise actively conduct business for profit in Antigua and Barbuda. An international trust may only be created through a trust deed or equivalent document. Upon the execution of the trust deed or equivalent document by a settlor and a trustee and registration in Antigua and Barbuda, an international trust acquires a legal personality and may hold assets in its own name (Section 6 of the ITA).

239. Ordinary trusts are recognised and created under the common law framework and have no governing statutes. Such local trusts operate under the Trust Corporation (Probate and Administration) Act, the Trustees and Mortgagees Act and the Trustees Relief Act, in some instances, the trust forms part of a mortgage company (mortgage and trust) and, in other instances, they are created for a specific limited legal purpose.

240. There are no standalone trusts (international or ordinary) within Antigua and Barbuda as at 31 December 2020. In the international sector, none of the banks held a composite bank and trust licence. In the domestic sector, a single ordinary trust was existing, which is primarily being subsumed as part of a bank and a mortgage trust company, which is subject to AML reporting requirements.

Identity information required to be provided to government authorities

241. An international trust must be registered with the FSRC pursuant to Section 17 of the ITA. At the point of registration, international trusts must submit information on the trust name, name and address of all trustees and protectors (Schedule 1 of the ITA).[50]

242. As noted in the 2014 Report, there is no obligation for an international trust to engage a service provider licensed under the CMTSPA as a trustee. However, in practice, and in accordance with the IBCA, the trustees of international trusts have been either service providers licensed under the CMTSPA or IBCs licensed under the IBCA to engage in the business of international banking. This arises from the requirement that they must have at least one Antigua and Barbuda domiciliary as a trustee, combined with the fact that the provision of such services is a regulated activity under the CMTSPA. The ITA provides that a company that is not licensed or regulated as a Trust Company under the CMTSPA may act as trustee for no more than three international trusts.

243. Section 17 of the ITA further requires a trustee to deposit any amendment to the trust deed of settlement with the FSRC within 10 days of the execution of the amendment. This applies to professional trustees of international trusts. The provision of such trustee services is regulated under the CMTSPA and the MLPA and they are required to conduct CDD on the

50. This registration requirement also applies to foreign trusts which subsequently change their governing law to Antigua and Barbuda law. Upon registration, such foreign trusts become international trusts and are subject to the regulations of the ITA; this includes having at least one trustee who is an Antigua and Barbuda domiciliary (Section 17 of the ITA).

trusts for which they act as trustees (see further below). Nothing prevents an instrument of trust entered into by a trust corporation from applying the law of another country to the trust (Section 248 of the IBCA).

244. In addition and as described earlier in this report, under Section 18A of the ITA, an international trust must submit annually an attestation report to the FSRC on beneficial ownership and control and it could be sanctioned if this requirement is not fulfilled. The report shall include (a) the name and address of any person who owns 5% or more of the trust; (b) the name and address of any person who controls the trust acting directly or indirectly, and acting individually or jointly; (c) the name of all of the directors and officers; and (d) any other information as the FSRC may determine. Antigua and Barbuda clarified that this obligation will not apply to foreign trusts (i.e. trusts established abroad but administered in/with a trustee in Antigua and Barbuda).

245. The ITA also contains a standalone definition of a "beneficial owner", introduced by the Law (Miscellaneous Amendments) Act 2016, No. 20 of 2016:

> "the natural person or persons who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or legal arrangement".

246. Therefore, the company law of Antigua and Barbuda does not require that beneficial ownership information on trusts includes information on the identity of the settlor, trustee(s), protector (if any), all of the beneficiaries or class of beneficiaries. Whilst some of these persons may be captured by the requirement to identify any person who controls the trust, this would not cover beneficiaries or classes of beneficiaries. Only a person who owns 5% or more of the trust needs to be identified which again may exclude some persons the identification of which is required by the standard.

247. There is no obligation for ordinary trusts to be registered in Antigua and Barbuda. However, as noted above, ordinary trusts that operate a company, business, trade, profession or service involved in economic activity in Antigua and Barbuda must register with the IRD for income tax purposes (see above in the sub-section that described tax law requirements). Trusts are taxed at the trustee level (Section 21 of the Income Tax Act). No details of the trust beneficiaries or settlors need to be provided at the point of registration or in the annual tax returns.

248. The obligation to submit annually an attestation report to the FSRC on beneficial ownership and control does not apply to ordinary trusts.

Identity information required to be held by the trust

Trusts that are professionally managed

249. Statutory requirements to keep ownership and identity information apply to professional trustees that act by way of business. This applies to professional trustees of foreign, international and ordinary trusts. The provision of such trustee services is regulated under the CMTSPA and the MLPA and such professional trustees are required to conduct customer due diligence on the trusts for which they act as trustees. This includes establishing the beneficial owners of the trusts for which they provide services to (Section 18 of the CMTSPA). More details of these obligations can be found in the earlier section on information held by service providers.

Trusts that are not professionally managed

250. In respect of trusts that are not professionally managed (including foreign trusts), the obligations on the trustee to maintain information on the trust beneficiaries and settlors arise only from the requirements of common law, largely based on the English common law as a result of the Common Law (Declaration of Application) Act of 1705, as summarised in the 2014 Report (paragraph 122). The common law places obligations on trustees to have full knowledge of all the trust documents, to act in the best interests of the beneficiaries and to only distribute assets to the right persons. These obligations implicitly require all trustees to identify all the beneficiaries of the trust since this is the only way the trustee can carry out his/her duties properly. If the trustees fail to meet their common law obligations, they are liable to being sued.

251. As concluded by the 2014 Report, the obligations placed on common law trustees (which are not regulated under the CMTSPA and MLPA) by English common law, which are applied in Antigua and Barbuda, ensure the maintenance of identity information on the settlors and beneficiaries (paragraph 123 of the 2014 Report). This means that even where a trustee would not be required under CMTSPA or the MLPA to identify the beneficiaries of the trust, he/she is still required to have this information available based on the common law obligations.

252. Accordingly, the 2014 Report observed that whilst the common law obligations should ensure that trustees are complying with their ongoing records keeping requirements, its effectiveness in ensuring the availability of information for EOI purposes in practice should be monitored by Antigua and Barbuda on an ongoing basis. The practice in this regard will be assessed during Phase 2 (see Annex 1).

253. It is not clear whether the common law obligations will require a look-through approach to identify the natural persons exercising ultimate effective control beyond all the parties to a trust who are legal entities or legal arrangements. The practice in this regard will be assessed during Phase 2 (see Annex 1).

Identity and beneficial ownership information held by third parties (e.g. service providers)

254. Financial institutions in Antigua and Barbuda are required to identify and verify the identity of beneficial owners of their customers, as described above under A.1.1. The requirement is to identify the natural persons who ultimately own or control the legal persons or arrangement (Regulation 4(3)(h) of the MLPR). The requirements also extend to ensuring that reasonable measures are taken to understand the ownership structure of the customer. The MLFTG details requirements for legal persons and arrangements. All types of customers, including trusts, are covered by the requirement in Regulation 4(3)(a)(iii).

255. Regulation 4(3)(h) of the MLPR mandates that where the customer is a trust, measures must be taken to determine who are the natural persons that ultimately own or control it, and reasonable measures must be taken to understand its ownership and control structure.

256. Part I paragraph 2.1.42 of the MLFTG provides that any application to open an account or undertake a transaction on behalf of another without the applicant's identifying their trust or nominee capacity should be regarded as suspicious and lead to further inquiries.

257. The MLFTG, as amended in 2017, require financial institutions to obtain the following information for trusts and other types of legal arrangements: Identity of the settlor and/or beneficial owner or class of beneficiary of the funds, who provided the funds, and of any controller or similar person having power to appoint or remove the trustees or fund managers and the nature and purpose of the trust. Identity of the principals, in particular those who are supplying and have control of the funds (Section 2.1.43). Also required are the full name of the trust, nature and purpose of the trust (e.g. discretionary, testamentary, bare), country of establishment, names of all trustees, and name and address of any protector or controller, any natural person exercising ultimate effective control (including through a chain of control/ownership), and beneficiaries, or beneficiaries identified by characteristics, class or other means (Section 2.6.3).

258. The financial institution should verify the identity of the trustees (or equivalent) who have authority to operate an account or to give the financial institution instructions concerning the use or transfer of funds or assets.

Section 2.6.3(5a), as amended in 2017, also requires that the financial institution take reasonable steps to verify the identity of the beneficial owners. The verification of identity does not extend to the settlor(s) and protector(s), contrary to the requirement of the standard.

259. The AML-based retention rules described earlier in this report, ensure that the relevant information is retained for the period required by the standard.

260. Since there is no obligation for all trusts to engage in a relationship with an AML obliged person at all times, there is no certainty that the beneficial ownership of all relevant trusts is available in Antigua and Barbuda (both during their lifecycle and after they cease to exist).

Oversight and enforcement

261. Section 17(C) of the MLPA empowers the FSRC to impose sanctions for breaches of the MLPA discovered during an onsite examination (see A.1.1).

262. Under Section 18A(2) of the CMTSPA, any company that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of XCD 5 000 (USD 1 850) and for a further penalty of XCD 5 000 (USD 1 850) for each day of default.

263. As part of examinations, the FSRC and ONDCP can verify that ownership information, including beneficial ownership information, is accurate and up to date, as indicated under A.1.1.

264. While the CMTSPA and MLPA obligations imposed on relevant trustees should ensure that information on settlors and beneficiaries is available to the Antigua and Barbuda competent authority, during the previous peer review the Antigua and Barbuda's authority did not have a system of oversight in place to ensure that the legal obligations to maintain information identifying the settlors and beneficiaries are being complied with by the obligated persons. Accordingly, the 2014 Report recommended that Antigua and Barbuda should monitor the implementation of the oversight programme, which was then planned for 2014, and exercise its enforcement powers as appropriate to ensure that the legal obligations are being complied with by the obligated persons and the information is fully available in practice (paragraph 129 of the 2014 Report). These aspects will be peer reviewed in Phase 2, together with the supervision of the availability of beneficial ownership information (see Annex 1).

Conclusion

265. The obligation for trustees to have information on trust settlors and beneficiaries stems from common law and, in the case of international trusts and professional trustees, also from the company and AML requirements that apply to the Antigua and Barbuda trustee. However, the company law which requires an annual attestation on beneficial ownership applies only to international trusts and does not explicitly require identification of the settlor, trustee(s), protector (if any), and all of the beneficiaries or class of beneficiaries as required under the standard. Under the AML framework, the verification of identity does not extend to the settlor(s) and protector(s), contrary to the requirement of the standard. More generally, there is no obligation for all trusts to engage in a relationship with an AML obliged person at all times. To an extent that such an engagement does not occur or does not last throughout an entire lifecycle of relevant arrangements, the availability of ownership information may be compromised. **Antigua and Barbuda is recommended to ensure that identity and beneficial ownership information in line with the standard is available in respect of trusts.** The application in practice will be reviewed in Phase 2.

266. It is conceivable that an ordinary trust could be created which has no connection with Antigua and Barbuda other than that the settlor chooses the trust to be governed by Antigua and Barbuda's law. In that event, there may be no information about the trust available in Antigua and Barbuda. In these situations, trust information would have to be available in the jurisdiction where the trustee is located, as the relevant records would be situated there.

A.1.5. Foundations

267. Jurisdictions that allow for the establishment of foundations should ensure that information is available to their competent authorities for foundations formed under those laws to identify the founders, members of the foundation council, and beneficiaries (where applicable), as well as any beneficial owners of the foundation or persons with the authority to represent the foundation.

268. There are no laws that provide for the creation or recognition of domestic foundations in Antigua and Barbuda. While there may be non-profit organisations in Antigua and Barbuda who use the term "foundation" in their name, this does not refer to a foundation in the sense of a legal arrangement or relationship. Rather, it refers to its ordinary meaning, being an institution supported by endowments. These "foundations" are predominantly used for charitable purposes and usually take the legal form of private companies without share capital incorporated under the CA and the Friendly Societies Act. These types of companies have been covered above.

269. The laws of Antigua and Barbuda provide for the creation of international foundations under the International Foundations Act 2007 (IFA). The international foundation is a separate legal entity under the laws of Antigua and Barbuda upon proper execution of a foundation charter or equivalent document by a founder and by the members of a foundation council, by which a founder makes a disposition of rights, title or interest in property to the foundation for a specific purpose. At least one of the members of the foundation council must be a domiciliary of Antigua and Barbuda.[51]

270. There were no international foundations pursuant to International Foundations Act as at 31 December 2020.

Ownership information

271. An international foundation that specifies the laws of Antigua and Barbuda for any part of its administration must be registered with the FSRC, which maintains a Register of International Foundations. At the time of registration, in accordance with Section 17 of the IFA, the international foundation must provide to the FSRC the names and addresses of the following persons:

- the Antigua and Barbuda member of the foundation council[52]
- all non-resident members
- all protectors.

272. There is no explicit obligation to report the name of the founder(s), beneficiary(ies) and all persons with the authority to represent the foundation who, in accordance with Section 3(4) of the IFA, are the members of the foundation council.

273. Further, Section 21 of the IFA states that a foundation charter must:

- specify the name of the foundation

51. Section 2 of the IFA defines a domiciliary as a person who resides in Antigua and Barbuda with the intention of making Antigua and Barbuda his/her permanent place of residence, or an entity that is incorporated or registered in Antigua and Barbuda and has its principal place of business in Antigua and Barbuda.

52. Under Section 5 of the IFA, at least one member of the foundation council shall at all times be (a) a domiciliary of Antigua and Barbuda; (b) subject to Section 34 of the IFA, a company or other entity incorporated or registered under the Antigua and Barbuda Companies Act; or (c) a company licensed under the Antigua and Barbuda Corporate Management and Trust Service Providers Act, 2007. Section 34 stipulates that a company which is not licensed or regulated under the CMTSPA may not serve as member of more than three foundation councils for international foundations.

- specify the beneficiary or class of beneficiaries, or, if no beneficiary, the purpose of the foundation
- appoint a foundation council and specify its members
- set forth the respective rights, duties, responsibilities and beneficial interests of the foundation council and the beneficiary
- set forth the method for appointing or removing a member of the foundation council
- specify the initial endowment; and set forth the manner in which the endowment shall be maintained and distributed.

274. The charter shall be executed by a founder and by each member of the foundation council and any protector, either before two witnesses or before a notary public or officer of a court.

275. Accordingly, the beneficiary(ies) and the members of a foundation council will be included in the charter but the founder(s) are not included (except one who executes it). Antigua and Barbuda explained that "specify" for the purpose of Section 21 of the IFA means to identify clearly and definitely and will include the names and addresses of the relevant persons. Antigua and Barbuda noted that Section 87 of the IFA lists the foundation charter as a type of document that can be disclosed and therefore indirectly it implies that it has to be kept and maintained by each foundation. Nevertheless, there are no explicit statutory obligations on the international foundation to keep or maintain a copy of the foundation charter.

276. Under Section 53 of the IFA, each international foundation is obliged to keep at its registered office[53] a register containing the names and addresses of each foundation member and protector. The founders and beneficiaries are not mentioned.

277. Identity information on the founders and beneficiaries of international foundations is instead made available through the company and AML obligations imposed on their service providers which would include the compulsory Antigua and Barbuda member of the foundation council (with a company which is not licensed or regulated under the CMTSPA permitted to serve as member of no more than three foundation councils for international foundations).

278. Under Section 18A of the CMTSPA, a corporate management and trust service provider must submit annually an attestation report to the FSRC on the beneficial ownership and control of their clients, including

53. The registered office of an international foundation is the office of the Antigua and Barbuda member of the foundation.

international foundations. Further, a foundation itself, under Section 18A of the IFA, must submit annually an attestation report to the FSRC on beneficial ownership and control of the foundation, which includes the following:

> (a) the name and address of any person who owns 5% or more of the foundation;
>
> (b) the name and address of any person who controls the foundation acting directly or indirectly, and acting individually or jointly;
>
> (c) the name of all of the directors and officers; and
>
> (d) any other information as the Commission may determine.

279. Antigua and Barbuda clarified that the term "owns" in Section 18A is used loosely, and it is to be understood and interpreted as a reference to the founder. Whilst the threshold approach in the context of foundations which have legal personality is accepted under the standard, doubts remain as to whether the company law requirements of Antigua and Barbuda ensure that information on beneficial owners of international foundations is available in accordance with the standard. If members of the foundation council (and by extension any persons with the authority to represent the foundation) are captured by the requirement to identify any person who controls the foundation acting directly or indirectly, and acting individually or jointly, the beneficiaries (where applicable) do not appear to be covered.

280. In addition to company law requirements, the service providers will be subject to the AML obligations described earlier in this report. The AML-based retention rules described earlier in this report, ensure that the relevant information is retained for the period required by the standard. However, the relevant section of the MLFTG ("2.6.3 Other trusts, foundations and similar entities") focuses exclusively on trusts and only limited guidance is provided with respect to the identification of beneficial owners of clubs and societies.

Oversight and enforcement

281. If an international foundation is created or established, its service providers will be under the oversight of the FSRC.

282. Under Section 18A(2) of the CMTSPA, any entity that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of XCD 5 000 (USD 1 850) and for a further penalty of XCD 5 000 (USD 1 850) for each day of default.

283. The 2014 Report recommended that Antigua and Barbuda should put in place a system of oversight to ensure the availability of information in practice for any international foundations registered in future (paragraph 137

of the 2014 Report). The implementation of this recommendation will be reviewed during Phase 2.

Conclusion

284. The company and AML obligations imposed on the Antigua and Barbuda foundation council member require that information on the identity of the founders, members of the foundation council, as well as any beneficial owners of the foundation or persons with the authority to represent the foundation is available to the competent authorities and up to date. However, the definition of beneficial ownership in the context of international foundations does not fully meet the standard. In particular, the beneficiaries (where applicable) do not appear to be covered. **Antigua and Barbuda is recommended to ensure the availability of information on the beneficiaries of international foundations.** The application in practice will be reviewed in Phase 2.

A.1.6. International limited liability companies (ILLCs)

285. ILLCs in Antigua and Barbuda are unincorporated entities or associations that are not trusts or partnerships, formed or continued under the ILLCA for any lawful business or other purpose, including the rendering of professional services by or through their members, managers, officers or agents. Therefore, whilst the name of ILLCs includes the word "companies", this report analyses them separately from incorporated companies. As at March 2021, there has never been an ILLC registered in Antigua and Barbuda.

Ownership information

286. An ILLC may be formed in Antigua and Barbuda, under the ILLCA, by a person domiciled in Antigua and Barbuda signing and filing the articles of organisation with the FSRC. The articles of organisation must include among other items the name of the ILLC, name, address and signature of the registered agent (who must be a licensee under the CMTSPA) and information on any restrictions on the business that the ILLC may carry on (Sections 2, 12 and 17 of the ILLCA). No legal ownership information is provided to the FSRC.

287. An ILLC must at all times have a registered agent in Antigua and Barbuda, in default of which the company is dissolved and struck from the register (Section 23 of the ILLCA, see further paragraph 298). A registered agent may resign upon filing a written notice with the FSRC (Section 23(3) of the ILLCA). A designation of a new registered agent may be made, revoked, or changed by the ILLC by filing an appropriate notification with the FSRC (Section 23(6) of the ILLCA).

288. An ILLC is required to keep at the office of its registered agent, or at another place to which the registered agent has access, prescribed information relating to the ILLC. This includes a list of the full name and last known business, residence or mailing address of each member and manager, a copy of the initial articles of organisation and all amendments, as well as a copy of membership certificates issued (Section 8 of the ILLCA). The authorities of Antigua and Barbuda indicated that this membership structure would be reviewed by the FSRC in its examinations.

289. As mentioned above, the CMTSPA and AML ensure that whenever a company engages a company service provider, the service provider is obligated to conduct due diligence to know the identity of the client (company) and ultimate natural person(s) controlling or owning the client (company) (see paragraphs 74-85 of the 2014 Report for more details). The same applies to ILLCs.

290. The FSRC continues to be the regulator in charge of administration and maintaining all the documentation filed by ILLCs (see paragraphs 46-48 of the 2014 Report). The Chief Executive Officer of the FSRC (the Director) maintains registers of ILLCs containing the name of every corporation that is incorporated or continued under the ILLCA, and keeps copies of all documents filed by ILLCs. Whilst all documents filed with the Registrar and the Director by domestic companies and IBCs respectively must be kept for six years from the date of receipt (Section 507 of the CA, Section 331 of the IBCA), no equivalent provision is present in the ILLCA with respect to ILLCs.

291. The FSRC keeps a central registry of beneficial ownership information compiled through an annual attestation, which is submitted by all ILLCs (Section 18A of the ILLCA, as introduced by the Law (Miscellaneous Amendments) (No. 2) Act 2017, No 14 of 2017). Beneficial ownership information with respect to ILLCs is available through corporate management and trust service providers, which are also required to submit an annual report on beneficial owners of their clients (Section 18A of the CMTSPA).

292. **Whilst beneficial ownership information is available through the company and AML laws, the limitations which have been identified in this report with respect to the definition of beneficial owners under the respective regimes apply also with respect to ILLCs** (see paragraphs 174 and 194).

293. As with IBCs, while the Tax Law requires an annual return to be filed with the details of the shareholders of a company, it is unlikely to ensure the availability of legal ownership information consistently, in respect of ILLCs, since almost all their activities are exempt from tax in Antigua and Barbuda.

Mobility of ILLCs

294. The law of Antigua and Barbuda allows for corporate mobility of ILLCs. A foreign limited liability company[54] can be continued in Antigua and Barbuda, provided that it complies with the legal and regulatory framework. As part of the application of transfer (Section 75 of the ILLCA) the service provider must ascertain the identity of persons owning a beneficial ownership interest of at least 20% as provided in the CMTSPA (Section 76 of the ILLCA). Thereafter, an annual attestation report on beneficial ownership would be required to be submitted on the ILLCA pursuant to Section 18A.

295. Under Section 81 of the ILLCAs, an ILLC may become re-domiciled in a foreign jurisdiction. An application to transfer domicile out of Antigua and Barbuda is filed with the FSRC (Section 82). The FSRC issues a certificate of departure and, as of the date of the certificate, the limited liability company will be deemed to have ceased to be an ILLC domiciled in Antigua and Barbuda (Section 83). There is no specific requirement concerning the retention of records by the FSRC; however, the ILLCs should have complied with the requirements imposed by the laws of Antigua and Barbuda prior to the departure,[55] including the annual attestation on beneficial ownership (as described in the preceding paragraph), and the records will be retained by the service provider for six years after termination of the client relationship.

ILLCs which ceased to exist

296. Under Section 63 of the ILLCA, an ILLC may be dissolved and its affairs wound up upon the happening of the first to occur of the following: (a) when an event specified in the operating agreement occurs; (b) when all of the members entitled to vote consent to dissolution in writing; (c) when judicial dissolution is decreed under Section 65; and (d) when administrative dissolution is determined by the FSRC under Section 64.

297. With respect to the circumstances described in (a) to (c), an ILLC is under the duty to file a written notice with the FSRC, which includes a statement that the records and documents of the company be kept for a period of six years from the date of the notice, the location at which they will be kept

54. Under the ILLCA, a "foreign limited liability company" means a limited liability company formed or continued under the laws of a jurisdiction other than Antigua and Barbuda for any lawful purpose that is characterised as a limited liability company by those laws.

55. Under Section 82(2)(d) of the ILLCA, the application to transfer domicile out of Antigua and Barbuda must set forth that that the ILLC at the time of application is not in breach of any obligation imposed on it by the ILLCA or any other law of Antigua and Barbuda.

and the person who will have custody or access to such location. The ILLCA does not require that this person be domiciled in Antigua and Barbuda. There is no procedure for restoring the ILLC dissolved.

298. An administrative dissolution under Section 63(1)(d) takes place on the failure of an ILLC to pay the annual registration fee or maintain a registered agent for a period of 180 days. An application to restore an ILLC can be made within three years of the date of removal and dissolution (Section 64 of the ILLCA). There is no special provision concerning the document retention, however under Section 67(5), the court may make the orders it deems proper in all matters in connection with the dissolution or in winding up the affairs of the ILLC. Whilst the provisions under the ILLCA do not ensure the retention of documentation within the reach of competent authorities and – with respect to the administrative dissolution – its retention for the required minimum period, the ownership information will be available through an AML-obliged service provider.

A.2. Accounting records

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

299. Deficiencies concerning the legal obligation to maintain comprehensive accounting records by legal entities were initially identified in the Phase 1 peer review of Antigua and Barbuda, published in 2011. These deficiencies were rectified through the amendment to Antigua and Barbuda's laws reviewed in the supplementary review in 2012. The amended law of Antigua and Barbuda provided for an express requirement for all domestic companies, foreign companies, relevant partnerships (i.e. those that carry on a business in Antigua and Barbuda), international trusts, international foundations and ILLCs to keep comprehensive accounting records, including underlying documentation, for at least five years.

300. The 2014 Report (Phase 2) noted the above-mentioned improvements and identified some remaining gaps. Element A.2 was determined by the 2014 Report not to be in place as it was not clear whether the accounting obligations applicable to international business companies (IBCs) and ordinary trusts not carrying on business in Antigua and Barbuda cover underlying documentation and a minimum record retention period of five years. In addition, there were no penalties for non-compliance with the obligation to keep accounting records. Accordingly, Antigua and Barbuda was recommended to amend and clarify its laws to ensure that there are clear and comprehensive legal obligations requiring IBCs and ordinary trusts not carrying on business in Antigua and Barbuda to keep reliable accounting records; meeting the requirements of the standard in all cases for at least five years. In addition,

the 2014 Report recommended that appropriate sanctions for instances of non-compliance be established.

301. This peer review recognises improvements made in 2014, after the publication of the 2014 Report, by Antigua and Barbuda to clarify the accounting obligations applicable to IBCs to stipulate that the relevant records must be maintained for a minimum of five years from the date on which the transaction took place. Yet, this report identifies that there is no requirement to retain the records after the IBC ceased to exist. Further, no changes occurred with respect to ordinary trusts not carrying on business in Antigua and Barbuda.

302. The 2014 Report also identified that there were no sanctions for the following entities that do not meet their accounting record keeping obligations: an international limited liability company; an international trust; and an international foundation. No amendments have been made to the relevant laws imposing sanctions for the failure to comply with obligations to maintain accounting information.

303. Element A.2 is thus determined as "in place but needs improvement".

304. In practice, the 2014 Report concluded that during the review period, Antigua and Barbuda did not have a regular oversight programme in place to monitor compliance with the accounting record keeping obligations. Also, there were no sanctions for non-compliance with the accounting record keeping obligations. As a result, this element was rated as "Non-Compliant". The present review assesses only the legal and regulatory framework in Antigua and Barbuda. Implementation of the standard in practice will be dealt with in the Phase 2 review. In this context, the effectiveness of the provisions introduced in 2014 which, in particular, provide the possibility of keeping the records within or outside Antigua and Barbuda (if not at the service provider's office), will be reviewed as to its effectiveness.

305. The conclusions are as follows:

Legal and Regulatory Framework: in place but needs improvement

Deficiencies/Underlying factor	Recommendations
The accounting records of International Business Companies must be kept at the service provider's office or such other place or places within or outside Antigua and Barbuda. The legal framework does not ensure that a person in Antigua and Barbuda is in possession of, or has control of, or has the ability to obtain, such information.	Antigua and Barbuda should ensure that accounting records of International Business Companies are kept in Antigua and Barbuda, or ensure that a person in Antigua and Barbuda is in possession of, or has control of, or has the ability to obtain, such information.

Deficiencies/Underlying factor	Recommendations
There are no penalties for non-compliance with the obligation to keep accounting records applicable to international trusts, international foundations and international limited liability companies, including after they cease to exist.	Appropriate sanctions for instances of non-compliance with the obligation to keep accounting records should be established for international trusts, international foundations and international limited liability companies.
Whilst accounting records must be maintained by international business companies (International Business Companies) for a minimum of five years from the date on which the transaction took place, there is no requirement to maintain such records for at least five years after the International Business Company ceased to exist. This concern also applies to certain type of partnerships. Further, it is not clear whether the accounting obligations applicable to ordinary trusts not carrying on business in Antigua and Barbuda cover underlying documentation and a minimum record retention period of five years. Moreover, there are no penalties for non-compliance with the obligation to keep accounting records.	Antigua and Barbuda should amend and clarify its laws to ensure that there are clear and comprehensive legal obligations requiring International Business Companies (and certain type of partnerships) which ceased to exist and ordinary trusts not carrying on business in Antigua and Barbuda to keep reliable accounting records; meeting the requirements of the Terms of Reference in all cases for at least five years and indicating who will be the person that will be responsible for keeping the accounting books and the underlying documentation. In addition, appropriate sanctions for instances of non-compliance should be established.
The law of Antigua and Barbuda allows for corporate mobility of International Business Companies and international limited liability companies. Such companies may become re-domiciled in a foreign jurisdiction. There is no specific requirement concerning the retention of accounting records in such circumstances.	Antigua and Barbuda is recommended to ensure that all accounting information is consistently available in relation to International Business Companies and international limited liability companies that re-domicile out of Antigua and Barbuda for a minimum period of five years.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

The Phase 2 recommendations issued in the 2014 Report are reproduced below for the reader's information.

Deficiencies/Underlying factor	Recommendations
During the review period, Antigua and Barbuda did not have a regular oversight programme in place to monitor the compliance of the accounting record keeping obligations. In addition, there are no sanctions for non-compliance with the accounting record keeping obligations under the relevant laws.	Antigua and Barbuda should put in place an oversight programme to monitor the compliance of the obligations to maintain accounting records. Antigua and Barbuda should also ensure that there are effective sanctions for non-compliance of the accounting record keeping obligations under the relevant laws and should exercise its enforcement powers to ensure that accounting records for all relevant entities are available in practice.

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

306. The tax legislation of Antigua and Barbuda establishes accounting record keeping requirements for all persons carrying on a business in Antigua and Barbuda and who may be taxable in Antigua and Barbuda. In respect of other legal entities, in particular the tax exempt entities in the offshore sector, the requirements to keep accounting records have increased with several amendments in 2011, 2014 and 2017.[56]

307. While now all legal entities and arrangements (except ordinary trusts not carrying on business in Antigua and Barbuda) are subject to the requirement to maintain the accounting records and underlying documentation, the legal framework is still not fully in line with the standard due to some issues remaining open with regards to the retention rules and applicable sanctions.

Onshore entities: Domestic, foreign and non-profit companies and partnerships

308. Ordinary and non-profit companies, foreign companies and partnerships, must keep and maintain accounting records in Antigua and Barbuda to meet their obligations under the CA, the Income Tax Act and Antigua and

56. Tax exemptions for IBCs were repealed by the Law Miscellaneous (Amendments) Act No. 26 of 2018, which also provided that IBCs are now permitted to conduct business in Antigua and Barbuda, subject to the additional registration and other relevant requirements (Section 4A). Accordingly, for IBCs which will carry on with conducting business internationally, they will be subject to the requirements envisaged by Section 130A IBCA. For the IBCs that choose to do business in Antigua and Barbuda, they will be taxed at the applicable domestic rate under the Income Tax Act and will be subject to the accounting obligations pursuant to Section 77 of the TIE (Amendment) Act 2011, as amended in 2011.

Barbuda Sales Tax Act (ABSTA). The relevant provisions were summarised in the 2014 Report (paragraphs 150-157, 158-162 and 169-170) and have remained unchanged. They meet the standard.

Company law

309. Under Section 154(A) of the CA for domestic companies and Section 356(A) for relevant foreign companies, a company is required to retain all accounting records that (i) correctly explain all transactions; (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared (Section 154(A)(1) and Section 356(A)(1) of the CA respectively). In addition, the accounting records should include underlying documentation, such as invoices, contracts, purchase orders, delivery notes and bank statements which should reflect details of (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the entity (Section 154(A)(2) and Section 356(A)(2) of the CA respectively). Section 154(A)(3) and 356(A)(3) of the CA require that such records are retained for a minimum period of six years from the date of winding up of a domestic company and external company respectively.

310. Section 154 of the CA creates the obligation to file annual financial returns to the Registrar for a company that is a public company, or the gross revenue of which exceeds XCD 4 000 000 (USD 1 480 000) or the assets of which as shown in those financial statements exceed XCD 2 000 000 (USD 740 000), or such greater amounts as may be prescribed. The Registrar will be in possession of these records at the point that a company is struck off in accordance with Section 511 of the CA. The Registrar has the statutory obligation to maintain documents in their possession for a period of six years (Section 507 of the CA).

311. Pursuant to Section 154 and Section 356 of the CA respectively, any person guilty of an offence under the CA or Regulations is liable on summary conviction to a fine of XCD 5 000 (USD 1 850).

312. In addition, the CA requires the directors of domestic companies to place before their shareholders, at every annual meeting, financial statements pertaining to the latest two financial years. Such financial statements must be prepared in accordance with the standards approved by the Institute of Chartered Accountants of Antigua and Barbuda and must contain at least: (a) a balance sheet; (b) a statement of retained earnings; (c) a statement of income; and (d) a statement of changes in financial position. The company may omit certain items from the financial statement if the Registrar of Companies reasonably believes that such disclosure would be disadvantageous to the company's business. Examples would include cases where the

company deals in only one line of products or services and its competitors are not required to make similar disclosures, or information the disclosure of which would put it in at a disadvantage in its dealings with its suppliers, customers or others (Sections 149 and 150 of the CA, read together with Regulation 10 of the Companies Regulations 1997).

313. Non-profit companies are required within 15 days of their annual meetings to submit to the Registrar a financial statement showing the assets and liabilities of the company in the form of a balance sheet and the revenue and expenditure of the company since the date of incorporation or the date of the previous financial statement (Regulation 28 of the Companies Regulations 1997).

314. The accounting record keeping obligations of a company under the Income Tax Act and ABSTA apply similarly to relevant partnerships, including foreign partnerships, that meet the criteria established in the respective Acts (paragraphs 169-170 of the 2014 Report). A domestic partnership as an ordinary company will be subject to Section 154A of the CA and a foreign partnership would operate as an "external company" under the CA and as such the accounting records will be available by virtue of Section 356A of the Act. However, partnerships which are not registered as a company under the CA (see paragraph 217 above), will not be subject to Sections 154(A) and Section 356(A) of the CA. Their accounting records will be available by virtue of tax law, as described below (see also paragraph 220 above).

Tax law

315. The Income Tax Act and the 2018 TAPA imposes similar, although not identical, accounting requirements on taxpayers, which are defined by the Income Tax Act as any person who is engaged in any business by way of trade (i.e. any trading entity with stocks in excess of XCD 500) or in any profession or required to make any return under the Income Tax Act.[57] Antigua and Barbuda explained that the Income Tax Act and the 2018 TAPA are not identical because the legal context is different; notwithstanding, the same result is achieved of creating the legal obligation to ensure reliable accounting records are kept for all relevant entities and arrangements.

316. Under Section 77 of the Income Tax Act and Section 22 of the 2018 TAPA, the taxpayer is required to keep and maintain in Antigua and Barbuda and in the English language, books of accounts, sufficient to record all transactions in order to ascertain the gains and profits made or the loss incurred

57. Similarly, Section 22 of the 2018 TAPA refers to a person engaged in business or independent professional activity or who is required to make a return under tax legislation.

in respect of these transactions. In addition to the books of account, any source documents and underlying documentation utilised in the creation of the books of account and the underlying documentation must be kept. Source documents is defined to include but not limited to sales and purchase invoices, costing documents, bookings, diaries, purchase orders, delivery notes, bank statements, contracts and all documents which relate to any element of the transaction.[58] All such records have to be retained for a minimum period of seven years from the date on which the transaction took place. Failure to do so is an offence and attracts upon conviction, a fine of XCD 10 000 (USD 3 700) or imprisonment for six months. In addition to any penalty imposed, that person shall be liable to pay any tax to which he may be assessed.

317. In addition, Section 22 of the 2018 TAPA adds that a taxpayer must also retain source documents and underlying documentation utilised in the creation of the records and accounts that (i) correctly explain all transactions; (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and (iii) allows financial statements to be prepared. The records and accounts should contain details of (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the entity. The same details are not contained in the Income Tax Act.

318. The Income Tax Act also requires all persons engaged in business in Antigua and Barbuda to file annual tax returns, which must be accompanied by an audited financial statement (no threshold applies), which must include a balance sheet, an income statement and a cash flow statement (Section 49A of the Income Tax Act, read together with the Corporation Tax Guide 2011). This includes non-profit companies. All financial statements must be reviewed by a certified auditor. Failure to do so is an offence and attracts upon summary conviction a penalty not exceeding XCD 5 000 (USD 1 850), and in default of payment to imprisonment with or without hard labour for a term not exceeding six months. This means that some minimum accounting information is available directly with the tax administration.

58. The Antigua and Barbuda Sales Tax Act complement these obligations: all persons which supply goods and services, the value of which meet the thresholds (XCD 300 000 (USD 111 000) in any 12 month period), are required to register for ABST purposes. Such persons are required to issue sales invoices if they make a taxable supply to another registered person (Section 9) and to keep copy of all ABST invoices, credit notes and debit notes issued and received, as well as all customs documentation relating to imports and exports of goods by the person (Section 38).

International Business Companies (IBCs)

319. The tax requirements applicable to domestic and foreign companies are not applicable to international business companies, so long as they are not carrying on business in Antigua and Barbuda. The only applicable requirements are those in the IBCA and Regulations (unless the IBC has a financial licence; see below). The only obligation which was in place at the time when the 2014 Report was adopted – if required by the articles of incorporation or by-laws of the IBC – was for its directors to present at every annual meeting of the shareholders: (a) financial statements relating separately to the previous two financial years; (b) the report of the auditor, if any; and (c) any further information with respect to the financial positions of the corporation and the results of its operations (Section 130 of the IBCA). Therefore, the 2014 Report concluded that it was not clear whether the accounting obligations applicable to IBCs covered underlying documentation and a minimum record retention period of five years. Moreover, there were no penalties for non-compliance with the obligation to keep accounting records. Accordingly, Antigua and Barbuda was recommended to amend and clarify its laws to close these gaps.

320. Antigua and Barbuda acted upon this recommendation. The International Business Corporation (Amendment) Act, No 16 of 2014, introduced Section 130A ("Financial Record") pursuant to which an IBC must keep, at the office of its agent or such other place or places within or outside Antigua and Barbuda, records that (a) are sufficient to show and explain the IBC's transactions; (b) will at any time, enable the financial position of the corporation to be determined with reasonable accuracy; and (c) will allow financial statements to be prepared. Accounting records include invoices, contracts, costing documents, bookings diaries, purchase orders, delivery notes, bank statements, assets and liabilities of the IBC and its subsidiaries, and all documents which relate to sums of money received and expended. The accounting obligations of IBCs now cover the appropriate elements, in accordance with the standard.

321. Records must be maintained for a minimum of five years from the date on which the transaction took place. Specific provisions have been inserted concerning the location of the accounting records. Such records must be kept at the service provider's office or such other place or places within or outside Antigua and Barbuda. If records are not kept at the service provider's office, the IBC must provide the service provider with a written record of the physical address of the place or places at which the records are kept. If records are moved to a different location, the IBC must provide the service provider with the new address within 14 days of the change. The IBCA further requires all IBCs to keep at their registered offices a copy of the financial statements of each of its subsidiaries whose accounts are consolidated in its financial statements (Sections 142 and 144 of the IBCA). Accordingly, IBCs are not required to keep their accounting records in

Antigua and Barbuda, or ensure that a person in Antigua and Barbuda is in possession of, or has control of, or has the ability to obtain, such information. **Antigua and Barbuda is recommended to ensure that IBCs are required to keep their accounting records in Antigua and Barbuda, or ensure that a person in Antigua and Barbuda is in possession of, or has control of, or has the ability to obtain, such information.** The effectiveness of the existing system with regard to the location of accounting records in practice will be reviewed in the Phase 2 review (see Annex 1).

322. An IBC that fails to comply with these obligations commits an offence and is liable on summary conviction to a fine of XCD 10 000 (USD 3 700) under Section 130A(6) of the IBCA. The adequacy of this sanction will be reviewed in Phase 2 (see Annex 1).

323. Section 130A of the IBCA was further amended by the Law (Miscellaneous Amendments) Act 2017 to require an IBC to respond to a request from the FSRC for accounting records. Section 335 of the IBCA was amended by the same Act to allow the Director of the IBC Registry to strike an IBC from the register for failing to comply with a request from FSRC (similar changes have been made in the TIE Act, as discussed in B.1 below, and as discussed above, the struck off corporation may subsequently be restored by the Director). Whilst the failure of an IBC to respond to a request may result in the striking of the IBC from the register, it is not clear how the retention of records will be ensured in these circumstances. The adequacy of the new measure to ensure the full implementation of the standard will be assessed in Phase 2 (see Annex 1).

Additional obligations of licensed IBCs, including international banks

324. An IBC that is a "licensed institution", i.e. licensed by the FSRC to engage in international banking, international trust or international insurance business,[59] must, in respect of all its transactions obtain the name and number of the account, the type, amount and date of the transaction, and the identity of the party authorising the transaction. In relation to deposits, it must obtain the account name, number and the financial institution from which the accounts were drawn. In relation to withdrawals, it must obtain the name, address and where applicable the financial institution and account name and number to whom the funds are disbursed. All the information obtained must be retained for at least five years (Regulation 16, IBCA Regulations 1998).

325. Additionally, an IBC that is an international bank must as a condition of its licence further submit an annual audited return to the FSRC providing an analysis of customers' liabilities to the corporation in respect

59. A "licensed institution" is defined under the IBCA Regulations 1998.

of loans, advances and other assets of the corporation, a profit and loss statement, a balance sheet, and the statement of assets and liabilities. The return must be submitted no later than 21 days after the end of the year to which it relates (Section 242 of the IBCA). Such records will be kept for six years (Section 331 of the IBCA).

326. An international bank is also subject to AML requirements, and accordingly must keep for a minimum of six years details relating to all transactions it carries out in the course of its banking business.

Other actors of the offshore sector

327. The legal obligations of ILLCs, International Trusts and International Foundations have not changed since the 2014 Report (see paragraphs 167, 173 and 175).

328. Section 55A of the International Limited Liability Company Act (ILLCA), Section 42 of the International Trust Act and Section 46 of the International Foundation Act (IFA) provide for standard accounting obligations. The obligation applies to the manager(s) who are vested with the management of the ILLC, trustee and the foundation council: to retain all accounting records which (i) correctly explain all transactions; (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared. The accounting records should further include underlying documentation, such as invoices, contracts, purchase orders, delivery notes and bank statements which should reflect details of (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the entity. Finally, an ILLC, a trustee or a foundation council respectively are also required to retain all underlying documentations for a minimum period of six years from the date of dissolution. There are no sanctions for those actors that do not meet the accounting record keeping obligations under the laws, including after an ILLC, an international trust or an international foundation ceases to exist, contrary to what the standard requires. **Antigua and Barbuda is recommended to establish appropriate sanctions for instances of non-compliance with the obligation to keep accounting records for international trusts, international foundations and ILLCs.**

Ordinary trusts

329. The accounting record keeping obligations on domestic companies under the Income Tax Act and the ABSTA similarly apply to domestic trusts that carry on a business in Antigua and Barbuda and meet the respective criteria under the Acts (paragraph 171 of the 2014 Report).

330. The current obligations of ordinary trusts not carrying on business in Antigua and Barbuda can summarised as follows (see also paragraph 172 of the 2014 Report). The obligations for the trustee to keep accounting records arise from common law requirements under common law, all trustees resident in Antigua and Barbuda are subject to the fiduciary duty to the beneficiaries to keep proper records and accounts of their trusteeship and to allow the beneficiaries to inspect the accounts as required (Pearse v Green (1819) 37 E R 327 at 329 and Re Tillot [1892] 1 Ch 86). However, it is not clear that the common law obligations ensure that reliable accounting records, including underlying documentations, are maintained for at least five years in all cases.

331. On this basis, the 2014 Report concluded that it is not clear whether the accounting obligations applicable to ordinary trusts not carrying on business in Antigua and Barbuda cover underlying documentation and a minimum record retention period of five years. Moreover, there are no penalties for non-compliance with the obligation to keep accounting records. No changes have been reported by Antigua and Barbuda in response to this recommendation, which is maintained by this report. Accordingly, **Antigua and Barbuda is recommended to amend and clarify its laws to ensure that there are clear and comprehensive legal obligations requiring ordinary trusts not carrying on business in Antigua and Barbuda to keep reliable accounting records; meeting the requirements of the Terms of Reference in all cases for at least five years. In addition, appropriate sanctions for instances of non-compliance should be established.**

Entities that ceased to exist and retention period

332. The tax legislation requires the retention of accounting records for seven years, from the date on which the transaction took place. The accounting record keeping requirements imposed by the various acts apply to the circumstances in which entities cease to exist, in particular, pursuant to Section 154(A)(3) and Section 356(A)(3) of the CA, which apply to domestic, non-profit and foreign companies, as well as relevant partnerships, the minimum retention period is a period of six years from the date of winding up. The period is of six years after dissolution/termination of ILLCs, trusts and foundations (pursuant to Section 55(8) of the ILLA 2007, Section 42(8) of the International Trust Act 2007, and Section 46(8) of the IFA 2007).

333. As noted above, pursuant to Section 154(A)(3) and Section 356(A)(3) of the CA, a company is required to retain all underlying documentations for a minimum period of six years from the date of winding up. It is not clear, however, who is responsible for maintaining the records after the winding up of the company and whether this requirement applies to the companies that have been struck off the register. The lack of a specific direction in law is partly mitigated by the tax law requirements and, in particular that of an annual filing of audited

financial statements which are prepared with a certified auditor. In addition, the authorities of Antigua and Barbuda explained that the accounting information would be available with the liquidator who in practice is typically a certified accountant and subject to the AML laws, as amended in 2016. Whilst indeed these circumstances may mitigate the potential gap, Antigua and Barbuda should clarify who the nominated persons to retain accounting records after the winding up of an entity (including domestic, non-profit and foreign companies, relevant partnerships) are and ensure that the retention requirements also apply with respect to the entities that have been struck off (see Annex 1). This concern also applies with respect to ILLCs (see paragraphs 296 to 298 and 328). When an international trust or an international foundation ceases to exist, a trustee and a foundation council respectively will be responsible for the document retention (see paragraph 328).

334. For the partnerships which are not registered as a company under the CA (see paragraph 217 above), the document retention will be regulated by Section 77 Income Tax Act and Section 22 of the 2018 TAPA. All such records have to be retained for a minimum period of seven years from the date on which the transaction took place or, if longer, until expiration of the time limit for assessment of tax for a tax period to which the records are relevant (see paragraphs 315 to 318). However, there is no requirement to maintain such records for at least five years after the relevant partnership ceased to exist.

335. Similarly, under Section 130A of the IBCA, accounting records must be maintained by IBCs for a minimum of five years from the date on which the transaction took place. However, there is no requirement to maintain such records for at least five years after the IBC ceased to exist. Antigua and Barbuda explained that in such instances the records would be available with the liquidator who in practice is typically a certified accountant and subject to the AML laws, as amended in 2016 and to some extent with the registered agent (if kept at his/her office). Whilst these circumstances may somewhat mitigate the gap in practice, **Antigua and Barbuda is recommended to amend and clarify its laws to ensure that there are clear and comprehensive legal obligations requiring IBCs (and certain type of partnerships) which cease to exist to keep reliable accounting records; meeting the requirements of the Terms of Reference in all cases for at least five years and indicating who will be the person that will be responsible for keeping the accounting books and the underlying documentation. In addition, appropriate sanctions for instances of non-compliance should be established.**

Corporate mobility and retention period

336. As described in paragraph 151 above, an IBC incorporated under the IBCA can be continued/re-domiciled in another country, as if it had been incorporated under the laws of that country, and cease to be a corporation

under the IBCA. Similarly, and as described in paragraph 295 above, under Section 81 of the ILLCA, an ILLC may become re-domiciled in a foreign jurisdiction. There is no specific requirement concerning the retention of accounting records in such circumstances. **Antigua and Barbuda is recommended to ensure that all accounting information is consistently available in relation to IBCs and ILLCs that re-domicile out of Antigua and Barbuda for a minimum period of five years.**

A.3. Banking information

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

337. The 2014 Report concluded that the legal framework in Antigua and Barbuda ensured that banking information was available for all account holders and thus the legal and regulatory framework was determined as "in place". This peer review, which evaluates the situation in Antigua and Barbuda against an enhanced standard incorporating the availability of information on beneficial owners of account holders, determined Element A.3 is "in place, but certain aspects of the legal implementation of the element need improvement".

338. The implementation in practice was rated as Compliant in the 2014 Report. The present review assesses only the legal and regulatory framework in Antigua and Barbuda. Implementation of the standard in practice will be dealt with in the Phase 2 review.

339. The conclusions are as follows:

Legal and Regulatory Framework: in place, but needs improvement

Deficiencies/Underlying factor	Recommendations
Regulation 4(3)(e) and (f) of the Money Laundering (Prevention) Regulations provide that where the customer acts or appears to act for another person, reasonable measures must be taken for establishing the identity of that person, and where the customer acts in a professional capacity as attorney, notary public, chartered accountant, certified public accountant, auditor or nominee of a company on behalf of another person, reasonable measures must be taken for the purpose of establishing the identity of that person on whose behalf the customer acts. This does not conform to the standard that requires the identification of the person behind a nominee (nominator and beneficial owners) to always be identified, the "reasonable measures" referring to the verification of the identity.	Antigua and Barbuda is recommended to ensure that accurate identity information on the nominator(s) and beneficial ownership information is available in respect of nominees where they act as the legal owners on behalf of any other person.

Deficiencies/Underlying factor	Recommendations
Although banks may have their own internal policies for customer due diligence, there is no guidance in Antigua and Barbuda on how frequently banks should update legal and beneficial ownership information on account holders.	Antigua and Barbuda is recommended to ensure that banks keep up-to-date legal and beneficial ownership information on all accounts.
The guidance provided in Antigua and Barbuda on the identification of beneficial owners of bank accounts applicable to legal entities do not specifically indicate that the controlling ownership interest applies to a person who controls the company acting directly or indirectly, and acting individually or jointly. Further, there is no specific guidance on how to identify beneficial owners of legal entities under the three-step approach. This may lead to beneficial ownership information in respect of bank accounts not being available in line with the standard in all cases.	Antigua and Barbuda is recommended to ensure that suitable guidance on identifying beneficial owners of legal entities is provided to all banks so that beneficial owners are correctly identified as required under the standard.
Whilst banks are required to identify natural persons who ultimately own or control the trust-client as part of their customer due diligence measures, the verification of identity does not extend to the settlor(s) and protector(s), contrary to the requirement of the standard.	Antigua and Barbuda is recommended to ensure that banks are required to verify the identity of settlor(s) and protector(s) of the trusts which have an account with a bank in Antigua and Barbuda as required under the standard.
The determination of beneficial owners for partnerships under the AML laws follows the definition of companies, including taking a 25% threshold in ownership or control. This approach is not necessarily in accordance with the form and structure of partnerships.	Antigua and Barbuda is recommended to ensure that beneficial ownership information in line with the standard is available in respect of partnerships.
There is no applicable definition and guidance in respect of foundations that may come from foreign jurisdictions and open accounts in Antigua and Barbuda to identify their beneficial owners in line with the standard.	Antigua and Barbuda is recommended to ensure that beneficial ownership information is determined in line with the standard in respect of all foundations having a bank account in Antigua and Barbuda.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

A.3.1. Record-keeping requirements

340. The standard was strengthened in 2016 to require that beneficial ownership information be available in respect of all account holders, which is considered in this section alongside the availability of banking information.

Availability of banking information and beneficial ownership information under the AML framework

341. The availability of banking information and beneficial ownership information with respect to account holders in Antigua and Barbuda is dealt with through the AML framework. As explained earlier in this report, it comprises three key acts, MLPA, MLPR and MLFTG. The concept of beneficial ownership information is not defined in these acts. However, beneficial ownership information is available to some extent through the "customer identification" and "evidence of identity" requirements, which require that the natural persons that ultimately own or control a customer being a legal person, trust or other legal arrangement be identified.

342. All persons carrying on banking business (including IBCs that are international banks) from or within Antigua and Barbuda must be licensed and are subject to Antigua and Barbuda's AML regulations. Domestic and international banks are subject to the AML/CFT regime. As such, both types of banks are legally obliged to obtain and maintain beneficial ownership information on account holders.

Money Laundering Prevention Act (MLPA)

343. The MLPA defines the list of AML-obliged persons, sets the requirements related to the retention of financial records and the associated penalties. A financial institution must retain, or retain a copy of: (i) each customer generated financial transaction document; and (ii) each financial transaction document, the retention of which is necessary to preserve a record of the financial transaction concerned. If a financial institution contravenes these requirements it commits an offence and is liable (a) on summary conviction to a fine not exceeding XCD 500 000 (USD 185 000); or (b) on conviction on indictment to a fine not exceeding XCD 1 000 000 (USD 370 000) (Section 12 of the MLPA).

344. According to Section 12B of the MLPA, the "minimum retention period" is six years, starting from (a) the closure of the account or deposit box, if the document relates to their opening; (b) after the day on which the transaction takes place, in any other case.

345. The MLPR establishes an obligation for banks to obtain and record identity information of customers who seek to form a business relationship or

undertake certain one-off transactions with the bank (i.e. suspicious transactions, transactions above XCD 25 000 (USD 9 250) and wire transfers).

346. Opening or operating an account in a false name is prohibited (Section 11A of the MLPA).[60] A person which commits such an offence is liable on summary conviction to a fine not exceeding XCD 500 000 (USD 185 000) or to a term of imprisonment not exceeding two years or to both.[61]

Money Laundering (Prevention) Regulations (MLPR)

347. Regulation 5 of the MLPR provides additional record keeping requirements. Records must be maintained for at least six years after the date of closure of the account and be able to be produced in a timely manner when requested by supervisory and other competent and authorised domestic authorities (Regulation 5(1)). The records that must be maintained include CDD information required in Regulation 4, records of business correspondence and transaction records (Regulation 5(2)).

348. Regulation 4 sets customer due diligence (CDD) procedures, including by requiring banks:

- to establish CDD procedures which apply when it forms a business relationship with a customer
- to complete CDD before or in the course of establishing a business relationship or conducting a one-off transaction
- to repeat the identification process when doubts arise about the veracity or adequacy of previously obtained identification data
- to not open or terminate an account or not perform a transaction where satisfactory evidence of identity is not obtained; and to not take further action if the business relationship or the one-off transaction had commenced, unless in accord with the direction from the Supervisory Authority.

349. There is no reference to a specific timeframe regarding updating beneficial ownership information. CDD measures must be applied to existing customers on the basis of materiality and risk,[62] and Regulation 5(1b) stipulates that documents, data or information collected under the CDD process are kept up to date and relevant by undertaking reviews of existing records.

60. Regulation 4(3) (ab) of the MLPR also includes anonymous accounts.
61. Section 5 of the Money Laundering (Prevention) (Amendment) Act 2018, No 8 of 2018.
62. Section 3 of the Money Laundering (Prevention) (Amendment) Regulations 2017, No 43 of 2017 amending Regulation 2(1).

An appropriate time to review records is when a transaction of significance takes place, when customer documentation standards change substantially, or when there is a material change in the way that the account is operated. If a financial institution becomes aware at any time that it lacks sufficient information about an existing customer, it should take steps to ensure that all relevant information is obtained as soon as possible.

350. Although banks may have their own internal policies for customer due diligence, there is no guidance in Antigua and Barbuda on how frequently banks should update legal and beneficial ownership information on account holders. **Antigua and Barbuda is recommended to ensure that banks keep up-to-date legal and beneficial ownership information on all accounts.**

351. As concerns the verification of identity, Regulation 4(3) requires the gathering of "satisfactory evidence of identity" as soon as is reasonably practicable (after contact is first made between a bank and its customer or in respect of an existing business relationship, at an appropriate time), using reliable, independent source documents data or information (see further paragraph 171 above).

352. Customer identification information under the AML requirements includes the identity of beneficial owners where the bank customer is a legal person, trust or arrangement:

- Measures must be taken to determine who are the natural persons that ultimately own or control the customer, and reasonable measures must be taken to understand the ownership and control structure of the customer.
- Where there is doubt that the person with the controlling ownership interest is the beneficial owner or where no natural person exerts control through ownership interests of the legal person or legal arrangement, the bank should identify the natural person (if any) exercising control through other means.
- Where, however, no natural person who ultimately has a controlling ownership interest is identified, the bank should identify the relevant natural person who holds the position of senior management official.[63]

353. This provision raises several questions concerning its practical application. First, it appears difficult for a bank to identify the beneficial owners of a customer without fully understanding its ownership structure and

63. Regulation 4(3)(h) of the MLPR as amended by the Money Laundering (Prevention) (Amendment) Regulations 2017, No 43 of 2017.

control. Second, the second step on control through means other than ownership does not refer to trusts. Third, the default position of manager refers to the impossibility of identifying a person with a "controlling ownership interest" whereas control through others means should be preferred to the default position. These issues will be further reviewed in Phase 2 (see Annex 1).

354. Regulation 4(3)(e) and (f) provide that where the customer acts or appears to act for another person, reasonable measures must be taken for establishing the identity of that person, and where the customer acts in a professional capacity as attorney, notary public, chartered accountant, certified public accountant, auditor or nominee of a company on behalf of another person, reasonable measures must be taken for the purpose of establishing the identity of that person on whose behalf the customer acts. This does not conform to the standard that requires the identification of the person behind a nominee (nominator and beneficial owners) to always be identified, the "reasonable measures" referring to the verification of the identity. **Antigua and Barbuda is recommended to ensure that accurate identity information on the nominator(s) and beneficial ownership information is available in respect of nominees where they act as the legal owners on behalf of any other person.**

Money Laundering and Financing of Terrorism Guidelines for Financial Institutions (MLFTG)

355. The MLFTG have been issued by the Supervisory Authority (ONDCP) under the powers provided by Section 11(vii) of the MLPA to make recommendations arising out of any information received and issue guidelines to financial institutions. The objective is to assist financial institutions to comply with the relevant requirements and to provide a practical interpretation of the MLPA and MLPR.

356. The MLFTG sets identity verification requirements for a natural person, as well as for legal persons and arrangements.

- Under Section 2.6.1.2 of the MLFTG, for private companies, whenever faced with less transparency, less of an industry profile, or less independent means of verification of the client identity, financial institutions should consider the money laundering or terrorist financing risk presented by the entity, and therefore the extent to which, in addition to the standard evidence, they should verify the identities of the principal beneficial owners, shareholders and/or controllers. Following the financial institution's assessment of the FT and ML risk presented by the company, the financial institution may feel it appropriate to verify the identity of appropriate beneficial owners holding 25% or more of the shares. This section suggests that CDD does not need to be systematic and would depend on the risk

assessment on the client, whereas the Act and Regulations do not appear to give an opt out from performing CDD.

- Then, "[w]here a principal owner is another corporate entity or trust, the financial institution should take measures to look behind that company or trust and establish the identities of its beneficial owners or trustees, unless that company is publicly quoted".
- Finally, "control may also rest with those who have power to manage funds or transactions without requiring specific authority to do so, and who would be in a position to override internal procedures and control mechanisms. Financial institutions should make an evaluation of the effective distribution of control in each case. What constitutes a significant shareholding or control for this purpose will depend on the nature of the company, the distributions of shareholdings, and the nature and extent of any business or family connections between the beneficial owners". The MLFTG usefully complements the Regulations, which were silent on what control through other means could cover.

357. With respect to trust, nominee and fiduciary accounts, the MLFTG specifies that measures must be taken to establish and verify the identity of the underlying beneficiary on whose behalf an applicant for business is acting (Section 2.1.42). The identity of the settler and/or beneficial owner of the funds, who provided the funds, and of any controller or similar person having power to appoint or remove the trustees or fund managers and the nature and purpose of the trust must be available to law enforcement in the event of an enquiry (Section 2.1.43).

358. Further, the MLFTG, as amended in 2017, stipulates that the financial institution should obtain the full name of the trust, nature and purpose of the trust (e.g. discretionary, testamentary, bare), country of establishment, names of all trustees, and name and address of any protector or controller, any natural person exercising ultimate effective control (including through a chain of control/ownership), and beneficiaries, or beneficiaries identified by characteristics, class or other means (Section 2.6.3). Where the trustee is itself a regulated entity or a publicly quoted company, or other type of entity the identification procedures that should be carried out should reflect the standard approach for such an entity (Section 2.6.1.2). The financial institution should verify the identity of the trustees (or equivalent) who have authority to operate an account or to give the financial institution instructions concerning the use or transfer of funds or assets. Section 2.6.3(5a), as amended in 2017, also requires that the financial institution take reasonable steps to verify the identity of the beneficial owners.

359. With respect to partnerships, the MLFTG requires verification of all partners of the firm who are relevant to the application and have individual authority to operate the account or otherwise to give relevant instructions. In the case of a limited partnership, the identity of the general partner should be verified (Section 2.1.39B). The MLFTG further explains that (i) where partnerships and unincorporated businesses are well known, reputable organisations, with long histories in their industries, and with substantial public information about them and their principals and controllers, the standard evidence for publicly quoted companies will be sufficient to meet the financial institution's obligations; (ii) other partnerships and unincorporated businesses should be treated as private companies and thus the AML-obliged persons will need to verify the identity of appropriate beneficial owners holding 25% or more of the shares. Where a principal owner is another corporate entity or trust, measures should be taken to look behind that company or trust and establish the identities of its beneficial owners or trustees, unless that company is publicly quoted.

360. Concerning foundations, the relevant section of the MLFTG ("2.6.3 Other trusts, foundations and similar entities") focuses exclusively on trusts and only limited guidance is provided with respect to clubs and societies. In the case of accounts to be opened for clubs or societies, a deposit taking institution should satisfy itself as to the legitimate purpose of the organisation by, for example, requesting sight of the constitution. The identity of all signatories should be verified and, when signatories change, care should be taken to ensure that the identity of new signatories is verified (Section 2.1.40). There is no mention of beneficial ownership.

Conclusions

361. As observed in the context of Element A.1, whilst establishing the requirement to identify beneficial owners for all legal persons, trusts or other legal arrangements, MLPA, MLPR and the MLFTG fail to provide details concerning the identification and verification of beneficial owners in accordance with the standard. More specifically:

- The guidance provided in Antigua and Barbuda on the identification of beneficial owners of bank accounts applicable to legal entities does not specifically indicate that the controlling ownership interest applies to a person who controls the company acting directly or indirectly, and acting individually or jointly. Further, there is no guidance on how to identify beneficial owners of legal entities under the three-step approach, which is sometimes confusing. This may lead to beneficial ownership information in respect of bank accounts not being available in line with the standard in all cases. **Antigua and Barbuda is recommended to ensure that suitable guidance**

on identifying beneficial owners of legal entities is provided to all banks so that beneficial owners are correctly identified as required under the standard.

- Whilst banks are required to identify natural persons who ultimately own or control the trust as part of their customer due diligence measures, the verification of identity does not extend to the settlor(s) and protector(s), contrary to the requirement of the standard.[64] **Antigua and Barbuda is recommended to ensure that banks are required to verify the identity of settlor(s) and protector(s) of the trusts-clients which have an account with a bank in Antigua and Barbuda as required under the standard.**
- The determination of beneficial owners for partnerships under the AML laws follows the definition of companies, including taking a 25% threshold in ownership or control. This approach is not necessarily in accordance with the form and structure of partnerships. **Antigua and Barbuda is recommended to ensure that beneficial ownership information in line with the standard is available in respect of partnerships.**
- There is no applicable definition and guidance in respect of foundations that may come from foreign jurisdictions and open accounts in Antigua and Barbuda to identify their beneficial owners in line with the standard. **Antigua and Barbuda is recommended to ensure that beneficial ownership information is determined in line with the standard in respect of all foundations having a bank account in Antigua and Barbuda.**

362. In the instances where a customer is acting in the capacity of an agent, the bank has the option of accepting a written assurance from the customer that evidence of the principal's identity has been recorded under the procedures maintained by the customer, but only if the bank has reasonable grounds to believe that the agent is regulated by a local or overseas regulatory authority. In the latter case, the agent must be based in a country whose laws contain provisions of a similar or higher standard of those contained in the MLPA. The bank remains liable for any customer due diligence that is not performed.

64. Whilst Section 2.1.43A(1), as amended in 2017, requires broadly that the verification of identity for trust, nominee and fiduciary accounts should include identifying the natural person exercising ultimate effective control (including through a chain of control/ownership), this requirement may not capture settlor(s) and protector(s) in all cases.

Other relevant laws

363. Banking laws add some specific record-keeping and reporting requirements, for instance in relation to loans. These records, which, as explained by Antigua and Barbuda, contain identity information, must be held and maintained at the principal office of the licensed financial institution with authenticated copies held at a secondary location for a minimum period of 20 years calculated from the date of the issuance of the document (Section 43(2) International Banking Act 2016).

364. Finally, Section 23 of the 2018 TAPA ("Obligations of financial institutions") also stipulates that a bank is required to keep account of all transactions with a client, including the client's identity, to include the beneficial owner. The "beneficial owner" is defined as "the natural owner or person who ultimately owns or controls a client and or natural person on whose behalf a transaction is being conducted". It also includes those persons who exercise ultimate effective control over a legal person or legal arrangement. With no further guidance provided, these additional requirements do not alter the conclusions and recommendations made earlier in this section with respect to the AML framework.

Oversight and enforcement

365. As indicated above, the MLPR require all persons carrying on a banking business to maintain records containing details relating to all transactions carried out in the course of carrying out that business. Any financial institution that fails to undertake the customer due diligence measures prescribed under the MLPR is liable upon summary conviction to a fine not exceeding XCD 500 000 (USD 185 000), or on conviction on indictment to a fine not exceeding XCD 1 000 000 (USD 370 000) under Section 12(6) of the MLPA.

366. The supervisory function is conducted by ONDCP alone and, on occasions, jointly with the FSRC, pursuant to a 2010 MoU. Antigua and Barbuda reported that as a result of enforcement action, in respect of CDD for the banking sector for AML/CFT purposes, the compliance of domestic banks and international banks has been 58% and 75% respectively. The assessment of the implementation and enforcement of obligations on availability of banking information will be assessed in Phase 2.

Part B: Access to information

367. 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).

368. The 2014 Report concluded that Antigua and Barbuda had in place the legal and regulatory framework which gave to its competent authority access powers that cover all relevant persons and information. Whilst the legal and regulatory framework remains largely unchanged since 2014, this review identified some deficiencies which emerged as a result of the legislative changes in the Tax Information Exchange Act (TIE Act) introduced in 2020.

369. At the time of the 2014 peer review, in practice, Antigua and Barbuda's competent authority had not exercised its access powers to obtain information from third parties, since it considered that none of the few EOI requests it had received required it. The 2011 amendments, which had been introduced to the laws on the international business sector and reviewed in the supplementary review in 2012, to remove the impediments relating to the access powers of the competent authority, were not tested in practice. Accordingly, the 2014 Report recommended that Antigua and Barbuda should monitor the effectiveness of its access powers to obtain information from third parties when it receives EOI requests requiring the use of these access powers. Antigua and Barbuda's system of access to information was rated as Largely Compliant with the standard.

370. Concerning the practice, whilst Antigua and Barbuda's competent authority has now used its access powers to obtain the requested information from third parties, the assessment team is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

371. The conclusions are as follows:

Legal and Regulatory Framework: in place, but needs improvement

Deficiencies/Underlying factor	Recommendations
Section 5A on the authority to obtain information from residents, which was inserted in the Tax Information Exchange Act in 2020, refers only to persons in possession of the requested information, without mentioning the information in the custody or control of the person, contrary to the other sections of the law and the standard, which covers both possession and control. The sanctions, correspondingly, are limited to persons "in possession" of the requested information and do not refer to information in the "custody or control".	Antigua and Barbuda is recommended to align the specific powers to obtain information from residents (Section 5A) with the general access powers under the Tax Information Exchange Act to cover persons in possession, custody or control of the requested information, so as to ensure that the specific powers are not interpreted to limit the general access powers. Antigua and Barbuda is also recommended to ensure that sanctions are applicable against a person in control of the requested information that would fail to provide it.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

The Phase 2 recommendations issued in the 2014 Report are reproduced below for the reader's information.

Deficiencies/Underlying factor	Recommendations
The competent authority did not exercise its access powers to obtain information from third parties as it considered that this was not required to reply to the few EOI requests received by the competent authority during the review period. In addition, the amendments introduced to the IBCA, ILLCA, IFA and the ITA that were reviewed in the supplementary review in 2012 to remove the impediments relating to the access powers of the competent authority were not yet tested in practice.	Antigua and Barbuda should monitor the effectiveness of its access powers to obtain formation from third parties when it receives EOI requests requiring the use of these access powers.

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

Accessing information for exchange of information purposes

372. Pursuant to Section 2(2) of the TIE Act 2002, the Commissioner of the Inland Revenue Department (IRD) is the authority designated to exercise the powers and perform the duties of the competent authority for international exchange of information in tax matters. The TIE Act covers access to and exchange of information in respect of requests made pursuant to all EOI agreements that Antigua and Barbuda has entered into.

373. According to the TIE Act, the competent authority can access information to exchange it with a "Requesting State". "Requesting State" and "Requested State" which are together the "Contracting State" providing or requested to provide information. In turn, "Contracting States" mean the Government of a "foreign country" and the Government of Antigua and Barbuda. Antigua and Barbuda's competent authority clarified that "State" and "country" are to be interpreted as including a "jurisdiction" along with a "state", and both words can be used interchangeably. The competent authority further observed that the emphasis should be on the word "Government" which will appoint a competent authority, and the two competent authorities will exchange information accordingly.

General access powers

374. The Commissioner's powers to access information for EOI purposes are stipulated by the TIE Act and can be exercised when he/she receives a valid request (see section C.1). The combined effect of Section 5 ("Authority to obtain information"), Section 5A (introduced in 2020; "Authority to obtain information from residents"), Section 6 ("Power to require production of information") and Section 7 ("Power to enter premises to obtain information") of the TIE Act provides the Commissioner with the powers to make enquires, inspect documents, and perform search and seizure.

375. To answer an EOI request, in application of Section 6 of the TIE Act, the Commissioner will issue a notice requiring the information holder to deliver the specified information. The notice will contain the relevant details of the information sought. Antigua and Barbuda clarified that in formulating the notice, the competent authority will utilise the information submitted by the requesting authority, but not submit the actual request. The person will have up to 14 days from the date of service of the notice to produce the information. The Commissioner may grant an extension. The use of judicial proceedings, under Section 7 of the TIE Act, is limited to circumstances where a warrant needs to be obtained to enter upon premises for the purpose of enforcing a notice issued under Section 6.

376. The powers of the Commissioner to obtain relevant information to respond to an EOI request are applicable regardless of the type of information sought (i.e. whether it is ownership, banking, accounting or other information) or the person from whom the information is sought (i.e. bank, company, individual, etc.). According to Section 5(3) of the TIE Act, information can be obtained from financial institutions, nominees, or persons acting in an agency or fiduciary capacity (see B.1.5 below). Section 4 of the Law (Miscellaneous Amendment) Act, No. 3 of 2020 introduced an explicit acknowledgement that this power applies also to notaries, accountants and tax advisors, to strengthen the requirements in compliance with the EOIR standard.

377. Further, Section 4 of the Law (Miscellaneous Amendment) Act, No. 3 of 2020, introduced Section 5A to the TIE Act which was intended to enhance Section 5, making it more robust and fully in line with the Global Forum's requirements set in Element B.1.1. Section 5A specifically provides that the competent authority is able to:

- require any corporate service provider or financial institution to supply information which may include particulars on legal ownership information, identity information and accounting information for specific exchange of information for tax purposes
- require any resident person who has had any commercial dealings with a company to supply particulars
- require a company, or person connected with the company to disclose ownership information for specific exchange of information for tax purposes.

378. Section 5A refers exclusively to the information which is "in possession" of the specified persons. This raises concerns as to how Section 5A affects the general access powers already contained in Sections 5, 6 and 7 of the TIE Act. Antigua and Barbuda authorities consider that the words "control" and "possession" are synonyms and explained that the purpose of Section 5A is to enhance the competent authority's powers and it will not limit the general access powers under TIE Act. However, some other provisions of the TIE Act clearly refer to not only "possession" but also to "custody and control" (Sections 4, 5 and 6). In addition, Section 5A provides the competent authority with the power to request information from "any resident person", whereas Section 6 refers to any information which is under "the possession, custody or control of a person within Antigua and Barbuda". The internal inconsistency of the TIE Act may lead to difficulties in collecting appropriate information in all cases. Therefore, **Antigua and Barbuda is recommended to align the specific powers to obtain information from residents (Section 5A) with more general access powers under Sections 5, 6 and 7 TIE Act to cover persons in possession, custody or control of the**

requested information, so as to ensure that the specific powers are not interpreted to limit the general access powers.

Accessing information held by another public authority

379. The TIE Act contains specific provisions on accessing information from public authorities (Sections 5(1) and 5(5) of the TIE Act).

380. The 2011 and 2014 Reports noted a difference in handling public and non-public information, based on the interaction of the TIE Act with other legislation. With respect to public information held by a government body or agency, the Commissioner has the authority to transmit the information directly to the EOI partner. Where the information was non-public information held by a government body or agency, the Commissioner would transmit the information only to the extent and under the same conditions, as such copies would be available to the Commissioner under the Income Tax Act.

381. The 2014 Report expressed concerns regarding Section 47(1) of the Income Tax Act, which governed the transmission of non-public information by government bodies and agencies to the Commissioner (paragraphs 203-204). Statutory secrecy obligations applicable to public officers were not always overridden by the Commissioner's powers to obtain information for income tax purposes and thus for EOI purposes too.

382. Section 47(1) of the Income Tax Act was repealed by the Tax Administration and Procedures Act No. 19 of 2012 (the 2012 TAPA), removing the restraint on the access powers of the Commissioner to non-public information. The 2012 TAPA was in turn repealed by the Tax Administration and Procedures Act No. 12 of 2018 (2018 TAPA), which provides the revised authority of the Commissioner of the Inland Revenue concerning non-public information.

383. At present, Section 10 of the 2018 TAPA ("Confidentiality") contains a specific exception for EOI purposes which overrides statutory secrecy obligations and provides as follows:

> (1) Except as provided in subsections (3), (4), or (5), every person having a duty under this Act or being employed in the administration of this Act, shall regard as secret and confidential all information and documents the person has received in an official capacity in relation to a specific taxpayer, and may disclose that information only to the following persons: …
>
> (d) tax authorities of a foreign country, in accordance with an international agreement; …

> (2) If a person is permitted to disclose information under subsection (1), the person shall maintain secrecy except to the minimum extent necessary to achieve the object for which disclosure is permitted, otherwise section 84 applies [which envisages sanctions in the case of breach].

384. In conclusion, the reservation made in the 2014 Report is no longer relevant due to the changes in the laws. The new provision which introduces a specific exception for exchange of information purposes and lifts the statutory secrecy "to the minimum extent necessary" is in principle consistent with the standard. Antigua and Barbuda confirmed that "to the minimum extent necessary" is to be interpreted in compliance with the treaty obligations related to the exchange of information for tax purposes. The application of these provisions and the assessment whether they impede effective EOI will be assessed in Phase 2 (see Annex 1).

Accessing beneficial ownership information

385. Beneficial ownership information is available through taxpayers, information holders and relevant government authorities. The access powers are based on Sections 5, 5A, 6 and 7 of the TIE Act. In addition to the concerns already identified above (see paragraph 378), Section 5A of the TIE Act also added, amongst others, the definition of "accounting information" and "beneficial ownership", which are narrowly drafted. "Accounting information" is defined as "data or information about a company's financial transactions" and "beneficial ownership" means "a person who enjoys the benefits of ownership of property or an interest in property but who may not be registered or listed as the legal owner of the property". Antigua and Barbuda authorities consider that Section 5A augmented the existing definitions and these definitions will only serve to enhance the access powers. With respect to beneficial ownership information, Section 5A merely distinguishes beneficial ownership from legal ownership and in no way does this replace the existing FATF definitions in other laws. However, as indicated above, the internal inconsistency of the TIE Act may lead to difficulties in collecting appropriate information in all cases. Therefore, Antigua and Barbuda should ensure that the definitions included in Section 5A are not interpreted to limit the general access powers and the practice in this regard will be evaluated in Phase 2 (see Annex 1).

386. One of the key sources of beneficial ownership information in Antigua and Barbuda is a central registry for ownership (beneficial) and identity information, established by virtue of the amendment introduced by the Law (Miscellaneous Provisions) Act (No. 2) of 2017. The registry is held at the FSRC, which, as noted above, is responsible for regulation, supervision and monitoring of the offshore sector.

387. As described under the sub-heading "Accessing information held by another public authority", the competent authority has the power to access information from a government authority, which includes the FSRC. In November 2016, the FSRC signed a Memorandum of Understanding (MoU) to facilitate access to information for EOI purposes. The IRD may request information from the FSRC orally, provided such communication is confirmed in writing within three business days of the oral request. The request must specify: (i) the information sought by the IRD; (ii) a general description of the matter which is the subject of the request; (iii) how the information requested will assist the IRD in the performance of its statutory duties; (iv) the purpose for which the information is sought; and (v) the desired time period for reply and where appropriate, the urgency of the request. The MoU provides that the FSRC will respond to a request within seven business days either by providing the information requested, indicating a time frame within which such information will be provided, or denying the request. A request may be denied where the request would require the requested authority to act in a way that would violate the statutory obligations of that authority; or where the request is not in accordance with the provision of this MoU. Antigua and Barbuda has not indicated whether and in which cases a request by the competent authority to get information from the FSRC in order to answer an EOI request could be denied. This issue should be further clarified in Phase 2 (see Annex 1).

Accessing banking information

388. The access to banking information is based on the provisions described above. Under Section 6(1) of the TIE Act, the Commissioner issues a written notice to the person referred to in Section 4(2)(c) directing such person to deliver to the Commissioner the requested information. According to Section 5(3) of the TIE Act, information can be obtained from financial institutions. Section 5A(2) of the TIE Act, which, as explained by Antigua and Barbuda, was introduced to enhance the access powers, stipulates that information can be requested from financial institutions and it "may include legal ownership information, identity information and accounting information which may be in their possession for exchange of information for tax purposes". To some extent, the concerns identified above with respect to the narrow definitions included in Section 5A may also be of relevance with respect to banking information (see paragraph 385). The implementation of this section in practice will be reviewed in Phase 2 (see Annex 1).

389. The Exchange of Information Manual, which was put in place on 1 March 2017 (the 2017 EOI Manual), sets a procedure for gathering banking information (Section 4.1). In particular:

- The EOI Unit Manager should check that sufficient information has been received to identify the account holder and the bank or financial

institution. If the request is incomplete, the EOI Manager calls or sends an e-mail immediately to the foreign CA asking for the missing information.

- Having checked the request, the EOI Manager should allocate the request to an EOI Officer, who will prepare the request to the bank. Formal requests to banks need to be approved and signed by the Commissioner.
- A sample letter is provided by the 2017 EOI Manual. The template provides the space for indicating the name of the accountholder and the account number. Antigua and Barbuda clarified that this template corresponds with the requirement of the TIE Act, Section 4(d), in that the identity of the taxpayer in respect of whom the information is sought needs to be provided by the requesting party but the 2017 EOI Manual explains that where the requesting competent authority does not provide the name of the taxpayer other information sufficient to identify the taxpayer will suffice. The template also indicates that the access powers are provided under Section 5A of the TIE Act, which underscores the importance of the special access powers envisaged by this section.
- The letter should allow the bank 14 days from the date of receipt of the letter to provide the requested information or to explain why it is unable to do so. The EOI Officer should allow 3 days for delivery of the letter and set an alert for a review date for 14 days later in the EOI database. If the information has not been received within the specified deadline, the EOI officer should follow up immediately with the bank by phone call or e-mail.
- If a bank needs additional time to submit information, it can request an extension, which will not be more than 30 days from the date of receipt of the original notice. The EOI Officer should also contact the bank to explain that a subpoena or summons will be issued if a reply is not received before the specified deadline. If the bank does not reply to a request within the period specified, a subpoena or summons should be prepared by the EOI Manager, to be signed by the Commissioner and then delivered to the bank by registered mail. If the bank fails to comply with the subpoena or summons, the EOI Unit Manager should prepare the papers for submission to the Legal Division. At the same time, the requesting State should be notified that the bank has failed to provide the information requested and that the matter has been referred to the Legal Division for enforcement action.

390. The extent of the identifying information to be provided by the requesting authority, on the account holder and the bank, is unclear and might diverge from the standard. The effectiveness of access to banking information, including the application of Section 5A of the TIE Act, and enforcement mechanisms will be assessed in Phase 2 (see Annex 1).

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

391. The information gathering powers of the Commissioner are not subject to Antigua and Barbuda requiring such information for its own tax purposes. The Commissioner may exercise these information-gathering powers upon the receipt of a valid request pursuant to an EOI agreement. The subject of a valid request does not need to concern the implementation of Antigua and Barbuda tax laws.

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

392. The legislation on enforcement has not changed since the 2014 Report (paragraphs 208-213), except for two changes explained below.

393. The TIE Act grants the Commissioner compulsory powers to compel the production of information. The Commissioner may require the production of information by issuing a notice or may use a warrant to enter premises to access the information. The TIE Act, Section 5, also allows the Commissioner to obtain relevant information by way of witness deposition or certified copy.

394. The Commissioner or an authorised officer may apply to a magistrate for a search warrant to enforce the notice issued under Section 4(2) of the TIE Act. The magistrate may issue the warrant if the magistrate is satisfied that there are reasonable grounds to suspect that an offence has been, is, or will be committed against the TIE Act that will endanger the delivery of the information to the Commissioner (Section 7 of the TIE Act). The warrant would be served within 48 hours of the grant of the order.

395. The TIE Act establishes offences where a person (as listed in Section 11(1) to 11(3) of the TIE Act):

- fails to deliver the information required pursuant to a notice
- gives false evidence or produces false books, papers, records or other tangible property pursuant to a notice
- wilfully obstructs the execution of a search warrant

- wilfully tampers with, or alters any information or any part of such information so that it is false when received by the Commissioner; or
- wilfully alters, destroys, damages or conceals any information requested under a notice.

396. Under Section 11 of the TIE Act, such offences carry on summary conviction fines of up to XCD 5 000 (USD 1 850) or imprisonment for a term not exceeding six months or both. The maximum penalties were doubled by Section 4 of the Law (Miscellaneous Provisions) Act, No. 3 of 2020, which increased the fine to XCD 10 000 (USD 3 700) and the imprisonment of one year respectively. Again, Section 11(4) of the TIE Act seems to apply to persons covered by Section 5A that are only "in control" of the information. The liability envisaged by the new version of Section 11(4) of the TIE Act thus appears to be limited in scope and may be read as applying to a person when the required information is in his/her possession and would not cover the instances where the information is in his/her control.

397. Therefore, **Antigua and Barbuda is recommended to ensure that sanctions are applicable against a person in control of the requested information that would fail to provide it.**

398. Further and in addition, the access powers of the competent authority have been strengthened indirectly. Section 130A of the IBCA was amended in March 2017 to require an IBC to respond to a request from the FSRC for accounting records. Section 335 of the IBCA was also amended to allow the Director of the IBC Registry to strike an IBC from the register for failing to comply with the request from FSRC. Under Section 5 of the TIE Act the Commissioner may, in the execution of any request, require an officer in the employment of the Government or any local Government or other public body or statutory authority, including the FSRC, to supply such particulars as may be required for the purposes of the TIE Act and which may be in the possession of such officer. The competent authority and FSRC have an MoU in place, as described in paragraph 387 of this report, to facilitate the exchange of information. The effectiveness of these provisions in practice will be assessed in Phase 2 (see Annex 1).

B.1.5. Secrecy provisions

399. According to Section 5(3) of the TIE Act, information can be obtained from financial institutions, notaries, accountants, tax advisors, nominees, or persons acting in an agency or fiduciary capacity (not including information that would reveal confidential communications between a client and an attorney, solicitor or other legal representative where the client seeks legal advice). The confidentiality provisions applicable to various types of information held by relevant entities can be found in the various governing acts.

Bank secrecy

400. Section 178 of the Banking Act 2016 provides that no person who has acquired knowledge in his/her capacity as staff or in his/her official dealings with a bank or an insurer shall disclose to any person or government authority the identity, assets, liabilities, transactions or other information in respect of a customer; however, the person may do so under the provisions of any other law of Antigua and Barbuda, which includes the TIE Act.

401. Section 5(3) of the TIE Act provides that notwithstanding the provisions of any other law, the Commissioner will obtain and provide information held by financial institutions. In addition, Section 6(7) of the TIE Act provides that a person who provides information to the Commissioner pursuant to a notice requiring them to do so, has an absolute defence to any claim brought against him/her in respect of any action taken in compliance with the notice. Confidentiality provisions in the Banking Act 2016 therefore do not affect EOI.

Offshore entities

402. The legal framework for the offshore sector sets clear confidentiality obligations, that are overridden for EOI purposes since the entry into force of relevant amendments in December 2011.

403. As noted in the 2014 Report (paragraphs 218-219), the IBCA (in respect of international banks and trusts only), ILLCA, IFA, and the ITA contain confidentiality provisions that expressly prohibit the disclosure of key information and documents relating to the entity. In the case of international trusts, international foundations and international limited liability companies (ILLCs), confidential information includes the founding documents (trust deed, foundation charter, ILLC operating agreement, etc.), documents relating to the financial information of the entity (assets, income, expenses, etc.), documents relating to the exercise of any function or duty of key personnel (trustee, protector, manager, member, etc.) and documents relating to the rights, benefits or interests of settlors, beneficiaries, founders, and ILLC members.[65] In the case of an IBC that is an international bank or an international trust company, confidential information includes any business affairs of a customer.[66]

404. The IBCA, ILLCA, IFA and the ITA, as amended in 2011 and reviewed in the supplementary review, spell out circumstances under which these confidentiality provisions may be lifted. The IBCA, IFA, ILLCA and the ITA expressly cater to situations where disclosure may be needed for EOI

65. Section 91 of the ILLCA, Section 87 of the IFA and Section 87 of the ITA.
66. Section 244 of the IBCA.

for tax purposes and state that confidential information may be disclosed (Section 88 of the ITA, Section 88 of the IFA, Section 92 of the ILLCA and Section 281A of the IBCA). The relevant provisions were reproduced in paragraph 220 of the 2014 Report and have not changed since that peer review.

Professional secrecy

405. Under the TIE Act, all professionals acting as notaries, accountants, tax advisors, nominees or in an agency or fiduciary capacity must provide information as requested by the Commissioner, but not including information that would reveal confidential communications between a client and an attorney, solicitor or other legal representative where the client seeks legal advice (Section 5(3)). This would apply even to lawyers when they act as nominees, agents or in any other fiduciary capacity. Notaries, accountants and tax advisors have been included in this provision following the amendment made by Section 4 of the Law (Miscellaneous Provisions) Act, No. 3 of 2020.

406. The domestic scope of information subject to legal professional privilege can be found in the Legal Professions Act 1997, Section 15: "An attorney-at-law shall never disclose, unless lawfully ordered to do so by the Court or required by statute, what has been communicated to him in his capacity as an attorney-at-law by his clients or his client's attorney-at-law" and this duty not to disclose extends to his/her partners, to junior attorneys-at-law assisting him/her and to his/her employees.

407. Antigua and Barbuda confirmed that there are no confidentiality or secrecy provisions, including legal professional privilege, that further prohibit or restrict disclosure. The reference to legal professional privilege is limited only to the extent of receiving independent and personal legal advice. This is outside of giving effect to a legal requirement to obtain information. Therefore, notwithstanding legal privilege, if an activity is conducted in furtherance of a legal obligation in law, for instance to keep legal and beneficial ownership of companies and partnerships, that information is not subject to nor can it benefit from legal professional privilege.

408. Accordingly, the conclusion of the 2014 Report that the scope of legal professional privilege in Antigua and Barbuda would not interfere unduly with effective EOI for tax purposes (paragraph 222) remains unchanged.

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.

409. The 2014 Report, concluded that the rights and safeguards that apply to persons in Antigua and Barbuda were compatible with effective exchange of information. It determined that Element B.2 was in place and this review arrives at the same conclusion.

410. Further, the 2014 Report rated Element B.2 as Compliant. The practical implementation of the legal framework will be assessed in Phase 2.

411. The conclusions are as follows:

Legal and Regulatory Framework: in place

The rights and safeguards that apply to persons in Antigua and Barbuda are compatible with effective exchange of information.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

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

Notification and exceptions to prior notification

412. Whenever the Commissioner issues a notice to a holder of information pursuant to an EOI request, he/she may, under Section 6(2) of the TIE Act, send a copy of the same notice to the taxpayer concerned, unless he/she is of the opinion that the service of such a notice may lead to the obstruction of any investigation for which the information is requested or unduly delay the effective exchange of the information.[67]

413. The 2014 Report noted that the competent authority did not exercise its access powers to obtain information from third parties provided under Sections 6(1) and 7 of the TIE Act during the review period (paragraph 235 of the 2014 Report). Consequently, notifications had not been issued and the

67. Prior to 2011 amendments, the TIE Act contained a mandatory notification requirement with no exceptions.

exception to the requirement to inform the taxpayer of the written notice issued under Section 6(1) of the TIE Act was never invoked in practice.

414. Accordingly, the 2014 Report included an in-text recommendation that Antigua and Barbuda should put in place clear guidelines to ensure that the exception to the prior notification requirement may be invoked expeditiously by the competent authority when they receive an EOI request that requires the exercise of access powers under Sections 6(1) and 7 of the TIE Act (paragraph 235 of the 2014 Report).

415. Since then, Antigua and Barbuda put in place the 2017 EOI Manual which indicates that the tax administration does not notify a taxpayer that it has received a request to exchange information, except in certain cases as per Section 6(2) of the TIE Act (see paragraph 466 below). Even where an exception may apply, the taxpayer should not be notified when the requesting competent authority has specified that they should not be informed. The implementation in practice of notifications and exceptions to notifications will be reviewed during Phase 2 (see Annex 1).

Appeal rights

416. Any person to whom a notice has been issued, or any person affected by such notice, may apply to a Judge in Chambers within 14 days commencing from the date the notice is served on such person, for a review of the Commissioner's decision to issue such notice (Section 9 of the TIE Act).

417. Upon receipt of any information pursuant to a notice or the execution of a search warrant, the Commissioner is required to hold the information for a period of 20 days without disclosing the information to any person (Section 8 of the TIE Act). If a taxpayer or interested person objects to the exchange of information, or seeks a judicial review of the Commissioner's actions, the Commissioner may extend the 20 days holding period at his/her discretion. During this period, the information is not released to the requesting party.

418. The 2014 Report observed that a judicial review by a Judge in Chambers would conceivably result in a more rapid judicial process relative to an open court hearing, and it did not appear that the 20-day holding period or the possibility of judicial review would alone compromise the effective exchange of information or Antigua and Barbuda's ability to respond in a timely manner (paragraph 234). At that time, the 20-day holding period requirement as prescribed in Section 8 of the TIE Act, as well as the judicial review procedure, had never been invoked in practice.

419. Accordingly, the 2014 Report contained an in-text recommendation that Antigua and Barbuda should monitor the 20-day holding period

and the judicial review procedure, when they receive EOI requests that require the use of these procedures, to ensure that these procedures do not impede effective EOI. This peer review however does not review the practice of implementation. This situation will be reassessed during Phase 2 (see Annex 1).

Part C: Exchanging information

420. Sections C.1 to C.5 evaluate the effectiveness of Antigua and Barbuda's network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all Antigua and Barbuda's relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, and whether Antigua and Barbuda's network of EOI mechanisms respects the rights and safeguards of taxpayers.

C.1. Exchange of information mechanisms

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

421. The 2014 Report concluded that Antigua and Barbuda's comprehensive network of EOI relationships generally provided for effective exchange of information in line with the standard. Element C.1 was determined as In Place and this continues to be the case.

422. With the signature of the Multilateral Convention on 27 July 2018, Antigua and Barbuda has an EOI relationship with 142 jurisdictions. The Multilateral Convention entered into force in Antigua and Barbuda on 1 February 2019.

423. Antigua and Barbuda has 23 bilateral EOI agreements with jurisdictions, which all participate in the Multilateral Convention.[68] Therefore, these bilateral agreements are not reviewed in greater detail in this report, as the EOI relationship under the Multilateral Convention meets the standard and can be used by Antigua and Barbuda and its EOI partners to exchange information to the standard.

68. Two bilateral double tax conventions (DTCs) and 21 tax information exchange agreements (TIEAs) – of which a total of 19 are in force (see Annex 2).

424. Finally, Antigua and Barbuda is a signatory to the CARICOM Income Tax Treaty (CARICOM treaty),[69] an international agreement concluded among Caribbean jurisdictions for the avoidance of double taxation and prevention of fiscal evasion with respect to income taxes. It largely overlaps with the Multilateral Convention, except for Guyana and Trinidad and Tobago, with which it is the only applicable EOI instrument. The CARICOM treaty was ratified by Antigua and Barbuda on 6 July 1994 and entered into force in 1999.

425. The 2014 Report raised no issues in practice with respect to the application of the EOI agreements by Antigua and Barbuda in the review period 2010-12 and rated this element as Compliant. The assessment team is not in a position to issue a rating on this element, as it involves issues of practice that will be dealt with in the Phase 2 review.

426. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in Antigua and Barbuda's exchange of information mechanisms.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

C.1.1. Foreseeably relevant standard

427. The standard for exchange of information envisages information exchange to the widest possible extent, but does not allow speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance". It does not allow "fishing expeditions".

428. All Antigua and Barbuda's EOI relationships provide for the exchange of information that is foreseeably relevant to the administration and enforcement of the domestic tax laws of the Contracting Parties.[70]

69. The CARICOM treaty covers Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago.

70. The DTC with Switzerland restricts EOI to the purposes of carrying out the DTC provisions. The 2014 Report recommended its update at the earliest opportunity.

Clarifications and foreseeable relevance

429. The 2014 Report concluded that Antigua and Barbuda's competent authority interprets the standard of foreseeable relevance in accordance with the OECD Model Tax Convention (paragraph 247). The issues of practice however are not dealt with under this peer review and will be addressed in the Phase 2 review.

430. The following information needs to be included in the request for information under Section 4(2) of the TIE Act (as amended):

a. the particulars of the information sought as identified in the request

b. the description of the requested information

c. the particulars that the information requested is under the possession, custody or control of a person within Antigua and Barbuda

d. the identity of the taxpayer, whether it is an individual request or a group request, in respect of whom the information is sought[71]

e. a statement showing the relationship of the information to the identified taxpayer

f. the purpose for which the information is required (for example, for determining, assessing and collecting taxes or for investigation or prosecution of tax offences or offences involving the contravention of a tax administration law)

g. where the request is in respect of determining, assessing and collecting of tax, the law imposing the tax must be specified; where the request involves contravention of tax administration, the law contravened or believed to have been contravened must be specified

h. a statement that the information being sought is foreseeably relevant or material to the enforcement in the requesting State of the domestic laws in respect of determining, assessing and collecting taxes or for

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Antigua and Barbuda is engaged in preliminary assessment of the DTC. However, as Antigua and Barbuda and Switzerland can now exchange of information to the standard under the Multilateral Convention, the in-text recommendation is removed.

71. Interpreted, according to the 2017 EOI Manual, in accordance with the commentary to Article 5(5) TIEA. Further, the 2017 EOI Manual sets the procedures to gather banking information (Section 4.1). The EOI Unit Manager should check that sufficient information has been received to identify the account holder and the bank or financial institution. If the request is incomplete, the EOI Unit Manager should call or send an e-mail immediately to the foreign competent authority asking for the missing information.

the prosecution of tax offences or involves the contravention of tax administration law

i. (i) that the information relates to the taxable period specified in the request and that the period in respect of which the information is sought is not barred by the applicable statute of limitation of the requesting State.

431. The relevant details used to include the provision of a statement by the requesting State that the information sought is in Antigua and Barbuda ("the particulars that the information sought is in Antigua and Barbuda and that a person specified in the request has or may have the information in his/her possession, custody, or control"). This requirement was amended in 2011 and the requesting jurisdiction now only has to provide a statement that the requested information is under the possession, custody or control of a person within Antigua and Barbuda (Section 4(2)(c) of the TIE Act). However, in their responses to the Assessment Team, whilst the Antigua and Barbuda authorities observed that the requesting jurisdiction does not have to establish that the requested information is in the possession, custody or control of a person within Antigua and Barbuda but just be able to connect the person to Antigua and Barbuda, they also referred to the pre-2011 drafting of the provision. As laws are not routinely consolidated in Antigua and Barbuda, as and when amendments are made, this can occasionally raise this type of issue (and the amending legislation – the Tax Information Exchange (Miscellaneous Amendments) Act 2011 – does not seem to be available online).[72] The awareness and interpretation of the TIE Act will be reviewed in Phase 2 of the review (see Annex 1).

432. When a request is received, the Commissioner will examine the request to verify its validity by checking if there is an existing EOI arrangement with the requesting State. As noted earlier in Part B, the competent authority of Antigua and Barbuda issued guidelines to assist the EOI officers in identifying the validity of the requests (2017 EOI Manual). If the information provided is clear and specific, and if the request deals with periods which are covered by the EOI instrument, then the request is considered valid. In instances where the request is not specific or clear, then the competent authority reaches out by way of email communication to the EOI partner for clarification. Antigua and Barbuda observed that the competent authority would always try to communicate with the requesting jurisdiction if the request is unclear. Declining a request is not normally carried out. The practical implementation of the standard will be further reviewed in Phase 2.

72. Legal Affairs Laws Website laws.gov.ag managed by the Gazette Division of the Ministry of Legal Affairs contains a disclaimer that not all legislation might be available.

Group requests

433. There is no impediment in the TIE Act, or other restriction, for making or responding to a group request. The TIE Act was amended in 2020 to introduce the notion of group requests in Section 4(2)(d) which now requires that the request for information includes "the identity of the taxpayer, whether it is an individual request or a group request, in respect of whom the information is sought". The 2017 EOI Manual further indicates that "[a] "group request" is a request for information on two or more people with identical behaviour patterns who are identifiable by means of precise details" and that for banking information "[t]he EOI Unit Manager should check that sufficient information has been received to identify the account holder and the bank or financial institution". Therefore, the TIE Act requires the identity of the taxpayer to be provided even for a group request and the 2017 EOI Manual refers to group requests as covering any persons identifiable by "precise details", whereas the EOI Unit Manager must ensure he/she has sufficient data to identify the account holder and bank or financial institutions. These, alone or cumulatively, may result in a group request being rejected because they do not contain sufficient identification detail (e.g. name), whereas the requesting jurisdiction may have provided sufficient information to satisfy the standard for group requests. Antigua and Barbuda should ensure that its law and guidance are sufficiently clear to enable processing of requests on a group of taxpayers which are not individually identified ("group requests") as required by the standard (see Annex 1). The implementation in practice will be evaluated in Phase 2, especially on the identification of the members of the group.

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

434. For exchange of information to be effective, it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason, the standard for exchange of information envisages that EOI mechanisms will provide for exchange of information in respect of all persons.

435. All of Antigua and Barbuda's EOI relationships provide for EOI in respect of all persons.[73]

73. Article 20(1) of the DTC with Switzerland provides for exchange of information only for the purposes of "carrying out the provisions of the present Convention in relation of the taxes which are the subject of the Convention". Since the DTC provisions only apply to residents of either Switzerland or Antigua and Barbuda,

C.1.3 and C.1.4. Obligation to exchange all types of information, including in absence of a domestic tax interest

436. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement is not consistent with the standard.

437. All of Antigua and Barbuda's TIEAs and the Multilateral Convention provide for the exchange of information held by financial institutions, nominees, agents; and ownership and identity information. They also contain provisions similar to Article 5(2) of the 2002 Model Agreement on EOI for Tax Matters, which obliges the Contracting Parties to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested Party does not have a domestic interest in the requested information.

438. The CARICOM treaty does not contain similar provisions.[74] The commentary in the convention indicates that while paragraphs 4 and 5 of Article 26, added to the Model Tax Convention in 2005, represent a change in the structure of the Article, they should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information. Antigua and Barbuda's domestic laws allow it to access and exchange bank and ownership information even in the absence of wording akin to Article 26(5). There are also no domestic tax interest restrictions on Antigua and Barbuda's powers to access information in EOI cases (see Part B above). In view of this, whether the CARICOM treaty is compliant will depend on Antigua and Barbuda's EOI partners' respective domestic laws.

439. The obligation to exchange all types of information with the two partners who are not participating in the Multilateral Convention is not clearly available as:

- In Trinidad and Tobago's latest EOIR review report, serious deficiencies were found regarding the access powers of the competent authority. This resulted in Element B.1 being assessed as "not in place". This suggests that Trinidad and Tobago cannot exchange all types of information under its domestic law.

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exchange of information in respect of all persons is not possible under this DTC. This is now compensated through the Multilateral Convention.

74. The same applies to the DTC with Switzerland, but as noted in the previous footnote, it is compensated by the Multilateral Convention.

- Guyana having joined the Global Forum in 2016, its legislation has not been reviewed yet and no information is available about the competent authorities' powers to access information for purpose of EOI, so it is not possible to confirm that the CARICOM treaty with regard to Guyana would be applied in accordance with the standard.

440. The 2014 Report therefore recommended Antigua and Barbuda to work with CARICOM partners to ensure exchange of information to the standard can occur under that agreement. Antigua and Barbuda attended various events, seeking to increase the awareness of the necessity of amending the agreement. However, Antigua and Barbuda observed that the change would require regional effort and all member states must agree to the amendment before any such amendment can be given effect. Antigua and Barbuda should continue working with the relevant treaty partners to remove these restrictions (see Annex 1).

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

441. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The principle of dual criminality provides that assistance for criminal purposes 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.

442. All of Antigua and Barbuda's TIEAs and the Multilateral Convention provide for EOI in both civil and criminal tax matters, and contain provisions similar to Article 5(1) of the 2002 Model TIEA, which obliges Contracting Parties to exchange information without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Contracting Party. There are no dual criminality provisions in Antigua and Barbuda's DTCs and the CARICOM treaty.

C.1.7. Provide information in specific form requested

443. There are no restrictions in Antigua and Barbuda's domestic laws that would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices. Further, Section 12 of the TIE Act explicitly authorises the Commissioner to obtain, where the request so stipulates, information in the form of deposition of witnesses and authenticated copies of original documents.

444. This is reinforced in all of Antigua and Barbuda's TIEAs, which contain provisions similar to Article 5(3) of the 2002 Model TIEA, which obliges Contracting Parties to provide, on request, information in the form of depositions of witnesses and authenticated copies of original records to the extent allowable under domestic law.

C.1.8. Signed agreements should be in force

445. Exchange of information cannot take place unless a jurisdiction has exchange of information agreements in force. The standard requires that jurisdictions take all steps necessary to bring information agreements that have been signed into force expeditiously.

446. At the time of the last peer review, Antigua and Barbuda had concluded 22 EOI agreements,[75] of which 14 had been brought into force as of 15 May 2014.[76] In respect of the other eight agreements, at that time, Antigua and Barbuda had completed all its domestic procedures to ratify them.[77] Antigua and Barbuda had also informed its treaty partners that it had completed its domestic ratification procedures (with the exception of Belgium, Curaçao and Sint Maarten) and was waiting for its treaty partners to complete their domestic ratification procedures.

447. The 2014 Report acknowledged that the time taken for Antigua and Barbuda to bring their signed EOI agreements into force was short and had historically ranged approximately between two months and three years. A recommendation was made, under Element C.2, to take all steps necessary to bring concluded agreements into effect as quickly as possible.

448. As of March 2021, Antigua and Barbuda has signed two additional EOI agreements, namely the Multilateral Convention, which entered into force on 1 February 2019, and a bilateral DTC with the United Arab Emirates, which was signed on 15 January 2017, ratified on 8 February 2018 and on 18 March 2019 Antigua and Barbuda notified the United Arab Emirates that

75. 21 bilateral agreements and the CARICOM Treaty. Antigua and Barbuda's participation in the CARICOM Treaty allows it to exchange information with 10 other jurisdictions who are also signatories to this treaty.

76. At the time of the 2014 Report, Antigua and Barbuda had 31 EOI relationships in force, with Aruba, Australia, Denmark, Finland, France, Germany, Ireland, Liechtenstein, the Netherlands, Norway, Switzerland, the United Kingdom, the United States and the 10 CARICOM jurisdictions in the CARICOM treaty – Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago.

77. TIEAs with Belgium, Curaçao, Faroe Islands, Greenland, Iceland, Portugal, Sint Maarten and Sweden.

the internal procedures are completed. Since the last peer review, five TIEAs, signed in 2009-11, entered into force, i.e. Iceland in 2012, Curacao in 2013, Sint Maarten[78] in 2013, Sweden in 2013 and Belgium in 2017. The treaties with Belgium, Curaçao and Sint Maarten took more than three years to enter into force. Four TIEAs with Canada (a new TIEA signed in 2017), Faroe Islands (signed in 2010), Greenland (signed in 2010) and Portugal (signed in 2012) have not yet entered into force. With respect to Faroe Islands, Greenland and Portugal Antigua and Barbuda explained that the parliamentary resolution was passed in 2010 and the relevant partners were notified that the internal procedures are completed by Antigua and Barbuda. Similarly, concerning the TIEA with Canada, Antigua and Barbuda reported that it notified Canada on 12 March 2017 that the internal procedures are completed.

EOI Mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	**142**
In force	128
In line with the standard	126
Not in line with the standard	2 [a]
Signed but not in force	13 [b]
In line with the standard	13
Not in line with the standard	0
Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms	1 [c]
In force	1
In line with the standard	1

Notes: a. These are the EOI relationships with Guyana and Trinidad and Tobago, through the CARICOM agreement.

b. See Annex 2 on list of jurisdictions in which the Multilateral Convention has not entered into force.

c. United States.

78. Following the dissolution of the Netherlands Antilles on 10 October 2010, two separate jurisdictions were formed (Curaçao and Sint Maarten) with the remaining three islands (Bonaire, St Eustatius and Saba) joining the Netherlands as special municipalities. The TIEA concluded with the Kingdom of the Netherlands, on behalf of the Netherlands Antilles, continues to apply to Curaçao, Sint Maarten and the Caribbean part of the Netherlands (Bonaire, St Eustatius and Saba) and is administered by Curaçao and Sint Maarten for their respective territories and by the Netherlands for Bonaire, St Eustatius and Saba.

C.1.9. Be given effect through domestic law

449. For information exchange to be effective, the parties to an EOI arrangement need to enact any legislation necessary to comply with the terms of the arrangement. In Antigua and Barbuda, all EOI agreements have to be vetted by the Solicitor General before they are signed. Once the Solicitor General gives his/her agreement to the text of the EOI agreement, he/she will submit the EOI agreement to the Minister of Finance for final approval. The Minister of Finance will in turn submit the EOI agreement to the Cabinet for information before giving the final approval to sign the agreement. Once EOI agreements are signed and ratified by a resolution passed by the House of Representatives of Antigua and Barbuda, these agreements are then given the force of law (Section 3(2) of the TIE Act). Ratified EOI agreements have equal status as any law passed by the Parliament of Antigua and Barbuda. Under the Ratification of Treaties Act, "no provision of a treaty shall become, or be enforceable as, part of the law of Antigua and Barbuda except by or under an Act of Parliament" (Section 3(3)).

450. Once an agreement is ratified, the implementation of its terms is governed by the provisions of the TIE Act (Section 3(2) of the TIE Act). The Law (Miscellaneous Amendments) Act, No 4 of 2017, added Section 3(3) to the TIE Act, which specifies that where there is an inconsistency between the provisions of the TIE Act and the provisions of any other law, the provisions of the TIE Act will prevail only to the extent of the inconsistency.

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

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

451. Antigua and Barbuda committed to the standard of transparency and exchange of information on request in tax matters in 2002. At that time, it had only a DTC with Switzerland (extension to Antigua and Barbuda of the previous DTC between Switzerland and the United Kingdom) and the CARICOM Treaty. In 2009, it renewed this commitment and since then has rapidly expanded its network of EOI agreements, including with its main trading partners.

452. With the signature of the Multilateral Convention on 27 July 2018, Antigua and Barbuda has an EOI relationship with 142 jurisdictions (all its bilateral agreements are signed with jurisdictions that participate in the Multilateral Convention). The Multilateral Convention entered into force in Antigua and Barbuda on 1 February 2019.

453. No Global Forum members indicated, in the preparation of this report, that Antigua and Barbuda refused to negotiate or sign an EOI instrument with it. As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, Antigua and Barbuda should continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

454. The conclusions are as follows:

Legal and Regulatory Framework: in place

Antigua and Barbuda 's network of information exchange mechanisms covers all relevant partners.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

C.3. Confidentiality

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

455. The 2014 Report concluded that the combination of provisions in EOI agreements and domestic law regarding confidentiality of information ensured that information received under an EOI agreement would be kept confidential in line with the standard. This remains the case.

456. Concerning the practical implementation of the legal requirements by Antigua and Barbuda, the 2014 Report acknowledged that there is no known government policy governing the use of the public email account and the type of information that may be transmitted via the public email account. There have also been instances where the competent authority sent confidential information (i.e. response to an EOI requests) to its EOI partners via a public email account without prior agreement with such EOI partners and without any level of encryption. Antigua and Barbuda was recommended that if the need to communicate confidential information with its EOI partners via email arises, it should only use encrypted or secured email. For this peer review, the assessment team is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

457. The conclusions are as follows:

Legal and Regulatory Framework: in place

No deficiencies have been identified in the EOI mechanisms and legislation of Antigua and Barbuda concerning confidentiality.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

The Phase 2 recommendations issued in the 2014 Report are reproduced below for the reader's information.

Deficiencies/Underlying factor	Recommendations
There is no known government policy governing the use of public email account and the type of information that may be transmitted via the public email account. There have also been instances where the competent authority sent confidential information (i.e. response to an EOI requests) to its EOI partners via a public email account without prior agreement with such EOI partners and without any level of encryption.	If the need to communicate confidential information with its EOI partners via email arises, Antigua and Barbuda should only use encrypted or secured email.

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

458. The 2014 Report concluded that Antigua and Barbuda has adequate provisions to ensure the confidentiality of information received. This remains the case.

459. All of Antigua and Barbuda's EOI agreements have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the applicable EOI instrument. While each of the articles might vary slightly in wording, these provisions generally contain all of the essential aspects of Article 8 of the OECD Model TIEA and Article 26(2) of the OECD Model Tax Convention.

460. Accordingly, under the 2017 EOI Manual, all information received under exchange of information is marked as confidential ("This information is furnished under the provisions of a tax treaty and its use and disclosure are governed by the provisions of such tax treaties") and sets specific rules and procedures which apply to its handling. The Antigua and Barbuda's competent authority confirmed that confidential information is labelled and stored in locked fireproof cabinets. Such cabinets are only accessible by

the competent authority and the team directly involved in the information exchange processes. Further, the competent authority practices a clean desk policy and all official documents including any EOI requests received by the competent authority have to be kept in locked cabinets during and after office hours.

461. The standard, as amended in 2016, clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI agreement provides the authority for supplying the information to be used by a Party for purposes other than tax purposes and where tax information may be used for other purposes in accordance with their respective laws.

462. Section 4 of the Income Tax Act requires all persons having any official duty or employed in the administration of the Act to preserve the confidentiality of all taxpayer information they obtain in the course of their work. Further, under the 2017 EOI Manual, every person having an official duty within the EOI Unit and being employed at the Inland Revenue Department (IRD), or any person who formerly had a duty or was formerly so employed at the IRD within the EOI Unit, must treat and continue to treat at the end of their employment, information received in their official capacity as confidential.

463. More broadly, Section 10 of the 2018 TAPA ("Confidentiality") now provides that the person receiving information in an official capacity in relation to a specific taxpayer should regard it as secret and confidential. The same provision provides that the person may disclose that information only to the following persons: (a) other agents and employees of the Department and of the Customs and Excise Division in the course, and for the purpose, of carrying out their duties; (b) the Minister of Finance in the course, and for the purpose, of carrying out supervision of the [Income Tax] Department; (c) employees of the Ministry of Finance, for the purpose of reviewing and evaluating tax issues; (d) tax authorities of a foreign country, in accordance with an international agreement; (e) law enforcement agencies, for the purpose of the prosecution of a criminal offence; and (f) a court, in a proceeding to establish a taxpayer's tax liability or responsibility for an offence under a law. If one of these exceptions applies, the person must maintain secrecy except to the minimum extent necessary to achieve the object for which disclosure is permitted or for which the information was received. A person who breaches this provision is liable on summary conviction to a fine not exceeding XCD 20 000 (USD 7 400), or to imprisonment for a term of one year, or both.

464. Point (e) on law enforcement authorities is not restricted to tax matters. EOI agreements have equal status as any law passed by the Parliament of Antigua and Barbuda and therefore a concern arises as to whether the

competent authority would share exchanged information with these authorities also for non-tax matters. Antigua and Barbuda noted that Article 8 of its TIEAs allows for exceptions to disclosure which includes "…authorities (including court and administrative bodies) in the jurisdiction of the Contracting Party concerned with the …prosecution in respect of, …the taxes covered by this Agreement…" as it relates to prosecution of taxes…" and Section 10 TAPA gives effect to this provision. Antigua and Barbuda further explained that jurisdictions are bound to comply with their international obligations under customary international law. Accordingly, Antigua and Barbuda maintains that unless the disclosure facilitates the prosecution of a tax offence, the disclosure pursuant to Section 10 TAPA may be declined to ensure that the TIEA treaty obligations are adhered to. Therefore, any information received in the context of an EOI request can be shared with other domestic authorities only when the EOI instrument so allows. The practical application of this provision will be assessed in the Phase 2 review (see Annex 1).

465. According to Section 6(4) of the TIE Act, a written notice issued by the Commissioner under Section 6(1) of the TIE Act must contain the relevant details of the information sought. Antigua and Barbuda's competent authority confirms that if it needs to issue the written notice to any person in Antigua and Barbuda to obtain information for EOI purposes, there is no legal obligation to provide any other details to the person except for the details of the information required (see 2014 Report, paragraph 281). As specified by the 2017 EOI Manual, where the information required is held by a taxpayer, the letter should provide only the minimum amount of information needed to allow the taxpayer to respond to the request. Antigua and Barbuda clarified that "the minimum amount of information sought" refers to the use of the information within the request of the requesting state, but not the actual request. On no account should the letter of request from the foreign competent authority be provided. The practical application will be assessed in the Phase 2 review (see Annex 1).

466. Section 6(2) of the TIE Act, as amended in 2011, stipulates that the Commissioner may send a copy of the notice issued under Section 6(1) to the taxpayer, unless in the opinion of the Commissioner, the service of such a notice may lead to the obstruction of any investigation for which the information is requested or unduly delay the effective exchange of the information. This is the only manner in which the person, the subject of the EOI request may become familiar with the process, the TIE Act does not facilitate any further inspection of any EOI file held by the competent authority.

467. The Freedom of Information Act No 19 of 2004 (FIA) provides general access to information (which could include information on an EOI file) held by a public authority (which includes the competent authority). However, the FIA also provides an exception to the general rule in that a public authority may refuse to communicate if "the information was obtained

in confidence from another State or an international organisation, and to communicate it would, or would be likely to, seriously prejudice relations between Antigua and Barbuda and that State or international organisation" (Section 28(c)). Antigua and Barbuda explained that an EOIR request would be captured by this exception. Further and in addition, the Commissioner may disclose information concerning a taxpayer's affairs to a person claiming to be the taxpayer or the taxpayer's authorised representative only after obtaining reasonable assurance of the authenticity of the claim (Section 10(4) of the 2018 TAPA).The practical application of these provisions will be assessed in the Phase 2 review.

C.3.2. Confidentiality of other information

468. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests.

469. All of Antigua and Barbuda's EOI agreements contain confidentiality provisions similar to Article 8 of the OECD Model TIEA and Article 26(2) of the OECD Model Tax Convention, which specify that the confidentiality rules spelt out in the EOI arrangement apply to all information received under the agreement.

470. As described in C.3.1 above, under the 2017 EOI Manual, all information received under exchange of information is marked as confidential ("This information is furnished under the provisions of a tax treaty and its use and disclosure are governed by the provisions of such tax treaties") and handled accordingly.

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.

471. The 2014 Report concluded that Element C.4 was In Place as information exchange mechanisms of Antigua and Barbuda respect the rights and safeguards of taxpayers and third parties. The 2014 Report, however, acknowledged that Antigua and Barbuda's TIEA with Liechtenstein required the requesting state to notify the taxpayer of its intent to make a request whenever the investigation did not relate to a criminal case, which could potentially prevent or delay the exchange of information by Antigua and Barbuda in non-criminal cases. Antigua and Barbuda was recommended to update the TIEA with Liechtenstein to allow appropriate exceptions to the requirement to notify taxpayers in non-criminal cases. Since then, Antigua and Barbuda became a Party to the Multilateral Convention, and this

instrument (that meets the standard) can be used for exchange of information with Liechtenstein; the recommendation is therefore removed.

472. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the legal and regulatory framework of Antigua and Barbuda in relation to ensuring that its information exchange mechanisms respect the rights and safeguards of taxpayers and third parties.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

C.4.1. Exceptions to provide information

473. The standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. However, communications between a client and an attorney or other admitted legal representative are, generally, only privileged to the extent that, the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative.

474. The scope of attorney-client privilege is defined in 16 of Antigua and Barbuda's TIEAs[79] and these definitions adhere to the standard. With respect to the remaining 15 EOI agreements, in particular the CARICOM treaty, the scope of attorney-client privilege is not defined and thus would take reference from Antigua and Barbuda's domestic law.

475. As described in Part B, the domestic scope of attorney-client privilege in Antigua and Barbuda's domestic law is consistent with the standard. The Solicitor General also advised that the legal professional privilege would not preclude the competent authority from accessing information for bona fide reasons and in the context of when the attorney-at-law is holding the required information in a different capacity (e.g. as a director of company) other than as an attorney-at-law.

79. The exceptions are the TIEAs with Germany, Portugal and Liechtenstein, the DTC with Switzerland which are complemented with the Multilateral Convention, and the CARICOM treaty.

Notification of taxpayers

476. Where Antigua and Barbuda's TIEAs provide that the rights and safeguards secured to the persons by the laws or administrative practice of the requested party remain applicable, this is generally qualified by the statement that these rights and safeguards are only applicable to the extent that they do not unduly prevent or delay effective EOI. The exception is Antigua and Barbuda's TIEA with Liechtenstein, which simply provides that these rights and safeguards remain applicable.

477. The 2014 Report noted that Antigua and Barbuda's TIEA with Liechtenstein requires the requesting state to notify the taxpayer of its intent to make a request whenever the investigation does not relate to a criminal case, which can potentially prevent or delay the exchange of information by Antigua and Barbuda in non-criminal cases. Antigua and Barbuda was recommended to update the TIEA with Liechtenstein to allow appropriate exceptions to the requirement to notify taxpayers in non-criminal cases. Since then, Antigua and Barbuda became a Party to the Multilateral Convention, and this instrument (that meets the standard) can be used for exchange of information with Liechtenstein; the recommendation is therefore removed.

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.

478. The 2014 Report issued a "Largely Compliant" rating for Element C.5 and made two specific recommendations to ensure that the competent authority of Antigua and Barbuda provides information in an effective manner (as reproduced below). As requesting and providing information in an effective manner is a matter of practice, it will be considered in the course of the Phase 2 review.

Legal and Regulatory Framework

This element involves issues of practice. Accordingly, no determination has been made.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

The Phase 2 recommendations issued in the 2014 Report are reproduced below for the reader's information.

Deficiencies/Underlying factor	Recommendations
There were some issues concerning communication as both Antigua and Barbuda and its EOI partners have experienced lost mails in their previous exchanges.	Antigua and Barbuda should strengthen communication with its EOI partners.
As the MLU was established in October 2013, after the review period, the operation and efficiency of the MLU could not be assessed. There were also no established or written procedures of how an EOI request should be handled when the on-site visit was conducted. During the period of review, Antigua and Barbuda has not responded to one of the four EOI requests it received. This request was cancelled by the requesting jurisdiction after two years. Moreover, Antigua and Barbuda not provided an update on the status of the requests when it has been unable to provide the information requested within 90 days.	Antigua and Barbuda should monitor the functioning of the new MLU and complete the drafting of the 2017 EOI manual so as to clearly set out the duties, responsibilities of the relevant officers and the processes to be followed in handling with incoming EOI requests(including providing status updates to its EOI partners if an EOI request cannot be responded to within 90 days) to ensure that requests can be replied to effectively and in a timely manner.

C.5.1. Timeliness of responses to requests for information

479. All of Antigua and Barbuda's TIEAs and the Multilateral Convention, except for its TIEA with Liechtenstein, contain provisions similar to Article 5(6) of the 2002 Model Agreement on EOI on Tax Matters, which obliges Contracting Parties to forward the requested information as promptly as possible to the applicant Party.

480. Contracting Parties are required to confirm receipt of a request in writing to the applicant Party and notify it of deficiencies in the request, if any, within 60 days of the receipt of the request. The requested Party is also required to inform the applicant Party if it is unable to obtain and provide the information within 90 days of receipt of the request, and explain the reasons behind the delay.

481. An analysis of the practice of Antigua and Barbuda to respond promptly to requests for information sent to them and, if any, to send status updates and to ensure relevant communication with partners will be carried out during the Phase 2 review.

C.5.2. Organisational processes and resources

482. Antigua and Barbuda's Competent Authority for its EOI agreements is the Minister for Finance or his/her authorised representative. The TIE Act refers to the Commissioner of Inland Revenue as the person authorised to exercise the powers and perform the duties of the Competent Authority.

483. During the review period of the 2014 Report, Antigua and Barbuda did not have a dedicated EOI unit to handle incoming EOI requests until a new Monitoring and Legal Unit (MLU) was established within the IRD to monitor and process incoming EOI requests in October 2013.

484. Antigua and Barbuda reported that since the previous peer review, the 2017 EOI Manual, which set out the duties, responsibilities of the relevant officers and the processes to be followed in handling incoming EOI requests (including providing status updates to its EOI partners if an EOI request cannot be responded to within 90 days), has been prepared and is used by the EOI Unit to handle incoming EOI requests.

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

485. There are no factors or issues identified in Antigua and Barbuda 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**:
  - Antigua and Barbuda should introduce an explicit document retention requirement in respect of companies which have been wound up or struck off the register; clarify the rules regarding who the nominated persons to retain records are and that the records should be kept for a minimum period of five years; and sanctions should be envisaged for the breach of these duties (paragraph 128).
  - Antigua and Barbuda should ensure that a potential gap with respect to nominee shareholders for domestic companies does not impede any exchange of information in practice, and should monitor the availability of this information on an on-going basis (paragraphs 157 and 160).
  - Antigua and Barbuda should ensure that financial institutions keep up-to-date legal and beneficial ownership information on all customers (paragraph 176).
- **Element A.1.3**: The 2014 Report recommended that Antigua and Barbuda should put in place enforcement procedures to ensure that changes in partnerships are reported to its authorities. This Phase 1 review does not extend to the implementation practice, so this will be reviewed during Phase 2 of the review (paragraphs 224 and 225).
- **Element A.2**: Antigua and Barbuda should clarify who the nominated persons to retain accounting records and underlying documentation after the winding up of an entity (including domestic,

non-profit and foreign companies, relevant partnerships and ILLCs) are and ensure that the retention requirements also apply with respect to the entities which have been struck off (paragraph 333).

- **Element B.1**: Antigua and Barbuda should ensure that the definitions included in Section 5A of the Tax Information Exchange Act are not interpreted to limit the general access powers (paragraph 385).
- **Element B.2**:
  - The 2014 Report recommended that Antigua and Barbuda should put in place clear guidelines to ensure that the exception to the prior notification requirement may be invoked expeditiously by the competent authority when they receive an EOI request that requires the exercise of access powers under Sections 6(1) and 7 of the TIE Act. This Phase 1 review does not extend to the implementation practice, so this will be reviewed during Phase 2 of the review. The in-text recommendation is retained (paragraphs 414 and 415).
  - The 2014 Report recommended that Antigua and Barbuda should monitor the 20-day holding period and the judicial review procedure, when they receive EOI requests that require the use of these procedures, to ensure that these procedures do not impede effective EOI. This peer review however does not review the practice of implementation. This recommendation is therefore retained and the situation in practice will be reassessed during the Phase 2 review (paragraph 419).
- **Element C.1**:
  - Antigua and Barbuda should ensure that its law and guidance are sufficiently clear to enable processing of requests on a group of taxpayers which are not individually identified ("group requests") as required by the standard (paragraph 433).
  - There may be restrictions in some of Antigua and Barbuda's treaty partners' ability to exchange information in the absence of domestic interest. Where such restrictions exist the relevant treaties would not be considered compliant with the standard, it is recommended that Antigua and Barbuda continues working with the relevant treaty partners to remove these restrictions (paragraph 440).
- **Element C.2**: Antigua and Barbuda should continue to conclude EOI agreements with any new relevant partner who would so require (paragraph 453).

Moreover, the Global Forum may identify some aspects of the legal and regulatory framework to follow-up in the Phase 2 review. A non-exhaustive list of such aspects is reproduced below for convenience:

- **Element A.1**:
  - The effectiveness of the enforcement provisions in respect of key obligations to maintain legal and beneficial ownership information (paragraphs 65, 71, 119 and 125).
  - Whether the legal ownership information on foreign companies having sufficient nexus with Antigua and Barbuda is always available in practice (paragraphs 80 and 115).
  - Whether an up-to-date legal ownership information on foreign companies is available in practice, in particular in the case of the change of shareholders (paragraph 117).
  - The effectiveness of the provisions regulating the activities of exempt service providers in ensuring the availability of ownership information (paragraph 106).
  - The effectiveness of the provisions ensuring the availability of ownership information with respect to International Business Companies which have ceased to exist and/or have been restored (paragraphs 144 and 147).
  - The effectiveness of enforcement and supervision with respect to inactive companies (paragraph 150).
  - Whether the ownership information is available at all times in accordance with the standard where a person in Antigua and Barbuda is acting as nominee (paragraph 160).
  - The effectiveness of the AML framework in circumstances where the simplified CDD applies (paragraph 178).
  - The effectiveness of measures put in place to ensure that the ownership information with respect to all bearer shares is fully available in practice (paragraph 216).
  - The practical implementation of the obligation to identify the beneficial ownership of partnerships (paragraphs 233 and 235).
  - The effectiveness of the common law and statutory provisions in ensuring the availability of legal and beneficial ownership information with respect to trusts (paragraphs 252, 253 and 264).

- **Element A.2**:
  - The effectiveness of the existing system with regard to the location of accounting records (paragraphs 321 and 322).
  - The effectiveness of the new sanction which allows the Director of the International Business Company Registry to strike off the International Business Company from the register if it fails to comply with a request from Financial Services Regulatory Commission (paragraph 323).
- **Element A.3**:
  - The practical application of the definition of a "beneficial owner" by banks as envisaged by the AML framework (paragraph 353).
- **Element B.1**:
  - The practical application of the provisions governing the transmission of non-public information by government bodies and agencies to the Commissioner (paragraph 384).
  - The practical application of Section 5A of the Tax Information Exchange Act with respect to the access powers (paragraph 385).
  - The practical application of the competent authority's power to access information from the Financial Services Regulatory Commission and grounds on which a request for information may be denied (paragraph 387).
  - The effectiveness of access to banking information (paragraphs 388 and 390).
  - The effective of enforcement provisions to compel the production of information, in particular by International Business Companies (paragraph 398).
- **Element B.2**:
  - The practical application of the notification requirements (paragraph 415).
- **Element C.1**:
  - The awareness and interpretation of the TIE Act, in particular with respect to the 2011 amendment to remove the requirement that the requesting jurisdiction should provide a statement that the information sought is in Antigua and Barbuda (paragraph 431).

- **Element C.3**:
  - The practical application of the provisions which regulate the information-sharing with other domestic authorities and whether they ensure that any information received in the context of an EOI request can be shared only when the EOI instrument so allows (paragraph 464).
  - The practical application of Section 6(4) of the TIE Act and the 2017 EOI Manual concerning the minimum amount of information to be included in a written notice issued by the Commissioner under Section 6(1) of the TIE Act (paragraph 465).

Annex 2: List of Antigua and Barbuda's EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI PARTNER	Type of agreement	Signature	Entry into force
1	Aruba	Tax Information Exchange Agreement (TIEA)	30-Aug-10	02-Dec-10
2	Australia	TIEA	30-Jan-07	14-Dec-09
3	Belgium	TIEA	07-Dec-09	9-Nov-17
4	Canada	TIEA	30-Oct-17	No update provided by Antigua and Barbuda
5	Curaçao [a]	TIEA	29-Oct-09	5-Dec-13
6	Denmark	TIEA	02-Sep-09	23-Feb-11
7	Faroe Islands	TIEA	19-May-10	
8	Finland	TIEA	19-May-10	24-Mar-11
9	France	TIEA	26-Mar-10	28-Dec-10
10	Germany	TIEA	19-Oct-10	30-May-12
11	Greenland	TIEA	19-May-10	
12	Iceland	TIEA	19-May-10	17-Nov-12
13	Ireland	TIEA	15-Dec-09	04-Mar-11
14	Liechtenstein	TIEA	24-Nov-09	16-Jan-11
15	Netherlands	TIEA	02-Sep-09	23-Feb-10
16	Norway	TIEA	19-May-10	15-Jan-11
17	Portugal	TIEA	13-Sep-10	
18	Sint Maarten [a]	TIEA	29-Oct-09	5-Dec-13
19	Sweden	TIEA	19-May-10	17-June-13
20	Switzerland [c]	DTC		26 August 1963

	EOI PARTNER	Type of agreement	Signature	Entry into force
21	United Kingdom	TIEA	19-Jan-10	28-May-10
22	United Arab Emirates	DTC	15-Jan-17	Ratified by Antigua and Barbuda on 8 February 2018 (no update on the date of its entry into force provided by Antigua and Barbuda)
23	United States	TIEA	06-Dec-01	10-Feb-03

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

b. See previous note.

c. Extension of the DTC of 30 September 1954 between United Kingdom and Switzerland by exchange of notes of 20/26 August 1963.

Convention on Mutual Administrative Assistance in Tax Matters (as amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).[80] The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

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

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

The Multilateral Convention was signed by Antigua and Barbuda on 27 July 2018 and entered into force on1 February 2019 in Antigua and Barbuda. Antigua and Barbuda can exchange information with all other Parties to the Multilateral Convention.

The Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Armenia, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Bosnia and Herzegovina, Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Cabo Verde, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus,[81] Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Kenya, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), North Macedonia, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Montserrat (extension by the United Kingdom), Morocco, Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Oman, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay and Vanuatu.

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

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Benin, Botswana, Burkina Faso, Eswatini (entry into force on 1 July 2021), Gabon, Jordan, Liberia, Mauritania, Namibia (entry into force on 1 April 2021), Paraguay, Philippines, Thailand, Togo, United States[82] (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

CARICOM Tax Treaty

The CARICOM Income Tax Treaty (CARICOM treaty) is an international agreement concluded among Caribbean jurisdictions for the avoidance of double taxation and prevention of fiscal evasion with respect to income taxes.

The agreement is based on the OECD model double tax convention and in Article 24 provides for exchange of information in tax matters. The CARICOM treaty is signed and in force in respect of 10 jurisdictions (dates are those of entry into effect): Barbados (1 January 1996); Belize (1 January 1995); Dominica (1 January 1997); Grenada (1 January 1997); Guyana (1 January 1998); Jamaica (1 January 1996); St. Lucia (1 January 1996); St. Kitts and Nevis (1 January 1998); St. Vincent and the Grenadines (1 January 1999) and Trinidad and Tobago (1 January 1995).

Antigua and Barbuda signed the CARICOM treaty on 6 July 1994 and it has entered into force in 1999.

82. The original Multilateral Convention does not apply between Antigua and Barbuda and the United States.

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 as amended in December 2020 and the 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 29 March 2021 and Antigua and Barbuda's responses to the EOIR questionnaire and peer inputs received in preparing this review.

List of laws, regulations and other materials received

New for this review

Circular of the FSRC No. 3 of 2020 on "Reinstatement of IBCs and the Immobilisation of Bearer Shares"

Companies (Amendment) Act, No. 11 of 2017, amending provisions on non-profit companies

International Banking Act, 2016

International Business Corporation (Amendment) Act, No. 16 of 2014, strengthening accounting obligations of IBCs

Law (Miscellaneous Amendment) Act, No. 3 of 2020, amending the International Business Corporation Act, the Corporate Management and Trust Service Providers Act, the Antigua and Barbuda Tax Information Exchange Act, Amendment to the Insurance Act, Amendment to the Co-operative Societies Act and the Companies Act.

Law (Miscellaneous Amendments) (No. 2) Act, No. 14 of 2017, introducing provisions on an annual attestation on beneficial ownership and control into various acts (CA, IBCA, Insurance Act, Co-operative Societies Act, Money Service Business Act, ITA, IFA, ILLCA, CMTSPA and the FSRCA Act)

Law Miscellaneous Provisions (Amendment) Act, No. 20 of 2016, amending the scope of application of the MLPA and the definition of beneficial ownership in the MLPA, the Insurance Act, 2007, International Trust Act, 2007, International Foundations Act, 2007, International Limited Liability Companies Act, 2007, Corporate Management and Trust Service Providers Act, 2008, Co-operative Societies Act, 2010, Money Services Business Act, 2011, the International Banking Act, 2016

Law Miscellaneous Provisions (Amendment) Act, No. 26 of 2018, was enacted in strategic areas to address any issue of unfair tax practice and possible ring-fencing by the removal of tax exemptions and the insertion that such entities are now subject to income tax pursuant the Income Tax Act Cap. 212.

Law Miscellaneous Provisions (Amendment) Act, No. 4 of 2017, amending the Antigua and Barbuda Tax Information Exchange Act, 2002; International Business Corporations Act, Cap. 222

Money Laundering (Prevention) (Amendment) Act, No. 6 of 2017

Money Laundering (Prevention) Regulations (Amendment) 2017, No 43 of 2017

Money Laundering (Prevention) Regulations (Amendment) 2017, No 44 of 2017

Office of National Drug and Money Laundering Control Policy, Money Laundering and the Financing of Terrorism Guidelines for Financial Institutions (Update from 12 June 2017)

Tax Administration and Procedures Act No. 12 of 2018 was enacted to harmonise, rationalise and simplify the operation of tax administration and procedure in Antigua and Barbuda's tax laws. The Act applies to the Antigua and Barbuda Sales Tax Act, 2006, Income Tax Act, Insurance Levy Act, International Business Companies (Exemption from Income Tax) Act, Non-Citizens Undeveloped Land Tax Act, Personal Income Tax Act, 2005, Property Tax and Valuation Act, 2006, Provisional Collection of Taxes Act, and any taxes levied pursuant to this Act, Stamp Act, Travel Tax Act, and any other law if responsibility for the general administration of the tax is assigned to the Commissioner. It repeals the Tax Administration and Procedures Act of 2012.

The EOI Manual from 01 March 2017.

In existence at the time of the last review

Business Names Act Cap. 63

Companies Act No. 18 of 1995

Friendly Societies Act, Cap. 184

International Business Corporation Act Cap. 222, of 1982

International Limited Liability Companies Act No. 20 of 2007

Partnership Act Cap. 306

Trusts

- Trustees' Relief Act
- International Trust Act, No. 18 of 2007
- Trustees and Mortgagees Act
- Trust Corporations (Probate and Administration) Act
- Trustee Act
- The Trust Corporation (Probate and Administration) Act Cap 445
- Trustees and Mortgagees Act Cap 447

International Foundations Act No. 19 of 2007

Co-operative Societies Act, 2010

Corporate Management and Trust Service Providers Act No. 20 of 2008

Insurance Act No. 13 of 2007

Financial Institutions (Non Banking) Act, Cap.169

Money Services Business Act 2011

Antigua and Barbuda Tax Information Exchange Act No. 14 of 2002

Tax Information Exchange (Miscellaneous Amendments) Act 2011 amending the Income Tax Act, Inland Revenue Administration Act, Companies Act, Tax Information Exchange Act, International Trusts Act, International Foundations Act and the ILLC Act

Money Laundering (Prevention) Act 1996 (MLPA)

Money Laundering (Prevention) Regulations 2007 (MLPR)

Money Laundering and Financing of Terrorism Guidelines for Financial Institutions

Financial Services Regulatory Commission Act 2013

Office of National Drug and Money Laundering Control Policy Act No. 3 of 2003

Current and previous reviews

The peer review process of Antigua and Barbuda has been undertaken across four reports in Round 1 of the review process: the August 2011 Phase 1 Report, the May 2012 supplementary Phase 1 Report, the July 2014 Phase 2 Report and a report pursuant to the Round 1 fast track review process. The assessment of the legal and regulatory framework of Antigua and Barbuda was based on the 2010 Terms of Reference and was prepared using the Global Forum's 2010 Methodology for Peer Reviews.

The 2011 Phase 1 Report concluded that fundamental deficiencies in the legal and regulatory framework of Antigua and Barbuda would widely prevent it to exchange information in accordance with the standard.

The 2012 Phase 1 supplementary report recognised the improvements made and Antigua and Barbuda was encouraged to continue to review and update its legal and regulatory framework in line with the remaining recommendations.

The 2014 Phase 2 assessment evaluated further developments in the legal and regulatory framework, as well as the application of the framework to the EOI practices of Antigua and Barbuda's competent authority. Antigua and Barbuda was rated as Partially Compliant overall.

The 2017 Fast Track process reviewed the progress made and assigned a Provisionally Largely Compliant rating to Antigua and Barbuda.

The current review concludes by assigning a determination of "in place" for five elements (B.2, C.1, C.2, C.3 and C.4) and "in place but needs improvement" for four elements (A.1, A.2, A.3 and B.1). The rating for each element and the Overall Rating will be issued once the Phase 2 review is completed.

Summary of reviews

Review	Assessment team	Period under Review	Legal Framework as of	Date of adoption by Global Forum
Round 1 Phase 1	Ms Hyonae Park, Ministry of Strategy and Finance, Republic of Korea; Mr Colin Chew, Inland Revenue Authority of Singapore; and Mr Guozhi Foo of the Global Forum Secretariat	not applicable	June 2011	August/ September 2011
Round 1 Supplementary to Phase 1	Mr Kwangmin Kim, Ministry of Strategy and Finance, Republic of Korea; Mr Colin Chew, Inland Revenue Authority of Singapore; and Mr Guozhi Foo of the Global Forum Secretariat.	not applicable	April 2012	May/June 2012
Round 1 Phase 2	Mr Eric Ho from the Inland Revenue Authority of Singapore; Ms Aya Okimoto from the National Tax Agency, Japan; and Mr Robin Ng and Ms Renata Teixeira from the Global Forum Secretariat	1 January 2010 to 31 December 2012	May 2014	August 2014
Round 1 Fast Track review	not applicable	not applicable		not public
Round 2 Phase 1	Mr Rob Gray, Guernsey; Ms Gioconda Medrano Cubillo, Costa Rica; and Ms Anzhela Cedelle from the Global Forum Secretariat.	not applicable	29 March 2021	18 June 2021

Annex 4: Antigua and Barbuda's response to the review report[83]

Antigua and Barbuda, through the Competent Authority, the Inland Revenue Department would like to take this opportunity to express our sincere appreciation to the Global Forum for this opportunity to participate the 2nd Round Phase 1 Peer Review. By our participation we have been given an opportunity to positively progress our implementation of the international standards on transparency and exchange of information for tax purposes. We would also like to thank the Secretariat and the assessment team for their guidance. Over the review period, Antigua and Barbuda has made several changes to our legal and regulatory framework which has had a positive impact on the tax exchange process and the financial services, both domestically and internationally. Antigua and Barbuda has increased its range of treaty networks by signing the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which entered into force 1 February 2019. Antigua and Barbuda will endeavour to continuously make improvements based on all of the recommendations as stated in the report in anticipation of our Phase 2 Peer Review. In conclusion, as a member of the Global Forum, we wish to reiterate that Antigua and Barbuda is committed to the continuous implementation of the international standards of transparency and effective exchange of information for tax purposes.

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

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request ANTIGUA AND BARBUDA 2021 (Second Round, Phase 1)

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 publication contains the 2021 Second Round Peer Review Report on the Exchange of Information on Request of Antigua and Barbuda. It refers to Phase 1 only (Legal and Regulatory Framework).

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