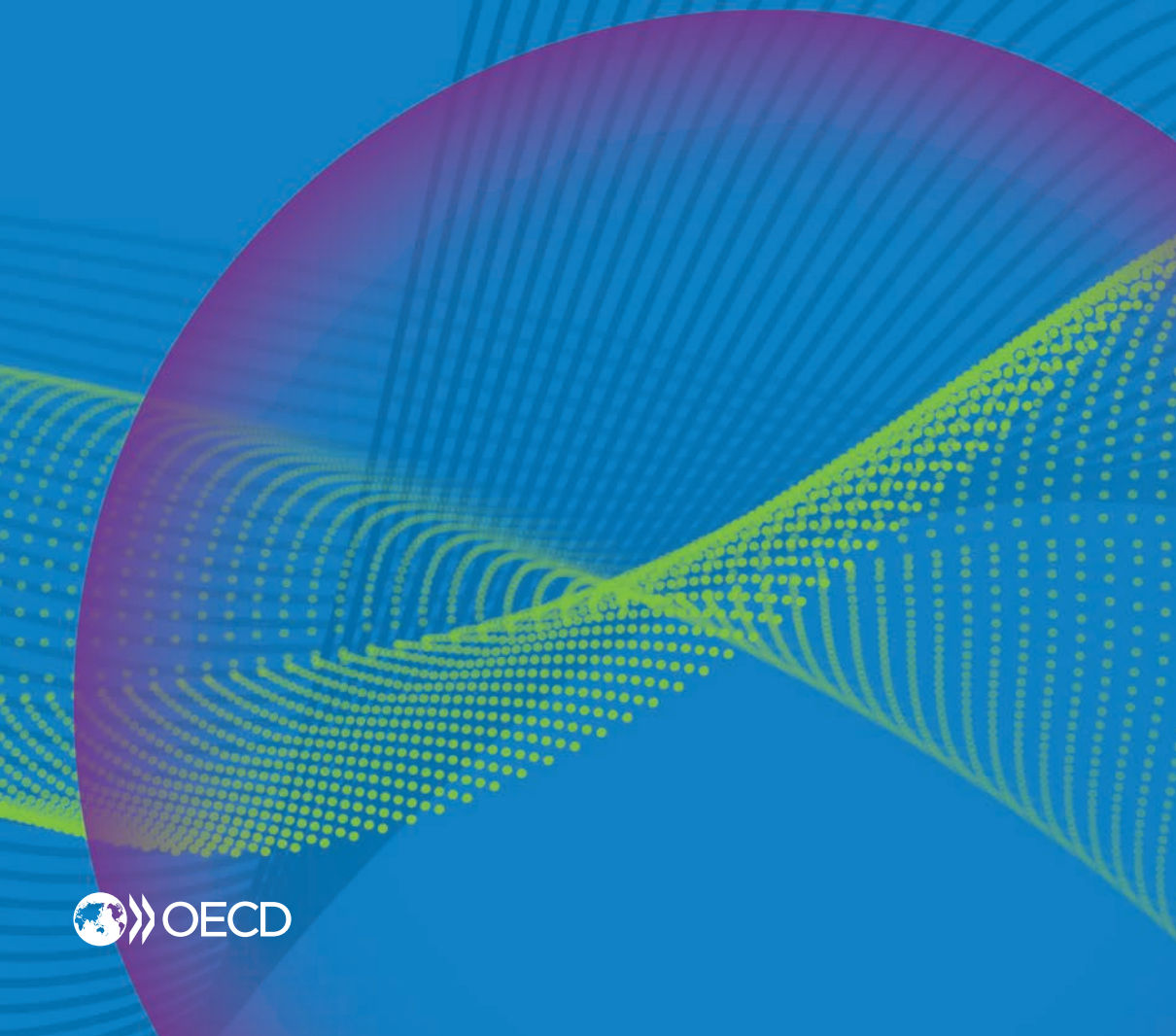
GLOBAL FORUM ON

TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

CÔTE D'IVOIRE

2021 (Second Round, Phase 1)



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PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

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Table of contents

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 Assessment Criteria Note	Note on the assessment criteria, as approved by the Global Forum on 29-30 October 2015
2016 Terms of Reference	Terms of Reference related to the Exchange of Information on Request, as approved by the Global Forum on 27-28 October 2015
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
AUDCG	OHADA Uniform Act on General Commercial Law (*Acte uniforme de l'OHADA sur le droit commercial général*)
AUDCIF	OHADA Uniform Act on Accounting Law and Financial Reporting (*Acte uniforme de l'OHADA sur le droit comptable et l'information financière*)
AUDSCGIE	OHADA Uniform Act on Commercial Companies and Economic Interest Groups (*Acte uniforme de l'OHADA relatif au droit des sociétés commerciales et du groupement d'intérêt économique*)
AUSC	Uniform Act on Co-operatives
BCEAO	Central Bank of West African States
CENTIF	National Financial Intelligence Processing Unit (*Cellule nationale de traitement des informations financières*)
CGI	General Tax Code (*Code général des impôts*)
CIMA	Inter-African Conference on Insurance Markets
DGI	Directorate-General for Taxation (*Direction générale des impôts*)
DTC	Double Taxation Convention

ECOWAS	Economic Community of West African States
EIG	Economic interest group
EOI	Exchange of Information
EOIR	Exchange of Information on Request
GDP	Gross domestic product
GIABA	Inter-Governmental Action Group against Money Laundering in West Africa
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
LPF	Tax Procedures Code (*Livre des procédures fiscales*)
Methodology	2016 methodology for peer reviews and non-member reviews, as amended in December 2020
Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended by the 2010 Protocol
OHADA	Organization for the Harmonization of Business Law in Africa
RCCM	Trade and Personal Property Credit Register (*Registre du commerce et du crédit mobilier*)
SA	Public limited company (*Société anonyme*)
SARL	Limited liability company (*Société à responsabilité limitée*)
SARLU	Single member Limited liability company
SAS	Simplified joint stock company (*Société par actions simplifiée*)
SASU	Single member simplified joint-stock company
SCS	Limited partnership (*Société en commandite simple*)
SEP	Joint venture (*Société en participation*)
SNC	General partnership (*Société en nom collectif*)
SYSCOHADA	Organization for the Harmonization of Business Law in Africa accounting system
UER	Information Exchange Unit (*Unité d'échange de renseignements*)

WAEMU	West African Economic and Monetary Union
WAMU	West African Monetary Union
XOF	West African CFA franc

Executive summary

1. This report analyses the implementation of the international standard of transparency and exchange of information on request (the standard) in Côte d'Ivoire under the second round of reviews conducted by the Global Forum against the 2016 Terms of Reference. As Côte d'Ivoire joined the Global Forum in 2015, no assessment of Côte d'Ivoire was conducted under the first round of reviews. Therefore, this report is the first assessment of Côte d'Ivoire.

2. Due to the COVID-19 pandemic, no on-site visit could be organised in the months following the launch of the review. This report therefore only assesses the legal and regulatory framework in force in Côte d'Ivoire in August 2021 (Phase 1) against the 2016 Terms of Reference. The assessment of the practical implementation of this framework will be organised at a later date (Phase 2 review).

3. This report concludes that Côte d'Ivoire has a legal and regulatory framework that broadly ensures the availability of, access to and exchange of relevant information for tax purposes, but that this framework requires improvement in several areas.

Findings of the Second Round Phase 1 Report

	Second Round Report (2021)
Element	**Determinations**
A.1 Availability of ownership and identity information	Needs improvement
A.2 Availability of accounting information	In place
A.3 Availability of banking information	Needs improvement
B.1 Access to information	In place
B.2 Rights and Safeguards	In place
C.1 EOIR Mechanisms	Needs improvement
C.2 Network of EOIR Mechanisms	Not in place
C.3 Confidentiality	In place

	Second Round Report (2021)
Element	**Determinations**
C.4 Rights and safeguards	In place
C.5 Quality and timeliness of responses	Not applicable
OVERALL RATING	Not applicable

Note: The three-scale determinations for the legal and regulatory framework are In place, In place but needs improvement, Not in place. (For the Phase 2 review, the four-scale ratings for the legal and regulatory framework and its implementation in practice are Compliant, Largely Compliant, Partially Compliant and Non-compliant.)

Transparency

4. Since it joined the Global Forum, and particularly since 2018, Côte d'Ivoire has implemented several significant tax reforms to comply with the standard, including to ensure the availability of information on the ownership and beneficial owners of legal entities and arrangements.

5. Ivorian company and accounting laws already contain obligations that ensure, in most cases, the availability of information on the identity and legal ownership of Ivorian entities. This is due in particular to the requirement to include legal ownership information in companies' articles of association and to provide this information at the time of registration in the Trade and Personal Property Credit Register (RCCM). Company and accounting laws also ensure the availability of accounting information. They are complemented by the tax legislation, which requires a registration for tax purposes before the legal entity starts its activity. For this tax registration, the legal entities must provide their articles of association and a declaration of existence for tax purposes, which contains a list of their partners or shareholders. The tax law has also recently been strengthened to include new record-keeping obligations for the legal entities, such as the keeping of the register of shareholders and nominative shares, the register of bearer shares and the register of beneficial owners. Trustees and administrators of legal arrangements are also required to make a declaration of the legal arrangement's existence to the tax authorities.

6. Beneficial ownership information of entities and legal arrangements may also be available from AML-obliged persons, when any such person has a business relationship with the relevant entity or legal arrangement. However, some deficiencies have been identified in the AML provisions. In terms of banking information, the anti-money laundering law also contains an obligation for banks to keep details of their customers' transactions.

Key recommendations

7. The standard was strengthened in 2016 to require the availability of information on beneficial owners of legal entities and arrangements. In Côte d'Ivoire, this information is available firstly because of the tax requirement for Ivorian entities to keep a register of their beneficial owners. While this legislation seems appropriate for companies, the first step of the "cascading" approach (control through ownership with a threshold of 25% of the shares and voting rights) to determining beneficial owners, involving tiered information gathering, may not always be relevant for partnerships and co-operative companies.

8. AML-obliged persons must identify the beneficial owners of their clients, including when those clients are foreign entities or legal arrangements. However, there is no clear requirement for the relevant entities and arrangements to use the services of such a person. In addition, the anti-money laundering law does not provide for any specified frequency for updating beneficial owner information and does not include the obligation to identify the relevant natural person who holds the position of senior managing officer if no natural person meets the definition of the company's beneficial owner. Therefore, although tax and anti-money laundering legislations ensure the availability of beneficial ownership information for most relevant entities, such information may not always be available.

9. In addition, although the Ivorian authorities are not aware of any bearer share still in circulation, the legal framework does not provide for any deadline for claiming the rights attached to these shares.

10. It is therefore recommended that Côte d'Ivoire address these shortcomings

Exchange of information

11. Côte d'Ivoire's treaty network for information exchange is quite small, covering less than 20 partners. Nonetheless, the country participates in the exchange of information (EOI) in practice. Over the past three years, Côte d'Ivoire has received an average of four EOI requests per year (but has not sent any requests itself). The comments received from peers for this review indicate general satisfaction with Côte d'Ivoire's co-operation but also reveal issues relating to communication with the Ivorian competent authority. In some cases, although replies were sent, underlying documentation, such as accounting and banking documents, was not transmitted to the requesting jurisdiction. The review of EOI in practice is not covered in this report and will be the subject of a future Phase 2 review, to be organised as soon as travel conditions allow the assessment team to conduct the on-site visit to Côte d'Ivoire.

Key recommendations

12. Two exchange of information instruments do not meet the standard in that they restrict the exchange of information to the application of the provisions contained in those instruments and thus do not allow for an exchange of all foreseeably relevant information or in respect of all persons. In addition, another information exchange instrument, signed in 2016, is still not in force.

13. Moreover, Côte d'Ivoire has not yet responded to one Global Forum member which requested a bilateral tax information exchange agreement (TIEA). Also, Côte d'Ivoire has not made significant progress in its efforts to accede to the Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention). Nevertheless, Côte d'Ivoire must have an agreement with all relevant partners.

14. Côte d'Ivoire should therefore ensure that it has EOI instruments in line with the standard with all relevant jurisdictions.

Next step

15. This report only assesses Côte d'Ivoire's legal and regulatory framework for transparency and exchange of information for tax purposes. Côte d'Ivoire receives an "in place" determination for elements A.2, B.1, B.2, C.3, C.4, an "in place but needs improvement" determination for elements A.1, A.3 and C.1, and a "not in place" determination for element C.2. Each element will be rated and the overall rating given at the conclusion of the Phase 2 review.

16. This report was approved by the Peer Review Group of the Global Forum on 26 October 2021 and adopted by the Global Forum on 18 November 2021. A follow-up report on the measures taken by Côte d'Ivoire to implement the recommendations made in this report should be provided to the Peer Review Group by 30 June 2022, and thereafter annually in accordance with the procedure set out in the 2016 methodology for peer reviews and non-member reviews, as amended in 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	The availability of beneficial ownership information of relevant entities and legal arrangements (*fiducies* and trusts) is ensured by the tax legislation. However, the tax definition of beneficial owner considers the 25% ownership threshold to be the primary step, which is not always appropriate to the form and structure of partnerships and co-operative companies. Whilst AML-obliged persons must also identify the beneficial owners of their clients, the law does not contain a clear requirement to use the services of an AML-obliged person in all cases. Moreover, there is no specified frequency for the updating of this information by the AML-obliged person. Finally, according to the AML/CFT law, the natural person in the position of senior managing officer does not have to be identified as the "default" beneficial owner when no other person meets the definition of beneficial owner.	Côte d'Ivoire should ensure the availability of information on the beneficial owners of relevant partnerships and co-operative companies in all cases.

Determinations	Factors underlying Recommendations	Recommendations
The legal and regulatory framework is in place but needs improvement (continued)	Since 2014, Ivorian companies cannot issue bearer shares. Bearer shares issued before 2014 must have been converted into registered shares before 5 May 2016. The tax law also provide for an obligation for the companies to keep a register of bearer shares still in circulation, with the identification of the owner of these shares. However, although the Ivorian authorities have indicated that they are not aware of any Ivorian companies with bearer securities in circulation, holders of non-converted bearer shares can claim the rights attached to their bearer shares without any deadline.	Côte d'Ivoire should clarify the time limit after which holders of bearer shares can no longer claim rights over the non-converted shares or ascertain that no such shares exist any longer.
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		
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	In accordance with the AML/CFT law, banks must identify the beneficial owners of all accounts. However, there is no specified frequency for updating this information. Furthermore, if no natural person meets the definition of a beneficial owner of a company, the AML/CFT law does not provide for the identification by default of a relevant natural person who holds the position of senior managing officer.	Côte d'Ivoire should ensure the availability of beneficial ownership information for all bank accounts.

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		
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 but needs improvement	Two double taxation conventions (DTCs) restrict the exchange of information to the application of the provisions contained therein and therefore do not allow for the exchange of all foreseeably relevant information or in respect of all persons.	Côte d'Ivoire should ensure that its information exchange relationships allow for exchange of all foreseeably relevant information and in respect of all persons.
	A DTC signed in 2016 has not yet been ratified by Côte d'Ivoire.	Côte d'Ivoire must ensure that its EOIR mechanisms, including the DTC signed in 2016, are ratified expeditiously.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is not in place	Côte d'Ivoire was approached, several years ago, by two jurisdictions to negotiate respectively a tax information exchange agreement (TIEA) and an EOI-related protocol to a double taxation convention (DTC). Côte d'Ivoire has not yet replied to the proposal to negotiate a TIEA and has only acknowledged receipt of the proposal to negotiate a protocol to the DTC.	Côte d'Ivoire should continue to expand its network of information exchange agreements and should expeditiously, enter into such agreements (regardless of their form) with all relevant partners.

Determinations	Factors underlying Recommendations	Recommendations
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 Côte d'Ivoire

17. This overview provides some basic information about Côte d'Ivoire that serves as context for understanding the analysis in the main body of the report.

18. Côte d'Ivoire is a West African country with a population of approximately 26 million. The country's political and administrative capital is Yamoussoukro, but almost all institutions are located in Abidjan, its main economic centre. Its currency is the CFA franc (XOF), which is common to the members of the West African Monetary Union (WAMU) and is issued by the Central Bank of West African States (BCEAO).

19. At the economic level, the agricultural sector (cocoa and cashew nuts in particular) accounts for 22% of Côte d'Ivoire's gross domestic product (GDP – estimated at USD 58.8 billion, or EUR 49.3 billion, in 2019); the secondary sector, which accounts for almost 23% of GDP, mainly consists of oil refining, energy, agro-food and public works; finally, the tertiary sector, which accounts for around 55% of GDP, is dominated by telecommunications, transport (port and air), distribution and financial activities. Côte d'Ivoire accounts for more than a third of the GDP of the West African Economic and Monetary Union (WAEMU) and for 60% of its agricultural exports.

Legal system

20. Côte d'Ivoire has a civil law system in which the Constitution takes precedence over international law, which is itself superior to domestic law. National laws have a higher normative value than domestic regulations.

21. Executive power is exercised by the President of the Republic and the Government. Legislative power is exercised by the National Assembly and the Senate, which pass laws. The legal system consists of two types of court: judicial and administrative. Only the administrative court is competent to deal with disputes relating to tax. However, certain tax offences are penalised by law. In such cases, a criminal complaint may be filed with a judicial court by the tax authorities, without prejudice to administrative action.

22. Côte d'Ivoire is a member of several regional organisations with normative powers, including in the areas of taxation, accounting and company law. It is a member of the Organization for the Harmonization of Business Law in Africa (OHADA), which has 17 member States and within which "uniform acts" are adopted, including in the areas of general commercial law, company law and accounting law, as well as law relating to securities and guarantees, collective procedures and co-operative companies. These OHADA uniform acts are directly applicable in each country's domestic law and have a higher normative value than laws adopted at the national level. Several OHADA uniform acts, analysed in this report, thus ensure the availability of relevant information. Côte d'Ivoire is also a member of the Economic Community of West African States (ECOWAS), which has 15 member countries, and WAEMU, with eight. Both organisations adopt regulations and directives that guide the economic, fiscal and customs policies of their member countries. A regulation in this context is a law of general application, binding in its entirety and directly applicable in all WAEMU and ECOWAS member states. Conversely, a directive is binding on member states as to the result to be achieved but lets them chose the means to achieve it. The Regulation to prevent double taxation and to institute mutual tax assistance allows for EOI between the eight WAEMU member states, in accordance with the standard. Côte d'Ivoire is also a member of WAMU, which has the same membership as WAEMU and is responsible for monetary policy and banking and financial regulation in its member states.

Tax system

23. Corporate income tax is applied to profits made in Côte d'Ivoire, while personal income tax is based on the taxation of the global income of individuals. For individuals, the income tax is levied on all persons who have their usual residence in Côte d'Ivoire. Non-resident taxpayers are taxed on income derived from activities carried out or property held in Côte d'Ivoire (article 237, General Tax Code). The Ivorian authorities indicated that a foreign company is considered as a resident for tax purposes in Côte d'Ivoire if it has a permanent establishment in Côte d'Ivoire or if it has its effective management there.

24. The main general legal provisions on taxation are contained in the General Tax Code (Code général des impôts, CGI), which is updated annually, and in the Tax Procedures Code (Livre des procédures fiscales, LPF). These provisions are supplemented by sector-specific texts (e.g. the Mining Code or the Investment Code).[1] Legal provisions are determined by the

1. Law No. 2003-489 of 26 December 2003 on the financial, tax and property regime of local authorities also provides for a list of taxes that local authorities may introduce. The collection and management of these local taxes is not, in principle, the responsibility of the DGI.

administrative tax doctrine through which the tax authorities communicate their interpretation of the tax law and the terms of its application. Tax doctrine is regularly updated and published in the Official Bulletin of the Directorate-General for Taxation (Direction générale des impôts, DGI) and through memos.

25. Legal entities and individual entrepreneurs are required to register with the administration before starting their activity. This obligation also covers legal entities engaged in non-profit activities (e.g. associations, diplomatic missions or state-owned companies).

26. Tax administration is carried out by the DGI, under the supervision of the Ministry of the Budget and the State Portfolio. The DGI is composed of 12 central directorates and 24 regional directorates. Tax assessment and audit activities are decentralised to the regional tax directorates as well as to some central directorates (Medium enterprises Directorate, Large business Directorate and National tax audits Directorate). Tax intelligence and investigation remain centralised at the level of the Directorate of Investigation, Intelligence and Risk Analysis (*Direction des enquêtes, du renseignement et de l'analyse-risque*, DERAR). The function of competent authority is centralised and held primarily by the Director-General of Taxation, who delegates it to the Head of the EOI Unit (*Unité d'échange de renseignements,* UER). The UER sits within the Directorate of Policy, Litigation and Documentation (*Direction de la législation, du contentieux et de la documentation*), which is a central directorate without regional branches.

27. In 2015, Law No. 2015-499 of 7 July 2015 and Decree No. 2015-287 of 27 April 2015 were adopted to introduce a unique identifier for natural and legal persons in Côte d'Ivoire. The aim of this reform is to replace the multiple identifiers used by natural and legal persons in their relations with public and para-public administrations with a unique number, allowing for greater traceability, better monitoring and more integrated management. Taxpayers who register with the legal and tax authorities are now systematically assigned a unique identifier. In addition, the process of assigning a unique identifier to taxpayers registered before 2015 is under way. However, although this unique identifier has been already allocated to nearly 175 000 enterprises, the system is not yet functional, largely because of necessary IT modifications that are still pending. As a result, a unique identifier system is not yet in place for relations with public administrations.

Financial services sector

28. The Ivorian banking sector is governed by the regulations, instructions and directives issued by the WAEMU and the BCEAO, which is based in Dakar, Senegal. This sector saw strong growth between 2012 and 2015. As

at 31 December 2020, it had 29 banks and two financial institutions, making it the largest banking sector in the WAMU zone. The rate of banking among individuals in Côte d'Ivoire remains low; in 2019, it stood at 25%. On the other hand, according to the Ivorian authorities, the rate of banking of entities is estimated at 100% because entities must provide their bank account number when they register with the DGI and use a bank account to pay their taxes. The turnover generated by the banking sector in Côte d'Ivoire was XOF 9.5 billion (EUR 14.5 million) in 2018.

29. The microfinance sector is also subject to WAMU and BCEAO regulations. However, member States' ministries of finance can grant operating licenses to and audit decentralised financial systems if the outstanding loans do not exceed USD 4 million (EUR 3.2 million). As at 30 September 2020, the microfinance sector in Côte d'Ivoire comprised 45 decentralised financial systems, with 2.1 million members and total deposits of XOF 359.6 billion (EUR 550 million). The decentralised financial systems in Côte d'Ivoire have cumulative net assets of XOF 555.3 billion (EUR 846 million) with equity of XOF 48 billion (EUR 73 million).

30. Côte d'Ivoire belongs to the regional stock exchange (*Bourse régionale des valeurs mobilières*), which covers the WAMU zone, with headquarters in Abidjan. This exchange is the seventh largest in Africa in terms of capitalisation and represents a cumulative capitalisation of approximately EUR 6 billion. Côte d'Ivoire is the country in the WAMU zone with the greatest stock market presence, accounting for 35 of the 44 companies listed on the regional stock exchange. These 35 companies represent 42% of the stock index.

31. The Ivorian financial sector has also been marked by the significant growth, over the past several years, of "mobile money". This technology, which appeared in the 2010s, is a form of electronic money that offers a solution to the low rate of banking among individuals in the country and the dematerialisation of transactions. This mobile money activity is placed under the dual supervision of the country's telecommunications authority, the *Autorité de régulation des télécommunications de Côte d'Ivoire*, and the WAMU Banking Commission. As issuers of electronic money, mobile money operators have the status of financial institutions and are therefore covered by anti-money laundering and anti-terrorist financing (AML/CFT) legislation. In 2018, this market had 1.4 million subscribers and a cumulative turnover estimated at XOF 24.5 billion (EUR 37 million). As at 31 December 2018, financial and commercial transactions via a mobile phone (payments, savings and money transfers) had reached EUR 10 billion and represented 8% of Ivorian GDP.

32. Finally, in terms of insurance, Côte d'Ivoire is a member of the Inter-African Conference on Insurance Markets (CIMA) which brings together 14 African jurisdictions and whose headquarters are in Libreville (Gabon).

The CIMA Insurance Code (CIMA Code) and the other normative acts of this organisation are the main source of insurance law in Côte d'Ivoire. The conduct of insurance operations in the CIMA zone is subject to approval by the Ministry of the Economy and Finance of the jurisdiction concerned, once CIMA has given its assent. In addition to being audited by CIMA, the insurance sector in Côte d'Ivoire is also audited and regulated by the Insurance Directorate of the Ministry of the Economy and Finance. Audits performed on insurance market participants may result in sanctions, including withdrawal of operating licences, without prejudice to criminal proceedings where appropriate. The insurance sector in Côte d'Ivoire comprises 31 insurance companies, of which 21 provide non-life insurance and 10 provide life insurance. In 2019, the sector had a cumulative turnover of some USD 666.9 million (EUR 547 million). The insurance market in Côte d'Ivoire, which complies with the recommendations of the CIMA Code, also comprises 885 insurance intermediaries, including 239 brokerage companies and firms and 646 general agents and authorised agents.

AML Framework

33. Act No. 2016-992 of 14 November 2016 on anti-money laundering/countering the financing of terrorism (AML/CFT Law) is the reference text in this area. In particular, it sets out the due diligence obligations of regulated persons and the conditions to be met prior to entering into a business relationship, as well as the organisation of the oversight functions. This 2016 law is complemented by several AML/CFT laws and regulations.

34. In 2012, Côte d'Ivoire's AML/CFT mechanism was the subject of a mutual evaluation by the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), which concluded that the country was not compliant with Recommendation 33 (now Recommendation 24) on the transparency of legal entities. Recommendation 34 (now Recommendation 25) on the transparency of legal arrangements was considered not applicable to Côte d'Ivoire. Since then, Côte d'Ivoire has submitted seven follow-up reports on the implementation of the recommendations made in the initial Mutual Evaluation Report. The next GIABA Mutual Evaluation Report for Côte d'Ivoire is scheduled for adoption in November 2022.

Recent developments

35. Since 2018, Côte d'Ivoire has implemented several significant reforms to comply with the standard and to ensure, in particular, the availability of information on the ownership of legal entities and arrangements. These new legal provisions are described in this report.

Part A: Availability of information

36. 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.

37. Legal and beneficial ownership and identity information for legal entities and arrangements is generally available due to requirements of company law, tax law and the AML/CFT law.

38. All relevant legal entities must register with the Trade and Personal Property Credit Register (RCCM) or the Register of Co-operative companies, as well as with the tax authorities. At that time, they must submit their articles of association, which include the identification details of their members, and a declaration of existence for tax purposes, which contains a list of the company's partners or shareholders. This obligation also covers foreign entities with a sufficient nexus to Côte d'Ivoire.

39. Relevant entities must also maintain a register of their partners or shareholders, as well as a register of their beneficial owners. However, the application of the first step of the "cascade" approach (i.e. the control by ownership with a specific threshold relating to more than 25% of shares or voting rights), contained in the tax administration's doctrine and used to determine the beneficial owner, may not always be relevant in the case of partnerships and co-operative companies.

40. AML-obliged persons must also identify the beneficial owners of their clients. However, although all relevant entities and legal arrangements must hold a bank account, there is no clear requirement to use the services of an AML-obliged person located in Côte d'Ivoire. In addition, the AML/CFT law does not provide for any specified frequency for updating beneficial owner information and does not include the final step of the cascade process,

which is to verify the identity of the relevant natural person who holds the position of senior managing officer if no natural person meets the definition of the company's beneficial owner.

41. The information on the identity of the owners of bearer shares is available through the obligation of dematerialisation contained in the Company Law and the obligation to maintain a register of bearer shares contained in the Tax Law. However, this availability may not be ensured in all cases as there is no deadline for claiming the rights attached to the bearer shares still in circulation.

42. With regard to *fiducies* and foreign legal arrangements (trusts) administered in Côte d'Ivoire or with a trustee resident in Côte d'Ivoire, the availability of information on their beneficial owners is mainly ensured by tax legislation, which requires the administrators and managers of these structures to declare their existence, as well as the identity of their beneficial owners, to the tax authorities. These legal arrangements are also covered by the obligations of the AML-obliged persons described above.

43. The tax legislation provides for a retention period of ten years for the relevant information, including when the entity has ceased to exist.

44. The table below presents the findings on this element:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/Underlying factor	Recommendations
The availability of beneficial ownership information of relevant entities and legal arrangements (*fiducies* and trusts) is ensured by the tax legislation. However, the tax definition of beneficial owner considers the 25% ownership threshold to be the primary step, which is not always appropriate to the form and structure of partnerships and co-operative companies. Whilst AML-obliged persons must also identify the beneficial owners of their clients, the law does not contain a clear requirement to use the services of an AML-obliged person in all cases. Moreover, there is no specified frequency for the updating of this information by the AML-obliged person. Finally, according to the AML/CFT law, the natural person in the position of senior managing officer does not have to be identified as the "default" beneficial owner when no other person meets the definition of beneficial owner.	Côte d'Ivoire should ensure the availability of information on the beneficial owners of relevant partnerships and co-operative companies in all cases.

Since 2014, Ivorian companies cannot issue bearer shares. Bearer shares issued before 2014 must have been converted into registered shares before 5 May 2016. The tax law also provides for an obligation for the companies to keep a register of bearer shares still in circulation, with the identification of the owner of these shares. However, although the Ivorian authorities have indicated that they are not aware of any Ivorian companies with bearer securities in circulation, holders of non-converted bearer shares can claim the rights attached to their bearer shares without any deadline.	Côte d'Ivoire should clarify the time limit after which holders of bearer shares can no longer claim rights over the non-converted shares or ascertain that no such shares exist any longer.

Practical Implementation of the Standard: The assessment team is not able to assign a rating for this element as it requires an evaluation of the implementation in practice, which will be carried out in Phase 2.

A.1.1. Availability of legal and beneficial ownership information for companies (Sociétés de capitaux)

45. The creation of companies in Côte d'Ivoire and their main obligations are essentially governed by OHADA law, in particular by the Uniform Act on General Commercial Law (AUDCG) and the Uniform Act on Commercial Companies and Economic Interest Groups (AUDSCGIE).

46. Ivorian companies are classified as either commercial (determined by their form or purpose) (*sociétés commerciales*) or non-trading companies (*sociétés civiles*). The AUDSCGIE provides for seven types of entity: three types of company with share capital (presented here, in A.1.1), three types of partnerships (see A.1.3) and the economic interest grouping (see A.1.5). In addition, the form of co-operative companies (see A.1.5) is provided for by the Uniform Act on Co-operatives Companies (AUSC). It should be noted that the civil law concepts of *sociétés de capitaux* and *sociétés de personnes* do not exactly correspond to the concepts of "companies" and "partnerships" as found in Anglo-Saxon law.

47. The AUDSCGIE provides for the following types of commercial companies with share capital:

- The public limited company (*société anonyme*, SA), in which the shareholders' liability for corporate debts is limited to the amount of their stake. The minimum amount of share capital for an SA is XOF 10 million (EUR 15 240). Shareholders' rights are represented

by shares (registered or bearer shares). Public limited companies may issue shares for public subscription. They are managed by a board of directors or by a managing director. An SA is a single member company (*société anonyme unipersonnelle*, SAU) if it has only one shareholder. As at 30 June 2020, 1 919 SAs, including 300 SAUs, were registered with the Directorate-General for Taxation (*Direction générale des impôts*, DGI).

- The limited liability company (*société à responsabilité limitée*, SARL) in which the partners' liability for corporate debts is limited to the amount of their stake. The minimum amount of share capital for a SARL is XOF 1 million (EUR 1 524). The rights of partners are represented by company shares (*parts sociales*) (all registered) and the nominal value of a share cannot be less than XOF 5 000 (EUR 7.6). Shares are transferable but not tradable. A limited liability company is managed by one or more natural persons (members or not). The SARL is a single member company (SARLU) if it has only one partner. Certain rules governing the operation of SARLs are "public policy" (*ordre public*) rules, to protect the strong *intuitu personae*, which is prevalent in this type of company. As at 30 June 2020, there were 32 055 SARLs, including 19 991 SARLUs, registered with the DGI.
- The simplified joint stock company (*société par actions simplifiée*, SAS) comprises one or more partners; its articles of association provide for the free organisation and operation of the company, subject to compliance with the binding rules of the AUDSCGIE. As with the SAs, the partners of the SAS are only liable for corporate debts up to the amount of their stake and their rights are represented by shares (registered or bearer). An SAS may not issues shares for public subscription. The SAS is a single member company (SASU) if it has only one partner. As at 30 June 2020, 37 SAS, including 4 SASUs, were registered with the DGI.

48. Foreign companies may carry out their economic activity in Côte d'Ivoire using branch offices or representative (also known as liaison) offices. These structures of the foreign companies do not have a distinct legal personality. A branch office carries out, with a management autonomy, a full cycle of operations in Côte d'Ivoire while a representative office carries out, without any management autonomy, activities of a preparatory or auxiliary nature (Articles 116 and120-1 AUDSCGIE).

Legal Ownership and Identity Information Requirements

49. The legal ownership and identity requirements for companies are mainly provided for by company law and tax legislation. Information on the founding members (partners or shareholders) of companies with share capital is communicated when the company is registered with the RCCM and the tax authorities, through their articles of association and the declaration of existence for tax purposes. All companies are required to update legal ownership information with the tax authorities, whereas only SARLs must provide, under the company law, this updated information to the RCCM. In accordance with tax legislation, Ivorian entities must also maintain a register of their partners or shareholders. In addition, the AML/CFT legislation contains an obligation for regulated persons to retain information on the identity and ownership of some of their clients.

50. 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[2]

Type	Company law	Tax law	AML law[3]
SA/SAU (Public limited company)	All	All	Some
SARL/SARLU (Limited liability company)	All	All	Some
SAS/SASU (Simplified joint-stock company)	All	Al	Some
Foreign companies (tax resident)	Some[4]	All	Some

2. 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 the legislation, whether or not it meets the standard, contains requirements on the availability of ownership information for every entity of this type. "Some" means that an entity will be covered by these requirements if certain conditions are met.
3. There is no requirement for relevant entities to use the services of a person subject to AML/CFT legislation. Consequently, the requirements provided for by this legislation and relating to the availability of identity and ownership information do not cover all of these relevant entities.
4. Under company law, foreign companies resident in Côte d'Ivoire for tax purposes must provide a copy of their articles of association when they register with the RCCM, but these articles of association do not always contain complete information on the identity and ownership of these companies.

Company Law requirements

51. The articles of association of commercial companies, which may be drawn up in a notarised deed or by private deed if they guarantee the same level of authenticity as a notarised deed, must include several mandatory statements (Article 13, AUDSCGIE), including:

- the form of the company, its name and, where appropriate, its acronym, the nature and the area of its activity (corporate purpose) and its duration
- its registered office (which must be located in Côte d'Ivoire)[5]
- the identity of the investors, whether providing contributions in cash or contributions in kind, the amount (or, for contributions in kind, the nature and valuation) of each contribution, and the number and value of the company shares given in return
- the identity of the beneficiaries of specific benefits and the nature of these benefits
- the amount of share capital and the number and value of shares issued, distinguishing, where appropriate, between the different categories of shares created
- the clauses relating to the allocation of the result, the constitution of reserves and the allocation of the liquidation surplus
- the operating procedures of the company.

52. Changes of ownership are governed by different rules for SAs and SASs on the one hand and SARLs on the other. A transfer of ownership of shares in a SA or SAS requires the registration of its transfer in the owner's share-account (article 744-1, AUDSCGIE). This registration is made at the date agreed between the purchaser and the transferor and notified to the company, which is required to maintain a register of shareholders and their registered shares (Articles 746-1 and 746-2, AUDSCGIE). The register shall contain, among other things, the following information for every operation in which shares are transferred, converted, pledged or held in escrow:

- the date of the operation
- the full name and address of the former and new holders of the shares, in the event of a transfer

5. In accordance with Article 1 of the AUDSCGIE, the provisions of this act are applied when a company's registered office is located in Côte d'Ivoire.

- the full name and address of the holder of the shares, in the event of conversion of bearer shares into registered shares
- the nominal value and number of shares transferred or converted.

53. The register shall be drawn up by the company or by a person authorised by it for that purpose. The auditor's report submitted to the annual ordinary general meeting (mandatory for SAs and SASs) notes the existence of the registers and gives an opinion on the quality of record-keeping. A declaration by the senior managers that records have been properly kept is also attached to this report. If the register is missing or contains inaccuracies, the auditor must indicate in his/her report this irregularity and the related penalties incurred.

54. In contrast, in a SARL, a share transfer can only be valid with regard to the SARL under one of the following conditions (Article 317, AUDSCGIE): (i) the transfer is notified to the company by a bailiff or by any other means that establishes its actual receipt by the company, (ii) the transfer is accepted by the company in a notarised deed, or (iii) the original of the transfer deed is filed at the company's registered office. In order for the transfer to be relied on against third parties, the SARL's articles of association must also be amended and the changes communicated to the RCCM.

55. Companies, including foreign companies with branches and representative offices in Côte d'Ivoire,[6] must also apply for registration within one month of their incorporation, to the clerk of the court or the competent body in the State in which their registered office or principal place of business is located (Article 46, AUDCG). This registration is carried out in the RCCM and confers on the legal entity the status of trader as well as legal personality (Article 97-98, AUDSCGIE). A company is incorporated when its articles of association are signed or, where applicable, when they are adopted by the constituent general meeting, but its existence cannot be relied upon against third parties before its registration (Article 101, AUDSCGIE).

56. The application for registration in the RCCM is made using a form provided for that purpose by the clerk of the court or the competent body, except where the application is made electronically. The application is signed

6. In accordance with article 35 of the AUDCG, the RCCM receives applications for registration from natural persons having the status of trader, commercial companies, non-trading companies with commercial purpose, economic interest groupings, branches of foreign companies, all groups having legal personality, any natural person carrying out a professional activity requiring registration with the RCCM, and any public establishment having an economic activity and enjoying legal and financial autonomy. Article 120-4 of the AUDSCGIE also requires the registration with the RCCM of the representative offices of foreign legal entities.

by either the applicant or the applicant's agent. In the latter case, the agent must provide proof of identity and be in possession of a power of attorney signed by the applicant (Article 39, AUDCG).[7] Pursuant to Article 46 of the AUDCG, the application for registration of the legal entity must indicate, among other things, the following information:

- the form of the legal entity and its name (or company name or designation, as the case may be) and its acronym or logo
- the activity or activities carried out
- where applicable, the amount of the share capital with an indication of the amount of contributions in cash and the valuation of contributions in kind
- the address of the registered office and, where appropriate, that of the principal place of business and of any other places of business
- the duration of the company or legal entity as set out in its articles of association or founding instrument
- the full name, date and place of birth, and address of the managers, directors, administrators or partners having general authority to bind the legal entity or grouping
- the full name, date and place of birth, and address of the auditors, when their appointment is provided for by the AUDSCGIE.

57. Article 47 of the AUDCG also requires that the application be accompanied by the following supporting documents in any form or medium:

- a certified copy of the articles of association or the founding act
- the declaration of compliance[8] or the notarised declaration of subscription and payment
- a certified list of the managers, directors, administrators or partners who are indefinitely and personally liable or who have the power to bind the company or legal entity

7. However, if the agent is a lawyer, notary or a bailiff, the requirement to produce a power of attorney for the registration formalities does not apply as the profession confers a tacit mandate on the agent. In such a case, the information on the identity of the applicant is still available in the documents filed for the registration.

8. In accordance with article 73 of the AUDSCGIE, the declaration of compliance is a declaration signed by the founders, managers, directors and administrators in which they list all the operations carried out to create the company and they attest that this creation was made in compliance with the provisions of the AUDSCGIE.

- a declaration on honour, signed by the applicant, stating that the applicant is not subject to any prohibition on carrying on a commercial activity. This declaration on honour shall be supplemented within 75 days of registration by an extract from the criminal record or a similar document
- where applicable, a prior authorisation to undertake the activity.

58. Consequently, information on the identity of the founding shareholders or partners of companies is communicated to the RCCM at the time of registration through the transmission of a copy of the articles of association. This information is not recorded in the registers of the RCCM but is held by the authority responsible for maintaining the RCCM. However, there is no obligation to inform the RCCM of a change to the articles of association that would not affect the information entered in the registration form, for example, a change of partners or shareholders, except in the case of a transfer of shares of a SARL as the transfer will only become opposable against third parties once the updated information is filed with the RCCM.

59. In the event of a change that makes it necessary to correct or supplement the information submitted to the RCCM in the registration form, this update must take place within 30 days of the change (Article 52, AUDCG). The AUDCG does not establish a specific time period for the retention of information contained in the RCCM, but the practice of the clerk of the court ensure that information relating to registered companies is retained indefinitely. Information on companies that have ceased their activity is also kept indefinitely for the purpose of informing third parties.

60. A legal entity can be dissolved either by agreement of its members or following a judicial order. A judicial order is issued after a process of judicial liquidation which is usually opened when the company faces a situation of serious financial difficulties and insolvency. When a legal entity is dissolved, the liquidator must ask the RCCM to strike the company off the register. This request must be made within one month of the closure of liquidation operations. The striking-off is then recorded in the RCCM and the rights conferred on the company by registration are lost (Articles 57-58, AUDCG). The legal personality of the company subsists during the liquidation and until the publication of the closure of the liquidation operations (Article 205, AUDSCGIE). The company law does not compel the retention of the legal entity-related documents by a designated legal representative after the dissolution of that legal entity. Nevertheless, such a requirement exists under the tax law (see para. 69). If a company registered in Côte d'Ivoire wishes to be "re-domiciled" abroad, it must first be struck off the RCCM.

61. The public authority responsible for registering the legal entity in the RCCM depends on the type of company: commercial companies are

registered with the clerk of the commercial court, non-trading and co-operative companies are registered with the clerk of the court of first instance in their jurisdiction, while associations are registered with the Ministry of the Interior.

62. In principle, the local RCCM files are maintained by the commercial courts, in accordance with Act No. 2016-1110 of 8 December 2016 on the establishment, organisation and functioning of commercial courts. However, only the commercial court of Abidjan is operational. Local RCCM files are maintained in the other regions by the judicial courts of first instance pending the operational establishment of the commercial courts. These authorities carry out a formal verification of the information provided within three months of the registration request. In the event of inaccuracies or irregularities, they may summon the applicant or declarant to provide further explanations and documents. If the irregularity persists, they will notify the company that its registration has been withdrawn and proceed to strike it from the register (Articles 50 and 66 of the AUDCG).

63. Registration with the RCCM and with the tax authorities (see paragraph 66) can also be done as a single procedure at the one-stop shop for business creation (*Guichet unique de création des entreprises*), which brings together the aforementioned public authorities. This one-stop shop is located in the centre for the promotion of investments in Côte d'Ivoire (*Centre de promotion des investissements en Côte d'Ivoire*), in Abidjan.

Tax law requirements

64. The 2019 State Budget Act[9] created Article 49 bis of the Tax Procedures Code (*Livre des procédures fiscales*, LPF), which specifies the obligations of companies regarding the availability of legal ownership information:

- SAs and SASs must make available to the tax authorities the record of their registered shares, pursuant to Articles 746-1 and 746-2 of the AUDSCGIE, as well as the register of bearer shares issued and still in circulation (Article 49 bis (1°), LPF).
- Other commercial companies and non-trading companies (see paragraph 163) must keep a register of their shareholders or partners (Article 49 bis (2°), LPF).

65. These registers must also be updated to reflect changes in the ownership of a company's shares (Article 49 bis (3°), the LPF). There is no specific deadline for this updated information to appear in the relevant registers.

9. Article 16 of the tax annex to law no. 2018-984 of 28 December 2018 on the State budget for 2019.

Nonetheless, the Ivorian authorities expect records to be updated without delay as they can be consulted at any time by the tax authorities. If the update is not carried out, the sanctions described in paragraph 83 may be applied.

66. In addition, persons wishing to engage in an activity motivated by the purpose of making profit on a professional basis must first register with the tax authorities, regardless of the expected level of turnover (Article 71, General Tax Code; Article 146, LPF). This obligation covers the non-trading companies (see paragraph 163). At the time of registration, legal entities make a declaration of existence for tax purposes in which they must state, among other things, the name of the entity, the address of its registered office, the nature of the commercial activities carried out and the name and address of the company's accountant. In addition, it is necessary to state in the registration form the name, address, nationality and share in the capital holding of each shareholder or partner of the company. Companies must also provide their articles of association and update the information on their partners or shareholders in the event of a change via the "Amending Declaration of Operating Conditions" form to provide to the tax authorities within ten days of the change.

67. Tax registration is carried out at the local tax office, which is responsible for checking the conformity of the documents and information provided by the applicant and for verifying that the person has not already been registered. The registration procedure is normally completed within 48 hours. A taxpayer identification number is issued to the individual upon completion of the registration process. This number is necessary to begin a commercial or professional activity and to carry out administrative procedures. As noted in paragraph 63, the application for tax registration can also be made at the one-stop shop for business creation, located in Abidjan.

68. Information on the ownership of companies is also reported in the annex of summary financial statements ("*liasse fiscale*"), included in the annual tax return submitted by taxpayers (articles 36, 49 bis and 82, CGI). This information is provided in an annex specifying the composition of the company's share capital and identifying all the partners or shareholders, as well as in an annex listing the managers, the principal shareholders or partners and the members of the board of directors. The filing of the company's financial statements with the tax authorities must also be accompanied by a copy of the amending deeds to the articles of association (Article 36, CGI), which contain, in particular, information relating to the transfer of shares in SARLs.

69. The tax legislation also provides that the minimum period for retaining documents that may be subject to a right to information request from the DGI is ten years, starting from the date the information came into existence or the document was created. In particular, the right to information may relate

to the articles of association of companies, amendments to those articles and the registers of shareholders. The ten-year retention period applies even if the company ceases to exist. A company ceasing its activities must designate a legal representative responsible for retaining the documents concerned for that period of time. The name, address and contact details of this representative must be communicated to the tax authorities during the business cessation process (Article 33, LPF). The administrative tax doctrine also specifies that, when such representatives are appointed, it must be established that the representative has given consent, resides in the national territory and will be available if needed.

Anti-money laundering law requirements

70. Article 18 of the AML/CFT law[10] requires AML-obliged persons to identify their client (and, where applicable, the beneficial owner) before entering into a business relationship with that client. Article 28 specifies that the identification of a legal entity, or of a branch or representative office of a foreign company, involves obtaining and verifying information on the company name, the address of the registered office, the identity and powers of the partners and directors, as well as proof of its legal constitution (in particular by presenting an extract from the RCCM not older than three months).

71. Therefore, where the client is a legal entity, the AML-obliged person must collect identity and ownership information, including the identity of the partners and managers. However, this obligation does not include the identification of shareholders of companies issuing securities (SA and SAS) and therefore only applies to SARLs (and partnerships).

72. The AML/CFT law also contains an obligation for AML-obliged persons to identify the beneficial owners of their clients. The appropriate identification of these beneficial owners must rely on the legal ownership information. However, there may be cases where the identification of the beneficial owners does not require the identification of all shareholders of an entity. For instance if a person holds more than 75% of the shares, then the identification of other shareholders that have a low participation in the company, can be omitted in practice (if the threshold for determining the control through ownership is 25%).

73. The information collected by AML-obliged persons must be updated throughout the business relationship (Article 19), but no specified frequency for this updating is established by the law.[11] It may therefore not always be up

10. Act No. 2016-992 of 14 November 2016 on AML/CFT.

11. The specified frequency of updating information on the identity of clients is determined by the AML-obliged persons who/which must have adequate internal

to date. The identification documents of clients of financial institutions must be retained for ten years from the closing of accounts or the termination of the business relationship (Article 35). No specific retention period is established for other AML-obliged persons, but a retention period of ten years is provided for in tax legislation (see paragraph 69).Finally, it is not mandatory for the relevant legal entities to use the services of a person subject to the provisions of the AML/CFT law.

74. The AML/CFT legislation therefore provides for the availability of identity and ownership information on SARLs only if the legal entity has an ongoing business relationship with a regulated person and on some SAs and SASs when the identification of BO requires the identification of all shareholders of the company. Nevertheless, this information will not necessarily be up to date.

Foreign companies

75. Pursuant to Article 2 of the CGI, foreign companies, regardless of their nationality, are subject to income tax in Côte d'Ivoire on profits from their businesses operating in the country. Profits are taxable in Côte d'Ivoire when they are made in the ordinary course of business. In practice, this business is carried out through branch offices, representative offices or subsidiaries. Foreign companies that have their management headquarters in Côte d'Ivoire are also considered permanent establishments and subject to income tax on activities carried out in Côte d'Ivoire.

76. Subsidiaries of foreign companies are incorporated under Ivorian law and in the form of an Ivorian company. They are therefore subject to the same registration and record-keeping requirements as other Ivorian companies.

77. The requirement to register with the RCCM also covers foreign companies with a branch office or representative office in Côte d'Ivoire (Articles 199 and 120-4, AUDSCGIE). The information and documents to be provided for this registration are identical to those required for legal entities incorporated in Côte d'Ivoire. Therefore, information on the shareholders and partners of foreign companies may be available in the articles of association that the company must provide upon registration. However, whether the names of the company's shareholders and partners are included and updated in the articles of association will depend on the legal requirements contained in the law of the jurisdiction in which the company was incorporated.

78. Conversely, the tax registration requirement described in paragraph 66 applies to foreign companies as soon as they begin a profit-making activity on a professional basis in Côte d'Ivoire. The names of the partners or

procedures (Instruction No. 007-09-2017, Article 5).

shareholders of the foreign company must therefore be reported during this tax registration and the company's articles of association provided. In the event of a change, the legal ownership information must be updated within ten days via the "Amending Declaration of Operating Conditions" form. Therefore, information on the ownership of foreign companies with a sufficient nexus to Côte d'Ivoire is available.

79. When a foreign company uses the services of a person subject to the AML/CFT law, information on the identity and ownership of that company may also be available (see paragraphs 70 to 74).

Nominees and agents

80. Ivorian law does not contain any specific provisions relating to the Anglo-Saxon concept of nominee. The AUDSCGIE refers to the concept of an agent (*mandataire*), who can act in the name and on behalf of the principal. When a SARL is incorporated, the partners must all participate in the constitutive act in person or through an agent, provided that the latter has a special power of attorney (Article 315 AUDSCGIE). Otherwise, the company is void. In relation to SAs, Article 396 of the AUDSCGIE provides that "the articles of association shall be signed by all the subscribers, in person or by an agent specially authorised for this purpose, after a certificate attesting to the deposit of funds has been drawn up". In such cases, the identity of the principal must be clearly specified in the document authorising the agent and in the articles of association signed on his or her behalf by the agent. Agents may not enter their own name in the articles of association. The same conditions apply to an SAS insofar as Article 853-3 of the AUDSCGIE specifies that, with a few exceptions, the rules concerning an SA are applicable to an SAS. These rules therefore make it possible to identify, in all cases, the beneficial owners in the articles of association of the company concerned.

81. The owners are also identified in the registers of registered and bearer shares, as provided for by Articles 746-1 and 746-2 of the AUDSCGIE and in Article 49 bis of the LPF. In the event of a transfer, the agent's name may not appear in the register in place of that of the new shareholder, just as it may not appear in the articles of association.

Legal ownership information – Enforcement measures and oversight

82. Act No. 2017-727 of 9 November 2017 on the repression of offences provided for by the OHADA uniform acts punishes non-compliance with any of the obligations provided for by the AUDCG with a fine of between XOF 100 000 and XOF 1 million (EUR 152 and EUR 1 520) and/or imprisonment for a term of 3 months to 3 years. These sanctions are imposed by the court, on the basis of reports from the registry services.

83. In tax matters, any inaccuracy or omission in the documents that must be kept is punishable by a fine of XOF 100 000 (EUR 152) in accordance to article 65 of the LPF. Moreover, failure to keep documents for the period established by Article 33 of the LPF is punishable by a fine of XOF 500 000 (762 EUR) per document not kept (Article 66, LPF). In the case of a company that has ceased to exist, the failure to appoint a representative to retain the relevant documents is punishable by a fine of XOF 2 000 000 (EUR 3 048), to be paid by the principal shareholders at the time of the company's cessation. In addition, the 2019 State Budget Act created Article 170 quinquies of the LPF, which provides that failure to keep the records of registered and bearer shares provided for in Article 49 bis (see paragraph 64) is punishable by a fine of XOF 5 million (EUR 7 620), plus XOF 500 000 (EUR 762) for each additional month of delay after the requisition. Furthermore, in accordance with article 146 of the LPF, a failure to provide the "Amending Declaration of Operating Conditions" (see para. 66) is punishable by a fine of XOF 100 000 (EUR 152).

84. With regard to tax registration, the DGI undertakes two types of monitoring actions. On the one hand, cross-checks and on-site investigations are regularly carried out to monitor compliance with the registration requirement. If active companies are identified as not having registered, the DGI will issue a notice to compel the company to register. On the other hand, incentives for voluntary tax reporting were adopted in 2017 and 2020. As an incentive, companies were offered an amnesty on taxes due during the period of undeclared activity, provided that they voluntarily submit their tax declaration of existence within a certain period following the adoption of these incentives.

85. Companies that fail to comply with the reporting requirements may be subject to the penalties described above (paragraphs 82 and 83). With respect to inactive companies, the RCCM does not contain any information relating to the possible "inactive" or "in liquidation process" status of a legal entity. However, companies can voluntarily notify the tax authorities of a temporary cessation of their activities. This cessation must entail a complete halt to the purchase, production, marketing and sale of the company's products or the performance of the company's services. In this case, the company must file a declaration of "temporary cessation of activity" with the tax authorities within ten days of the cessation of activities. Companies that have temporarily ceased trading are not exempt from filing the periodic returns provided for by the CGI and the LPF. They must therefore file their income tax return each year together with their summary financial statements (*liasse fiscale*). The duration of the temporary cessation of activity may not exceed 24 months. If, once this period has elapsed, the company has not notified the DGI of the resumption of its activity, the cessation will have to be considered as a definitive cessation of activity. This means that the company's activities

can no longer be reactivated without the completion of a full process of registration. It does not automatically trigger off the liquidation of the company, but if a company for which a definitive cessation has been established wishes to resume its activity, its members will have to register a new company with the tax administration. As the tax identifier assigned at the time of tax registration is individual, unique and definitive, the tax database contains information on legal entities which has definitively ceased their activity to make the link between the earlier and the new registration.

86. The DGI also conducts an annual clean-up process in relation to taxpayer files. It identifies entities that it presumes to be inactive, i.e. entities that have not filed any tax returns for a certain period,[12] that cannot be contacted and for which cross-checked data do not indicate any involvement in a transaction during the same period. Any entity meeting at least one of these criteria, if not contradicted by any other indicia or fact, is considered by the DGI to be inactive, which may result in the definitive termination of the activity of the company due to the *de facto* cessation of its activities for 24 months. The monitoring of the inactive companies in Côte d'Ivoire, and whether or not it ensures the availability of legal ownership information, will be further analysed during the Phase 2 review (see Annex 1).

87. The AML/CFT enforcement and oversight measures are described in paragraphs 109 to 112.

88. The implementation in practice and the application of the enforcement and oversight measures contained in the legal requirements relating to the availability of beneficial ownership information will be further assessed during the Phase 2 review.

Availability of beneficial ownership information

89. In Côte d'Ivoire, this aspect of the standard is provided for by the tax legislation, which was recently amended for this purpose, and in a complementary (but partial) manner by the AML/CFT law. Each of these legal regimes is discussed below.

12. There is no legal provision defining the minimum period of time during which a company can be considered inactive. The tax authorities therefore have a margin of appreciation to determine after how long a company can be considered inactive. According to the Ivorian authorities, if a company is required to file monthly tax returns, the tax administration generally considers the company to be inactive if it does not file any tax returns or perform any tax formalities for a period of 6 to 12 months.

Companies covered by legislation regulating beneficial ownership information

Type	Company law	Tax law	AML law
SA/SAU (Public limited company)	None	All	Some
SARL/SARLU (Limited liability company)	None	All	Some
SAS/SASU (Simplified joint-stock company)	None	All	Some
Foreign companies (tax resident)[13]	None	All	All

Tax law requirements

90. Article 49 ter of the LPF, adopted in 2019, requires commercial and non-trading companies created in Côte d'Ivoire, regardless of their form and activities, to ensure that a register of their beneficial owners is available to the administration. In addition, since 2020, newly created companies must provide the DGI, at the time of their tax registration, with information on their beneficial owners, using a form provided for this purpose (Article 71, CGI). The Ivorian authorities have also confirmed that these tax obligations apply to foreign companies that are tax resident in Côte d'Ivoire.

91. The concept of beneficial owner contained in these tax provisions has been supplemented, since 2020, by a reference to international standards. The beneficial owner is thus defined as "a natural person identified as such in accordance with the provisions of national legislation on anti-money laundering and countering the financing of terrorism and the international standards on anti-money laundering and countering the financing and proliferation of terrorism issued by the Financial Action Task Force". The implementation of this provision is specified by the tax doctrine[14], which clearly indicates that the term "beneficial owner" of a legal entity designates

> the natural person who ultimately has a controlling interest in the legal entity concerned, i.e. who directly or indirectly holds more than 25% of the shares, exchange-traded stocks or voting rights in the legal entity or exercises a power of control over the administrative or management bodies of that legal entity, or
>
> the natural person who, by any other means, exercises effective control over the legal entity, or
>
> the natural person who holds the position of senior managing officer of the legal entity.

13. 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).
14. Doctrine published in the Official Bulletin of the DGI No. 35 BODGI-2020-HS-15.

92. The tax doctrine notes that these criteria for identifying beneficial owners must not be implemented in a cumulative and disordered manner, but according to a progressive approach in three successive steps, respecting the order in which they are presented. It also specifies that a criterion is only used when the previous step has been taken but has not resulted in the identification of the beneficial owner(s) or leaves doubts as to their identity. Moreover, the Ivorian authorities have confirmed that the direct or indirect holding mentioned in the first step includes the joint holding by several persons. They have also confirmed that "effective control by any other means", as referred to in the second step of this approach, should be interpreted as control exercised directly or indirectly. The definition used in the tax doctrine and the "cascade" approach to beneficial ownership identification are consistent with the standard.

93. The tax doctrine does not establish which beneficial owner identification details must be entered in the register. However, the tax authorities have produced an administrative form that must be completed. This form requires the identification details of each beneficial owner (full name, address, tax identification number, nationality and country of residence) as well as information on how beneficial owner status has been established (control by direct or indirect ownership, control by any other means or default status [managing officer]). Companies are not obliged to use this form: the tax authorities allow them to keep a record of beneficial owners using other registers and forms provided that these contain at least the information required by the tax authorities' form.

94. Article 49 ter of the LPF was also amended in 2020 to require companies to systematically update the information on their beneficial owners as soon as a change occurs. The Ivorian authorities consider that the register should be updated without delay, as it can be consulted at any time by the tax authorities. The law does not provide for a specific mechanism to ensure that companies are informed of any changes in their beneficial owners. The Ivorian authorities have indicated that each entity should provide for its own mechanisms to ensure that it is able to comply with its obligation to identify and report its beneficial owners.

95. Article 33 of the LPF requires any person in possession of documents or information covered by the tax authorities' right to information, including information on beneficial owners, to keep them for a period of ten years. This retention period applies even if the company ceases to exist (see paragraph 69).

Anti-money laundering law requirements

96. The AML law complements the requirements arising from tax law. However, there is no clear obligation for all companies to use the services of AML-obliged persons. In particular, entities are not required to open a bank

account in Côte d'Ivoire, although this is very common in practice due to the requirement for an entity to provide its bank account number at the time of tax registration and the requirement for all entities to pay their taxes online (but the bank account may be abroad). SAs and SASs are also required to use the services of auditors for the preparation of the annual report presented to their general meeting.

97. Act No. 2016-992 of 14 November 2016 on AML/CFT provides for several obligations for regulated persons, who must, among other things:

- identify their clients and the beneficial owners of their clients and verify the identification details by means of reliable written documentation before beginning a business relationship (Article 18)
- keep documents relating to the identity of their clients and their beneficial owners for ten years after the business relationship ends (Article 35)
- report suspicious transactions by their clients to the national financial intelligence processing unit (*Cellule nationale de traitement des informations financières*, CENTIF) (Article 79)
- have an internal standards monitoring programme linked to AML/CFT (Article 25)
- regularly train their personnel in AML/CFT rules (Article 23)
- identify the risks associated with their clients (Article 11).

98. The AML-obliged persons are defined in Articles 5 and 6 of the AML/CFT law and include, among other, financial institutions and their business introducers, trust and company service providers, real estate companies and agents, traders, external auditors and accountants, tax advisors, lawyers, notaries, bailiffs and other independent legal professionals.

99. In accordance with Articles 56 and 57 of the AML/CFT law, financial institutions may rely on a third party to implement their due diligence obligations, including identification of clients and their beneficial owners. However, the financial institutions remain ultimately responsible for compliance with these obligations. A third party may be used to implement due diligence obligations when the following cumulative conditions are met:

- The third party is a financial institution or a person subject to AML/CFT obligations, located or having its head office in Côte d'Ivoire; or a person belonging to an equivalent category under foreign law and located in a third country imposing equivalent AML/CFT obligations.
- The financial institution has access to the information collected by the third party. Article 58 of the AML/CFT law establishes that the third party must, without delay, provide the financial institution with

> information on the identity of the client and the beneficial owner, as well as on the purpose and nature of the business relationship. It must also transmit, on request, copies of documents identifying the client and the beneficial owner, as well as any document relevant to the performance of this due diligence. An agreement may be signed between the third party and the financial institution to specify terms and conditions pertaining to the transmission of the information gathered and monitoring of the due diligence.

100. The AML/CFT law defines the concept of beneficial owner as follows (Article 1-11):

> The natural person(s) who ultimately own(s) or control(s) a client and/or the natural person on whose behalf a transaction is being conducted. This definition also includes persons who ultimately exercise effective control over a legal entity or arrangement.
>
> – Where the client […] is a company, the beneficial owner shall mean the natural person(s) who either holds, directly or indirectly, more than 25% of the capital or voting rights of the company, or who exercises, by any other means, control over the management, administrative or executive bodies of the company or over the general meeting of its members.

101. In accordance with this definition, regulated persons must identify simultaneously any natural persons having indirect or direct control of the company, be it through the holding of capital, voting rights or by any other means. This definition and the simultaneous approach to identifying beneficial owners is consistent with the standard because it enables the identification of more (or at least as many) persons as the "cascade" approach. The notion of control by any other means refers to "a power of control over the management, administrative or executive bodies of the company or over the general meeting of its members". Although this clarification is not included in the standard, it does not seem to contradict this standard insofar as control of a company is in principle exercised by these bodies or assemblies.

102. However, in the event that no natural person matches the definition of a company's beneficial owner, the AML/CFT law does not provide for the identification of a relevant natural person who holds the position of senior managing officer, as required by the standard. This information may be available in the RCCM when the senior managing officer is a natural person (see paragraph 56). However, only SARLs are required to appoint a natural person as manager. Other companies may appoint legal entities, including foreign legal entities, as managers. As a result, when there is no beneficial owner matching the definition given in the AML/CFT law, the identity of the natural person holding the position of senior managing officer of the company is not available in all cases.

103. Article 18 of the AML/CFT law also requires AML-obliged persons to verify the identity of their client and the beneficial owners by means of reliable written documentation, before entering into a business relationship with them. However, if the risk of money laundering and terrorist financing appears to be low, the identity of the client and beneficial owner may be verified during the establishment of the business relationship. The Ivorian authorities have indicated that this provision should not be interpreted as allowing verification of the identity of the beneficial owner after the business relationship has been established. Moreover, the AML/CFT law contains guidance for the AML-obliged persons on how to assess the risks of money laundering and terrorist financing.[15]

104. The elements of identification that regulated persons must collect on natural persons, including the beneficial owners of their clients, include the full name, date and place of birth, and main place of residence of such persons. Verification of the identity of a natural person by means of reliable written documentation also requires the presentation of an original, valid and official identity document.

105. AML-obliged persons must gather and update information on the beneficial owners of their clients throughout the business relationship (Article 19). This information must be kept and updated to support the objectives of assessing the risk of money laundering and terrorist financing and of conducting monitoring appropriate to this risk. The Central Bank of West African States (BCEAO) directives for financial institutions[16] also state that their internal procedures must provide for the necessary due diligence, particularly with regard to setting deadlines for verifying the identity of clients and updating the related information (Article 5). However, the Ivorian AML/CFT legal framework does not establish any specified frequency for updating

15. The basic guidance for the AML-obliged person to identify and assess the risk to which they are exposed (including the risk in relation to the type of client) is included in article 11 of the AML/CFT law. This provision states that the risk factors to take into account are the clients, the countries or geographical zones, the products/services, the operations or the distribution channels. It also mentions that the measures taken to identify and assess the risks must be proportionate to the nature, size and volume of activities of the AML-obliged persons. In accordance with the same provision, the AML-obliged person must have internal policies, procedures and controls, in particular in respect of the CDD requirements, to mitigate and manage efficiently the risks. Article 25 of the AML/CFT law give further details for Financial institutions on the internal procedures and controls to implement.

16. Directive No. 007-09-2017 outlining rules for financial institutions to implement the Uniform Act on Money Laundering and the Financing of Terrorism in West African Monetary Union Member States.

this information and therefore does not ensure the availability of up-to-date information as required by the standard.

106. The identification documents of clients of financial institutions must be retained for ten years from the closing of accounts or the termination of the business relationship (Article 35). No specific retention period is established for other AML-obliged persons, but a retention period of ten years is provided for in tax legislation (see paragraph 95).

107. The AML/CFT law does not expressly require that information and documents relating to beneficial owners be kept in the territory of Côte d'Ivoire. However, regulated persons are required to submit such information or documents in response to a request from the public authorities. They must therefore ensure that they have access to the information in order to comply with this requirement. Failing this, the sanctions described in paragraphs 111 and 112 may be applied.

108. In conclusion, the tax legislation contains requirements ensuring the availability of information on the beneficial owners of entities created in Côte d'Ivoire as well as of foreign companies with a sufficient nexus with Côte d'Ivoire. AML-obliged persons must also identify the beneficial owners of their clients but several deficiencies relating to this requirement of the AML/CFT law have been identified (see paragraphs 102 and 105). Therefore, Côte d'Ivoire should ensure that beneficial ownership information is available, in application of the AML law, in all cases for relevant companies (Annex 1).

Beneficial ownership information – Enforcement measures and oversight

109. Monitoring of compliance with the requirements of the AML/CFT law is carried out by the judicial authorities, State agents responsible for detecting money laundering and terrorist financing offences acting under a judicial mandate, supervisory authorities and the CENTIF (Article 36 of Law No. 2016-992 of 14 November 2016 on Money Laundering and Terrorist Financing).

110. The supervisory authorities of regulated persons include:

- the West African Monetary Union (WAMU) Banking Commission, for banks and financial institutions
- the Inter-African Conference on Insurance Markets (*Conférence interafricaine des marchés des assurances*, CIMA), for insurance companies
- professional associations for the independent legal professions, including the Association of Notaries, the Association of Lawyers and the Association of Chartered Accountants
- the judicial authority for real estate companies and agents, traders and business introducers of FI.

111. If a regulated person fails seriously in its AML/CFT obligations, the relevant supervisory authority may initiate disciplinary measures (Article 112, AML/CFT law). In addition, any person who intentionally or unintentionally participates in or facilitates the commission of money laundering offences may be punished by imprisonment for a term of six months to two years and/or a fine of XOF 100 000 to XOF 500 000 (EUR 152 to EUR 762) (Article 116, AML/CFT law).

112. Implementation of the requirements to identify beneficial owners is also verified by the DGI insofar as the tax legislation contains a general requirement, which also covers AML-obliged persons, to keep documents and information covered by the tax administration's right to information for ten years (Article 33, LPF). This obligation applies even after the regulated person has ceased its activity.[17] Failure to keep documents for ten years is punishable by a fine of XOF 500 000 (EUR 762) per document not kept (Article 66, LPF).

113. In addition, failure to keep the register of beneficial owners, as provided for in Article 49 ter of the LPF, is punishable by a fine of XOF 5 million (EUR 7 620), in accordance with Article 170 quinquies of the LPF. The keeping of records containing errors, omissions or outdated information is punishable by a fine of XOF 500 000 (EUR 762) per error, omission or outdated piece of information. Failure to submit the register when requested by the tax authorities is punishable by a fine of XOF 5 million (EUR 7 620), plus XOF 500 000 (EUR 762) for each additional month of delay following the request. Moreover, failure to keep this information for the legal period is punishable by a fine of XOF 500 000 (EUR 762), in accordance with Article 66 of the LPF.

114. The implementation in practice, and the application of the enforcement and oversight measures contained in the legal requirements relating to the availability of beneficial ownership information, will be assessed during the Phase 2 review

A.1.2. Bearer shares

115. Article 745 of the AUDSCGIE states that securities shall take the form of bearer shares or registered shares, whether they are issued against contributions in kind or cash contributions. However, a company's articles of association or other provisions of the AUDSCGIE may establish that only the registered form may be used. Only SAs and SASs may issue transferable securities. SARLs only issue registered shares.

17. Article 29 of the tax annex to Finance Act No. 2020-972 of 23 December 2020 on the 2021 State budget.

116. The provisions of the AUDSCGIE and domestic legislation do enable the identification of the owner of a bearer share. Article 744-1 states that "securities, regardless of their form, must be registered in an account in the name of their owner. Such securities are exchanged by means of a transfer from one account to another. The transfer of ownership of these securities results from the registration of the securities in the purchaser's securities account". Thus, existing legislation provides for the dematerialisation of bearer and registered shares and the identification of their owners. Article 744-1 was adopted in 2014 and a transitional period established until 5 May 2016 (Article 919) to allow for the dematerialisation of all securities, but at that time Côte d'Ivoire took no specific implementing measures to enforce this deadline. In addition, in accordance to Article 748-1, also adopted in 2014, shares that cannot be traded on a stock exchange or dealt with by a central depository must be in registered form. In the West African Economic and Monetary Union (WAEMU), the regional central depository for bearer securities is the Central Depository/Settlement Bank, which is one of the organs of the regional stock exchange (*Bourse régionale des valeurs mobilières*).

117. Moreover, since 2019, SAs and SASs have been required to keep both an up-to-date record of their registered securities and a record of bearer securities issued and still in circulation. These records must show, in particular, the identity of the owner or the holder of the security, the number of securities held and their value (Article 49 bis, LPF). These companies are also required to provide these records upon request by the tax authorities. The register of bearer shares must be maintained by the company if it has bearer shares in circulation at the date of the entry into force of article 49 bis of the LPF. It is organised according to a form designed by the tax authorities to identify the successive legal owners and beneficial owners of these securities. In accordance with article 33 of the LPF, this register must be kept for 10 years, including after the company has ceased to exist (see para. 69). Information on the holders of bearer securities is therefore, in principle, available in Côte d'Ivoire.

118. The AUDSCGIE does not provide for any penalty in the event of failure to comply with the requirement to dematerialise securities, as established in Article 744-1, and Côte d'Ivoire did not enact any implementing measure to punish such a failure. In application of article 744-1 of the AUDSCGIE, a share can be transferred only from one account to another and therefore, any physical transfer of a bearer share would be void. Nevertheless, the Ivorian authorities indicated that the holder of a non-converted bearer share, issued before the 2014 reform of the Company law and still in circulation, can claim the rights attached to this bearer share, without any time limit, by registering them in a dematerialised account. This ability to claim the rights attached to a bearer share still in circulation at any time is not in line with the standard.

119. Regarding the tax obligation, failure to keep the register of bearer securities in circulation, provided for in Article 49 bis of the LPF, is punishable by a fine of XOF 5 million (EUR 7 620). The keeping of records containing errors, omissions or outdated information is punishable by a fine of XOF 500 000 (EUR 762) per error, omission or outdated piece of information. Failure to submit the register following a request from the administration is punishable by a fine of XOF 5 million (EUR 7 620), plus XOF 500 000 (EUR 762) for each additional month of delay following the request (Article 170 quinquies, LPF).

120. The Ivorian authorities have indicated that they are not aware of any Ivorian companies with bearer securities in circulation. Nevertheless, considering the ability of the holders of bearer shares still in circulation, to claim their rights attached to these shares at any time, **Côte d'Ivoire is recommended to clarify the time limit after which holders of bearer shares can no longer claim rights over the non-converted shares or to ascertain that no such shares exist any longer**. In addition, the enforcement of the tax obligation introduced in 2019, as well as the monitoring activities of the Ivorian authorities on the issuance or circulation of bearer shares, will be assessed during the Phase 2 review (see Annex 1).

A.1.3. Partnerships (Sociétés de personnes)

Types of partnerships

121. The AUDSCGIE provides for the following three types of partnerships:

- The general partnership (*Société en nom collectif*, SNC) is a company in which all the partners are traders and are indefinitely and jointly liable for the company's debts (Article 270, AUDSCGIE). As at 30 June 2020, 16 SNCs were registered with the DGI.
- A limited partnership (*Société en commandite simple*, SCS) is a company in which one or more partners who are indefinitely and jointly liable for the company's debts ("general" partners) coexist with one or more partners who are liable for the company's debts up to the limit of their contributions ("limited" partners) (Article 293, AUDSCGIE). As at 30 June 2020, 22 SCSs were registered with the DGI.
- The joint venture (*Société en participation*, SEP) is a company that does not have legal personality and is not registered with the RCCM. Its existence is therefore not made public. Relations between the partners of a joint venture are governed by the rules applicable to SNCs, unless the partners agree otherwise (Article 862, AUDSCGIE). Each partner remains the owner of the property that he or she places at the disposal of the partnership. The creation of SEPs is provided for in

Articles 854 et seq. of the AUDSCGIE. The SEPs must be registered with the tax administration before starting its activity, although their profits are taxable at the level of each partner. Since SEPs do not have any assets of their own and their partners remain liable to third parties, SEPs are not considered relevant for the purposes of this report.

122. The common feature of partnerships is that their share capital is divided into partnership shares (*parts sociales*), which are not freely transferable.

Identity and ownership information

123. In the case of an SNC, partnership shares may only be transferred with the unanimous consent of the partners. In the absence of unanimity, the transfer cannot take place, but the articles of association may provide for a buy-back procedure to allow the partner wishing to make the transfer to withdraw from the partnership (Article 274, AUDSCGIE). The transfer of shares must be recorded in writing (Article 275, AUDSCGIE). The transfer cannot be valid with regard to the partnership until one of the following formalities has been completed:

- The transfer is served on the partnership by a bailiff.
- The partnership accepts the transfer in a notarised deed.
- An original copy of the deed of transfer is deposited at the registered office in return for a certificate of receipt from the manager.

124. The transfer of partnership shares may not be relied upon against third parties until one of these formalities has taken place and the transfer has been made public in the RCCM.

125. In the case of an SCS, the transfer of shares must also be recorded in writing. The transfer may only be relied upon against the partnership and third parties under the same conditions that apply to the transfer of shares in SNCs. Partnership shares may only be transferred with the consent of all the partners (Article 296, AUSCGIE), except in the following circumstances:

- The shares of the limited partners are freely transferable between partners.
- The shares of the limited partners may be transferred to third parties outside the partnership with the consent of all the general partners and a majority in number and capital of the limited partners.
- General partners may transfer part of their shares to limited partners or third parties outside the partnership with the consent of all the general partners and a majority in number and capital of the limited partners.

126. In addition, SNCs and SCSs are registered with the RCCM under the same conditions as commercial companies with share capital (see paragraphs 55 to 61). Thus, as indicated in paragraph 56, the information that the partnership must provide when registering with the RCCM and update in the event of a change includes:

- the amount of share capital, with an indication of the amount of cash contributions and the valuation of contributions in kind
- the full name, date and place of birth, and domicile of the managers, directors, administrators or partners having general authority to bind the legal entity or grouping.

127. The registration form for an SNC or an SCS must include the full names and personal addresses of their partners, who are indefinitely and personally liable for the partnership's debts (Article 46, AUDCG). Since all the partners of an SNC and the general partners of an SCS are indefinitely and jointly liable for the partnership's debts, their identity must be disclosed in the registration form submitted to the RCCM. Information on the limited partners of an SCS will be available from the RCCM in the articles of association provided at the time of registration. In the event of a change of limited partners, the SCS is not obliged to inform the RCCM but this information will be available from the partnership.

128. In addition, SNCs and SCSs are required to register with the tax authorities in order to undertake any profit-making activity (see paragraph 66). They must therefore provide their articles of association as well as information on their partners. In the event of a change in this information, the partnerships must submit the "Amending Declaration of Operating Conditions" form within ten days of the change (Article 146, LPF). In addition, they must file an annual tax return together with their summary financial statements (*liasse fiscale*), which includes the list of their partners, to determine the allocation of the result. Partnerships are fiscally transparent, which means that the results must be taxed at the level of the partners.

129. Partnerships are also covered by the requirement under Article 49 bis of the LPF to keep and update a register of their partners (see paragraph 64).

130. Tax legislation provides that the minimum period for retaining documents that may be subject to a right to information request from the DGI is ten years (Article 33, LPF), starting from the date the information came into existence or the document was created. The right to information may relate to the articles of association of partnerships, amendments to those articles and the registers of partners, among other things. The ten-year retention period (see paragraph 69) applies even if the partnership ceases to exist.

131. In addition, foreign partnerships carrying out their economic activity through branch offices or representative offices must complete a registration process with the RCCM and with the tax authorities, as described in paragraphs 77 and 78. Although foreign partnerships must provide their articles of association at the time of registration, the inclusion of the names of their partners in those articles depends on the legal requirements of the jurisdiction in which the partnership was incorporated. However, this information must appear on the declaration of existence for tax purposes submitted during registration and must be updated within ten days of a change.

Beneficial ownership information

132. The requirement for regulated persons to identify their clients and the beneficial owners of their clients before the start of the business relationship (Article 18, AML/CFT law) applies regardless of whether the client is a commercial company with share capital or a partnership.

133. Partnerships created in Côte d'Ivoire and foreign partnerships carrying on business in Côte d'Ivoire are also covered by the requirement, under Article 49 ter of the LPF, to keep a register of their beneficial owners and make it available to the administration. Moreover, Article 71 of the CGI requires partnerships to provide information on the identity of their beneficial owners at the time of their tax registration (see paragraphs 90 to 95).

134. Furthermore, the same definitions of beneficial owner, contained in the AML/CFT law and in the tax doctrine, are applicable to both commercial companies with share capital and partnerships. However, as for all entities other than commercial companies with share capital, the determination of beneficial owners must take into account the specificities of their different forms and structures[18]. For partnerships in Côte d'Ivoire, it is not always appropriate to apply a specific threshold relating to ownership (more than 25%) of shares or voting rights. In fact, all the partners of SNCs and SEPs and all the general partners of SCSs are indefinitely and jointly liable for the partnership's debts, regardless of their stake in the partnership. Moreover, certain major partnership decisions, such as the transfer of shares, require the unanimous consent of all partners. This is a fundamental difference from commercial companies with share capital, where shareholders are generally liable for the amount of their capital contributions and decisions are taken by majority vote. Nonetheless, the definition of beneficial owner contained in the AML/CFT law seems appropriate for the identification of beneficial owners of partnerships since, as indicated in paragraph 101, the conditions of control by ownership and control by other means are verified simultaneously

18. See paragraphs 16 and 17 of the Financial Action Task Force Interpretative Note to Recommendation 24.

in the first step of this identification process. Nevertheless, other deficiencies are identified in the AML law (see paragraph 108). It should be noted, however, that the definition established by the tax doctrine clearly provides for the "cascade" approach and therefore does not allow, in all cases, for all the relevant beneficial owners of partnerships to be identified. Although the Ivorian authorities consider that the first step of the "cascade" (control by ownership) can be disregarded if it is not relevant for an entity, the implementation of the identification of beneficial owners of partnerships is not clearly explained in the Ivorian legal framework. **It is therefore recommended that Côte d'Ivoire ensure that information on all beneficial owners of relevant partnerships is available in all cases**.

Oversight and enforcement

135. The legal mechanisms for making information available on the ownership and identity of partnerships are the same as those discussed in section A.1.1. Therefore, the enforcement measures and sanctions applicable under the legal requirements relating to availability of information on legal ownership (paragraphs 82 to 88) and beneficial ownership (paragraphs 109 to 113) also apply when these requirements relate to partnerships.

136. The implementation in practice and the application of the enforcement and oversight measures contained in the legal requirements relating to the availability of beneficial ownership information, will be assessed during the Phase 2 review.

A.1.4. Trusts

137. The incorporation of trusts is not provided for by Ivorian law or by OHADA law. However, nothing prevents a resident of Côte d'Ivoire from acting as a trustee of a foreign trust. It is also possible in Côte d'Ivoire to enter into a *fiducie* agreement whereby one person (the settlor) transfers property, rights or security interests to another person (the administrator) so that the administrator may take action on behalf of one or more beneficiaries for a specified purpose. Administrators keep the *fiducie* property separate from their own assets. *Fiducie* are not defined by Ivorian law. The *fiducie* agreement is subject to the normal rules of contract, as set out in the Civil Code.

Requirements to maintain identity information in relation to trusts and implementation in practice

138. Information on the beneficial owners of *fiducies* and trusts administered in Côte d'Ivoire may be available from AML-obliged persons. Since 2020, the tax legislation has also contained a requirement for trustees and administrators to provide this information to the tax authorities.

139. The AML/CFT obligations, as described in paragraph 97, apply when the client is a *fiducie* or similar legal arrangement. In this case, Article 1-11 of the AML/CFT law defines the concept of beneficial owner as follows:

> The natural person(s) who ultimately own(s) or control(s) a client and/or the natural person on whose behalf a transaction is being conducted. This definition also includes persons who ultimately exercise effective control over a legal entity or arrangement.
>
> - […] where the client is a fiducie or other comparable legal arrangement governed by foreign law, the beneficial owner shall mean the natural person or persons who satisfy one of the following conditions:
>
> - They are entitled, by virtue of a legal instrument which designates them as such, to become rights holders owning at least 25% […] of the property transferred to a fiducie or any other comparable legal arrangement governed by foreign law.
>
> - They belong to a group in whose primary interest […] the fiducie or other comparable legal arrangement under foreign law has been constituted or has become effective, where the natural persons who are the beneficiaries of the fiducie or other legal arrangement have not yet been designated.
>
> - They hold rights to at least 25% of the property […] of the fiducie or other comparable legal arrangement under foreign law.
>
> - They have the status of settlor, trustee or beneficiary, according to the laws and regulations in force.

140. In the first and third of the identification steps described above, beneficial owners are identified by applying a holding or participation threshold of at least 25% in the *fiducie* or trust. This application of a threshold is not provided for by the standard, which requires the identification of all the trustees, settlors, beneficiaries and, where applicable, protectors of the legal arrangement. Although the last step of this definition in the AML/CFT law does provide for the identification of all persons who are settlors, trustees or beneficiaries, it specifies that these persons will be identified if they hold these positions "according to the laws and regulations in force". This precision may create implementation difficulties in Côte d'Ivoire as there are no specific regulations in place for *fiducies* and foreign trusts. The application of the definition of beneficial owners of legal arrangements, as provided for in the AML/CFT law, will therefore be examined in Phase 2 (Annex 1).

141. There is no requirement for a *fiducie* or a foreign trust to use the services of a person subject to AML/CFT obligations and there is no specified frequency for updating the information on beneficial owners (see paragraph 105).

142. However, since 2020, the tax legislation has contained a provision for the availability of information on the beneficial owners of *fiducies* and foreign trusts. Thus, Article 54 bis of the LPF, explained by the tax doctrine,[19] provides that persons residing in Côte d'Ivoire and acting as administrators of *fiducie* or other similar legal arrangements established abroad must declare to the tax authorities the existence, modification, termination, terms and content of the legal arrangements they administer. This declaration must also include the identity of the settlors, the protectors, if any, all beneficiaries or categories of beneficiaries and, in general, any other natural person who ultimately exercises effective control over the legal arrangements in question, according to international standards. The information covered by this reporting requirement is in line with the standard. However, the reference in Ivorian law to using international standards to define beneficial owners of legal arrangements is not further explained in the tax doctrine. The implementation of this new tax provision in practice, in particular the application of the definition of beneficial owners of *fiducies* and trusts, as provided for in the tax legislation, will therefore be examined in Phase 2 (Annex 1).

143. The obligation to submit a declaration on a *fiducie* or trust with the tax administration applies when one of the following conditions is met:

- The administrator of the *fiducie* or trust is resident in Côte d'Ivoire for tax purposes.
- At least one of the settlors or beneficiaries of the *fiducie* or trust is resident in Côte d'Ivoire for tax purposes. In this case, any settlor or beneficiary residing on Ivorian territory is jointly responsible for the reporting requirement.
- Property, rights or accumulated income located in Côte d'Ivoire are placed in the legal arrangement.

144. This declaration must be filed using a specific administrative form within 30 days of the establishment, modification or termination of the legal arrangement. The Ivorian authorities have indicated that no declaration in relation to a *fiducie* or a foreign legal arrangement has been filed with the tax authorities since this obligation came into force.

19. Administrative Directive No. 35 BODGI-2020-HS 15.

Oversight and enforcement

145. Failure to comply with the requirement to declare a legal arrangement is punishable by a fine of XOF 2 million (EUR 3 040), plus XOF 500 000 (EUR 762) for each additional month of delay (Article 54 bis, LPF). The fine of XOF 2 million (EUR 3 040) also applies to declarations containing incorrect or out-of-date information. Failure by the person concerned to keep available the information contained in the declaration is punishable by a fine of XOF 500 000 (EUR 762) per document not kept (Article 66, LPF).

146. In the event of non-compliance with AML/CFT obligations by regulated persons, the sanctions described in paragraphs 111 and 112 may be applied.

A.1.5. Foundations

147. Ivorian legislation makes no provisions for foundations. This type of structure must take the form of an association. However, because of their nature, non-profit purpose and characteristics, including a close monitoring of public interest associations by the public authorities, as described below, associations are not relevant to EOI for tax purposes. Therefore, only a brief overview of their legal structure and obligations in relation to ownership and identity information is provided in this section.

148. Associations are governed by Law No. 60-315 of 21 September 1960 (Law on Associations). They are defined as agreements through which two or more persons pool their knowledge and activities on a permanent basis for non-profit purposes (Article 1). Only two forms of association are possible: declared associations and associations recognised as being of public interest (Article 2). Associations therefore always pursue a non-profit activity and, in some cases, a public interest activity. Only Ivorian citizens may be members of the administrative or management bodies of an association (Article 3).

149. The Law on Associations also states that every declared association must be preregistered by those responsible for its administration or management with the prefecture or administrative district where the association has its headquarters (Article 7). This preregistration is carried out with the Ministry of the Interior and provides the title and purpose of the association, the location of its establishments and the names, occupations and domiciles of those responsible for its administration or management. For the association to obtain legal capacity, its existence must be made public (Article 11). In addition, associations must make known, within one month, any changes relating to their administration or management as well as any changes to their status (Article 10). In the event of a false declaration, the association can be dissolved (Article 8).

150. Associations applying for public interest status must first complete the formalities imposed on declared associations (Article 15). Subsequently, as part of the application for public interest status, they must submit a list

of the association's members (Article 16). The recognition of public interest must then be validated by a decree, on the basis of a report by the Minister of the Interior.

151. Associations are exempt from paying profits tax on activities carried out within the strict framework of their corporate purpose. However, they may also carry out commercial activities beyond this framework, so long as these do not cast doubt on the non-profit nature of their purpose. Tax is payable on the profits of these activities. In addition, associations are subject to other taxes under ordinary law, such as the tax on salaries and wages or property taxes. Consequently, they must register with the DGI pursuant to Article 436 of the CGI, under conditions similar to those described in paragraph 66. They are also subject to the requirement to keep a register of their beneficial owners, in accordance with Article 49 ter of the CGI (see paragraphs 90 to 95).

Other relevant entities and arrangements

Co-operative company (société coopérative)

152. Article 4 of the OHADA AUSC defines a co-operative company as an autonomous grouping of persons who come together voluntarily in order to satisfy their common economic, social and cultural needs and aspirations by means of a collectively owned and managed enterprise where power is exercised democratically and in accordance with co-operative principles.

153. A co-operative company is composed of members who effectively participate in the activities of the company in accordance with co-operative principles and who receive company shares representing their contributions (Article 8, AUSC). Natural or legal persons may be members of co-operative companies (Article 7, AUSC). Decisions are taken at a general meeting and each member has one vote, regardless of the size of his or her shareholding in the co-operative company (Articles 102 and 103, AUSC). As at 30 June 2020, 5 337 co-operative companies were registered with the DGI.

154. The articles of association of a co-operative company must include, among other things: the full name and domicile of each founding member; the identity of contributors of cash, including the amount of the contribution made by each one and the number and value of the company shares issued in return for each contribution; the identity of contributors in kind, the nature and value of the contribution made by each one and the number and value of the company shares issued in return for each contribution; and the rules governing contributed assets whose value exceeds that of the required contributions (Article 18, AUSC). An application for membership of a co-operative company is made in writing by the applicant. The membership is then ratified by the general meeting and the applicant's membership status is established

by means of a document, issued by the company's administrative body that states the identity of the member (Article 10 AUSC).

155. In addition, each co-operative company must maintain, at its registered office, a register of members that includes, for each member, their full name, identity document details, address, occupation, the number of company shares subscribed and the number of shares paid-up (Article 9, AUSC).

156. Co-operative companies are registered in the Co-operative companies Register (Article 74, AUSC). The application for registration must contain, among other things, the identity and address of each director with general authority to bind the co-operative company, as well as the company's articles of association (Articles 75 and 76, AUSC). If, due to subsequent changes, it is necessary to rectify or supplement the information entered into the Co-operative companies Register, the company must notify the Register within 30 days of the changes taking place. Any changes to a co-operative companies' articles of association must also be recorded in the Register (Article 80 AUSC).

157. Co-operative companies, except the co-operative companies for consumption which only gather the orders of their members and redistribute the products among them (article 4-A) 1 CGI), are subject to corporate tax and must therefore register with the tax authorities, under the conditions described in paragraph 66.

158. As regards information on beneficial owners, co-operative companies are covered by the AML/CFT requirements relating to companies and by the tax requirements to keep a register of beneficial owners and to disclose this information at the time of their tax registration, as described in section A.1.1. However, given the operating rules of co-operative companies, in particular the lack of correlation between the value of each member's vote in decision making at a general meeting and the size of that member's shareholding in the company, the rules for determining the beneficial owner contained in the tax legislation may not always be relevant. As explained in paragraph 134, while the definition provided by the tax doctrine – in which the "cascade" approach is clearly described – is appropriate for companies where decisions are taken by a majority of voting rights as represented by share capital, it does not allow for the identification of all the relevant beneficial owners of co-operative companies in all cases, as each member participates equally in the decision making. **It is therefore recommended that Côte d'Ivoire ensure that information on all beneficial owners of co-operative companies is available in all cases**.

Economic interest grouping

159. The sole purpose of an economic interest grouping (EIG) is to implement, for a defined period, all means likely to facilitate or develop

the economic activity of its members or to improve or increase the results of that activity (Article 869, AUDSCGIE). It may be formed by contract by several natural or legal persons. However, it is not intended per se to generate profits to be shared. Members' rights are not represented by transferable securities and members are liable for the EIG's debts out of their own assets (Articles 870 and 873, AUDSCGIE). An EIG can be created without any capital (article 869 AUDSCGIE). As at 30 June 2020, 87 EIGs were registered with the DGI.

160. The EIG contract must include, among other things, the name or company name, legal form, address of the domicile or registered office and, where applicable, the RCCM registration number of each of its members (Article 876, AUDSCGIE). In addition, the EIG must register with the RCCM under the same conditions as all other companies, submitting a copy of its founding contract. The identity of the EIG's members is thus also available from the RCCM. In the event of a change in the membership of the EIG, this change must be recorded in the RCCM (Article 52, AUDCG).

161. EIGs are subject to corporate tax and must therefore register with the tax authorities, under the conditions described in paragraph 66. They must also keep a register of their members, in accordance with Article 49 bis of the LPF.

162. With regard to information on beneficial owners, EIGs are covered by the AML/CFT requirements and by the tax requirements to keep a register of beneficial owners and to disclose this information at the time of their tax registration, as described in section A.1.1. Each member of the EIG participates equally in the decision-making process. As with partnerships and co-operative companies, the first step in the determination of beneficial owners provided for in the tax doctrine, relating to the control by ownership, is therefore not relevant for EIGs. Nevertheless, in the case of EIGs, this first step will always be omitted because a member's participation in the EIG is not represented by shares. The beneficial owners of EIGs will therefore be identified by the test of control by other means.

Non-trading company

163. Non-trading companies are companies with a non-commercial activity. Non-trading companies are usually non-trading real estate companies with a property focus, whose purpose is to take ownership of real estate acquired or passed on by partners, thereby facilitating the management and transfer of immovable assets. Non-trading companies can also enable several persons to engage jointly in a regulated non-commercial activity, such as activities of lawyer, accountant or physician.

164. A non-trading real estate company with a commercial purpose is a non-trading company that undertakes commercial activity insofar as it engages in real estate speculation and profit seeking. It is thus non-trading in form but commercial in purpose and is therefore subject to the laws governing commercial companies. It is subject to the same registration (article 35 AUDCG) and record-keeping obligations as commercial companies with share capital, as described in section A.1.1.

165. Other non-trading companies, including non-trading real-estate companies without commercial purpose, are not subject to commercial company law and are not required to register with the RCCM. They are, however, subject to the tax obligations of registration and maintenance of registers of shareholders and partners (Article 49 bis LPF – see paragraph 64) and of beneficial owners (Article 49 ter LPF – see paragraph 90), as described in Section A.1.1. Identity, legal and beneficial ownership information of non-trading companies is therefore available under the tax legislation.

166. In particular, as regards information on beneficial owners, the first step in determining the beneficial owner provided for in the tax doctrine (control through ownership) is relevant for these entities. This beneficial ownership information is also available under AML/CFT legislation in cases where the non-trading company has a business relationship with an AML-obliged person. The deficiencies identified in the AML/CFT provisions, as flagged in Section A.1.1, are therefore the same for non-trading companies.

A.2. Accounting records

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

167. All relevant entities as well as administrators and trustees of legal arrangements must keep accounting records, including the underlying documentation, in accordance with OHADA accounting and commercial law and tax legislation. These obligations include producing annual financial statements and keeping records that allow these entities' operations to be traced. This information must be retained for at least ten years, including after the entity has ceased to exist.

168. The table below presents the findings on this element.

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the legislation of Côte d'Ivoire in relation to the availability of accounting information.

Practical Implementation of the Standard: The assessment team is not able to assign a rating for this element as it requires an evaluation of the implementation in practice, which will be carried out in Phase 2.

A.2.1. General requirements

169. The general requirements regarding the availability of accounting information are mainly provided for by OHADA accounting and commercial law and tax legislation. The various legal regimes are analysed below.

Accounting and commercial law

170. The OHADA Uniform Act on Accounting Law and Financial Reporting (AUDCIF) contains accounting requirements common to all legal entities in Côte d'Ivoire. These accounting requirements under the AUDCIF apply to all entities subject to the provisions of the AUDCG (all commercial companies), the AUDSCGIE (SA, SARL, SAS, SNC, SCS, SEP and EIG) and the AUSC (co-operative companies). More generally, they apply to entities producing market or non-market goods and services if they are regularly engaged in a principal or ancillary economic activity, irrespective of whether or not financial gain is derived from that activity (Article 2, AUDCIF). They also cover foreign legal entities that are resident in Côte d'Ivoire for tax purposes and foreign partnerships carrying on business in Côte d'Ivoire.

171. The accounting requirements under the AUDCIF include (Article 19, AUDCIF):

- recording accounting transactions during the financial period chronologically in a day book
- keeping a ledger in which all the transactions during the financial period are recorded in accordance with the principle of double-entry bookkeeping
- maintaining the accounts balance which, at the end of the period, shows for each account the debit or credit balance at the start and end of the period, as well as the aggregate debit and credit movements during the financial period
- keeping an annual accounts book in which the balance sheet, income statement, cash flow statement and annex notes are transcribed.

172. Entities must also produce annual summary financial statements, using the appropriate templates according to the accounting system. These annual financial statements detail, in an accurate and reliable manner, the transactions, events and circumstances of the accounting period to give a true picture of the

entity's assets, financial position and results (Article 8, AUDCIF). They include (Article 29, AUDCIF):

- the balance sheet, which describes separately the assets and liabilities that make up the entity's net worth
- the income statement, which summarises the revenue and expenses, thus showing the interim results and the net profit or loss for the financial period
- the cash flow statement, which shows the cash inflow and outflow for the financial period
- the annex notes, which supplement and clarify the information provided by the other elements of the financial statements.

173. The accounting system of each entity must meet the requirements of accuracy, reliability and transparency inherent in the recording, presentation, auditing and disclosure of the information processed (Article 3, AUDCIF). The aforementioned accounting records must also (Article 17, AUDCIF):

- be kept in French (the official language of Côte d'Ivoire)
- use the double-entry bookkeeping method (entries are posted in at least two accounts)
- record transactions chronologically
- support entries with dated and classified documents.

174. In accordance with Article 5 of the AUDCIF, entities' accounting systems must be based on the OHADA general accounting plan and accounting system (SYSCOHADA). The application of the SYSCOHADA implies in particular that (Article 6, AUDCIF):

- The entity complies with the rules and procedures in force by applying them in good faith.
- Those responsible for accounting set up and implement the internal audit procedures necessary to obtain the information they should typically have on the reality and significance of events, transactions and circumstances relating to the entity's activity.
- Information is presented and communicated clearly with no attempt to disguise the reality.

175. All records, documents and accounting information must be kept by the entity for at least ten years (Article 24, AUDCIF).

176. The production of financial statements is mandatory for all entities, but their presentation can be simplified (using a minimal cash-basis system, the *système minimal de trésorerie*) depending on the turnover achieved by

the entity during the financial period concerned[20]. The *système minimal de trésorerie* is based on the preparation of a balance sheet, a statement of income and explanatory notes (Article 28, AUDCIF).

177. Companies with share capital (SA, SARL and SAS) must send their summary financial statements to an auditor for certification before the general meeting responsible for approving these statements.

178. In addition, the financial statements must be communicated annually to the RCCM, within one month of their approval (Article 269, AUDSCGIE). In practice, financial statements are filed in electronic and paper format at a dedicated service (the *Guichet unique de Dépôt des États Financiers*) within the DGI, which is responsible for transmitting them to the recipient structures, notably the RCCM. The RCCM retains this information on the annual financial statements indefinitely, even after the company has been terminated, for the purpose of informing third parties.

179. Commercial and accounting legislation does not expressly require entities to keep their accounting records in Côte d'Ivoire. However, these entities are required to give tax authorities access to the relevant information within 15 to 30 days after receiving the request. If they fail to do so, the tax authorities may impose a fine of XOF 1 million (EUR 1 520), which increases to XOF 2 million (EUR 3 040) if the entity does not respond within 30 days of a formal notice being issued (Article 64, LPF). Each additional month of delay is sanctioned by a fine of XOF 500 000 (EUR 762).

Tax Law

180. The tax law establishes requirements to keep accounting records in accordance with the standards set by SYSCOHADA. Thus, Article 36 of the CGI requires entities to file their annual financial statements with the tax authorities. The tax authorities will only accept financial statements certified by an auditor, in the case of an SA, SARL or SAS (see paragraph 177), or financial statements approved in advance by a registered chartered accountant for other companies. Entities must also include with their financial statements copies of amendments to their articles of association. Foreign entities operating in Côte d'Ivoire through a branch office or representative office are also subject to this requirement to file their financial statements.

181. Article 49 of the CGI stipulates that accounting and supporting documents, including purchase, overhead and sale invoices as well as receipts and

20. The thresholds established by Article 13 of the AUDCIF are XOF 60 million (EUR 91 380) for trading companies, XOF 40 million (EUR 60 920) for craft enterprises and XOF 30 million (EUR 45 690) for enterprises providing services.

expenditure vouchers, must be kept for a period of ten years, starting the year in which the related transaction took place.

182. As indicated in the paragraph 69, the minimum period for retaining documents that may be subject to a right to information request from the DGI is ten years, starting from the date the information came into existence or the document was created. The right to information can apply to all accounting information held by the entity concerned. The ten-year retention period applies even if the company or the partnership ceases to operate (including if they cease to exist). The company or partnership (as well as trustee of foreign trusts and *fiducie*) ceasing its activities must designate a legal representative responsible for retaining the documents concerned for that period of time. The name, address and contacts of this representative must be communicated to the tax authorities when the procedure for cessation of activities is carried out (Article 33, LPF). The administrative tax doctrine specifies that it must be established that this designated representative resides on the national territory

Fiducies and trusts

183. There is no specific legal requirement on the *fiducies* or the foreign legal arrangements to keep accounting information on their activities managed or administered in Côte d'Ivoire. On the other hand, the trustee or administrator of the *fiducie* is subject to the accounting obligations issued by the AUDCIF because this activity is an economic activity covered by Article 2 of the AUDCIF. The obligation for the trustee or administrator of the legal arrangement to keep accounts ensures the availability of accounting information relating to this legal arrangement as each accounting operation must be supported by details of its origin, allocation, content and by references to the relevant supporting documents (Article 17, 5°). In addition, the information presented in the financial statements must provide an adequate, fair, clear, accurate and complete description of the transactions (Article 9). Moreover, if the trustee or administrator of the *fiducie* is a financial institution subject to AML/CFT obligations, it is required to retain receipts and documents relating to its transactions in connection with the legal arrangement, including books of account and business correspondence. This information is retained for ten years after the transaction is completed.

184. In order to demonstrate that the assets placed in a *fiducie* or a trust and the income generated by these assets do not have to be taxed at the level of the administrator (or trustee), the administrator must also be able to demonstrate to the tax authorities the nature and extent of the operations relating to the legal arrangement. Such evidence may be provided by any relevant document.

185. However, it is uncertain that in practice, the non-professional trustees or administrators effectively apply the AUDCIF provisions. The compliance

with the accounting obligations by the non-professional trustees and administrators, as well as the materiality of the risk for a request relating to a legal arrangement managed by a non-professional trustee or administrator will be analysed during the Phase 2 review (Annex 1).

A.2.2. Underlying documentation

186. Each entity's accounting system must respect, at minimum, certain reliability and security requirements. These include supporting written entries with dated receipts that are filed in a specific order, deemed to have probative value and bear a reference number corresponding to their record in the accounting system (Article 17-3, AUDCIF). These receipts include purchase and sale invoices, contracts and other relevant documents. This requirement to keep supporting documents is also provided for in Article 49 of the CGI. As set out for accounting records in paragraph 182, the underlying documentation must also be kept for ten years, even if the entity ceases to exist (Article 24, AUDCIF; Article 49, CGI; Article 33, LPF).

Oversight and enforcement of requirements to maintain accounting records

187. Managers of an entity who fail to keep an inventory or do not produce annual financial statements, a management report and, where applicable, a balance sheet, as well as those who knowingly produce and submit financial statements that do not accurately reflect the assets, the financial situation and the results of the financial period, risk a prison sentence of three months to three years and/or a fine of XOF 500 000 to XOF 5 million (EUR 762 to EUR 7 620)[21]. In addition, company managers who knowingly publish or present to shareholders or partners, with a view to concealing the true state of affairs in the company, summary financial statements that do not accurately reflect the operations of the financial period, the financial situation and the assets of the company, as well as those who do not file the entity's financial statements by the deadline, risk a prison sentence of one to five years and/or a fine of XOF 1 million to 5 million (EUR 1 520 to EUR 7 620)[22]. Moreover, improperly kept accounts cannot be presented as evidence by the person who produced them (Article 68, AUDCIF).

188. Article 169 of the LPF provides for various tax fines for failure to file accounting documents, including financial statements, within the legal

21. Article 111 of AUDCIF and Article 48 of Act No. 2017-727 of 9 November 2017 on the repression of offences provided for by the OHADA uniform acts.
22. Article 890 of AUDSCGIE and Article 10 of Act No. 2017-727 of 9 November 2017 on the repression of offences provided for by the OHADA uniform acts.

deadlines. The tax authorities may also apply the procedure of compulsory rectification (Article 30, LPF) in the event of failure by the taxpayer to present the accounts, accounting documents, books, registers and any other documents that taxpayers are required to keep.

189. The tax authorities regularly check that companies comply with their accounting obligations through tax audits.

190. The implementation in practice and the application of the enforcement and oversight measures contained in the legal requirements relating to the availability of accounting information will be assessed during the Phase 2 review.

A.3. Banking information

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

191. The accounting legislation and the AML/CFT law generally ensure the availability of information on the holders of bank accounts in Côte d'Ivoire and the transactions carried out through these accounts. Information on beneficial owners of accounts is also collected and verified by banks as part of their AML/CFT obligations. However, the problems identified in section A.1.1 in the AML law also affect the availability of information on beneficial owners of accounts.

192. The conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/Underlying Factor	Recommendations
In accordance with the AML/CFT law, banks must identify the beneficial owners of all accounts. However, there is no specified frequency for updating this information. Furthermore, if no natural person meets the definition of a beneficial owner of a company, the AML/CFT law does not provide for the identification by default of a relevant natural person who holds the position of senior managing officer.	Côte d'Ivoire should ensure the availability of beneficial ownership information for all bank accounts.

Practical Implementation of the Standard: The assessment team is not able to assign a rating for this element as it requires an evaluation of the implementation in practice, which will be carried out in Phase 2.

A.3.1. Record-keeping requirements

193. The Ivorian banking sector is governed by the regulations, instructions and directives issued by the WAEMU and the BCEAO. Banking activities are subject to authorisation and licensing. Applications for licensing are addressed to the Minister of Finance and filed with the BCEAO, which examines them and verifies whether the legal entities applying for licensing meet the conditions and obligations laid down in the banking regulations. In particular, it examines the company's programme of activities and the technical and financial resources it plans to use, as well as its ability to achieve its development objectives under conditions compatible with the proper functioning of the banking system and adequate client protection (Article 15 of the WAMU framework law on banking regulation).

Availability of banking information

194. In accordance with Articles 2 and 3 of the framework law on banking regulation, the operations that banks may carry out are the receipt of funds from the public, credit operations and the provision of overdraft facilities, and management of means of payment.

195. Banks must keep the accounting records of these operations, including the underlying documentation, under the same conditions as those described in section A.2, except that banks do not apply SYSCOHADA but the WAMU Banking Accounting Plan, which takes into account the specificities of banking activities (Article 5, AUDCIF).

196. In addition, the AML/CFT law requires financial institutions to keep receipts and documents relating to the identity of their regular or occasional customers for a period of ten years following the closure of their accounts or the termination of the relationship. Financial institutions must also keep receipts and documents relating to transactions carried out, including account books and business correspondence, for ten years following the transaction (Article 35, AML/CFT law).

197. In addition, tax legislation requires banks to provide the tax authorities, voluntarily and on a quarterly basis, with information on fund transfers in excess of XOF 5 million (EUR 7 620) (Article 53, LPF) and on any account opened by a company (Article 56, LPF).

Beneficial ownership information on account holders

198. Banks, in the same way as other AML-obliged persons, are required to identify the beneficial owners of their clients (Article 18, AML/CFT law). This requirement is discussed in sections A.1.1 for companies with share capital, A.1.3 for partnerships and A.1.4 for *fiducies* and trusts.

199. Regarding companies with share capital and partnerships, the AML/CFT law may ensure the availability of beneficial ownership information on account holders in Côte d'Ivoire, but deficiencies have been identified. In particular, although banks must update information on the beneficial owners of their clients throughout the business relationship (Article 19) and the internal procedures of financial institutions must provide for due diligence, including setting deadlines for verifying customers' identity and updating related information[23], the Ivorian AML/CFT legal and regulatory framework does not specify a specified frequency for updating such information.

200. Furthermore, in the event that no natural person matches the definition of a company's beneficial owner, the AML/CFT law does not provide for the identification of a relevant natural person who holds the position of senior managing officer, as required by the standard. This information is available for entities registered in the RCCM when they have appointed a natural person as manager (see paragraph 102). However, in some cases, entities holding a bank account in Côte d'Ivoire appoint a legal entity as manager, meaning that information on the relevant natural person holding the position of senior managing officer will not be available.

201. The AML/CFT law also allows beneficial owners of legal arrangements to be identified, since the definition of beneficial owner for this type of structure provides for the identification of all persons who are settlors, trustees or beneficiaries of the *fiducie* or trust. However, the law specifies that such persons will be identified if they hold these positions "according to the laws and regulations in force". This may complicate implementation in Côte d'Ivoire since there are no specific regulations in place for legal arrangements (see paragraphs 139 and 140). The application of the definition of beneficial owners of legal arrangements, as provided for in the AML/CFT law, will therefore be examined in Phase 2 (Annex 1).

202. Article 18 of the AML/CFT law also requires AML-obliged persons to verify the identity of the client or the beneficial owners by means of reliable written documentation. The elements of identification that regulated persons must collect on natural persons, including the beneficial owners of

23. Article 5 of Directive No. 007-09-2017 outlining rules for financial institutions to implement the Uniform Act on Money Laundering and the Financing of Terrorism in West African Monetary Union Member States.

their clients, include the full name, date and place of birth, and address of the main place of residence of such persons. Verification of the identity of a natural person by means of reliable written documentation also requires the presentation of an original, valid, official identity document.

203. In addition, as described in paragraph 99, banks may use third parties to carry out their due diligence obligations, including the identification of the beneficial owners of their clients, provided that they comply with legal requirements consistent with the standard (Articles 56 and 57).

204. The retention period for the identification documents of a banking client is ten years from the closure of the account or the termination of the business relationship (Article 35). Moreover, as this information is covered by the right to information of the tax authorities, the requirement for a company ceasing its activities to designate a legal representative responsible for retaining the documents concerned for a ten-year period (Article 33, LPF) apply to the banks, including the Ivorian branches of foreign banks, having ceased their activities in Côte d'Ivoire.

205. In conclusion, although the AML/CFT law provides for the identification of the beneficial owners of all bank account holders in Côte d'Ivoire, the deficiencies identified (paragraphs 199 and 200) means that beneficial ownership information on account holders is not necessarily available in all cases. **It is therefore recommended that Côte d'Ivoire ensure that beneficial ownership information on accounts holders is available in all cases**.

Oversight and enforcement

206. The enforcement measures described in section A.1.1 (paragraphs 109 to 113) apply to the monitoring of banks' due diligence obligations and in the event of non-compliance with these obligations. Banks' implementation of their AML/CFT obligations is overseen by the WAMU Banking Commission.

207. In addition, a BCEAO Directive[24] details the internal procedures and internal audit arrangements that financial institutions must implement to ensure compliance with AML/CFT provisions. This directive also sets out the auditing and sanctioning procedures for oversight authorities.

208. The implementation in practice and the application of the enforcement and oversight measures contained in the legal requirements relating to the availability of beneficial ownership information will be assessed during the Phase 2 review.

24. Directive No. 007-09-2017 outlining rules for financial institutions to implement the Uniform Act on Money Laundering and the Financing of Terrorism in West African Monetary Union Member States.

Part B: Access to information

209. 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).

210. The ability of the Ivorian tax authorities to obtain information requested by an EOIR partner is based on information directly available in internal databases and on the right to information (*droit de communication*), which allows it to obtain information held by third parties, including banking and beneficial owner information. The right to information may also be exercised to obtain information from the person who is the subject of the EOIR request. Appropriate penalties may be applied for failure to provide the requested information. In addition, professional secrecy can generally be waived under the right to information.

211. The conclusions are as follows:

Legal and Regulatory Framework: in place

Deficiencies identified/ Underlying factor	Recommendations
No material deficiencies have been identified in the legislation of Côte d'Ivoire in relation to access powers of the competent authority.	

Practical Implementation of the Standard: The assessment team is not able to assign a rating for this element as it requires an evaluation of the implementation in practice, which will be carried out in Phase 2.

B.1.1. Ownership, identity and banking information

212. In Côte d'Ivoire, the role of competent authority for EOIR is delegated within the tax authorities to the Director-General of Taxation and the head of the information exchange unit (*Unité d'échange de renseignements*, UER). The UER, which was established in February 2019, is responsible, among other, for instructing the relevant tax authorities to collect information requested under an EOI arrangement.

Accessing information generally

213. Several types of information are directly available to the tax authorities, in particular those obtained at the time of tax registration, and those contained in the taxpayers' tax returns and in specific declarations such as the declaration of the creation, modification and extinction of a legal arrangement. DGI staff can access much of this information directly via internal databases, which include:

- the Côte d'Ivoire integrated tax management system (*Système intégré de gestion des impôts en Côte d'Ivoire,* SIGICI) database, which contains full details of all taxpayers, in particular information from taxpayers' tax returns
- the *Télé-liasse* database, which contains the financial statements filed by corporate taxpayers
- the *INFOCENTRE* database, which contains all the information received under the right to information, with or without prior request (see next paragraph).

214. DGI staff may also have direct and full access (without any prior request needed) to other external databases, such as the customs database.

215. When the information sought is held by third parties (including by the person concerned), for the purposes of tax assessment, audit and collection, the tax authority has a general right to information, giving it access to all documents, information and intelligence held by natural or legal persons related to an economic activity, and by local authorities, groups and associations related to the achievement of their corporate objective (Article 32, LPF). Information that may be subject to a right to information request must be kept for ten years (Article 33, LPF).

216. This general right to information comprises specific provisions for certain operators or sectors of activity, for example for obtaining documents held by public administrations and establishments (Article 34, LPF) or for obtaining information held by members of the independent or non-commercial professions (lawyers, notaries, accountants, etc.) who are involved in transactions or services of a legal, financial or accounting nature or who hold funds or property on behalf of third parties (Article 43, LPF).

217. The right to information may be exercised by the tax authorities on-site or by correspondence. When the tax authority wishes to exercise its right to information on-site, it must send the taxpayer a notification of the impending visit, specifying the nature of the documents required. Persons who receive a right to information request have 15 days to reply to a visit notification (Article 32, paragraph 4, LPF) and 30 days to reply to a request via correspondence. If the authorities proceed to audit a taxpayer, the right to information may still be exercised with regard to that taxpayer since these are separate procedures. Similarly, if an Ivorian taxpayer has already been audited, the right to information may still be exercised with regard to that taxpayer after completion of the audit.

218. The legal framework does not provide tax authorities with a standard form to use when exercising the right to information, for either an on-site visit notification or a request by correspondence. As such, the tax authorities normally use the general administrative letter template, which mentions the legal basis for the right to information, the information requested and the penalties incurred in the event of failure to provide the information.

219. Insofar as Article 73 of the LPF expressly provides for the possibility of the DGI exchanging information with foreign tax authorities, the Ivorian authorities have confirmed that the DGI's powers in relation to the right to information can be used to comply with requests for information from foreign counterparts. In such an event, the tax administration is not obliged to inform the information holder of the request from the foreign jurisdiction.

220. Articles 51 to 62 octies of the LPF also provide for the tax authorities' right to information without prior request, in particular from other public authorities or financial institutions (see paragraph 226).

221. CENTIF can also pass on any information in its possession to the tax authorities upon request (article 34 of the LPF). CENTIF can also do so spontaneously, provided that such information relates to events likely to be reported as suspicious or tax evasion or attempted tax evasion (Article 66, AML/CFT law).

222. In addition, the tax authorities may exercise their right of investigation to obtain information on-site concerning transactions that have been invoiced or are to be invoiced (Article 67, LPF). However, this is generally

done when there is a suspected case of tax evasion that is likely to lead to criminal proceedings in Côte d'Ivoire. As a result, it is rare in the context of EOI because the conditions of implementation are more restrictive than those required for the right to information.

Accessing identity, legal and beneficial ownership information

223. Information on the legal ownership of legal entities is directly available to the tax authorities through the documents provided during the tax registration procedure, in particular the companies' articles of association, the amending deeds and amending declarations provided in the event of changes (see para. 66). As beneficial ownership information is provided at the time of the tax registration and updated, it is therefore also directly available for newly established legal entities (Article 71 CGI). The trustee of a legal arrangement (foreign trust or *fiducie*) must also submit to the tax authorities a declaration of existence, modification or termination of the legal arrangement (article 54 bis, LPF) containing the up-to-date beneficial ownership information on this legal arrangement. The summary financial statements provided annually by these entities are also a source of information on their ownership. Moreover, the tax authorities may exercise their right to information to obtain information held by the court registries responsible for managing the RCCM and the registers of securities and shareholders that companies are required to maintain (Article 49 bis, LPF).

224. With regard to the beneficial owners of entities, the tax authorities exercise their right to information with the legal entities themselves to obtain the register of their beneficial owners. Legal entities are required to keep this register up to date, pursuant to Article 49 ter of the LPF. The right to information also allows tax authorities to obtain information held by CENTIF, which may also spontaneously communicate this information to the DGI pursuant to Article 66 of the AML/CFT law (see para. 221), and by the legal representatives of these entities (legal or tax advisors, accountants and notaries) or by their service providers, such as the banks with which entities have accounts.

Accessing banking information

225. The tax authorities may obtain any information held by financial institutions, including bank account statements, cheques and business correspondence, by exercising their right to information (Article 32, 36 and 48, LPF).

226. Banks and other financial institutions must also provide the tax authorities, without any prior request and on a quarterly basis, with information on fund transfers in excess of XOF 5 million (EUR 7 620) (Article 53, LPF) and on any account opened by an entity or individual entrepreneur (Article 56, LPF). Once declared, this information is directly available to DGI officials in the INFOCENTRE database.

227. Requests for banking information must include details that enable the identification of the bank or of its holder (account number, full name, date of birth and tax identification number of the account holder), the bank(s) concerned and the periods concerned, so that such requests can be correctly processed by the competent Ivorian authority. In practice, Côte d'Ivoire considers a bank account number sufficient to identify the person concerned. If the number is complete (an International Bank Account Number, IBAN) and allows the bank to be identified, a right to information request is addressed to that bank to obtain the requested information. If the number provided does not allow the bank to be identified, the right to information request is addressed to the head offices of all the banks established in Côte d'Ivoire. If the request for information concerns a legal entity or individual entrepreneur, DGI officials can also consult the INFOCENTRE database, which contains information on all accounts opened by these persons (see paragraph 226).

B.1.2. Accounting records

228. Accounting records are, to a large extent, directly available to the tax authorities since legal entities are required to submit annual summary financial statements with their tax return. For any accounting information not already available to the DGI, the tax authorities may use its right to information to obtain it from the entity or individual entrepreneur concerned or from the trustee of a legal arrangement.

229. In addition, the tax authorities may exercise their right to information with the entity's accountant (Article 43, LPF). They can do this using the information available under Article 62 of the LPF, which requires that the following documents be provided each quarter to the DGI:

- for accountants, a list of their clients
- for taxpayers, a list of persons who keep their accounts or prepare their tax returns.

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

230. Côte d'Ivoire's domestic legal framework does not contain any specific limitations on access to information held by taxpayers. In particular, the Ivorian tax authorities can access requested information even when they do not need it for domestic tax purposes. Moreover, when exercising its right to information, the Ivorian tax administration does not have to justify to the information holder its interest in obtaining the information. The Ivorian authorities have nevertheless clarified that the EOI requests received generally involve a taxpayer resident in Côte d'Ivoire.

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

231. Refusal to provide information requested by the tax authorities under their general right to information is punishable by a fine of XOF 2 million (EUR 3 040) when this right is exercised on-site (article 63, LPF). If the right to information is exercised by correspondence, refusal to send the information within 30 days of the request is punishable by a fine of XOF 1 million (EUR 1 520), or XOF 2 million (EUR 3 040) if the failure to comply extends beyond 30 days of a formal notice being issued. A fine of XOF 500 000 (EUR 762) is then applied for each additional month of delay (Articles 64, LPF). These sanctions of article 64 of the LPF also apply in case of failure to comply with the obligation to provide information without prior request (see for instance the obligation of the banks described in para. 226). Refusal to respond to a right to information request from the tax authorities may also result in on-site visits, searches or seizure of documents, depending on the case.

232. The aforementioned sanctions are not applicable to public administrative structures, where, in principle, it is sufficient to contact heads of department to obtain the information requested, and unnecessary to resort to a sanction procedure.

233. In the event of failure to produce the requested information due to non-compliance with the legal time period for which information must be kept, the tax authorities may charge a fine of XOF 500 000 (EUR 762) per document not provided (Article 66, LPF).

234. The right to information allows the tax authorities to obtain from persons established in Côte d'Ivoire information in their possession, even if this person is not legally obliged to hold this information. However, in the event of non-disclosure of the requested information, the tax authorities may only apply the aforementioned penalties if they can prove that the information is actually held by that person. The tax authorities therefore give preference to requests for information from persons who are legally required to hold that information or who manifestly hold that information as a result of their normal business activities or their relations with the persons receiving the request.

235. The Ivorian tax authorities also have the right to search premises and seize assets (Article 12, LPF) for the purpose of investigating and ascertaining tax offences. This procedure can be used by the tax administration to reply to an EOI request. However, they may not exercise the right to search a private home without authorisation from a judicial authority, with some exceptions.

236. The implementation in practice of these enforcement measures will be analysed in the Phase 2 review.

B.1.5. Secrecy provisions

Bank secrecy

237. Bank secrecy is protected in Côte d'Ivoire by Act No. 93-661 of 9 August 1993 on bank secrecy. Banks are obliged to maintain secrecy on all information relating to banking activity and of which they have become aware over the course of their business (Article 1). However, the same law expressly provides that bank secrecy cannot be relied upon against the tax authorities, who have a right to information with respect to the accounting and banking documents they need for assessing and collecting tax (Article 6). According to the Ivorian authorities, responding to requests for information from foreign authorities justifies the lifting of bank secrecy as the purpose of the EOI is to enable the foreign authorities to assess or collect tax. In addition, this exemption from banking secrecy is also stated in Article 36 of the LPF, which provides that banks and other financial institutions may not invoke, in the context of the right to information, professional secrecy to withhold any economic or financial information in their possession. Article 48 of the LPF also contains an obligation for the banks to provide, upon request, banking information to the tax administration without possibility to invoke the bank secrecy.

Professional secrecy

238. Article 383 of the Criminal Code establishes a general professional secrecy obligation for any person who, by profession, is entrusted with a secret. This includes lawyers, notaries and accountants. Professional secrecy is defined as the obligation of any person who, as part of their duties, has knowledge of confidential information or events or of information not intended for publication, not to disclose that information to unauthorised persons, except in cases where the law requires or authorises it.

239. However, Ivorian tax legislation provides that professional secrecy may not be relied upon against the tax authorities' right to information, regardless of the sector of activity or the type of information requested (Article 32, LPF). Professional secrecy may therefore be waived in the context of the right to information, including in the case of members of the independent or non-commercial professions and persons who are involved in legal, financial or accounting transactions or services or who hold funds or property on behalf of third parties (Article 43).

240. Lawyer-client privilege is enshrined in Article 44 of Regulation 05/CM/UEMOA on the harmonisation of rules governing the legal profession in the WAMU area. It states that "the lawyer, in all matters, must not make any disclosure contravening lawyer-client privilege" and must "respect the secrecy of criminal investigations, by refraining from publishing documents,

receipts or letters relating to an ongoing investigation and from communicating information from the case file, except to his client for the needs of the defence". This suggests that it only covers information that will be used in a legal action, either pending or envisaged, and correspondence to request or provide legal advice. The Ivorian authorities have confirmed that lawyers may not rely on this obligation of professional secrecy if serving as a trustee or as a representative of a company for its business affairs. The scope of lawyer-client privilege therefore appears to be in line with the standard. Its interpretation by lawyers in practice will be analysed in the Phase 2 review (see Annex 1).

241. The possibility of waiving professional secrecy for the benefit of the tax authorities is only established by the national provision contained in Article 32 of the LPF. Therefore, in accordance with the hierarchy of law, this provision cannot be applied to waive the lawyer-client privilege provided for by Article 44 of Regulation 05/CM/WAEMU. However, this is not an obstacle to EOI insofar as the scope of lawyer-client privilege under WAEMU law is considered to be in line with the standard (see paragraph 240).

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.

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

Notification

242. The Ivorian legal framework does not state any obligation to notify persons who are the subject of an EOI request, either before or after the information is sent to the requesting jurisdiction. Moreover, when the tax authorities exercise their right to information, they do not have to inform the holder of the information of the purpose of their request.

Appeal rights

243. The Ivorian legal framework does not contain a specific procedure for appeals against the EOI procedure.

244. Although tax law does not contain a specific provision for appealing against the right to information being exercised, the holder of the information requested has a right to appeal against administrative acts, including the

right to information proceedings. As such, the person receiving the authorities' request may file a prior administrative appeal, which is an appeal for reconsideration directed to the tax official or the tax official's superior. If the information holder is dissatisfied with the outcome of this prior appeal, they may appeal against the administration's request on the grounds that it has misused its power.

245. However, this appeal has no suspensive effect on the enforceability of the act. Thus, even if the information holder files an appeal against the proceedings, they are still obliged to provide the information requested or face the penalties described in paragraph 231. Information can therefore be collected by the tax authorities and then exchanged with EOIR partners before the appeal process is completed.

246. The Ivorian authorities stated that they were not aware of any appeals against a right to information proceeding filed in response to an EOI request. Since the purpose of the right to information request is never disclosed to the information holder, it does not seem possible to challenge the validity of the request.

247. The conclusions are as follows:

Legal and Regulatory Framework: in place

The rights and safeguards that apply to persons in Côte d'Ivoire are compatible with effective exchange of information.

Practical Implementation of the Standard: The assessment team is not able to assign a rating for this element as it requires an evaluation of the implementation in practice, which will be carried out in Phase 2.

Part C: Exchanging information

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

C.1. Exchange of information mechanisms

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

249. Côte d'Ivoire's EOIR network covers 18 partners through 11 bilateral double taxation conventions (DTCs) and one regional mechanism, the Regulation adopting the rules for the avoidance of double taxation within the West African Economic and Monetary Union and the rule for assistance in tax matters (the WAEMU Regulation) concluded with seven partners.[25]

250. Côte d'Ivoire's EOIR network is generally in line with the standard, but the EOI provision in the DTCs with Germany and Norway restrict EOI to the implementation of the provisions of the conventions and therefore do not allow for exchange of all foreseeably relevant information or for an EOI in respect of all persons. In addition, the DTC signed with Turkey in 2016 has still not been ratified by Côte d'Ivoire whereas Turkey ratified it in April 2020.

25. Benin, Burkina Faso, Guinea-Bissau, Mali, Niger, Senegal and Togo.

251. The conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/ Underlying factor	Recommendations
Two double taxation conventions (DTCs) restrict the exchange of information to the application of the provisions contained therein and therefore do not allow for the exchange of all foreseeably relevant information or in respect of all persons.	Côte d'Ivoire should ensure that its information exchange relationships allow for exchange of all foreseeably relevant information and in respect of all persons.
A DTC signed in 2016 has not yet been ratified by Côte d'Ivoire.	Côte d'Ivoire must ensure that its EOIR mechanisms, including the DTC signed in 2016, are ratified expeditiously.

Practical Implementation of the Standard: The assessment team is not able to assign a rating for this element as it requires an evaluation of the implementation in practice, which will be carried out in Phase 2.

Other forms of exchange of information and assistance

252. Côte d'Ivoire is engaged in international assistance in relation to the recovery of tax debts.

C.1.1. Foreseeable relevance standard

253. The international standard of "foreseeable relevance" envisages EOIR in the broadest possible sense. However, it does not allow for "fishing expeditions". The balance between these two competing elements is reflected in the concept of "foreseeable relevance" covered in Article 26, paragraph 1 of the OECD Model Tax Convention.

254. Only two DTCs[26] in Côte d'Ivoire's EOIR network provide for an exchange of foreseeably relevant information in accordance with the latest version of Article 26 of the OECD Model Tax Convention. The other DTCs and the WAEMU Regulation provide for an exchange of "necessary" information, except for the DTC with France, which provides for an exchange of "useful"

26. DTCs concluded with Portugal and Turkey.

information. Côte d'Ivoire interprets and applies its DTCs in accordance with the Commentary to Article 26 of the OECD Model Tax Convention, which states, among other things, that Contracting States may agree to an alternative formulation of the standard of foreseeable relevance, for example by using the term "necessary", provided that the formulation is consistent with the scope of the Article and therefore understood to require an effective EOI. The use of the terms "necessary" or "useful" in the DTCs to which Côte d'Ivoire is a party is therefore considered to be in line with the standard.

255. However, the DTCs with Germany and Norway restrict the exchange of information to the application of the provisions of these conventions. Therefore, they do not allow the exchange of information for the application of the domestic tax legislation of both partners concerned in cases where no DTC provision is applicable. Therefore, both instruments do not meet the standard as they do not always allow for the exchange of information that is foreseeably relevant for the administration and enforcement of the tax laws of the requesting jurisdiction. **It is therefore recommended that Côte d'Ivoire ensures that its information exchange relationships allow for the exchange of all foreseeably relevant information**.

256. In addition, the DTC with France provides for an exchange of tax information that is available to the tax authorities. Côte d'Ivoire considers "available to" to cover both information to which the DGI has direct access and information that it has the power to access. In addition, the Ivorian authorities confirmed that they have often exercised the right to information to reply to EOI requests from France.

Clarifications and foreseeable relevance in practice

257. Côte d'Ivoire requires the requesting jurisdiction to provide sufficient information to demonstrate the foreseeable relevance of its request. In practice, Côte d'Ivoire does not require requesting jurisdictions to submit their requests using a specific form, but it does expect a request for information to:

- give a sufficiently precise description of the situation
- identify precisely the information requested and the periods concerned
- identify the persons in Côte d'Ivoire that the request concerns
- state the reason why the requesting authority considers that the information might be available on Ivorian territory, if this reason is not obvious from the nature of the information or events described.

258. With regard to identifying the persons concerned in Côte d'Ivoire, the Ivorian authorities specified that it was not necessary to provide their names and addresses if other details made it possible to identify them unambiguously. For example, in the event of a request for banking information,

the request will be processed by the Ivorian competent authority even if the requesting jurisdiction does not have the name of the bank concerned nor of the account holder, provided that the account number reference is indicated in the EOI request (see paragraph 227).

Group requests

259. The EOIR standard now includes a reference to group requests in accordance with paragraph 5.2 of the OECD Model Tax Convention Commentary. In addition, the foreseeable relevance of a group request must be sufficiently demonstrated, and it must be shown that the information requested would assist in determining whether the taxpayers in the group were compliant.

260. Côte d'Ivoire does not implement any specific process for group requests. If Côte d'Ivoire received a group request, it would analyse the compliance of this request with the foreseeable relevance criteria as provided in the standard.

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

261. Paragraph 1 of Article 26 of the OECD Model Tax Convention states that "the exchange of information is not restricted by Articles 1 and 2", with Article 1 defining the persons covered by the Convention (and Article 2 defining the taxes covered).

262. Five DTCs[27] to which Côte d'Ivoire is a party, as well as the WAEMU Regulation, contain a similar phrase, stating that EOI is not limited to persons covered by these instruments. The other six DTCs[28] in Côte d'Ivoire's network do not contain such a phrase. Of these six DTCs, those concluded with France, Italy, Morocco and Tunisia nevertheless provide for EOI necessary for the application of the provisions of the Model Tax Convention, or those of the laws of the Contracting States relating to taxes covered by the Convention. As such, these DTCs do not restrict EOI to their residents, since their domestic tax laws apply to all their taxpayers, whether they are residents or not. Consequently, EOI is possible in respect of all persons through the application of these DTCs. The Ivorian authorities confirmed that they agree with this interpretation.

263. In contrast, as mentioned in paragraph 255, the DTCs with Germany and Norway restrict EOI to the application of the provisions of these DTCs. As such, they do not allow for EOI in respect of all persons, in particular in the case of an EOI request in relation to the application of the tax law of the

27. DTCs with Belgium, Canada, the United Kingdom, Portugal and Turkey.
28. DTCs with Germany, France, Italy, Morocco, Norway and Tunisia.

requesting jurisdiction to a taxpayer that is not resident in one of the two contracting States. Consequently, they do not comply with the standard. **It is therefore recommended that Côte d'Ivoire ensure that its information exchange relationships allow for EOI in respect of all persons**.

264. Furthermore, only two DTCs[29] and the WAEMU Regulation do not limit EOI to the taxes covered by these instruments. However, the other instruments do cover the main direct taxes on personal and corporate income, which is sufficient to comply with the standard.

265. The Ivorian authorities advise that in practice, requests for information received by the Ivorian tax authorities generally involve a taxpayer resident in Côte d'Ivoire

C.1.3. and C.1.4. Obligation to exchange all types of information and Absence of domestic tax interest

266. Two DTCs[30] in Côte d'Ivoire's EOIR network, and the WAEMU Regulation, contain provisions equivalent to paragraphs 4 and 5 of Article 26 of the OECD Model Tax Convention. The other bilateral instruments to which Côte d'Ivoire is a party do not contain such provisions. However, there are no specific restrictions in the legislation of Côte d'Ivoire or that of its relevant EOIR partners[31] that would prevent the exchange of any type of information or that would prevent EOI for which there is no domestic tax interest in Côte d'Ivoire.

267. The Ivorian authorities advise that in practice, although the requests received by the Ivorian tax authorities generally involve a taxpayer resident in Côte d'Ivoire, the information exchanged is rarely of immediate tax interest to Côte d'Ivoire.

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

268. The EOIR instruments to which Côte d'Ivoire is a party, and Ivorian legislation, do not establish the principle of dual criminality as a condition for responding to a request for information in criminal tax matters. Côte d'Ivoire therefore interprets these instruments and its legislation as allowing for EOI even in cases where the act under investigation would not constitute a criminal offence under Ivorian law if it had occurred in Côte d'Ivoire.

29. DTCs with Portugal and Turkey.
30. DTCs with Portugal and Turkey.
31. Belgium, Canada, France, Germany, Italy, Morocco, Norway, Tunisia and the United Kingdom.

269. Côte d'Ivoire's EOIR instruments do not restrict EOI to criminal tax matters. Consequently, Côte d'Ivoire interprets these agreements as allowing for EOI relating to administrative and civil matters as well as criminal.

C.1.7. Provide information in specific form requested

270. There is no particular restriction in Côte d'Ivoire's EOIR instruments or in its legislation that would prevent it from providing information requested in the form specified by the requesting jurisdiction.

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

271. All of Côte d'Ivoire's EOIR instruments are in force, except for the DTC signed in 2016 with Turkey. To date, there are no institutional blockages or political objections to the ratification of this DTC with Turkey. According to the Ivorian authorities, the delay in ratification is due to the inherently slow pace of political procedures for ratifying agreements and to the priorities set by the parliamentary calendar. Turkey ratified this DTC with Côte d'Ivoire in April 2020.

272. Once an EOIR instrument has been signed by the competent minister, it is then forwarded to the Ministry of Foreign Affairs, which drafts a bill authorising the President of the Republic to ratify the instrument. This bill is submitted for approval to the Government, which approves it and sends it to the National Assembly in the form of a ratification bill. The National Assembly can then pass a law authorising the President of the Republic to ratify the convention. The President of the Republic then ratifies the convention by means of a decree issued in the Council of Ministers. This decree is published in the Official Gazette of the Republic of Côte d'Ivoire. The ratification instrument is then sent through diplomatic channels to the information exchange partner. The convention enters into force on the day that the last exchange of ratification instruments takes place. There is no pre-established timeframe for the completion of these different steps.

273. The timeframe for ratification of EOIR instruments is generally two years. However, longer timeframes were noted in some cases, in particular for the ratification of the DTCs with Morocco (11 years) and Tunisia (16 years). The Ivorian authorities stated that the delays were due to a "freeze" in the country's usual activity due to a major internal crisis from 2002 to 2011. Given that the ratification procedure for these two DTCs was only initiated after this crisis, these particularly long ratification periods seem justified.

274. However, **it is recommended that Côte d'Ivoire ensure that its EOIR instruments, including the DTC signed with Turkey in 2016, are ratified as soon as possible**.

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms		**18**
In force	17	
In line with the standard		15
Not in line with the standard		2 [Germany, Norway]
Signed but not in force	1	
In line with the standard		1
Not in line with the standard		0
Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms		11
In force	10	
In line with the standard		8
Not in line with the standard		2
Signed but not in force	1	
In line with the standard		1
Not in line with the standard		0

275. Once an EOIR mechanism has entered into force, Côte d'Ivoire does not need to take any additional measures to make it effective. Article 73 of the LPF confirms that the tax administration may exchange information with the tax authorities of States with which Côte d'Ivoire has concluded a mutual assistance agreement.

276. WAEMU Community Regulations are immediately enforceable in all States Parties without the need for transposition or ratification. Under the provisions of Article 24 of the WAEMU Treaty, only the WAEMU Commission is authorised to issue the implementing regulations necessary to apply a Regulation. Thus, for the application of the WAEMU Regulation, implementing regulation 005/2010/COM/UEMOA was issued on 17 November 2010 and is applicable in all WAEMU member states, including Côte d'Ivoire.

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

The jurisdiction's network of information exchange should cover all relevant partners, meaning those jurisdictions who are interested in entering into an information exchange arrangement.

277. Côte d'Ivoire currently has a limited EOIR network with 11 DTCs and a regional instrument covering seven other jurisdictions. However, this network covers a large number of Côte d'Ivoire's main economic partners.[32] Côte d'Ivoire has also initiated the process of acceding to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention). The minister in charge of the budget has called upon the Government, in a statement to the Council of Ministers on 20 April 2020, to authorise him to request an invitation from the OECD General Secretariat to sign the Multilateral Convention. The Ivorian authorities indicated that the authorisation from the Government to send a request for being invited to join the Multilateral Convention has not yet been obtained.

278. Côte d'Ivoire has received requests from several jurisdictions to open negotiations or renegotiate DTCs, accompanied by model conventions containing EOI provisions in line with Article 26 of the OECD Model Tax Convention. Generally, Côte d'Ivoire has responded favourably to these requests. Nevertheless, in one case, Côte d'Ivoire has only acknowledged receipt of a proposal to negotiate a protocol to a DTC that does not contain any EOI article sent by a peer in December 2017, and has never reverted back to the peer since, although the initial proposal contains a draft protocol on which comments were expected.

279. Côte d'Ivoire has also received, at the beginning of 2019, a proposal of one jurisdiction to enter into a tax information exchange agreement (TIEA) but it has not yet officially replied to this proposal. Since this jurisdiction is already a party to the Multilateral Convention, Côte d'Ivoire stated that it wanted to consider this proposal in relation to the provisions of the Multilateral Convention and to conduct the negotiations on this TIEA at the same time of the procedure for joining the Multilateral Convention. Nevertheless, the jurisdiction concerned has not yet been informed of this Cote d'Ivoire's position and the procedure for joining the Multilateral Convention has not significantly progressed since 2020. 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 a relationship, **Côte d'Ivoire is recommended to continue to expand its network of information exchange agreements**

32. In particular, Côte d'Ivoire's EOIR network covers some of the Member States of the Economic Community of West African States (ECOWAS) and the European Union that are among its main economic partners.

and to expeditiously enter into such agreements with all relevant partners who would so require.

280. Besides the case of this jurisdiction, which is awaiting an answer to its proposal to enter into TIEA, no Global Forum members indicated, in the preparation of this report that Côte d'Ivoire refused to negotiate or sign an EOI instrument with it.

281. The conclusions are as follows:

Legal and Regulatory Framework: not in place

Deficiencies identified/ Underlying factor	Recommendations
Côte d'Ivoire was approached, several years ago, by two jurisdictions to negotiate respectively a tax information exchange agreement (TIEA) and an EOI-related protocol to a double taxation convention (DTC). Côte d'Ivoire has not yet replied to the proposal to negotiate a TIEA and has only acknowledged receipt of the proposal to negotiate a protocol to the DTC.	Côte d'Ivoire should continue to expand its network of information exchange agreements and should, expeditiously, enter into such agreements (regardless of their form) with all relevant partners.

Practical Implementation of the Standard: The assessment team is not able to assign a rating for this element as it requires an evaluation of the implementation in practice, which will be carried out in Phase 2.

C.3. Confidentiality

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

282. The international EOI instruments to which Côte d'Ivoire is a party contain confidentiality rules in line with the standard. The provisions of Ivorian law on professional secrecy, which apply in particular to tax officials, also ensure the confidentiality of information exchanged.

283. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the EOI mechanisms and legislation of Côte d'Ivoire concerning confidentiality.

Practical Implementation of the Standard: The assessment team is not able to assign a rating for this element as it requires an evaluation of the implementation in practice, which will be carried out in Phase 2.

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

284. The DTCs concluded by Côte d'Ivoire protect the confidentiality of the information exchanged, in accordance with the standard. In particular, they provide that the information obtained shall be kept secret under the same conditions as those for information obtained under Ivorian law and shall only be disclosed to persons or authorities concerned with tax assessment or collection.

285. The WAEMU Regulation does not contain a provision on the confidentiality of information exchanged under this instrument and it is therefore the domestic law of the jurisdictions party to this regional instrument that governs the confidentiality of such information. However, Article 14 of implementing regulation 005/2010/COM/UEMOA states that "information received by a Member State shall be kept secret in the same way as information obtained under that Member State's own domestic law". This provision supplements Regulation 08/2008/CM/UEMOA and is applicable in member states in the same way as that regulation (see paragraph 276).

286. The Terms of Reference, as amended in 2016, clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax, an exception applies where, in accordance with the EOI agreement, the authority supplying the information authorises the use of information for purposes other than tax purposes and where the information may be used for such purposes in accordance with the respective laws of the relevant partner jurisdictions. The LPF provides for several situations in which the DGI is required to exchange information with other structures having non-tax activities (Article 71-81, LPF). However, the rules contained in the DTCs and the WAEMU Regulation take precedence over the provisions of domestic law, including those of the LPF. Thus, information received from foreign partners is not disclosed internally for non-tax purposes.

287. In practice, the competent authority removes from the information received any confidential information that is not relevant to the needs of the services concerned. No further reference is made to the origin of documents received in the context of EOI. Compliance with confidentiality rules, including the conditions necessary for the use of information received for non-tax purposes, will be examined during the Phase 2 review (see Annex 1).

288. Ivorian legislation also ensures the confidentiality of the information exchanged, in particular through the rules of professional secrecy that apply to DGI officials under Article 70 of the LPF. Professional secrecy extends to all information gathered over the course of tax assessment, audit, collection

and litigation operations, including information received in the context of an EOI procedure. Professional secrecy and confidentiality is reinforced in practice through general training on ethics and professional conduct given to DGI staff as part of their initial training. In addition, there is an ongoing campaign to reinforce the rules of ethics, including those relating to professional secrecy, with a "virtue of the month" displayed on the premises of the various DGI units each month. The topic selected is discussed briefly at the beginning of each formal department meeting. There are also secure storage rules for documents and information obtained during EOIR proceedings, whether they are in hard-copy or electronic format.

289. A DGI official who violates the obligation of professional secrecy risks criminal, disciplinary and civil sanctions. Under Article 383 of the Criminal Code, violation of the obligation of professional secrecy may be punishable by fines and imprisonment. The obligation to respect professional secrecy, as provided for by article 383 of the Criminal Code and article 70 of the LPF, is not limited in time and then, according to the Ivorian authorities, applies to both current and former DGI employees. At the disciplinary level, it may be punishable by a range of disciplinary penalties, which may include dismissal of the staff member concerned (DGI Charter of Ethics). At the civil level, the staff member concerned or the tax authorities may be held liable for the damage suffered by the persons concerned due to the information's disclosure (Article 1382-1386, Civil Code). The Ivorian authorities stated that if information is disclosed by a member of the tax authorities in accordance with the LPF but contrary to the DTC confidentiality rules, that official may be subject to the penalties just described.

290. If a breach of confidentiality relating to the information exchanged is brought to the attention of a head of department, they must take immediate precautionary measures, which may include temporarily suspending the staff member concerned, removing them from their post or revoking their access rights to the sources of information and the premises where they are held[33]. The case is then forwarded to the general inspectorate of tax services (*Inspection générale des services fiscaux*), which opens an investigation to establish the facts, liabilities and the circumstances that led to the breach. A report on this investigation is then prepared, addressed to the Director-General of Taxation, which describes the facts, provides evidence and establishes the liabilities of the persons who participated, and which may contain proposals for sanctions and, if necessary, other measures to correct the circumstances that contributed to the breach. This report is forwarded to the Disciplinary Committee of the DGI, which gives its opinion on the proposed disciplinary

33. Articles 73, 74 and 77 of Act No. 92-570 of 11 September 1992 issuing the General Conditions of Service for the Public Service.

measures. In light of this report, the Director-General of Taxation takes the administrative, disciplinary or corrective measures that they deem necessary.

C.3.2. Confidentiality of other information

291. The confidentiality provisions included in the EOIR instruments and in Ivorian law do not differentiate between information received in response to EOI requests and that contained in foreign EOI requests. All information, such as reference documents and correspondence between the requesting and requested authorities and within the tax authorities, is treated as confidential.

C.4. Rights and safeguards of taxpayers and third parties

The information exchange mechanisms should respect the rights and safeguards of taxpayers and third parties.

C.4.1. Exceptions to the requirement to provide information

292. The information exchange mechanisms to which Côte d'Ivoire is a party ensure that the parties concerned will not be required to provide information that would reveal any industrial, commercial or professional secrets, nor any information of which the disclosure would be contrary to public policy (*ordre public*). The DTC with France does not refer to public policy, but establishes that assistance may not be given where the requested State considers that it would endanger its sovereignty or security or harm its general interests. The concepts of "sovereignty", "security" and "general interests" are understood to be equivalent to the concept of "public policy (*ordre public*)". The Ivorian authorities confirm this interpretation.

293. Article 73 of the LPF prohibits the Ivorian tax authorities from providing information that would reveal a commercial, industrial or professional secret, or a secret of which the disclosure would likely undermine security or public policy.

294. No definition of professional secrecy is provided in the EOI mechanisms. The domestic law of Côte d'Ivoire, as described in section B.1.5, allows professional secrecy to be waived in the context of the tax authorities' right to information. Although this provision does not apply to lawyer-client privilege, this privilege is considered to be in line with the standard (see paragraph 240).

295. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the information exchange mechanisms of Côte d'Ivoire in respect of the rights and safeguards of taxpayers and third parties.

Practical Implementation of the Standard: The assessment team is not able to assign a rating for this element as it requires an evaluation of the implementation in practice, which will be carried out in Phase 2.

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.

296. For EOI to be effective, it should take place within a time frame that allows the requesting tax authorities to apply the information to the matters concerned. If a response is provided after a significant period of time has elapsed, the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation.

297. Since requesting and providing information in an effective manner is a practical issue, this will be assessed in Phase 2 review.

298. The conclusions are as follows:

Legal and Regulatory Framework

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

Practical Implementation of the Standard: The assessment team is not able to assign a rating for this element as it requires an evaluation of the implementation in practice, which will be carried out in Phase 2.

C.5.1. Timeliness of responses to requests for information

299. The adoption of an administrative assistance implementation manual (*Manuel de mise en œuvre de l'assistance administrative*) has been included as an objective in the DGI's 2021 action plan. This manual is currently being developed. Although the various stages of the process of registration, follow-up and processing of requests received are detailed at the level of the competent authority, they are not formalised in a document and no time limit is set for the various departments to carry out each of these stages.

300. In addition, there is no defined procedure for updating the status of an incoming request within 90 days of receipt. An analysis of the practice of the Ivorian authorities in terms of responding to information requests in a timely manner, or sending status updates on such requests, and communication with partners, will be carried out during the Phase 2 review.

C.5.2. Organisational processes and resources

Organisation of the competent authority

301. The Ivorian competent authorities for EOIR is the Director-General of Taxation and the head of the UER. The head of the UER maintains contacts with Côte d'Ivoire's main EOIR partners, particularly through international meetings.

302. The UER was established in February 2019. Because of the small number of files to be processed, no specific organisational chart has been created for the unit's operation. It is staffed by an overall head with the rank of assistant director, who supervises two officials who are both heads of department.

303. Assistance in gathering the information needed to process EOI requests is provided by the Directorate of Investigation, Intelligence and Risk Analysis (*Direction des enquêtes, du renseignement et de l'analyse-risque*) or any tax department that may hold the relevant information.

Resources and training

304. The UER does not have its own budget. In addition, no specific software is used to record and monitor information requests due to the limited number of requests received. EOIR statistics are recorded in a table, entitled "Administrative assistance update" ("*Point de l'assistance administrative*"). The table lists the name of the requesting jurisdiction, the date of the request, the topic of and the persons concerned by the request, the date of transmission of the request to the services responsible for collecting the information, the date of response from these services and the date of response to the request. These statistics are entered and updated manually. No other system for monitoring the performance of information request processing has been implemented within the DGI.

305. All UER staff have attended training on EOI, including the sessions run by the Global Forum, the West African Tax Administration Forum (FAFOA) and the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA). An internal seminar was also held.

Incoming requests

306. The UER never collects the information requested by a foreign partner itself, even when this information is available in the databases of the tax authorities.

307. On receipt of a request, the UER writes a note to the Directorate of Investigation, Intelligence and Risk Analysis or to the tax department that should hold the information, to inform the competent service of the information sought. Until 2020, this note that was sent to the services concerned included, as an attachment, the request for information from the requesting jurisdiction. However, since 2021, the original request is no longer sent; instead, the note lists the information sought and the elements of identification of the persons concerned.

308. Once the information has been collected, the department concerned forwards it to the UER, which then prepares and sends the response to the foreign competent authority. Each of these steps is recorded in the "Administrative assistance update" monitoring tool.

Outgoing requests

309. The Ivorian authorities indicate that drafts of outgoing EOIRs must be forwarded to the UER by the operational service making the request. A template is available to assist and guide these departments in drafting EOIRs. On receipt of the draft EOI requests, the UER must check and format them. The check includes verifying their legal basis, their foreseeable relevance and whether they contain the relevant information.

310. The draft must be then submitted to the Director-General or the head of the UER for their signature and, once signed, the request must be sent to the necessary competent authority by e-mail.

311. An analysis of the organisational processes and resources implemented by Côte d'Ivoire in practice will be conducted during the Phase 2 review.

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

312. No unreasonable, disproportionate or overly restrictive factors or legal issues have been identified in Côte d'Ivoire.

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:** Côte d'Ivoire should ensure that beneficial ownership information is available, in application of the AML law, in all cases for relevant companies (paragraph 108)

In addition, the Global Forum may identify aspects of the legal and regulatory framework that require follow-up in Phase 2. A non-exhaustive list of these aspects is reproduced below for convenience.

- **Element A.1:** The monitoring of the inactive companies in Côte d'Ivoire will be further analysed during the Phase 2 review (paragraph 86).
- **Element A.1:** The enforcement of the tax obligation introduced in 2019, as well as the monitoring activities of the Ivorian authorities on the issuance or circulation of bearer shares, will be assessed during the Phase 2 review (paragraph 120)
- Element A.1 and A.3: The application of the definition of beneficial owners of legal arrangements, as provided for in the AML/CFT law, will be examined in Phase 2 (paragraph 140 and 201)
- **Element A.1:** The implementation of the new tax provision on the reporting obligation on trusts and *fiducie*, in particular the application of the definition of beneficial owners of legal arrangements, as provided for in the tax legislation, will be examined in Phase 2 (paragraph 142)
- **Element A.2:** The compliance with the accounting obligations by the non-professional trustees and administrators, as well as the

materiality of the risk for a request relating to a legal arrangement managed by a non-professional trustee or administrator will be analysed during the Phase 2 review (paragraph 185)

- **Element B.1:** The scope of lawyer-client privilege appears to be consistent with the standard. Its interpretation by lawyers in practice will be discussed in the Phase 2 review (paragraph 240).
- **Element C.3:** Compliance with confidentiality rules, including the conditions necessary for the use of information received for non-tax purposes, will be examined during the Phase 2 review (paragraph 287).

Annex 2: List of Côte d'Ivoire's EOI mechanisms

Bilateral international agreements for the exchange of information

Bilateral international EOI agreements signed by Côte d'Ivoire as of August 2021.

	EOI partner	Type of agreement	Signature	Entry into force
1	Belgium	DTC	25 November 1977	3 June 1980
2	Canada	DTC	16 June 1983	19 December 1985
3	France	DTC	6 April 1966	1 October 1968
4	Germany	DTC	3 July 1979	8 July 1982
5	Italy	DTC	30 July 1982	15 May 1987
6	Morocco	DTC	6 July 2004	7 March 2016
7	Norway	DTC	15 February 1978	1 January 1980
8	Portugal	DTC	17 March 2015	11 August 2017
9	Tunisia	DTC	14 May 1999	23 November 2015
10	Turkey	DTC	29 February 2016	Not ratified
11	United Kingdom	DTC	26 June 1985	24 January 1987

Regulation 08/2008/CM/UEMOA to prevent double taxation in the Community and to institute mutual tax assistance

Regulation 08/2008/CM/UEMOA to prevent double taxation in the Community and to institute mutual tax assistance (the WAEMU Regulation) is a regional instrument adopted on 26 September 2008 and in force since 1 January 2009. The eight member jurisdictions of the WAEMU are covered by this regional instrument: Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo.

Article 33 of the WAEMU Regulation contains provisions relating to the EOI on tax matters between the jurisdictions covered by the regulation. These provisions are consistent with the EOIR standard but not the latest version of Article 26 of the OECD Model Tax Convention. In particular, they do not include the aspects of the Convention relating to the confidentiality of the information exchanged. Nonetheless, the confidentiality of information exchanged under the WAEMU Regulation is protected, in accordance with the standard, by the provisions of implementing regulation 005/2010/COM/UEMOA (Article 14), which was adopted on 17 November 2010 for the implementation of the WAEMU Regulation and which is applicable in all WAEMU member states, including Côte d'Ivoire.

Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference and conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and amended in December 2020, and the Schedule of Reviews.

The evaluation is based on information available to the assessment team, including the EOI arrangements signed, laws and regulations in force or effective as at August 2021, Côte d'Ivoire's responses to the EOIR questionnaire, and inputs from partner jurisdictions. Since this assessment was launched in the final quarter of 2020, peer review contributions were received for the period 1 July 2017 to 30 June 2020. Although implementation in practice is not assessed in this report, the report may refer to these contributions to confirm the compliance of the legal and regulatory framework or to highlight specific problems with that framework.

Côte d'Ivoire joined the Global Forum in 2015. This review is the first one conducted by the Global Forum on Côte d'Ivoire.

List of laws, regulations and other materials received

OHADA Uniform Act on Commercial Companies and Economic Interest Groups

OHADA Uniform Act on General Commercial Law

OHADA Uniform Act on Co-operatives

OHADA Uniform Act on Accounting Law and Financial Reporting

Act No. 2016-1110 of 8 December 2016 on the establishment, organisation and functioning of commercial courts

Act No. 2016-992 of 14 November 2016 on anti-money laundering/countering the financing of terrorism

Doctrine published in Official Bulletin No. 35 of the DGI, BODGI-2020-HS-15

Directive No. 007-09-2017 outlining rules for financial institutions to implement the Uniform Act on Money Laundering and the Financing of Terrorism in West African Monetary Union member states.

General Tax Code

Manual of Tax Procedures

Criminal Code

WAMU framework law on banking regulation

Act No. 93-661 of 9 August 1993 on bank secrecy

Regulation 05/CM/UEMOA on the harmonisation of rules governing the legal profession in the West African Economic and Monetary Union area

Current review

This report analyses Côte d'Ivoire's legal and regulatory framework in relation to the international standard of transparency and EOIR, in the second round of reviews conducted by the Global Forum. As Côte d'Ivoire joined the Global Forum in 2015, it was not assessed in the first round.

Information relating to the review of Côte d'Ivoire is listed in the table below.

Summary of reviews

Review	Assessment team	Period under review	Legal framework as of	Date of adoption by Global Forum
Round 2	Ms Joanna Kowalska (Luxembourg)	Not applicable	25 August 2021	18 November 2021
Phase 1	Mr Abdou Ben Jenkins Sambou (Senegal)			
	Ms Carine Kokar (Global Forum Secretariat)			

Annex 4: Côte d'Ivoire's response to the review report[34]

Côte d'Ivoire would like to thank the assessment team and the Global Forum Secretariat for their work and support throughout the review process of its tax transparency framework.

Côte d'Ivoire also thanks the members of the Peer Review Group (PRG) for their constructive comments, which helped improve the accuracy of the information provided in this report and identify sensitive areas that need to be addressed.

Côte d'Ivoire recognises that all the findings and conclusions of the review report accurately reflect the progress made in the reforms, the aspects to be improved in its legal framework and the shortcomings to be corrected.

Côte d'Ivoire takes good note of the recommendations made in the report, which are invaluable in continuing the process of bringing its legal and regulatory framework and practices in line with the standards of tax transparency to which it is committed.

Côte d'Ivoire reassures peers of its determination and commitment to make every effort to implement these recommendations.

In particular, Côte d'Ivoire commits to take the necessary measures as soon as possible to ensure the availability of information on beneficial owners and to adopt mechanisms to ensure the effective exchange of information with all relevant partners.

34. This Annex presents Côte d'Ivoire'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 CÔTE D'IVOIRE 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 Côte d'Ivoire. It refers to Phase 1 only (Legal and Regulatory Framework).

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