

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

Peer Review Report on the Exchange of Information
on Request

GABON

2022 (Second Round, Phase 1)

Global Forum on Transparency and Exchange of Information for Tax Purposes: Gabon 2022 (Second Round, Phase 1)

PEER REVIEW REPORT ON THE EXCHANGE
OF INFORMATION ON REQUEST

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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 160 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).

Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. The implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. The implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/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 Methodology	2016 Methodology for Peer Reviews and Non-Member Reviews, as approved by the Global Forum on 29-30 October 2015 and amended in December 2020
2016 ToR	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015
AML	anti-money laundering
AML/CFT	anti-money laundering and countering the financing of terrorism
ANIF	Agency for Financial Investigations
ANPI	National Investment Promotion Agency
AUDCG	Uniform Act on General Commercial Law
AUDCIF	Uniform Act on Accounting Law and Financial Reporting
AUDSCGIE	Uniform Act on the Law of Commercial Companies and Economic Interest Groupings
AUSC	Uniform Act on Co-operative societies
BEAC	Bank of Central African States
BVMAC	Central African Stock Exchange
CDD	customer due diligence
CEMAC	Central African Economic and Monetary Community
CGI	General Tax Code
CIMA	Inter-African Conference on Insurance Markets
COBAC	Central African Banking Commission

COSUMAF	Central African Financial Market Supervisory Commission
DGI	General Tax Directorate
DNFBP	designated non-financial business or profession
DSF	statistical and tax-related returns
DTC	double tax convention
EOI	exchange of information
EOIR	exchange of information on request
FATF	Financial Action Task Force on Money Laundering
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
IEU	Information Exchange Unit
LIIR	integrated tax and revenue collection software
Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
OCAM	Afro-Malagasy and Mauritian Common Organisation
OHADA	Organisation for the Harmonisation of Business Law in Africa
RCCM	Trade and Personal Property Credit Register (<i>Registre du Commerce et du Crédit Mobilier</i>)
SA	public limited company (<i>société anonyme</i>)
SARL	private limited company (<i>société à responsabilité limitée</i>)
SAS	Simplified joint-stock company (<i>société par action simplifiée</i>)
SC	co-operative society
SCS	Limited partnership (<i>société en commandite simple</i>)
SNC	General partnerships (<i>société en nom collectif</i>)
SP	Joint venture (<i>société en participation</i>)
UMAC	Central African Monetary Union
XAF	CFA (<i>Communauté financière d’Afrique</i>) Franc

Executive summary

1. This report analyses the implementation of the international standard of transparency and exchange of information on request in Gabon, as part of the second round of reviews conducted by the Global Forum. The COVID-19 pandemic meant that it was not possible to conduct an on-site visit in the months following the commencement of the review. Therefore, this report assesses only the legal and regulatory framework of Gabon in force as at 26 November 2021 against the 2016 Terms of Reference (Phase 1). It concludes that Gabon’s legal and regulatory framework generally ensures that relevant information is available and that it can be accessed and exchanged for tax purposes, but that improvements are required in a number of areas. In particular, too few of the international instruments signed by Gabon to allow for the exchange of information have entered into force. The assessment of the implementation of the legal framework in practice will be conducted at a later date (Phase 2 evaluation).

2. During the first cycle of peer reviews in 2016, the Global Forum assessed Gabon against the 2010 ToR in respect of both legal implementation and effectiveness in practice of the EOIR standard. The report (the 2016 Report) concluded that Gabon was Largely compliant with the international standards for transparency and exchange of information on request.

Comparison of ratings for First Round Report and Second Round Report

Element	First Round EOIR Report (2016)		Second Round EOIR Report (2022)
	Determination	Rating	Determination
A.1 Availability of ownership and identity information	Needs improvement	Partially compliant	Needs improvement
A.2 Availability of accounting information	In place	Compliant	Needs improvement
A.3 Availability of banking information	In place	Compliant	Needs improvement
B.1 Access to information	In place	Compliant	In place
B.2 Rights and safeguards	In place	Compliant	In place
C.1 EOIR mechanisms	In place	Compliant	Not in place

Element	First Round EOIR Report (2016)		Second Round EOIR Report (2022)
	Determination	Rating	Determination
C.2 Network of EOIR mechanisms	In place	Compliant	Not in place
C.3 Confidentiality	In place	Compliant	In place
C.4 Rights and safeguards	In place	Compliant	In place
C.5 Quality and timeliness of responses	N/A	Largely compliant	N/A
Overall rating	Largely compliant	N/A	

Note: The three-scale determinations are “in place”, “in place but certain aspects of the element need improvement” (needs improvement) and “not in place”. The four-scale ratings are “compliant”, “largely compliant”, “partially compliant” and “non-compliant”.

Progress made since previous review

3. The 2016 Report noted that Gabon should take appropriate steps to implement the new version of the Organisation for the Harmonisation of Business Law in Africa (OHADA) Uniform Act providing for the dematerialisation of all bearer shares before the expiry, in 2016, of the two-year transitional period allowed to companies for that purpose. In 2017, Gabon adopted a law prescribing rules governing the dematerialisation of securities. However, it has not yet adopted all necessary measures to ensure the dematerialisation of all bearer shares, whether through the adoption of a Decree on Penalties for Failure to Register Securities in an Account or, as only one company had issued bearer shares, by taking a direct measure with that company.

Key recommendations

4. In order to ensure the availability of information on the ownership of bearer shares, Gabon must take binding measures to ensure dematerialisation of all bearer shares.

5. The transparency standard was strengthened in 2016 to require information to be available on the beneficial ownership of legal persons and legal arrangements. In Gabon, that information is available only under AML regulations. Information on the beneficial ownership of legal persons, legal arrangements and bank accounts are available from AML-obligated persons where such a person has a business relationship with the entity in question. Although the definition of beneficial owner complies with the standard, no methodology for determining the beneficial ownership of legal persons or legal arrangements is included in the legislation, and information may not always be up to date. Moreover, legal persons and legal arrangements are under no obligation to engage AML/CFT-obligated persons, all of whom would be required to identify their beneficial owners.

6. Those same limitations on methodology of implementation do not ensure the availability of complete information on the beneficial owners of bank accounts. Gabon should ensure the availability of beneficial ownership information in respect of legal persons, legal arrangements and account holders.

7. In addition, there is no provision for retaining accounting and banking information for companies that have ceased to exist. Gabon should ensure the availability of accounting and banking information for companies and banks that have ceased to exist for at least five years, according to the standard.

Exchange of information

8. Gabon received eight requests for information and sent two over the past three years. As a result of bilateral, regional and multilateral instruments, Gabon has a very extensive network of partners on information-exchange matters. However, only 13 of the 147 relationships with partners are in force. In particular, the Multilateral Convention, signed in 2014 and ratified by Gabon in 2016, has not yet entered into force because Gabon has not deposited its instruments of ratification with the depositary.

9. Gabon's legal framework will not be in place until a substantial proportion of its international information exchange agreements have entered into force. Gabon should ensure that its EOIR instruments are ratified and enter into force without delay.

Next steps

10. This report assesses Gabon's legal framework for transparency and exchange of information for tax purposes only. Gabon received the determinations "in place" for elements B.1, B.2, C.3 and C.4, and "needs improvement" for elements A.1, A.2, A.3 and "not in place" for elements C.1 and C.2. The ratings for each element and the overall rating will be determined during the Phase 2 evaluation on the implementation of the legal framework in practice.

11. This report was approved at the Peer Review Group of the Global Forum on 21 February 2022 and was adopted by the Global Forum on 31 March 2022. A follow up report on the steps undertaken by Gabon to address the recommendations made in this report should be provided to the Peer Review Group no later than 30 June 2023 and thereafter every year in accordance with the procedure set out under the 2016 Methodology 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 (<i>ToR A.1</i>).		
The legal and regulatory framework is in place but needs improvement.	The OHADA Uniform Act on Commercial Companies and Economic Interest Groupings of 2014 provides for the dematerialisation of shares and allows companies a two-year period in which to comply. Gabon adopted a law setting out the regime for the dematerialisation of shares in 2017, but has not yet adopted the decree governing sanctions for failure to present shares for registration.	Gabon should ensure the dematerialisation of all bearer shares.
	The availability of beneficial ownership information is provided solely under the regional anti-money laundering legislation. The legislation does not contain sufficient information about the method of determining the beneficial owners in the various situations referred to in the definition, such as control over a company or a legal arrangement. The beneficial ownership information should be updated throughout the business relationship but no specified update frequency is provided for. Finally, the beneficial ownership information may not be available because there is no requirement for all legal persons and arrangements to engage AML/CFT-obligated persons, all of whom would be required to identify their beneficial owners.	Gabon should ensure the availability of beneficial ownership information in respect of all legal persons and legal arrangements.

Determinations	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>).		
The legal and regulatory framework is in place but needs improvement.	There is no provision requiring entities to retain accounting records after dissolution or liquidation.	Gabon should ensure the availability of accounting documents for entities that have ceased to exist for at least five years.
Banking information should be available for all account holders (<i>ToR A.3</i>).		
The legal and regulatory framework is in place but needs improvement.	There is no obligation to retain bank information if the bank ceases its activities.	Gabon should ensure the availability of banking information when a bank ceases to exist for at least five years.
	Although the anti-money laundering Regulation provides for the identification of beneficial owners of bank account holders in Gabon, the absence both of methodology for determining the beneficial ownership of legal persons and legal arrangements and of a requirement to update that information means that the information on beneficial owners of bank accounts cannot be regarded as available in all cases.	Gabon should ensure the availability of beneficial ownership information in respect of all account holders.
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1</i>).		
The legal and regulatory framework is in place.		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>).		
The legal and regulatory framework is in place.		

Determinations	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information (<i>ToR C.1</i>).		
The legal and regulatory framework is not in place.	The Multilateral Convention on Mutual Assistance signed in 2014 was ratified in 2016 but has not yet entered into force in Gabon. Moreover, only six of the 14 bilateral conventions entered into are in force.	Gabon should ensure that its EOIR instruments are ratified and enter into force without delay.
The network of exchange of information mechanisms should cover all relevant partners (<i>ToR C.2</i>).		
The legal and regulatory framework is not in place.	Gabon has not yet responded to a proposal from a peer to conclude an EOI agreement.	Gabon should continue to extend its network of EOI agreements to all relevant partners.
	Although Gabon has signed agreements that potentially allow for exchanges of information with 147 jurisdictions, the network of instruments in force is restricted to 13 countries and is therefore largely ineffective.	Gabon should ensure it has effective EOI agreements with all its partners.
The mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>).		
The legal and regulatory framework is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>).		
The legal and regulatory framework is in place.		
The jurisdiction should request and provide information under its network of agreements in an effective manner (<i>ToR C.5</i>).		
Legal and regulatory framework	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	

Overview of Gabon

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

13. The Gabonese Republic is a country in Central Africa that has borders with Congo, Equatorial Guinea and Cameroon. Gabon had 2 173 000 inhabitants in 2019 (source: World Bank). Its capital city is Libreville.

14. Gabon is ranked highest of all sub-Saharan African countries in the United Nations' human development index and has the second-highest income per capita, behind Equatorial Guinea and ahead of Botswana.

15. Gabon's official language is French, and its official currency is the CFA franc (XAF) (EUR 1 equals XAF 655.83). Gabon's economy is based on the extraction of oil and the exploitation of natural resources, especially forestry and mining. Hydrocarbons account for nearly 50% of GDP, 60% of tax revenues and 80% of exports. In 2019, Gabon's GDP was USD 16.87 billion (source: World Bank).

Legal system

16. The separation of powers (executive, legislative, judicial) is a constitutional principle. Gabon has a presidential system with a President of the Republic, who is the head of the executive and Head of State, and a Government headed by a Prime Minister.

17. The legal system is based on a single corpus of law which applies in all provinces and local authorities with the same binding force.

18. The Gabonese legal system is based on the hierarchy of norms. The Constitution, established by the Constitutional Act of 18 January 1996 as amended, is at the top of the hierarchy, followed by international conventions and treaties duly ratified by Gabon. International agreements do not apply until it has been verified that they are consistent with the Constitution (Articles 113 and 114). In the event of a conflict between the Constitution and an international treaty, the Constitution has to be amended when the

international treaty is ratified. The Constitutional Court verifies whether the international treaty complies with the Gabonese Constitution within a 30-day period, reduced to eight days in case of urgency. National laws (both organisational and ordinary) and equivalent statutory instruments, i.e. ordinances ratified by Parliament, rank below international conventions and treaties. Regulations are one tier below national laws. This category includes decrees, which the President of the Republic and the Prime Minister are empowered to enact; ministerial orders; prefectural orders, issued at departmental level; and municipal orders, which are issued by municipalities and departmental assemblies.

19. Gabon is a member of several regional organisations with powers to make legislation in fields that include company law and combating money laundering. Together with Cameroon, Congo, Equatorial Guinea, the Central African Republic and Chad, Gabon is a member of the Central African Economic and Monetary Community (CEMAC). Secondary CEMAC legislation, including all anti-money laundering (AML) regulations, is directly applicable in the law of CEMAC member States upon its entry into force, without any prior formality (Article 41 of the CEMAC Treaty). Gabon is also a member of the Organisation for the Harmonisation of Business Law in Africa (OHADA), a group of 17 member States focusing on the adoption of “Uniform Acts” on matters including general commercial law, company law, accounting law, securities law, insolvency law and co-operative society law. The OHADA Uniform Acts are directly applicable in the domestic legal order and take precedence over laws adopted at national level. Several OHADA Uniform Acts examined in this report ensure the availability of relevant information.

Tax system

20. The Gabonese tax system is based on the provisions of the Gabonese General Tax Code (CGI), which lays down rules for the taxation of income, assets and transactions in Gabon.

21. Corporate tax is levied on the income generated in Gabon by Gabonese and foreign companies and other legal persons. In accordance with the territoriality principle, income generated by Gabonese companies in other countries through foreign subsidiaries is exempt from taxation in Gabon. However, resident companies are taxable on passive income (dividends, interest, royalties, etc.) of both Gabonese and foreign origin. Subject to the provisions of international treaties, the earnings of legal persons whose activity or operations are located in Gabon are taxable at their registered office or principal place of business.

22. Corporate tax is levied on the earnings generated over a 12-month period corresponding to the calendar year. The standard rate is 30% and 35% for mining and oil companies. The assessment base is determined in accordance with the relevant accounting requirements under OHADA law.

23. Partnerships are not liable to corporate tax unless their partners decide to opt into it. The opt-in is irrevocable.

24. Personal income tax (IRPP) is levied on the taxpayer's total net income, namely the sum of net income per category minus deductible expenses, without prejudice to specific provisions applicable to certain categories of income. The applicable rate ranges between 0% and 35% (Article 174 of the CGI).

25. The competent authority in Gabon is the Minister for the Economy, who has delegated this power to the Director General of Taxation. Exchange of information (EOI) requests are processed by the Information Exchange Unit (IEU) within the International Relations Service of the Directorate for Legislation and Litigation.

Financial services sector

26. Through its membership of CEMAC, Gabon is part of the CFA zone of countries whose common currency is the CFA franc. They have a common central bank, the Bank of Central African States (BEAC). Commercial banks are regulated by the Central African Banking Commission (COBAC) and insurance companies by the Inter-African Conference on Insurance Markets (CIMA). There is also a stock exchange which is managed and co-ordinated by the Central Africa Stock Exchange (BVMAC) in Douala, Cameroon.

27. The Gabonese banking sector consists of seven commercial banks and three financial institutions. Three banks dominate the market. The market leader has a 40% market share, far ahead of the banks in second and third place which each have a 19% share of the market. However, the situation is more varied where numbers of bank accounts are concerned; for example, the market leader holds only 11% of accounts. Furthermore, three public establishments are currently under liquidation procedure: the Banque Gabonaise de Développement (BGD), the Banque Gabonaise de l'Habitat (BGH) and Poste Bank Gabon. There are also six main insurance companies with branches throughout the country. In 2019, the total net asset value of the banks in Gabon amounted to XAF 210 billion (EUR 320 million). The number of bank clients in Gabon stood at 407 000, for around 627 000 bank accounts. The banking penetration rate is only of 30%, and the Gabonese banking sector is not a regional player.

28. The new CEMAC Currency Exchange Regulation adopted at end-2018 has had immediate consequences for the banks. The aim of the regulation is to repatriate and domicile foreign currency in the CEMAC zone and to increase transparency in order to combat money laundering and the financing of terrorism (AML/CFT). Under the new regulatory framework, the banks are required to lend up to 70% of foreign currency to the BEAC. The commercial banks must also request authorisation from the BEAC to import foreign currency and must regularly report on imports of foreign currency. The burden of implementing this new regulation lies chiefly with the banks which are now subject to more reporting requirements.

29. The stock market functions as follows:

- The oversight authority is the Central African Financial Market Supervisory Commission (COSUMAF), which regulates the operation and activity of the stock market (Article 11 of CEMAC-CAMU Regulation No. 06/03 relating to the Organisation, Operation and Oversight of the Central African Financial Market).
- BVMAC manages and co-ordinates the stock market (Articles 3 and 27 of CEMAC-CAMU Regulation No. 06/03). Six companies are listed on the BVMAC, one on behalf of Gabon.
- The Regional Securities Depository (CRDV) acts as both central depository and clearing house. Under Articles 3 and 46 of CEMAC-CAMU Regulation No. 06/03, it is the custodian of transferable securities listed for trading. It also acts as the settlement and delivery agent.
- BEAC is the bank of settlement (Article 3 of CEMAC-CAMU Regulation No. 06/03).
- Stock market intermediaries are mostly subsidiaries of CEMAC zone credit establishments. They have a monopoly on securities trading on the market on their own account and on behalf of their customers (Article 38 *et seqq.* of CEMAC-CAMU Regulation No. 06/03).

AML framework

30. Measures to combat money laundering and the financing of terrorism (AML/CFT) in CEMAC countries are based on the adoption, in 2002, of the statute of the Task Force on Money Laundering in Central Africa (GABAC), set up to lead and co-ordinate the development of AML measures. Gabon is a member of the GABAC. In Gabon, AML is governed by Regulation No. 01/CEMAC/UMAC/CM of 11 April 2016 on the Prevention and Suppression of Money Laundering and the Financing of Terrorism and Proliferation in Central Africa.

31. The financial intelligence unit (FIU) is the National Agency for Financial Investigations (ANIF), which is empowered to investigate financial transactions of any kind. The agency carries out assignments that supplement those of the Community task force, i.e. the GABAC. In addition, the National Commission to Combat Illicit Enrichment (CNLCEI) has powers relating to financial investigations and illicit enrichment. Gabon's FIU is operational and has been accepted as a member of the Egmont group.

32. The most recent assessment by the GABAC of Gabon on its AML/CFT framework was in 2013.¹ This is a report from the previous assessment round, and Gabon was rated NC on Recommendation 33 on transparency of ownership and beneficial ownership of legal entities, and NC on Recommendation 5 on customer due diligence. The GABAC Technical Committee produces an annual monitoring report for each member country, so Gabon is covered by the fast-track monitoring scheme.

Recent developments

33. Since the 2016 Report, Gabon has adopted Law No. 027/2016 of 6 February 2017 prescribing rules governing the dematerialisation of securities. Under Article P-818 *quater* of the General Tax Code (CGI), which was added to the CGI pursuant to the 2017 Finance Law adopted by Gabon, taxpayers' tax returns must be accompanied by documents such as a statement of share ownership at the beginning and end of each tax year.

1. http://spgabac.org/site/wp-content/uploads/2015/10/rapport_evaluation_mutuelle_GABON_vf.pdf.

Part A: Availability of information

34. 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.

35. Legal and beneficial ownership and identity information in respect of legal persons and legal arrangements is generally available as a result of obligations laid down in company law, tax legislation and AML legislation.

36. All relevant Gabonese legal persons are required to register in the Trade and Personal Property Credit Register (RCCM) or the Register of Co-operative Societies, and with the tax authorities. In so doing, they are required to provide their articles of association, which include means of identifying their members. Pursuant to commercial and tax law, they must also maintain an up-to-date legal ownership information. These requirements apply also to foreign entities that have a sufficient nexus to Gabon.

37. AML/CFT-obligated persons must identify their clients' beneficial owners, including foreign owners. However, the AML/CFT Regulation does not specify the methodology for clearly identifying the beneficial ownership of legal persons and legal arrangements. Moreover, there is no clear obligation for legal persons and legal arrangements to use the services of an AML/CFT-obligated person. Additionally, the AML/CFT law does not lay down a specified frequency for updating beneficial ownership information. The legal and regulatory framework is therefore incomplete.

38. The 2016 Report stated that Gabon should take appropriate steps to implement the new version of the OHADA Uniform Act providing for the dematerialisation of all bearer shares before the expiry, in 2016, of the

two-year transitional period allowed to companies for that purpose. In 2017, Gabon adopted a law prescribing rules governing the dematerialisation of securities but has not yet adopted the Decree on Penalties for Failure to Register Securities in an Account. Gabon should ensure the implementation of the dematerialization of all shares.

39. Tax legislation provides for a 10-year retention period for relevant information, including when an entity has ceased to exist.

40. The table below presents the findings on this element.²

Legal and regulatory framework: in place, but certain aspects require improvement

Underlying factor/deficiencies identified	Recommendations
The OHADA Uniform Act on Commercial Companies and Economic Interest Groupings of 2014 provides for the dematerialisation of shares and allows companies a two-year period in which to comply. Gabon adopted a law setting out the regime for the dematerialisation of shares in 2017, but has not yet adopted the decree governing sanctions for failure to present shares for registration.	Gabon should ensure the dematerialisation of all bearer shares.
The availability of beneficial ownership information is provided solely under the regional anti-money laundering legislation. The legislation does not contain sufficient information about the method of determining the beneficial owners in the various situations referred to in the definition, such as control over a company or a legal arrangement. The beneficial ownership information should be updated throughout the business relationship, but no specified update frequency is provided for. Finally, the beneficial ownership information may not be available because there is no requirement for all legal persons and arrangements to engage AML/CFT-obligated persons, all of whom would be required to identify their beneficial owners.	Gabon should ensure the availability of beneficial ownership information in respect of all legal persons and legal arrangements.

Practical implementation of the standard: The assessment team is not able to give a rating for this element because an evaluation in practice is required, which is to be conducted in Phase 2.

The Phase 2 recommendations issued in the 2016 Report are reproduced below for the reader's information.

2. The tables of determinations and ratings in this report show changes from the previous published report. At the time of publication of the report, the tables will be presented in their "final" version.

Underlying factors/Deficiencies identified	Recommendations
<p>Although there was monitoring of ownership obligations undertaken in Gabon by the tax authorities, this monitoring was not systematically carried out during the taxpayer's accounting and tax audits. In addition, during the review period, the RCCM did not have a control system in place to monitor compliance with ownership obligations.</p>	<p>It is recommended that Gabon improve its system for monitoring ownership information obligations under tax and OHADA law to ensure that up-to-date ownership information is maintained for all companies in Gabon.</p>
<p>While during the review period there were no applicable sanctions regarding the obligation to maintain a register of shareholders for SA, SAS and similar companies, Gabon recently adopted a tax provision requiring SA, SAS, and similar companies to maintain a register of registered shares at the location of their registered office under penalty of a fine. However, the implementation of this provision has not been tested in practice.</p>	<p>The Gabonese authorities should monitor the effective implementation of the tax requirement that SAs, SASs, and similar entities maintain a register of registered shares at their registered office and the associated penalty for failure to do so.</p>

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

41. Requirements concerning identity and ownership of companies are laid down chiefly in OHADA law, particularly the Uniform Act on the Law of Commercial Companies and Economic Interest Groupings (AUDSCGIE).

42. Gabonese companies may be commercial (determined by their form or purpose) or non-commercial (non-trading or civil, see Section A.1.5). The AUDSCGIE provides for seven types of entity: three types of stock companies (see Section A.1.1), three types of partnership (see Section A.1.3)³ and economic interest groupings (Section A.1.5). In addition, the form of co-operative societies (see Section A.1.5) is provided for in the Uniform Act on Co-operative Societies (AUSC).

3. Note that the French terms “*société de capitaux*” and “*société de personnes*” do not exactly correspond to the terms “companies” and “partnerships” used in English.

43. Three different types of stock company may be created under OHADA law:

- Public limited companies (*sociétés anonymes*, SA) are companies whose owners, called shareholders, are liable for corporate debts only up to the amount of their contribution; their rights are represented by shares. Since 2014, SA have been able to issue registered shares only (see Section A.1.2). The minimum share capital for an SA is XAF 10 million (EUR 15 245). An SA may have only one shareholder (Article 386 of the AUDSCGIE). On 31 May 2021, there were 2 332 SA.
- Limited liability companies (*sociétés à responsabilité limitée*, SARL) are companies whose members are liable for corporate debts only up to the amount of their contribution; their rights are represented by shares (Article 309 of the AUDSCGIE). The minimum share capital for an SARL is XAF 1 million (EUR 1 525). The Uniform Act does not set any minimum or maximum number of shareholders of the SARL. On 31 May 2021, there were 22 907 SARL.
- Simplified joint-stock companies (*sociétés par actions simplifiées*, SAS) may be created by one or more shareholder(s). The organisation and operation of the company are defined in the articles of association, subject to the mandatory provisions of the AUDSCGIE (such as the requirement to have a president). The shareholder(s) is/are liable for corporate debts only up to the amount of their contribution; their rights are represented by shares (Article 853-1 of the AUDSCGIE). The minimum share capital for an SAS is the same as for an SA, i.e. XAF 10 million (EUR 15 245). On 31 May 2021, there were 61 SAS.

Legal ownership and identity information requirements

44. The ownership and identity requirements for companies are found mainly in commercial and tax law. Information on the founding shareholders of stock companies (whether partners or shareholders) is notified at the time of its registrations in the Trade and Personal Property Credit Register (RCCM) and with the tax authorities. Companies are required to inform the tax authorities of changes in their membership, and SARL must also inform the RCCM. In conformity with company and tax law, Gabonese entities must also hold a register of their partners or shareholders. Additionally, legislation on AML/CFT-obligated persons requires AML-obligated persons to keep information about the identity and ownership of their customers.

45. The following table summarises the legal requirements to maintain legal ownership information in respect of companies:

Companies covered by legislation regulating legal ownership information

Type	Company law	Tax law	AML law
SA	All	All	Some
SAS	All	All	Some
SARL	All	All	Some
Foreign companies (tax resident) in Gabon	All	All	Some

Note: The table shows each type of entity and whether the various rules applicable require availability of information for “all” such entities, “some” or “none”. “All” means that 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.

Company law requirements

46. The articles of association of stock companies are governed by the AUDSCGIE and the Uniform Act on General Commercial Law (AUDCG).

47. Under Article 13 of the AUDSCGIE, the articles of association of a commercial company must set out:

- the form of the company, its name, and the nature and area of its activity (corporate purpose)
- its registered office⁴
- the identity of contributors in cash or kind including, for each one, the amount of the contribution (or, for contributions in kind, the nature and a valuation of the contribution made by each), and the number and value of the shares issued in return for each contribution
- the identity of beneficiaries of particular benefits and the nature of such benefits
- the amount of the share capital and the number and value of the shares issued, drawing a distinction where applicable between the different categories of share created
- clauses on the allocation of profit, the maintenance of reserves and the distribution of any surplus on liquidation
- the company’s operating arrangements.

4. The registered office does not necessarily have to be located in Gabon. However, Article 1 of the AUSGCIE specifies that it must be located in one of the OHADA territories and Art. P-891 of the CGI specifies that the documents must be kept on the Gabonese territory (see paragraph 71).

48. Under Article 27 of the AUDCG, incorporation is conditional on registration of the company in the RCCM no later than one month after its formation. The RCCM receives applications from legal persons for registration in, amendments to, and removal from the register.

49. Under Article 317 of the AUDSCGIE, the identity of the founding shareholders of stock companies is available in the company's articles of association, which must be provided at the time of its registration in the RCCM (Article 47 of the AUDSCGIE).

50. Only SARL are required to amend their articles in the event of a change in membership and therefore to inform the RCCM thereof. Under Article 52 of the AUDCG, changes in membership must be made in the form of an amending or supplementing application to the RCCM within 30 days of the change. Under Article 317 of the AUDSCGIE, share transfers *inter vivos* must be recorded in writing and registered in the RCCM.

51. Unlike SARL, SA and SAS are not required to disclose the identity of their shareholders in the RCCM (other than at company foundation). However, all companies must record that information in the register of shareholders together with their registered shares (Article 746 of the AUDSCGIE). Registers are maintained by each company, or by a person that the company authorises to that end. The details recorded in the registers include transactions for the transfer, conversion, pledging and sequestration of shares, the transaction date and, in the case of a transfer, the family names, given names and addresses of the former and new shareholders or, in the case of a conversion of bearer shares into registered shares, the full name and address of the shareholder.

52. In the case of a transfer, the name of the former shareholder may be replaced by a serial number that can be used to find the name in registers. All entries made in registers must be signed by the company's legal representative or his/her delegate. The company is required to keep the registers of registered shares up to date. The auditor's report, which is submitted to the annual general meeting, notes the existence of the registers and gives his/her opinion on their proper keeping.⁵ A declaration made by the directors certifying that the registers have been kept in due form must be annexed to the said report (Article 746, second paragraph, of the AUDSCGIE).

5. A statutory auditor is mandatory for all SAs; it is mandatory for SASs and SARLs that meet two of the following conditions: i) balance sheet total in excess of XFA 125 million (EUR 190 300), ii) annual turnover in excess of XFA 250 million (EUR 190 300), or iii) permanent workforce in excess of 50 persons (Articles 694, 853 13 and 376 AUSCGIE).

53. In the event of the dissolution of a legal person, whether as a result of agreement among its members or a court-ordered liquidation, the liquidator must apply for the removal of the legal person from the RCCM. That request must be made during the month following the closure of liquidation proceedings. The notice of closure of the liquidation must contain an indication of the RCCM where the liquidators' accounts are deposited (Articles 266-268 of the AUSCGIE). These accounts include the shareholder register. The removal is then stated in the RCCM and entails the irrevocable loss of the rights arising from registration (Articles 57 and 58 of the AUDCG).

Company registrations and information available from the authorities

54. The application for entry on the RCCM is made in writing or electronically using a form made available for that purpose by the Registry or competent body. The application is signed as appropriate by the registrant, applicant or his/her nominee who must both prove his/her identity and, unless he/she is an attorney (*avocat*), accredited professional, officer of justice (*huissier*), notary or receiver, be in possession of a power of attorney signed by the applicant (Article 39 of the AUDCG). The application for registration of a legal person must include (Article 46 of the AUDCG):

- the family names, given names, dates and places of birth and addresses of managers, directors, administrators or partners with general authority to act on behalf of the legal person or group
- the family names, given names, dates and places of birth and addresses of auditors, where the appointment of auditors is provided for in the AUDSCGIE.

55. The application for registration must be accompanied by the following supporting documents, in whatever form or medium (Article 47 of the AUDCG):

- a certified copy of the articles of association or of the founding act and the declaration of compliance and conformity or the notarised declaration of share capital and payment
- the certified list of managers, directors, administrators or partners who are indefinitely and personally liable or who have the power to commit the company or legal person.

56. Consequently, the information about the identity of the founding shareholders or partners of companies is notified to the RCCM at the time of registration. Nevertheless, there is no requirement to inform the RCCM in the event of an amendment to the articles of association that would not affect the information contained in the registration form, including changes in partners or shareholders, except for the transfer *inter vivos* of shares in an SARL, which must be updated in the RCCM for reasons of third-party effectiveness.

57. The RCCM is held by the trade clerk, acting on behalf of the President of the District Court (Tribunal de Grande Instance). The information contained in each RCCM is centralised in a national database and, pursuant to Article 36 of the AUDCG, the information contained in each national database is centralised in a regional database held by the OHADA Common Court of Justice and Arbitration. Currently, Gabon has a single register maintained by the commercial registry of the Court of First Instance in Libreville, the capital.

58. In practice, newly founded companies register with the National Investment Promotion Agency of Gabon (ANPI-Gabon) which acts as a single window to support companies in completing the administrative business start-up formalities. ANPI-Gabon deals with entry on the RCCM and registration with the tax authorities.

59. The AUDCG does not provide for a specific period of time for retaining the information contained in the RCCM, but the clerk is responsible indefinitely for the safekeeping of information about registered companies.

60. To conclude, information on the ownership of Gabonese companies at the time of their incorporation is available from the RCCM. During the life of a company, the information concerning SARL is available from the RCCM, and information about all companies is available on the company's list of registered shareholders.

Tax law requirements

61. Company ownership information is collected by the tax authorities (i) when the company is registered; (ii) during the life of the company when there is a change in ownership and (iii) through the annual tax return.

62. Under Article P-817 of the Gabonese Tax Code (CGI), any legal or natural person liable as a taxpayer for the payment of a tax must register with the tax authorities within two months of the commencement of their activities. This requirement applies to all Gabonese companies as well as to foreign taxpayers who carry on economic activities in Gabon without having a registered office there. Those concerned must appoint a solvent representative accredited by the tax authorities.

63. At the time of registration, the natural or legal person requiring registration must supply the following documents:

- a registration application form (form IM01 supplied by the authorities and available on the DGI website)
- a copy of the identity card or of the residence card or passport for company directors

- a certified copy of the articles of association
- a copy of the contract with the Gabonese Energy and Water Company (SEEG) and the electricity invoice for the month preceding the application for registration
- a copy of the legal title to leased assets and the lease
- a map of where the activities take place (form IM03, available for download from the DGI website).

64. Once the file is complete, the tax authority software (integrated tax and revenue collection software, LIIR) automatically assigns the taxpayer a single tax identification number that is used for matters concerning direct and indirect taxes, customs and public procurement.

65. Registration is compulsory for all Gabonese companies, branch offices of international companies, individual entrepreneurs, foundations, partnerships and international organisations.

66. Any material change affecting operations, such as a change of director, transfer (i.e. change of shareholder), or cessation or change of the business, must also be notified to the tax authorities within 15 days of the event.

67. All deeds amending the articles of association of a company – including the transfer of shareholdings in a SARL – must be made by a notary and be registered at the registration service of the tax administration. The taxpayer must meet the deadline for registration of instruments (Articles 473 et seq. of the CGI) or risk the application of penalties that are often equal to the amount of the fees payable (Articles P-1011 et seq. of the CGI). With regard to the transfer of shares (drawn up by way of private documents that must be registered), the taxpayer must produce the document authorising the transfer, the updated articles of association, the company accounts and the previous articles of association, so that the total number of partners or shareholders is known. Updates in company ownership are registered in the LIIR software.

68. Under Article 191 of the CGI, in the annual tax return, a legal person liable to corporate tax (including all commercial companies) must provide a statement setting out the conditions under which their earnings are distributed or shared between partners, limited partners, managing partners, co-participants or board members in consideration of their functions or contributions. Under Article 192 of the CGI, the company must supply the beneficiaries' identities and details of the amounts allocated to them.

69. Under the 2020 Finance Law, Gabon added new Article P-818 *quater* to the General Tax Code, laying down a requirement for all natural or legal

persons liable as taxpayers (including all companies) for the payment of a tax to attach the following documents to its annual tax-return (DSF):

- a statement of share ownership at the beginning and end of each tax year listing the identity of the ultimate beneficiary; the Gabonese authorities have indicated that, in the absence of a definition, this should be understood as beneficial owner, but this is not explained in the documents provided to the taxpayer. This aspect will be verified during the Phase 2 assessment (see annex 1).
- a list of suppliers and customers as soon as the taxpayer attains a turnover that brings him/her within the scope of the medium-sized businesses department.

70. SA, SAS and assimilated foreign entities⁶ are required to keep and retain a register of registered shares at their head office (new Article P-820 of the CGI). Under Article P-822 of the CGI, these companies are required to provide the tax authorities upon request with registers of share or bond transfers, minutes and attendance sheets for shareholders' and board meetings, and auditors' reports.

71. The books, registers, documents and other information in respect of which the authorities may exercise their right of audit, their right to information or their right of investigation must be kept for 10 years from the date of the last transaction recorded in them or the date on which they were drawn up (Article P-821 of the CGI). These include legal ownership documentation. Instruments of incorporation, amendment or any other change that comes about during the life of a business must be kept for an unlimited period of time, i.e. for as long as the company exists (Article P-822 of the CGI). When an entity ceases to exist, Gabon indicated that share and bond transfer registers, attendance sheets and minutes of general meetings and boards of directors, as well as auditors' reports, remain available with the auditors for 10 years. The documents must be kept in Gabon (Article P-891 of the CGI).

72. Tax registration of newly founded companies is done by ANPI-Gabon at the time of registration with the RCCM (cf. paragraph 58).

6. A foreign company can be assimilated to a Gabonese SA or SAS if its legal form does not correspond to the SA or SAS as defined by OHADA law, but it is treated or follows the same regime as the SA and SAS in the foreign country. The assimilation will concern the tax regime applicable to this category of companies and not the legal regime *stricto sensu*. This is the case, for example, of semi-public companies, nationalised companies, professional or interprofessional companies.

Obligations under anti-money laundering legislation

73. Under Article 21 of the CEMAC AML/CFT Regulation,⁷ AML/CFT-obligated persons must identify their client before entering into a business relationship with that client. Article 31 states that the identification of a legal person by the financial institutions must be verified by the production of its articles of incorporation and any document that establishes that it has been legally constituted and actually exists at the time of identification. It further states that the financial institutions must understand the nature of the activities of the legal persons and their ownership and control structure.

74. Consequently, where the client is a legal person, the AML/CFT-obligated person must collect information on its identity and ownership, even if the information is not necessarily complete. This information must be updated throughout the business relationship (Article 22), but no specified update frequency is provided for. Therefore, the information collected by AML/CFT-obligated persons may not always be up to date.

75. The documents establishing the identity of financial institutions' clients must be retained for 10 years from the closure of the accounts or the cessation of the business relationship (Article 38).

76. Finally, there is no obligation requiring the relevant legal persons to use the services of an AML/CFT-obligated person. In addition to company law and tax law, the AML/CFT legislation therefore makes company identity and ownership information available only if the company has an ongoing business relationship with an AML/CFT-obligated person, but that information may not be complete or up to date.

Foreign companies

77. The ToR require the availability of ownership information for foreign companies where they have a sufficient nexus with a jurisdiction. In Gabon, information on foreign company ownership is available as a result of company and tax reporting requirements.

78. Under Articles 119 and 120-4 of the AUDSCGIE, foreign companies with a branch office in Gabon must register their establishments in the RCCM. Under Articles 116 to 120 of the AUDSCGIE, branch offices of foreign companies must incorporate as Gabonese companies after four years as from the registration in the RCCM (art. 118 to 120 AUDSCGIE). The rules

7. Regulation No. 01/CEMAC/UMAC/CM of 11 April 2016 on the Prevention and Suppression of Money Laundering and the Financing of Terrorism and Proliferation in Central Africa (AML/CFT Regulation).

governing registration in the RCCM of branch office of foreign companies are the same as those for Gabonese businesses (see above).

79. As the foreign company branch office is thus treated in the same way as a Gabonese company, the registration of branch offices of foreign companies means that updated information about their ownership is available from the RCCM if they are limited liability companies (SARL) or partnerships, because these types of entities are required to provide updated information to the RCCM. By contrast, updated information about the ownership of companies with share capital (SA and SAS) will not be available from the RCCM. However, this information will be available in the share register, which the branch office is required to maintain in the same way as any Gabonese stock company (Article 746-1 of the AUDSCGIE). When there is no branch office, the information is available according to tax law.

80. The reporting obligations provided for in tax law also apply to foreign companies (see paragraph 62). Foreign companies that become established in Gabon without a subsidiary (branch office, headquarters, etc.) must appoint a solvent legal representative who is accredited by the tax authorities (Article P-817, fourth paragraph, of the CGI). The General Tax Directorate (DGI) issues a definitive single taxpayer identity number after the taxpayer's effective location has been certified. The penalties set forth in Article P-1002 of the CGI apply in the event of non-compliance with these obligations.

81. SA, SAS and assimilated entities (i.e. foreign companies assimilated to Gabonese SA and SAS) are also required by the tax authorities to maintain a shareholder register (Article P-818 quarter of the CGI).

82. In conclusion, information about the ownership of foreign companies deemed to carry out business activities in Gabon should be available either from the RCCM or from tax obligations.

Inactive companies

83. Article 188 *bis* of the CGI also provides for the possibility of companies to be made inactive. This means a voluntary, temporary suspension of activities enabling the inactive company to be exempt from taxes. This tax exemption does not, however, release the taxpayer from its reporting obligations, including regarding updated legal ownership information. A document signed at the tax authorities' office must record the fact that the company has been made inactive. Any false declaration of inactivity is punishable by penalties as provided for in Article P-997 of the CGI.

84. Inactivity may last no longer than two years and is not renewable. After two years, the taxpayer automatically becomes liable in compliance with the rules of ordinary law unless it initiates the procedure for definitive

cessation of activities or is automatically struck off. The practice of striking off does not consist in a liquidation or dissolution, and the company retains its legal personality. Gabon has stated that close to 1 000 companies have been declared inactive in the past three years (202 in 2018, 195 in 2019 and 580 in 2020). This aspect will be further analysed during the Phase 2 assessment (see Annex 1).

Nominees

85. There are no specific provisions in Gabonese or OHADA law relating to the common law concept of nominee. Instead, OHADA law provides for a *mandataire* (authorised person), a civil law concept. OHADA law provides that, in certain specific circumstances, the shareholders of a company can be represented by an authorised person in various acts.

86. Under OHADA law, any company shareholder may be represented by an authorised person of his/her choice on formation of the company (Article 315 of the AUDSCGIE) or at a shareholders' meeting. However, the authorised person acts expressly and publicly on a shareholder's behalf and does not have shareholder status with regard to third parties.

87. The authorised person must obtain a power of attorney from the principal, containing information about the principal's identity. Under Article 538 of the AUDSCGIE, the power of attorney must state the principal's family name, given name, residence, number of shares and voting rights held, and the shareholders' meeting for which it is given. It must be signed by the principal, preceded by the words "*bon pour pouvoirs*" (good for power of attorney), and state the date. Consequently, although an authorised person acts for the principal, the identity of the principal, i.e. the legal owner, is known.

Ownership information – enforcement and oversight

88. Various penalties are available under Gabonese company, tax or AML/CFT law to ensure the availability of information on the identity of the owners of entities in existence in Gabon.

89. Under Articles 114 and 115 of the AUDSCGIE, a company that fails to register in the RCCM is considered to be either a joint venture or a de facto company without legal personality and hence governed by the provisions of Articles 864 et seq. of the AUDSCGIE. The Act thus acts as a deterrent. A de facto company is founded where two or more natural or legal persons behave like partners without having established a company within one of the categories recognised under the Uniform Act (Article 864 of the AUDSCGIE).

90. Law No. 2017/727 of 9 November 2017 laying down Penalties for Violations of the OHADA Uniform Acts sanctions failure to comply with one of the obligations laid down in the AUDCG with a fine of between XAF 100 000 and XAF 1 million (EUR 152 and EUR 1 520) and/or a period of imprisonment of between three months and three years. The punishments are imposed by the court on the basis of reports from the register office.

91. Failure to register for tax purposes or to notify any material change as provided for in Article P-817 of the CGI is punishable by a fine of XAF 250 000 (EUR 380) (Article P-1002 of the CGI). There are, at present, no penalties in Gabonese law for failure to register transfers of shares in an SARL in the RCCM. Under Article P-1002 of the CGI, however, the penalty for failing to file changes to information used in an initial registration is a flat-rate fine of XAF 250 000 (EUR 380). Therefore, members of an SARL who fail to inform the tax authorities of a change of membership are liable to a penalty.

92. Under both the AUSGIE and the CGI, there is a requirement for companies to maintain a register of shareholders (Article 746-1 of the AUDSGIE and Article P-820 of the CGI). The tax legislation also provides for the obligation to attach to the annual tax return a statement of share ownership (Article P-818 quarter of the CGI). Failure to hold and keep a register of registered shares at the registered office may result in a flat-rate fine of XAF 5 million (EUR 7 620) (Article P-1003 of the CGI). Penalties are also applicable in case of non-compliance with reporting obligations. Non-compliance with the shareholding declaration obligations may result in the freezing of the taxpayer's bank accounts, the administrative closure of its establishments, the prohibition to participate in public procurement operations and the prohibition to import (Article P-1007 of the CGI).

93. Failure by such entities to comply with the requirement to retain documents for 10 years as laid down in Article P-821 of the CGI (see paragraph 71) may result in a flat fine of XAF 5 million (EUR 7 620) (Article P-1003 of the CGI).

94. The implementation in practice and the enforcement and oversight of legal requirements regarding the availability of ownership information will be assessed in greater detail during the Phase 2 evaluation.

Availability of beneficial ownership information

95. In Gabon, this aspect of the standard is met exclusively through anti-money laundering legislation (the AML/CFT Regulation). The legal regime is analysed below.

Companies covered by legislation regulating beneficial ownership information

Type	Company law	Tax law	AML law
SA	None	None	Some
SAS	None	None	Some
SARL	None	None	Some
Foreign companies (tax resident) ^a	None	None	All

Note: Where a foreign company has a sufficient nexus to the jurisdiction under evaluation, then the availability of beneficial ownership information is required to the extent that the company has a relationship with an AML-obligated services provider that is relevant for the purposes of EOIR. (ToR A.1.1, footnote 9).

Obligations under anti-money laundering legislation

96. Under Gabonese law, the concept of beneficial ownership occurs in anti-money laundering legislation and legislation to combat the financing of terrorism (AML/CFT legislation). The AML/CFT legislation in force in Gabon derives from a Regulation of the Central African Economic and Monetary Community (CEMAC) of which Gabon is a member. Under Article 41 of the revised CEMAC Treaty, “regulations are binding in their entirety and directly applicable in all member States” without the need for transposition.

97. Regulation No. 01/CEMAC/UMAC/CM of 11 April 2016 on the Prevention and Suppression of Money Laundering and the Financing of Terrorism and Proliferation in Central Africa (the AML/CFT Regulation) defines a beneficial owner as the “natural person who ultimately possesses or controls (i) a customer and/or (ii) the natural or legal person on whose behalf a transaction is performed. Also included are persons who ultimately have effective control over a legal person or arrangement” (Article 1(16)). This definition complies with the requirements of the international standard to the extent that it follows the definition given in FATF Recommendation 10 reproduced in footnote 8 of the Global Forum Terms of Reference.

98. Before entering into a business relationship with a client or assisting the client with the preparation or conduct of a transaction, AML/CFT-obligated persons are required “to identify their customer and, where relevant, the beneficial owner of the business relationship using suitable means and to verify every aspect of the identification through the use of any credible documentation” (Article 21). The expression “where relevant” as used here is to be interpreted as meaning “if the circumstances arise”; which means that there is no obligation to identify the beneficial owner in the circumstances set out in Article 52 on simplified CDD requirements, e.g. where the customer is a financial institution, a listed company or an authority or a public body, which is in line with the standard.

99. The simplified due diligence procedures provided for in Article 52 do not cover Article 21 on the identification of beneficial owners. Beneficial owners must therefore be always be identified except in the cases identified above.

100. In conformity with Articles 62 to 64 of the AML/CFT Regulation, financial institutions may rely on a third party to implement the CDD requirements incumbent upon them, including in respect of identifying their customers and their beneficial owners; however, in so doing, they are not absolved of their ultimate liability for compliance with those requirements. A third party may implement CDD requirements provided that the following cumulative conditions are met:

- The third party is a financial institution or an AML/CFT-obligated person situated or having its head office in Gabon or an equivalent person under the law of another jurisdiction and located in a third state that lays down equivalent AML/CFT obligations.
- The financial institution has access to the information collected by the third party.
- The third party promptly makes available to the financial institution information on the identity of the customer and of the beneficial owner as well as information relating to the object and nature of the business relationship.
- The third party must also forward, on request, a copy of the documents identifying the customer and the beneficial owner as well as any document relevant to the performance of the due diligence procedures. An agreement may be signed between the third party and the financial institution to set out the arrangements for communicating the information thus collected and auditing the due diligence procedures implemented (Article 64 of the AML/CFT Regulation).

101. The beneficial ownership information must be updated throughout the business relationship (Article 22), but no specified update frequency is provided for. Therefore, the information collected by AML/CFT-obligated persons may not always be up to date.

102. Under the AML/CFT Regulation, Gabonese legislation merely defines the concept of beneficial owner but does not set out methods of identification. It is silent on the criteria to be taken into account in determining the identity of a beneficial owner where the customer of a person obligated to identify a beneficial owner is a legal person. Although the definition states that the beneficial owners of legal persons and legal arrangements are the persons who have effective control over them, no details are given as to how “effective control” is to be interpreted. For example, no percentage of share capital or

any other form of control are stated in the legislation, nor is there a requirement to identify all natural persons who are covered by the definition. Finally, there is no provision for a fall back position where no person falls within the definition, namely the reference to the chief executive officer. It is difficult to know what AML/CFT-obligated persons, especially financial institutions and designated non-financial businesses and professions (DNFBP, as referenced in the AML/CFT Regulation), are expected to do in these circumstances to identify their customers' beneficial owners.

103. To conclude, the procedures for determining beneficial ownership in Gabon have not been set out in detail, thus it cannot be concluded that the beneficial owners of companies are identified in compliance with the requirements laid down in the standard. **Gabon should ensure that the methodology for identifying beneficial owners is set out in detail and is in compliance with the standard.**

104. The documents establishing the identity of financial institutions' clients must be retained for 10 years from the closure of the accounts or the cessation of the business relationship (Article 38). No specific retention period is provided for in respect of other AML/CFT-obligated persons, but tax law provides for a 10-year retention period (see paragraph 71).

Scope of AML legislation

105. The range of persons subject to AML/CFT obligations persons is fairly broad, to the extent that it covers financial institutions and DNFBP (Articles 6 and 7 of the AML/CFT Regulation). The DNFBP covered include:

- providers of services to companies and trusts
- persons providing business to financial institutions
- external auditors, who are the statutory auditors in the framework of Gabon, accountants and tax advisers
- attorneys, notaries, officers of justice and other members of independent legal professions including court-appointed receivers, court-appointed administrators and court-appointed auctioneers and valuers.

106. In addition, Article 51 extends the CDD requirements to the providers of services to trusts and companies when they prepare or perform transactions for a customer in connection with one of the following activities:

- they act as agent for the incorporation of a legal person
- they act (or take steps to enable another person to act) as a director or general secretary of a stock company, a partner in a partnership or as a holder of a similar office for other types of legal persons

- they provide a registered office, a business address or premises, an administrative or postal address to a stock company, a partnership or any other legal person or legal arrangement
- they act (or take steps to enable another person to act) as a trustee of an express trust or exercise an equivalent function for another form of legal arrangement
- they act (or take steps to enable another person to act) as a shareholder acting on another person's behalf.

107. There is no requirement for companies to engage the services of a DNFBP or a financial institution at all stages of their lives. Only the SA must be created by notarial act (Article 396 of the AUDSCGIE). Therefore, the scope of the AML/CFT legislation is not such that it covers all Gabonese companies. For example, there is no requirement to have a bank account in Gabon or to use the services of a member of a legal profession, such as a notary, during the life of the company. The only requirement relates to instruments amending a company's articles of association (including the transfer of shareholdings in a SARL), which must be notarised as described in paragraph 67, giving rise to occasional dealings that render it impossible to ensure continuous availability of information.

108. Moreover there is no requirement in law for companies to identify and maintain information on beneficial owners. Neither the RCCM, which holds information on companies founded in Gabon, nor any other public register is empowered in law to receive and retain beneficial ownership information.

109. To conclude, various legal obligations exist in respect of money laundering, and compliance with them would enable the beneficial owners of legal persons to be identified by members of the accounting and legal professions, and by financial institutions, all of whom are obligated to identify their customers and their customers' beneficial owners, and to retain that information. However, there are a number of shortcomings that mean it is not possible to ensure the availability of beneficial ownership information in all circumstances as required by the international standard, namely:

- the lack of detail on the method of determining beneficial owners in the various situations referred to in the definition, such as control over a company
- the lack of a provision as to the person who should be identified in the event that no natural person meets the definition of beneficial owner
- the lack of a provision laying down a specified frequency for updating beneficial ownership information

- the lack of a provision on the period for which DNFBP must retain beneficial ownership information, even though tax law plugs the gap
- the lack of a provision requiring all legal persons to engage an AML/CFT-obligated person who is required to identify their beneficial owners.

110. Gabon should ensure the availability of beneficial ownership information in respect of all legal entities.

Nominees

111. Although the common law concept of “nominee” does not exist in Gabonese law, AML/CTF customer identification requirements may be helpful in determining the identity of shareholders who use nominees to conceal their identity, whether it is a straw man or the nominee is in the chain of ownership outside Gabon.

112. Article 33 of the AML/CFT Regulation states that “where it is not certain that the client is acting on their own behalf, the financial institution shall use any means to learn the principal’s identity”. If the client is an attorney, a notary, an accountant, an auditor or a stockbroker acting as a financial intermediary, they may not invoke professional secrecy to decline to communicate the identity of the beneficial owner.

113. In addition, Article 51 extends the CDD requirements to the providers of services to trusts and companies when those providers prepare or perform transactions for a customer, including when they act (or take steps to enable another person to act) as a director or general secretary of a stock company, as a partner in a partnership or as a holder of a similar office for other types of legal persons; or when they act (or take steps to enable another person to act) as a shareholder acting on another person’s behalf.

114. The identity of a beneficial owner behind a nominee should be identified as part of the due diligence procedures described above. This will be verified during the Phase 2 assessment (see Annex 1).

Beneficial ownership information – enforcement measures and oversight

115. Oversight of AML/CTF law is provided by the authorities that regulate AML/CTF-obligated persons, including:

- the Central African Banking Commission (COBAC) for banks and financial institutions
- CIMA for insurance companies

- the Agency for Financial Investigations (ANIF) for accountants, legal professions and notaries
- the tax administration and the registry of the Court of First Instance for company and trust service providers.

116. COBAC is an arm of the Bank of Central African States (BEAC) and is responsible for ensuring that lending institutions comply with the legislative and regulatory provisions applicable to them that are issued by the national authorities, the Ministerial Committee of the Central African Monetary Union (UMAC), BEAC or by COBAC itself, and to punish any failures to do so. COBAC oversees the lending institutions' operating conditions, monitors their financial circumstances and enforces professional ethics. COBAC enforces the AML/CFT Regulation in respect of the establishments it oversees.

117. In the event of a failure to comply with the obligations provided for in law, the punishments that COBAC may impose are: warnings, reprimands, a ban or other restriction of any nature on performing certain operations or engaging in banking activity, the suspension or revocation of statutory auditors, the suspension or automatic resignation of liable directors and, finally, withdrawal of the establishment's licence (Article 39 of the Annex to the Convention on the Harmonisation of Banking Regulations).

118. Oversight of AML/CFT-obligated persons who do not have their own regulatory bodies (such as accountants, the legal professions and notaries) is provided by ANIF. The ANIF is present in each member state of the CEMAC, and in Gabon it was established under Article 25 of Regulation No. 01/03/CEMAC-UMAC-CM of 4 April 2003. The ANIF is a financial information unit operating under the authority of the Minister for the Economy. Its main duty is to prevent, detect and stop money laundering and the financing of terrorism. It also has the task of supervising obligated-persons who do not have their own supervisory bodies. It is mandated to receive, process and forward to the competent legal authorities a report together with all supporting documents other than the suspicious activity report itself. It has the additional mission of raising awareness and training professionals in combating money laundering and the financing of terrorism.

119. The implementation in practice and the enforcement and oversight of legal requirements regarding the availability of beneficial ownership information will be assessed in greater detail during the Phase 2 evaluation.

A.1.2. Bearer shares

120. Under the OHADA Uniform Act, transferable securities must take the form of bearer shares or registered shares, whether they are issued in consideration of contributions in kind or contributions in cash (Article 745

of the AUDSCGIE). However, other AUDSCGIE provisions, or a company's articles of association may require transferable securities to be issued in the form of registered shares exclusively. Only SA and SAS may issue bearer shares; SARL may issue only company shares (*parts sociales*).

121. The 2016 Report noted that the new OHADA Act (AUDSCGIE) provided for the dematerialisation of securities (registered shares and bearer shares) and allowed a two-year compliance period for companies; however, it did not clearly state what should happen to bearer shares that were not dematerialised at the end of the transitional period. The report also noted that there was no other provision in Gabonese law clarifying the arrangements for dematerialisation, but that only one SA had actually issued bearer shares. Gabon was therefore recommended to take appropriate steps to implement the new version of the OHADA Uniform Act to ensure the dematerialisation of all bearer shares on expiry of the two-year transitional period allowed to companies for that purpose.

122. Under Article 744-1, “transferable securities, whatever their form, must be registered in an account in the name of their owner. They are transmitted by transfer from account to account.” Title to transferable securities is transferred by the registration of the transferable securities in the acquirer's securities account. Thus, bearer shares and registered shares should be dematerialised (paper shares should no longer exist) and their owners identifiable. Article 744-1 was adopted in 2014, and a transitional period ending on 5 May 2016 (Article 919) was laid down for the dematerialisation of all securities. However, at that time, Gabon had not taken any specific implementing measure to meet the deadline.

123. On 6 February 2017, Gabon adopted Law No. 027/2016 prescribing rules governing the dematerialisation of securities. Registered shares or bearer shares, whether listed on the stock exchange or not, are dematerialised through registration in an account in the owner's name (Article 6).

124. The method for registering dematerialised transferable securities in an account and transferring those securities are as follows:

- Pursuant to record-keeping requirements, the accounts in which the securities are held must be administered either by the issuer (e.g. the company issuing the securities) or by a custodian accredited by COSUMAF. These are stock exchange companies. There are 15 such companies approved by COSUMAF for all CEMAC countries, including one in Gabon. A central file maintained by COSUMAF makes it possible to identify the account holder acting for a given company.
- The account issuer or custodian enters the securities in an account against issuance of a registration certificate drawn up in the name of

the owner of the securities. The certificate certifies that the shares have been entered in an account and specifies the characteristics and number of the shares held.

- Transferable securities are transmitted by transfer from account to account, and such transfers may be carried out only on the written instruction of the holder of the account to be debited (or his/her nominee) using one of the following forms: transfer notice (*bordereau de transfert*), transfer declaration (*déclaration de transfert*) or security transfer request (*ordre de mouvement*).
- Movement in transferable securities by means of entering them into an account does not waive the requirement for companies with share capital to hold a register of registered shares containing all references to transactions for the transfer, conversion, pledging and sequestration of shares (Article 746-1 of the AUDSCGIE). In that regard, the new Uniform Act of 2014 requires directors to make a statement certifying that the registers are kept in compliance with the requirements. The statement is attached as an annex to the annual general report by the external auditor who, in turn, is required to confirm the existence of the register of registered shares and give an opinion on its compliance with record-keeping requirements (Article 746-2 of the AUDSCGIE).⁸ This annual general report must be filed with the Registry of the Commercial Court to enable the information in the RCCM to be updated.

125. Article 31 of Law No. 027/2016 also refers to the obligation incumbent on SA, SAS and assimilated entities to keep and retain at their registered offices a register of registered shares. Gabon has further stated that a draft decree in the process of being adopted provides for penalties in the event of failure to present securities for registration in an account.

126. The 2016 Report stated that bearer shares are not often used by Gabonese economic operators and that only 16 SA, or 0.04% of the SA registered with the DGI, provided in their articles of association for the issuance of registered shares or bearer shares and that only one SA had actually issued bearer shares. In conclusion, Gabon adopted a law setting out the regime for the dematerialisation of shares in 2017, but has not yet adopted the decree governing the penalties for failure to present shares for registration in an account. **Gabon is therefore recommended to ensure the**

8. A statutory auditor is mandatory for all SAs; it is mandatory for SASs and SARLs that meet two of the following conditions: i) balance sheet total in excess of XFA 125 million (EUR 190 300), ii) annual turnover in excess of XFA 250 million (EUR 190 300), or iii) permanent workforce in excess of 50 persons (Articles 694, 853 13 and 376 AUSCGIE).

dematerialisation of all bearer shares. The implementation in practice of legal provisions on bearer shares will be assessed in greater detail during the Phase 2 evaluation (see Annex 1).

A.1.3. Partnerships

Types of partnerships

127. The Uniform Companies Act distinguishes the following types of partnership:

- Limited partnerships (*sociétés en commandite simple*, SCS). An SCS is a legal person which has one or more partners who have unlimited joint and several liability for the partnership's debts (general partners) and one or more partners who are liable for the partnership's debts only up to the amount of their contribution (limited partners). The capital of an SCS is divided into shares (Article 293 of the AUDSC). On 31 May 2021, there were 1003 SCS registered with the DGI.
- General partnerships (*sociétés en nom collectif*, SNC). An SNC is a legal person in which all partners are traders and have unlimited joint and several liability for the partnership's debts (Article 270 of the AUDSC). On 31 May 2021, there were 888 SNC registered with the DGI.
- Joint ventures (*sociétés en participation*, SP). A partnership in which the partners agree that the company will not be registered in the RCCM and will not have legal personality. Joint ventures are not subject to disclosure formalities (Article 854 and following AUSCGIE).

128. Information about the owners of partnerships and foreign partnerships with a branch office in Gabon (see section A.1.1 on foreign companies) is available from the RCCM and the tax authorities.

Identity and ownership information

129. Partnerships, with the exception of joint ventures, are required to register in the RCCM in the same way as stock companies. Under AUDCG Articles 46 and 52, the following information is kept in the RCCM:

- the last names, first names, dates and places of birth, personal residences, nationalities of partners and personal domicile of partners who have unlimited personal liability for the partnership's debts
- the last names, first names, dates and places of birth and addresses of managers, directors, administrators or partners with general authority to act on behalf of the legal person or group

- shareholdings if applicable
- the address of the registered office and, where applicable, the addresses of the principal place of business and all other establishments
- amending, supplementing and secondary information.

130. Changes of partners must be notified to the RCCM, thus the identity of limited and general partners is held and regularly updated on the RCCM. The information is also available from the partnership, as partnerships must maintain an up-to-date register of partners.

131. Because SP do not have to be registered and have no legal personality, they do not appear on the RCCM. However, their managers are required to register in the RCCM if they carry on a commercial activity. Unless otherwise provided for, under Article 856 of the AUDSCGIE, the relationships between the partners of joint ventures are governed by the rules applicable to general partnerships.

132. Like stock companies, partnerships must register with the tax authorities and report material changes affecting their operation (change of director, cessation, change to the capital structure) (Article P-817 of the CGI). From a tax point of view, the SP is considered as a partnership (Article 5 paragraph 4 of the CGI). As a result, it is subject to the reporting obligations set out in Article P-817 of the CGI.

133. SCS, SNC and SP may be liable for corporate tax, but only if all the partners agree to opt into it. Once exercised, the opt-in is irrevocable. Under Article 5 of the CGI, in the absence of an opt-in, limited partners in an SCS, and partners in an SP are subject to tax on a personal basis. The share of earnings of general partners in an SCS and of members in an SNC is subject to corporate tax, even where it has not opted into corporation tax.

134. Record keeping obligations for partnerships are the same as those applicable for commercial companies as described in paragraph 71.

135. In conclusion, information about the owners of partnerships is available as a result of commercial and tax reporting requirements.

Beneficial ownership information

136. The obligation incumbent upon AML/CFT-obligated persons to identify their customers and their customers' beneficial owners before entering into the business relationship (Article 21 of the AML/CFT Regulation) applies in the same way whether the client is a stock company or a partnership.

137. In addition, the same definition of beneficial owner provided for in the AML/CFT legislation applies both to stock companies and partnerships

(see section A.1.1). As for all entities, the process of determining beneficial ownership should, under the standard, take account of the features of the entities' various forms and structures.⁹ The absence of methodology for identifying the beneficial owners of companies as described in paragraph 102 is also true of partnerships. There is no indication of the means by which the beneficial owners of partnerships are to be determined.

138. The shortcomings of the AML/CFT Regulation identified in section A.1.1 (see paragraph 109) also apply here. **Gabon should ensure the availability of beneficial ownership information in respect of all partnerships.**

Oversight and enforcement

139. The legal mechanisms that ensure the availability of information on the ownership and identity of partnerships are the same as those examined in section A.1.1. Consequently, the enforcement powers and penalties that apply in respect of the legal obligations concerning the availability of information on ownership (paragraphs 88 to 94) and on beneficial owners (paragraphs 115 to 119) are equally applicable when those obligations relate to partnerships.

140. The implementation in practice and the enforcement and oversight of legal requirements regarding the availability of information on ownership and on the beneficial owners of partnerships will be assessed during the Phase 2 evaluation.

A.1.4. Trusts

141. Current Gabonese legislation does not provide a framework for trusts, and Gabon has not signed the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. Consequently, it is impossible to create a trust or similar structure in Gabon. Neither is there any structure in Gabon that is similar to a trust, such as a *fiducie*. However, there is nothing in Gabonese law to prevent a trust created in a foreign country from being administered in Gabon or to prevent assets located in Gabon from forming part of a foreign trust. Although there is a reporting requirement in tax law, it does not cover all the information required under the standard. Moreover, although obligations on retention of information apply under anti-money laundering legislation, they apply only to AML-obligated persons.

9. See paragraphs 16 and 17 of the Interpretive Note to FATF Recommendation 24.

Requirements to maintain identity information in relation to trusts

142. There is no specific requirement for a trust governed by the law of another country that is administered in Gabon to register with the RCCM. Under the prevailing legislation, however, all natural and legal persons, whether Gabonese or foreign, who carry on a commercial activity in Gabon are subject to a reporting requirement (Article P-817 of the CGI). Accordingly, persons acting in a professional capacity as trustees in Gabon must register with the RCCM as soon as they engage in business activities. In such cases, the same information as that required of any company on registration will be communicated to the Register.

143. A specific reporting requirement applies to foreign trusts since 2016, according to which “any person established in Gabon who has formed an entity under a foreign law that could be classed as a trust by a foreign jurisdiction linked to Gabon by a tax agreement or a mutual administrative assistance agreement, must make a declaration to the EOI Unit” (Article P-832 bis of the CGI). The reporting requirement also applies to settlors and beneficiaries of foreign trusts who are Gabonese residents. The report has to include certain information, including the identity of the trustee, the owner and the ultimate beneficiary of any income taken from the trust, the bank details of the trust and the settlor. Identity information documentation should be kept for 10 years under the general record-keeping obligations as set out in Article P-821 of the CGI (see paragraph 71). To date, no foreign trusts have been reported to the IEU.

144. The AML/CFT Regulation covers the providers of services to companies and trusts as well as attorneys, notaries and independent legal professions (Articles 6 and 7). Professionals acting as trustees must comply with the rules for identifying their customers. Moreover, as stated in paragraph 106, Article 51 extends the CDD requirements to the providers of services to trusts and companies when they act (or take steps to enable another person to act) as a trustee of an express trust or exercise an equivalent function for another form of legal arrangement. Gabon indicated that this obligation also applies to non-professional trustees.

145. The AML/CFT legislation does not set out a method for identifying the beneficial owners of legal arrangements. Although the definition states that the beneficial owners of legal persons and legal arrangements are the persons who have effective control over them, no details are given as to how “effective control” is to be interpreted. It is therefore difficult to ascertain whether an AML/CFT-obligated person would identify all parties (trustee, settlor, protector, administrator, beneficiaries or assimilated functions) to a foreign legal arrangement when establishing a business relationship as required under the standard.

146. Although some foreign *fiducies* or trusts are subject to a requirement to report to the tax authorities, they are not required to use the services of an AML/CFT-obligated person, and there is no specified frequency for updating beneficial ownership information. **Gabon should ensure the availability of beneficial ownership information in respect of all legal arrangements.**

Oversight and enforcement

147. Non-compliance with obligations to report to the tax authorities is punishable by a flat fine of XAF 250 000 (EUR 380) (Article P-1002 of the CGI).

148. Non-compliance by AML/CFT-obligated persons with the AML/CFT obligations incumbent upon them may result in the application of the penalties described in paragraphs 115 to 119.

149. The implementation in practice and the enforcement and oversight of legal requirements regarding the availability of information on ownership and on the beneficial owners of legal arrangements will be assessed in greater detail during the Phase 2 evaluation.

A.1.5. Foundations

150. Gabonese law permits the creation of foundations with a general interest and non-profit purpose (Ordinance 2/99 of 30 July 1999). Under Article 9 of the Ordinance, there are two classes of foundation: those that have a public-interest purpose and those that do not. Foundations are required to operate in accordance with their purpose. Under Articles 17 and 22, they must therefore not seek to make a profit, else they become liable to penalties. The State may prevent the activity of a foundation under the conditions provided for in Article 22. There are no for-profit foundations.

151. The 2016 Report concluded that Gabonese foundations are not relevant with regard to the exchange of information for tax purposes but that information about their ownership is available under Gabonese law from both the administrative and the tax authorities.

Other relevant entities and arrangements

152. In addition to the entities and arrangements described above, the other relevant entities in Gabon are non-trading companies, co-operative societies and economic interest groupings. The issues regarding the availability of ownership, identity and accounting information are similar to those discussed in relation to stock companies and partnerships.

Non-trading companies

153. Non-trading companies (*sociétés civiles*) are generally defined in opposition to commercial companies and generally carry on a non-commercial activity such as an intellectual, professional or real estate activity. A distinction is drawn between real-estate companies and professional companies:

- Real-estate companies have a real-estate purpose and are intended to hold property assets acquired or contributed by the members in order to facilitate the management and/or transmission of their assets or to optimise their yield.
- Professional companies have a professional purpose and are intended to allow natural or legal persons to practise a regulated profession jointly (e.g. attorneys, architects).

154. Non-trading companies are constituted by company shares (*parts sociales*) which are registered in the company's articles of association, available with the RCCM. In all events, under Article 35 of the AUDCG, non-trading companies, whatever their nature, are governed by the same rules on creation as other types of company and must be registered in the RCCM. They are subject to the same requirements on registration and retention of information as SARL as described in section A.1.1. Non-trading companies are also subject to the registration and reporting obligations to the tax authorities as described in paragraph 62 (Art. P-817 and following, CGI).

155. Where beneficial ownership information is concerned, the provisions of AML/CFT legislation apply to the extent that the non-trading company has a business relationship with an AML/CFT-obligated person. **The shortcomings already identified in the AML/CFT Regulation therefore also apply in respect of non-trading companies.**

Cooperative societies

156. Article 4 of the OHADA Uniform Act on the Law of Co-operative Societies (AUSC) defines a co-operative society as an autonomous grouping of persons, voluntarily united to fulfil their common economic, social and cultural aspirations and needs through a jointly owned and managed enterprise where power is exercised democratically and according to co-operative principles. On 31 May 2021, there were 116 SC registered with the DGI.

157. The SC comprises members who actively participate, in accordance with co-operative principles, in the society's activities and receive shares representing their contributions (Article 8 of the AUSC). Any natural or legal person may be a member of a co-operative society (Article 7 of the AUSC). Decisions are taken at a general meeting, and each member has one vote, regardless of their shareholding in the SC (Articles 102 and 103 of the AUSC).

158. Each SC must keep at its registered office a register of members showing the membership number, family name, given name and identity document references of each member as well as his/her address, occupation and number of subscribed and of paid-up shares (Article 9 of the AUSC).

159. A co-operative is created by the formulation of a constitution by private deed in lieu of a partnership agreement and must, within one month of its creation, be registered on the Register of Co-operative Societies held by the prefecture for the place in which the co-operative has its registered office (Articles 70 et seqq.). Later changes requiring corrections or additions to the information provided to the Register of Co-operative Societies must be notified by the society within 30 days following such changes. Any change relating inter alia to the constitution of the SC must also be stated in the Register of Co-operative Societies (Article 80 of the AUSC). The register of members is not required to be filed with the Register of Co-operative Societies.

160. In terms of taxation, co-operative societies are liable, in principle, for corporate tax, though some of them (those involved in the production, processing, conservation and sale of crop and livestock farming products) are exempt for certain specific activities. They are subject to the reporting and retention obligations described in section A.1.1.

161. In terms of beneficial ownership information, the provisions of AML/CFT law apply to the extent that an SC has a business relationship with an AML/CFT-obligated person. **The shortcomings already identified in the AML/CFT Regulation therefore also apply in respect of SC.**

Economic interest groupings

162. An economic interest grouping (EIG) is one whose sole purpose 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 of the AUDSCGIE). An EIG may be established by contract between two or more natural or legal persons. It is not intended per se to generate profits to be shared. Members' rights may not be represented by transferable securities, and members are liable for the grouping's debts on their own assets (Articles 870 and 873 of the AUDSCGIE). On 31 May 2021, there were 158 EIG registered with the DGI;

163. The EIG contract must include the EIG's name, legal 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 of the AUDSCGIE). Registration of the EIG with the RCCM is compulsory and is subject to the same conditions as those that apply to other companies, with the addition of a copy of the founding contract. The identity of the EIG's members is thus available from the RCCM. The RCCM must record any change in the membership of the EIG (Article 52 of the AUDCG).

164. EIG are subject to corporate tax and must therefore be registered with the tax authorities subject to the conditions described in paragraph 62. Record-keeping obligations as described in paragraph 71 also apply.

165. **Where beneficial ownership information is concerned, the shortcomings already identified in section A.1.1 are valid also in respect of EIG.**

A.2. Accounting records

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

166. All relevant entities in Gabon must keep accounting records, including the underlying documentation, in conformity with OHADA accounting and commercial law and tax legislation. The requirements include the annual disclosure of financial statements and the maintenance of accounting records that can be used to trace the transactions conducted by the entities. The information must be retained for at least 10 years. However, there is no provision requiring that accounting records be kept for at least five years from the date a company ceases to exist.

167. Under Gabonese law, legal persons and other entities are subject to transparency requirements in respect of accounting records in compliance with the standard.

168. The conclusions are as follows:

Legal and regulatory framework: in place but needs improvement

Underlying factor/ Deficiencies identified	Recommendations
There is no provision requiring entities to retain accounting records after dissolution or liquidation.	Gabon should ensure the availability of accounting documents for entities that have ceased to exist for at least five years.

Practical implementation of the standard: The assessment team is not able to give a rating for this element because an evaluation in practice is required, which is to be conducted in Phase 2.

A.2.1. General requirements

169. Companies whose registered office is in Gabon are required to keep accounts. The obligation is instituted by company law (Article 137 *et seqq.* of the AUDSCGIE), tax law (Article 17, first paragraph, of the CGI) and accounting law (OHADA Uniform Accounting Act). These rules apply equally to Gabonese branch offices of foreign stock companies or partnerships that have a subsidiary in Gabon.

Commercial law

170. The 2016 Report examined the accounting requirements in commercial law under the Uniform Act on the Organisation and Harmonisation of Business Accounting (AUHCE) adopted in 2000. However, on 26 January 2017, OHADA adopted the Uniform Act relating to Accounting Law and Financial Information (AUDCIF) and the AUHCE was repealed. The AUDCIF constitutes a modernisation of accounting requirements in terms of the conceptual framework (including the use of the concept of entity rather than business, and the introduction of the concept of public interest entity represented by listed companies, credit institutions, insurance companies and social welfare organisations), the content and operation of accounts, and the presentation of financial statements in order to simplify them and make them more understandable.

171. The AUDCIF provides for common accounting requirements for all legal persons in Gabon. They apply to all entities that are subject to the provisions of the AUDCG (all commercial companies, as well as non-trading companies), the AUDSCGIE (SA, SARL, SAS, SNC, SCS, SP and EIG) and the AUSC (co-operative societies), in other words all the entities covered in section A.1 except trusts. More generally, they apply to entities that produce marketable or non-marketable goods and services, if they are habitually engaged in a principal or ancillary economic activity irrespective of whether or not financial gain is derived from that activity (Article 2 of the AUDCIF).

172. The accounting requirements provided for in the AUDCIF include the keeping of (Article 19):

- a day book in which transactions during the period are recorded in chronological fashion
- a general ledger made up of all the accounts, in which the transactions of the period are recorded in compliance with the double-entry method
- the general trial 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, and the aggregate of debit and credit movements during the period

- the profit and loss statement, the cash flow statement and notes to the statements.

173. Legal persons must also produce annual summary financial statements. The annual financial statements should faithfully and accurately represent the events, transactions and state of affairs throughout the accounting period and thus give a true and fair view of the undertaking's assets, financial position and results (Article 8 of the AUDCIF). They include (Article 29 of the AUDCIF):

- the balance sheet (describing the assets and liabilities that make up the undertaking's net worth separately)
- the income statement (which summarises revenue and expenses, showing interim results and net profit or loss for the accounting period)
- a cashflow table (tracing cash inflows and outflows during the period)
- the notes to the statements (which supplement and clarify the information provided by the other aspects of the financial statements).

174. Entities' accounting systems must meet the requirements of accuracy, reliability and transparency inherent in record-keeping, presentation, audit and communication of the processed information (Article 3 of the AUDCIF). The accounting records referred to above must also comply with the following requirements (Article 17 of the AUDCIF):

- they must be kept in French
- they must use the double-entry technique (accounting entries are posted in at least two accounts)
- transactions must be recorded chronologically
- transactions must be supported by dated, classified receipts.

175. In conformity with Article 5 of the AUDCIF, entities' accounting systems must be based on the OHADA General Chart of Accounts and the Accounting Procedure for Consolidated and Combined Accounts (OHADA Accounting System – SYSCOHADA). The application of SYSCOHADA implies in particular that (Article 6 of the AUDCIF):

- the entity complies with the rules and procedures in force and applies them in good faith
- accounts managers establish and implement those internal audit procedures that are crucial to the knowledge they would normally have of the reality and importance of the events, transactions and circumstances associated with the entity's activity
- the information is presented and communicated clearly with no intention to conceal the company's true situation behind a smokescreen.

176. All accounting records, documents and information must be retained by the entity for at least 10 years (Article 24 of the AUDCIF).

177. All entities are required to disclose financial statements, but presentation may be simplified (minimal cash-basis system – SMT) based on the entity’s turnover during the financial year in question¹⁰ Under the SMT, companies must prepare a balance sheet, income statement and notes to the financial statements (Article 28 of the AUDCIF).

178. For stock companies (SA, SARL and SAS), the summary financial statements must be sent to an external auditor for certification prior to the general meeting where they are to be approved (see paragraph 52). The financial statements must be forwarded each year to the RCCM within one month of their approval (Article 269 of the AUDSCGIE).

179. Although commercial and accounting law does not expressly require entities to retain their accounting records in Gabon, there is a requirement under tax law for them to do so for the purposes of the tax authorities’ right to information, discovery, investigation and audit where such records are not held electronically in a manner that guarantees full, immediate, online access to the information in question (Article P-891 of the CGI).

Trusts and fiducies

180. Companies and professionals acting as trustees of foreign trusts are required, as traders, to comply with the above-mentioned requirements of OHADA accounting law. Article 2 of the AUDCIF provides that entities that produce marketable or non-marketable goods and services are required to establish a general accounting system if they are habitually engaged in a principal or ancillary economic activity, irrespective of whether or not financial gain is derived from that activity. The obligation applies both to the relationship between the trustee and the trust to demonstrate that the properties or assets under management do not belong to the trustee and to the trust as a legal arrangement subject to accounting requirements.

181. Foreign trusts are taxed under the territorial principle, so the activities a foreign trust carries out in Gabon are taxable in Gabon, even where the trust in question does not have a registered office in the country. Foreign trusts are subject to withholding taxes at source levied by the trustee. The trustee is taxed on income derived from his/her professional trustee activities in Gabon.

10. The thresholds provided for in Article 13 of the AUDCIF are XAF 60 million (EUR 91 380) for business entities, XAF 40 million (EUR 60 920) for artisanal entities and XAF 30 million (EUR 45 690) for service-providing entities.

Tax law

182. Under Article 17 of the CGI, taxpayers must keep their accounts in accordance with the OHADA accounting system. Under Article 18 of the CGI, if they fail to do so, their accounts will be deemed in breach of requirements and non-probative.

183. Taxpayers liable to tax are required to declare their income, supported by the necessary accounting documents to determine the basis of assessment. All entities are required:

- to attach to the DSF (tax return) a statement of share ownership status at the beginning and end of each tax year, and a list of suppliers and customers as soon as the taxpayer attains a turnover that brings him/her within the scope of the medium-sized businesses department (Article P-818 quarter of the CGI)
- to provide the tax authorities upon request with all documents and accounting records, to enable the authorities to determine the accuracy of the information contained in their tax returns (new Article P-820 of the CGI).

184. The books, registers, documents and other information, regardless of form, in respect of which the authorities may exercise their right of audit, their right to information or their right of investigation, must be kept for 10 years from the date of the last transaction recorded in them or the date on which they were drawn up (Article P-821 of the CGI). The accounting information must be retained in Gabon (Articles P-890 and P-891 of the CGI).

185. With respect to liquidated or dissolved companies, the information available with the tax authorities, ANPI and RCCM will remain available for 10 years. However, there is no provision requiring entities to retain documents after dissolution or liquidation. **It is recommended that Gabon ensure the availability of accounting documents for entities that have ceased to exist for at least five years.**

A.2.2. Underlying documentation

186. Article 17, third paragraph, of the AUDCIF states that entities' accounting systems must, at a minimum, comply with reliability and security requirements, including supporting documents for accounting entries. Such documents may take the form of dated receipts which are classified and filed in a prescribed order; they must bear references to corresponding accounting entries and be deemed to have probative value. Supporting documents may be purchase or sale invoices, contracts and other relevant documents. Underlying documentation must be retained for 10 years (Article 24 of the AUDCIF and Article P-821 of the CGI). However, there is no obligation for liquidated or

dissolved companies to retain the underlying documentation. **It is recommended that Gabon ensure the availability of accounting documents for entities that have ceased to exist for at least five years.**

Oversight and enforcement of requirements to maintain accounting records

187. The first control on stock companies is that exercised by the external auditor (see paragraph 178).

188. Next, company directors who fail to keep the ledger, or to draw up annual financial statements, a management report or, where applicable, a social audit, as well as directors who knowingly draw up and disclose financial statements which do not give a true and fair view of the assets and liabilities, financial situation and profit or loss for the period, are liable to a period of imprisonment of between three months and three years and/or a fine of XAF 500 000 to XAF 5 million (EUR 762 to EUR 7 620).¹¹ Additionally, directors who, on expiry of an accounting period and in order to conceal the company's true situation, knowingly publish or present to shareholders or partners summary financial statements which do not give a true and fair view of the company's transactions, financial situation, assets and liabilities for the period, and directors who do not file financial statements within the prescribed time limit, are liable to imprisonment for between one and five years and/or a fine of between XAF 1 million and XAF 5 million (EUR 1 520 to EUR 7 620).¹² Moreover, accounts that are kept in irregular fashion may not be relied upon as evidence by a company or partnership (Article 68 of the AUDCIF).

189. A taxpayer who fails to file a return is served official notice to do so and has seven days in which to rectify the situation (Article P-819 of the CGI), failing which the tax authorities may make a discretionary assessment. Discretionary assessments are made inter alia where accounts are not kept properly or taxpayers fail to present all or some of their accounts or supporting documents, as ascertained in an official report. The burden of proof in such a procedure is reversed, since the taxpayer must prove that the tax authorities' assessment is unjustified, whereas in a normal procedure the burden of proof lies with the tax authorities.

11. Article 111 of the AUDCIF and Article 48 of Law No. 2017-727 of 9 November 2017 providing for the punishment of violations of the OHADA Uniform Acts.

12. Article 890 of the AUDSCGIE and Article 10 of Law No. 2017-727 of 9 November 2017 providing for the punishment of violations of the OHADA Uniform Acts.

190. In addition, under Article P-996 of the CGI, where the tax authorities have had to make a reassessment on account of deficiencies, omissions or inaccuracies which affect the assessment basis or elements of taxation, penalty interest is charged at 1.5% per month, up to a maximum of 50%, calculated on the basis of the tax charge to the taxpayer. Under Article P-997 of the CGI, the amount of tax payable is increased:

- by 100% in the case of bad faith
- by 150% in the case of fraud, without prejudice to the criminal penalties set forth in the CGI Book of Tax Procedures (*Livre des Procédures Fiscales*, LPF).

191. The penalties for failure to file a return are harsher, since, under Article P-999 of the CGI, the tax payable is increased by 100% (and 150% for a repeat offence). Various fines of up to XAF 250 000 (EUR 380) may also be imposed.

192. A fine equal to 100% of the value of the transaction, with a minimum of XAF 500 000 (EUR 760), is imposed on any sale of goods or provision of a service for which an invoice has not been issued. The fine is reduced to XAF 50 000 (EUR 76) for an erroneous or incomplete invoice issued or used by a professional.

193. As far as criminal penalties are concerned, any person who fails to make or to cause others to make accounting entries or causes inaccurate or fictitious entries to be made in the day books or ledgers provided for under OHADA Uniform Acts or in the documents that replace them, and any person convicted of preparing or helping to prepare false balance sheets is liable to imprisonment for between 15 days and one year and/or a fine of between XAF 500 000 and XAF 5 million (EUR 760 and EUR 7 600) (Article P-1025 of the CGI).

194. Gabonese commercial and tax law contains requirements for keeping accounting documents (including underlying documentation). Appropriate legal provisions are in place in Gabon, including penalties to enforce accounting requirements.

195. The implementation in practice and the enforcement and oversight of legal requirements regarding the availability of accounting information will be assessed in greater detail during the Phase 2 evaluation.

A.3. Banking information

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

196. Generally speaking, accounting legislation and the AML/CFT law provide for the availability of information on bank account holders in Gabon and the transactions performed in those accounts. However, there is no requirement to retain banking information when a bank ceases to exist. Beneficial ownership information is also collected and verified by the banks as part of their AML/CFT obligations. Nonetheless, the issues identified in section A.1.1 also affect the availability of beneficial ownership information in respect of account holders.

197. The conclusions are as follows:

Legal and regulatory framework: in place but needs improvement

Underlying factor/ Deficiencies identified	Recommendations
There is no obligation to retain bank information if the bank ceases its activities.	Gabon should ensure the availability of banking information when a bank ceases to exist for at least five years.
Although the anti-money laundering Regulation provides for the identification of beneficial owners of bank account holders in Gabon, the absence both of methodology for determining the beneficial ownership of legal persons and legal arrangements and of a requirement to update that information means that the information on beneficial owners of bank accounts cannot be regarded as available in all cases.	Gabon should ensure the availability of beneficial ownership information in respect of all account holders.

Practical implementation of the standard: The assessment team is not able to give a rating for this element because an evaluation in practice is required, which is to be conducted in Phase 2.

A.3.1. Record-keeping requirements

198. The Gabonese banking sector consists of 7 commercial banks and 3 financial institutions all supervised by the Central African Banking Commission (COBAC), which is responsible for supervising lending activity in the CEMAC sub-region. Secondary CEMAC law, including its entire body of anti-money laundering regulations has, since its entry into force, been an integral part of the law of the member States without any prior transposition formality. COBAC grants operating licences for these activities and verifies that operations are being properly conducted. In its capacity as a monetary authority, the Ministry of the Economy also oversees banking activity as well as overseeing intermediary exchange activities. Banking activity is governed by the Convention Harmonising Banking Regulation in Central African States

Availability of banking information

199. The banks are subject to the same accounting requirements as companies. These requirements are strengthened by Community banking regulations. Thus, Article 32 of the Annex to the Banking Regulation Convention states that banks and financial institutions must comply with rules relating to the consolidation of accounts and the disclosure of accounting documents and other information intended both for the competent authorities and for the public. Article 36 goes further, stating that they must provide all reports, information, clarifications and evidence helpful for the exercise of regulatory or technical oversight.

200. Under Article 17 of the CGI, banks and financial institutions must present their accounts for tax purposes in accordance with the sectoral chart of accounts approved by UDEAC Act 4/79 as supplemented by UDEAC Act 2/80. Under tax law, documents must be retained for 10 years (see paragraph 71).

201. CEMAC AML legislation applies to banks. The AML/CFT Regulation¹³ stipulates a requirement to identify customers (Article 21) prior to entering into a business relationship and to verify the identification using any credible documentation. The documents establishing the identity of financial institutions' clients must be retained for 10 years from the closure of the accounts or the cessation of the business relationship (Article 38).

202. There is no obligation to retain bank information if the bank ceases to exist. **It is recommended that Gabon ensure the availability of bank information when a bank ceases to exist for at least five years.**

13. Regulation No. 01/CEMAC/UMAC/CM of 11 April 2016 on the Prevention and Suppression of Money Laundering and the Financing of Terrorism and Proliferation in Central Africa.

Beneficial ownership information in respect of account holders

203. The standard was strengthened in 2016 in order to state clearly the requirement for beneficial ownership information on all account holders to be available.

204. In Gabon, the financial institutions, like other AML/CFT-obligated persons are required to identify their customers' beneficial owners (Article 21). That requirement was analysed in sections A.1.1 (stock companies), A.1.3 (partnerships) and A.1.4 (trusts and *fiducies*).

205. Although the definition of “beneficial owner” (AML/CFT Regulation Article 1(16)) is compliant with the international standard (see paragraph 97), no means of identification is stated for legal persons or legal arrangements. There is nothing in the legislation that can be used to determine how the term “*contrôle*” (“control”) should be interpreted. The legislation does not state a percentage of share capital or any other form of control; neither does it set out a process for identifying the beneficiaries of an express trust or a legal arrangement. It is therefore difficult to ascertain whether the beneficial owners of bank accounts have been correctly identified under AML/CFT legislation.

206. Additionally, the beneficial ownership information must be updated throughout the business relationship (Article 22), but no specified update frequency is provided for. Therefore, the information collected by AML/CFT-obligated persons may not always be up to date.

207. Additionally, the banks may rely on a third party to implement the CDD requirements incumbent upon them, including in respect of identifying their customers' beneficial owners, provided that they satisfy the legal requirements in compliance with the standard (see paragraph 100).

208. The documents establishing the identity of banks' clients must be retained for 10 years from the closure of the accounts or the cessation of the business relationship (Article 38).

209. In conclusion, although the AML/CFT Regulation provides for the identification of beneficial ownership of bank account holders in Gabon, the shortcomings identified above concerning the methodology for determining beneficial ownership and the requirement to update that information mean that beneficial ownership information in respect of bank accounts cannot be regarded as available in all cases. **It is therefore recommended that Gabon should ensure the availability of beneficial ownership information in respect of all account holders.**

Oversight and enforcement

210. Non-compliance with the AML/CFT Regulation is punishable as set out in Articles 114 to 132 of the Regulation itself. Thus, attempting, aiding or abetting or inciting such offences is punishable by imprisonment for between five and 10 years and a fine of up to five times the amount of the laundered sums but not less than XAF 10 million (EUR 10 524).

211. The COBAC has a range of powers and competencies with regards to the regulation and organisation of banking activities, the most important of which include:

- Giving their approval on individual licensing and authorisation procedures which remain the prerogative of the national monetary authorities. The COBAC can take provisional measures by placing a credit establishment under provisional administration and is authorised to appoint a liquidator for institutions that lose their licence.
- Establishing the accounting procedures applicable to lending establishments as well as establishing prudential standards for management (solvency, liquidity, division of risks, transformation, equity-to-asset ratios, etc.).
- Supervising and monitoring compliance with banking regulations by credit establishments. To that end, the General Secretariat organises and carries out on-site and desk inspections of these establishments. It is empowered to carry out any emergency inspections and simply reports the inspection findings to the national monetary authority.
- Imposing sanctions. COBAC is also a jurisdictional body and can impose sanctions, without prejudice to the sanctions applied by the national judicial authorities. The sanctions available include: warnings, reprimands, a ban or other restriction of any nature on performing certain operations or engaging in banking activity, the suspension or automatic resignation of directors and, finally, withdrawal of the establishment's licence.

212. The implementation in practice and the enforcement and oversight of legal requirements regarding the availability of banking information will be assessed in greater detail during the Phase 2 evaluation.

Part B: Access to information

213. 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).

214. The Gabonese tax authorities have extensive powers to access information. In particular, they may request information from any taxpayer or third party who may possess information sought in order to determine the amount of tax payable or to collect a tax. The powers may be used for EOI purposes irrespective of the existence of a domestic tax interest. Similarly, banking and professional secrecy are not an impediment to access to information for EOI purposes. Appropriate penalties may be applied in the event of failure to provide the information.

215. The conclusions are as follows:

Legal and regulatory framework: in place

No material deficiencies have been identified in the legislation of Gabon in relation to access powers of the competent authority.

Practical implementation of the standard: The assessment team is not able to give a rating for this element because an evaluation in practice is required, which is to be conducted in Phase 2.

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

216. The Gabonese authorities have four different rights giving them access to ownership, identity, banking and accounting information, namely:

- the right to information, which is the most important for domestic purposes
- the right of discovery, which is the most used for EOI purposes
- the right of audit
- the right of investigation.

Accessing information generally

217. Under the Multilateral Convention and the tax agreements concluded by Gabon, the competent authority for the exchange of information is the Minister for the Economy or his/her duly appointed representative. By virtue of Ministerial Order No. 23 of 15 July 2015, the Minister for the Economy delegated this power to the Director General of Taxation, who is the head of Gabon's tax authorities.

218. The Gabonese tax authorities' information-gathering powers derive mainly from Articles P-881 to P-885 of the CGI, which institute a right to information and a right of discovery in favour of the tax authorities. These rights may be used to answer requests for information from foreign jurisdictions. Thus, taxpayers, banks, financial institutions, insurance companies and, in general, any natural or legal person who has custody of or holds funds or assets for a third party are required to provide the tax authorities upon request with the books that must be kept under OHADA commercial law, together with all accounting documents and receipt and expense records that must be drawn up or issued under the prevailing regulations.

219. The right of inspection (art. P-833 et seq. CGI) and the right of investigation are rarely used for information exchange purposes. With the exception of the right of investigation, which applies only to indirect taxes, all the powers of access can be used simultaneously for the determination of Gabonese tax or for the exchange of information in tax matters.

Right to information

220. The right to information is a legal means of gaining access to tax information for investigative, cross-checking, programming and information-gathering purposes. It consists in the collection of information or copies of documents without an audit. No particular guarantee is extended to the person from whom the information is obtained, since the right to information

is neutral for them and cannot per se give rise to a reassessment. A notified person may not be the subject of an audit following a request made under the right to information. For that reason, the right to information generally applies to third parties.

221. Under Article P-820 of the CGI, taxpayers are required to provide the tax authorities, upon request, with all documents and accounting records, to enable the authorities to determine the accuracy of the information contained in their tax returns. This requirement applies to all taxpayers, to the accredited representatives of foreign companies having an economic activity in Gabon and to the managers of trusts, *fiducies* and other similar structures domiciled in Gabon.

222. Officials of the DGI having at least the rank of inspector may exercise the right to information (Article P-880 of the CGI). The right to information is very extensive and applies to natural or legal persons, public agencies, persons performing insurance transactions, banks, custodians of public documents and companies required to keep a register of shareholders. It may be exercised by correspondence or on-site. In all events, the authorities may, at their own expense, make copies of hardcopy or computerised documents (Article P-881 of the CGI).

Right of discovery

223. The right of discovery empowers DGI officials having at least the rank of inspector to obtain information and documents about a taxpayer (Article P-907 *bis* of the CGI). It is exercised under the same conditions, in the same forms and within the same time limits as the right to information, though independently of any audit procedure (making it the preferred means of EOI) and without any requirement to notify the taxpayer concerned beforehand. Article P-907 *bis* explicitly provides that “Such information and documents shall also be communicated within the framework of Gabon’s treaty obligations regarding the exchange of information for tax purposes, without the obligation of prior notification of the taxpayer who is the subject of the information request”.

Right of audit

224. Under Article P-833 of the CGI, the tax authorities have full powers to assess and audit taxes payable by a taxpayer. They audit tax returns and the various deeds or documents used to establish taxes, duties, charges, contributions and fees of whatever kind. The purpose of an audit is to verify the accuracy and reliability of tax returns submitted by taxpayers and, where relevant, to make adjustments. The right of audit is used if the taxpayer concerned by an information request is undergoing an audit procedure or if the

authorities consider that the content of the information requested requires the means of discovery available in a tax audit. The right of audit may be exercised in three ways:

- on a documentary basis
- through requests for clarifications and evidence, which is carried out within the framework of a documentary audit, when the information contained in the taxpayer's return appears to be erroneous; or
- on-site.

225. A documentary audit enables the tax authorities to audit tax returns submitted by taxpayers in their own offices, without notifying the taxpayer beforehand. In such cases, the tax authorities may request in writing all information, explanations and clarifications deemed necessary. They may hear the persons concerned when they consider a hearing to be helpful or when the persons concerned ask to provide oral explanations. However, a documentary audit is of limited use where EOI is concerned, since, under Article P-844 of the CGI, it is restricted to an examination of the consistency between tax returns, the documents used to assess taxes, duties and charges, and the documents filed in order to obtain deductions, refunds or reimbursements.

226. Under Article P-845 of the CGI, the tax authorities can ask taxpayers in writing for all information, justifications or clarifications relating to their tax returns and other documents filed, including for categories of income for which they are not required to keep accounts. Taxpayers must respond within 20 days of receiving the request. If they fail to do so, or if the tax authorities consider their response to be insufficient, a discretionary assessment is made in order to determine the taxes to which the request relates.

227. Under Article P-834 of the CGI, an on-site audit enables tax officials having at least the rank of inspector to verify the accounts and/or documents held by the taxpayer at the registered head office. When using the on-site audit procedure, the tax authorities must inform the taxpayer at least 15 days in advance by means of an audit notice. Under Article P-838 of the CGI, however, the authorities may conduct audits unannounced, in which case the audit notice is provided to the taxpayer at the start of the visit.

Right of investigation

228. Under Article P-892 of the CGI, the right of investigation is reserved for discovery searches into non-compliance with the rules on invoicing, account-keeping and the filing of tax returns as they apply to taxpayers liable to indirect duties and charges. It allows the tax authorities to access customs documents and to make findings of fact concerning physical elements of the operation (Article P-892, second paragraph, of the CGI). On the first visit,

the tax officials provide the taxpayer with an investigation notice bearing the authorising official's stamp. The tax authorities may access all business premises, land and warehouses, as well as transport vehicles and their loads, during the taxpayer's normal business hours and thereafter with the authorisation of the competent public prosecutor. This particular means of investigation may be used only to audit indirect taxes. Thus, the Gabonese tax authorities may use it for information exchange purposes only where the requested information concerns indirect taxes, in accordance with the relevant information exchange agreement or convention.

Accessing banking information

229. The right of access and the right of information described above are used to access bank information. Under Article P-888 of the CGI, they may be exercised to obtain information of any kind except that covered by a medical or defence secrecy interest.

230. Currently, there is no Gabonese tax legislation and no legal restriction on the authorities' capacity to collect and forward tax information held by a bank or a financial institution.

Accessing beneficial ownership information

231. Access to beneficial ownership information is obtained under the rights of access set out above. In view of the fact that beneficial ownership information is available under AML/CFT legislation, the conclusions set out above relating to access to banking information also apply to beneficial ownership information.

232. Additionally, Gabon has stated that the accounting information obtained as part of operations to combat money-laundering is, in principle, held by the ANIF, a government body. Under Article P-881 of the CGI, all public authorities, including the police and gendarmerie, publicly owned businesses and establishments and agencies controlled by the administrative authorities are covered by the requirement to provide information. Therefore, the right to information can also be exercised in relation to the ANIF.

B.1.3. Use of information-gathering measures in the absence of domestic tax interest

233. The concept of "domestic tax interest" describes situations in which a contracting party may provide information to another contracting party only if it has an interest in gathering such information for its own needs.

234. Although the information requested by Gabon's partners is not intended for the assessment of tax in Gabon, the tax authorities are still able to use the right to information and the right of audit for information exchange purposes. In addition, the right of discovery as described in paragraph 223 expressly provides for access to information where exchanges for tax purposes are concerned.

235. There is no provision in Gabonese law preventing the tax authorities from using their domestic information-gathering powers for information exchange purposes. In addition, treaties and conventions duly ratified by Parliament rank higher than legislation but lower than the Constitution. For that reason, the provisions of Gabon's tax agreements on information exchange prevail over the provisions of the CGI relating to the right to information and the right of audit. Once a tax agreement has entered into force, the tax authorities are required to implement its information exchange provisions. There is therefore no provision in Gabonese law preventing the tax authorities from using their domestic information-gathering powers for information exchange purposes. The implementation in practice of this aspect will be further analysed during the Phase 2 evaluation.

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

236. The tax authorities have powers to impose penalties for non-response or an insufficient response to a request for information. Without prejudice to other penalties, under Article P-1003 of the CGI, a flat-rate fine of XAF 5 million (EUR 7 600) may be imposed on any person who attempts to avoid or obstruct the right to information or the right of discovery. A fine of XAF 500 000 (EUR 760) per day of delay may be imposed for any attempt to defer execution of the right to information.

237. The fines described above apply only after service of official notice to comply with the request within 15 days. If the authorities do not receive a response before the expiry of the notice period, the fines may be imposed.

238. In addition, the right of inspection and seizure provided for in article P-897 of the CGI allows the tax authorities to carry out visits to any place, even private, where the documents and records necessary for its investigations are likely to be held, and to seize them, regardless of the medium, when it considers that there are presumptions that a taxpayer is evading the assessment or payment of taxes, duties and fees. The exercise of the right of inspection and seizure in premises exclusively used for residential purposes is subject to the authorisation of a judicial authority, the Public Prosecutor.

239. Under Article P-851 *et seqq.* of the CGI, failure to provide the information requested in order to perform an audit results in a discretionary assessment.

B.1.5. Secrecy provisions

240. Jurisdictions should not refuse to respond to an information request made under an information exchange mechanism on the grounds of secrecy rules (e.g. banking or business secrecy). There are several rules on secrecy and confidentiality in Gabonese law that are compliant with the standard.

Banking secrecy

241. Banking secrecy is governed by the Convention Harmonising Banking Regulation in Central African States. Article 11 of the Annex to that Convention stipulates a confidentiality obligation, which means that banks may not disclose information about their customers to third parties. This confidentiality obligation may not be invoked against certain government agencies, including the tax authorities (Articles P-881 and P-886 of the CGI)

242. The various means of accessing information as set out in paragraphs 216-228 are available to the tax authorities in order to access information held by banks. Exercise of the right to information and the right of discovery is not conditional on any administrative or judicial authorisation. Under Article P-888 of the CGI, those rights may be exercised in order to obtain any type of information with the exception of information covered by medical or defence secrecy.

243. In conclusion, there is no restriction in Gabonese tax law as it stands on the tax authorities' capacity to gather and communicate tax information held by a bank or financial institution.

Professional secrecy

244. A professional secrecy obligation exists in Gabonese law for attorneys and, more generally, professionals who act as legal representatives.¹⁴ Article 69 of the Law on the Organisation of the Legal Profession provides for the absolute professional secrecy of attorneys. However, the tax authorities have an extensive right to information. Under Article P-888, second paragraph, of the CGI, “attorneys may rely on professional secrecy as against the tax authorities in respect of information or documents they hold on their customers provided that such information or documents are directly linked

14. Law No. 8/73 of 20 December 1973 (Notaries) and Law No. 013/2014 of 7 January 2015 establishing the Framework of the Profession of Attorney in Gabon.

to their strategy of defence in ongoing court proceedings”. This exception is compliant with the international standard.

245. Under Article P-881 of the CGI, the right to information and the right of discovery apply to any natural or legal person “carrying on a profession, persons performing insurance transactions, banks, professional stock exchange intermediaries, custodians of public documents and companies required to keep registers of share or bond transfers, attendance sheets for shareholders’ meetings, minutes of board of directors’ meetings and auditors’ reports”.

246. The powers of enforcement described in paragraph 236 apply also to professionals acting as legal representatives.

247. The Gabonese tax authorities have extensive powers to gather and access information that are untrammelled by banking secrecy or other forms of professional secrecy.

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 the effective exchange of information.

248. The rights and safeguards applicable to individuals in Gabon are compatible with effective information exchange. There is no requirement in Gabonese law for the DGI to inform the taxpayers concerned of requests for information received from foreign authorities.

249. The conclusions are as follows:

Legal and regulatory framework: in place

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

Practical implementation of the standard: The assessment team is not able to give a rating for this element because an evaluation in practice is required, which is to be conducted in Phase 2.

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

250. In the first place, Gabonese law does not require the tax authorities to inform the person concerned in Gabon of a request for information received from a foreign authority pursuant to an international convention. Thus, no pre- or post-notification of the exchange of information is required in Gabon.

251. Furthermore, as indicated in section B.1.1, the right to information and the right of discovery, which are the ones mainly used for the exchange of information, since they do not entail any tax consequences in Gabon for the persons concerned, are not accompanied by any specific right or guarantee.

252. On the contrary, Gabonese legal framework guarantees taxpayers respect for their rights in their relations with the tax authorities, especially in tax audit and tax collection procedures. The right of audit is strictly regulated by the Tax Code (CGI), especially where the verification of accounts is concerned. The tax authorities must serve a notice of visit on the taxpayer at least eight days beforehand, stating the taxes to be audited and the period concerned. Under Article P-865 of the CGI, audited taxes may not be the subject of another audit for the same period. The audit may not last longer than three months, though this period may be extended to 12 months where the scope of the enquiry or the circumstances require (Article P-869 of the CGI).

253. A tax audit may be launched for information exchange purposes and, where a new audit is out of time or impossible, the tax authorities may always conduct a documentary audit which enables them to ask the taxpayer for information, or use the other powers at their disposal (communication and information rights), in order to obtain information, including from third parties. Taxpayer safeguards therefore do not hinder information exchange.

254. Lastly, Gabonese law does not provide for an appeal of either the powers used to collect the information or the act of exchange.

255. In conclusion, Gabonese law guarantees taxpayers respect for their rights in their relations with the tax authorities, especially in tax audit and tax collection procedures, and those rights do not hinder or unduly delay the exchange of information.

Part C: Exchanging information

256. Sections C.1 to C.5 evaluate the effectiveness of Gabon’s network of EOI instruments – whether these EOI instruments provide for exchange of the right scope of information, whether they cover all of Gabon’s relevant partners, whether there are adequate provisions to ensure the confidentiality of information received, whether Gabon’s network of EOI agreements respects the rights and safeguards of taxpayers and whether Gabon 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.

257. Gabon’s EOIR network comprises bilateral instruments (double tax conventions); regional instruments (the CEMAC Convention on Mutual Administrative Assistance in Tax Matters (CEMAC Convention),¹⁵ the General Convention on Tax Co-operation between the Member States of the Common Organisation of African States, Madagascar and Mauritius (OCAM Convention)); and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010.

258. The 2016 Report concluded that Gabon’s network of EOI mechanisms was compliant with the standard. Gabon signed the Multilateral Convention on 3 July 2014 and ratified it through domestic channels on 14 July 2016. However, the instruments of ratification have not been deposited with the depositary, and the Convention has therefore not entered into force seven years after signature. This situation is of great concern because it prevents the exchange of information between Gabon and the other jurisdictions that are parties to the Multilateral Convention.

15. Convention on Mutual Administrative Assistance in Tax Matters, Act No. 17/65-UDEAC-38 of 14 December 1965.

259. The conclusions are as follows:

Legal and regulatory framework: not in place

Underlying factor/ Deficiencies identified	Recommendations
The Multilateral Convention on Mutual Assistance signed in 2014 was ratified in 2016 but has not yet entered into force in Gabon. Moreover, only six of the 14 bilateral conventions entered into are in force.	Gabon should ensure that its EOIR instruments are ratified and enter into force without delay.

Practical implementation of the standard: The assessment team is not able to give a rating for this element because an evaluation in practice is required, which is to be conducted in Phase 2.

Other forms of exchange of information

260. Gabon is not involved in other types of EOI for tax purposes.

C.1.1. Foreseeably relevant standard

261. The standard assumes that information should be exchanged upon request to the widest possible extent. However, it does not allow “fishing expeditions”. The balance between these two competing aspects is expressed in the concept of “foreseeable relevance” contained in Article 26(1) of the OECD Model Tax Convention.

262. Gabon has signed 14 bilateral conventions that include the terms “foreseeably relevant”, “necessary” or “relevant”. The CEMAC Convention also provides for the exchange of tax information held by contracting states “that is useful in order to assess and collect taxes of all kinds and to prevent tax fraud”. The OCAM Convention refers to tax information which the tax authorities “have at their disposal and which is useful” in order to assess and collect the taxes covered by the convention and the enforcement, with regard to those taxes, of legal rules for the prevention of tax fraud. According to Gabon, “information at the disposal of the tax authorities” is interpreted broadly, covering both information in their possession and information to which they may have access by exercising the powers conferred on them by law. Gabon adds that the term “useful” is interpreted in the same way as “foreseeably relevant”.

263. Thus, the treaties concluded by Gabon which are in force may be deemed to comply with the standard of foreseeable relevance. Additionally,

all partners with whom Gabon has signed a bilateral agreement are covered by the Multilateral Convention, which is compliant with the international standard even where that Convention does not yet apply to the partner in question. Consequently, all Gabon’s information exchange mechanisms comply with the standard in terms of foreseeable relevance and the scope of the taxes covered by information exchange arrangements.

Clarifications and foreseeable relevance in practice

264. Since the previous Report, Gabon has adopted in April 2016 an EOI Manual which states: “in order for its request to be allowed, the requesting jurisdiction must establish the foreseeable relevance of the information requested”. The following information must be provided:

- the identity of the person under examination or investigation, which can be a simple means of identification such as an account number
- a statement of the information sought including its nature and the form in which the applicant party wishes to receive the information from the requested party
- the tax purpose for which the information is sought
- the grounds for believing that the information requested is held in Gabon or is in the possession or control of a person within the jurisdiction of Gabon
- to the extent known, the name and address of any person likely to be in possession of the requested information
- a statement that the request is compliant with the law and administrative practices of the applicant party, that if the requested information was within the jurisdiction of the applicant party then the competent authority of the applicant party would be able to obtain the information under the laws of the applicant party or in the normal course of administrative practice and that the request is compliant with the agreement concerned
- a statement that the applicant party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

Group requests

265. The EOIR standard currently includes a reference to group requests in line with paragraph 5.2 of the Commentary on the OECD Model Tax Convention. Additionally, the foreseeable relevance of a group request

should be sufficiently demonstrated, and it should also be demonstrated that the requested information would assist in determining compliance by the taxpayers in the group.

266. In order to deal with group requests, Gabon has amended the EOI Manual. In the event of a group request, it provides that the requesting jurisdictions must:

- give a detailed description of the group
- provide the facts and circumstances that have led to the request
- supply an explanation of the applicable law
- explain why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law, supported by a clear factual basis
- show that the “requested information would assist in determining compliance by the taxpayers in the group”.

267. In conclusion, the legal instruments and the EOI Manual for individual and group requests are compliant with the international standard in terms of foreseeable relevance. Their implementation in practice will be assessed during the Phase 2 evaluation.

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

268. Article 26(1) of the OECD Model Tax Convention states that “[t]he exchange of information is not restricted by Articles 1 and 2”;¹⁶ Article 1 defines the personal scope of the convention, while Article 2 defines the taxes covered. Article 5(1) of the Multilateral Convention states that “the requested State shall provide the applicant State with any information [...] which concerns particular persons or transactions”.

269. Twelve DTC¹⁶ to which Gabon is Party include this phrase. The two other DTC¹⁷ in Gabon’s network do not, but nonetheless provide for the exchange of the information necessary to enforce the provisions of the convention concerned, or those of the contracting states’ domestic legislation on the taxes covered by the convention. The conventions therefore do not restrict EOI merely to residents since their domestic tax legislation applies to all their taxpayers regardless of their residency status. The Gabonese authorities confirm that they adhere to that interpretation.

16. DTCs with Belgium, Canada, China, France, Italy, Korea, Lebanon, Mauritius, Morocco, Saudi Arabia, Singapore and South Africa.

17. DTCs with Tunisia and the United Arab Emirates.

270. The CEMAC and OCAM Conventions do not contain any express provision extending the scope of information exchange to persons who are not residents of the contracting states. However, both these treaties allow for the exchange of information that is necessary or useful for the purpose of enforcing their provisions or those of contracting states' domestic law. As the domestic tax law of each contracting state applies equally to residents and non-residents, Gabon confirms that the information covered by the conventions includes information concerning non-residents. Thus, none of the information exchange mechanisms concluded by Gabon restricts the scope of information exchange to one category of persons to the exclusion of others.

271. As a general rule, in practice, requests for information received by the Gabonese tax authorities do not involve necessarily a taxpayer resident in Gabon.

C.1.3 and C.1.4. Obligation to exchange all types of information even in the absence of domestic tax interest

272. Six DTC¹⁸ in Gabon's EOIR network contain provisions equivalent to Article 26(4) and (5) of the OECD Model Tax Convention. The other bilateral instruments to which Gabon is party do not include this type of provision. However, there are no particular restrictions in Gabon's domestic legislation or in that of its EOI partners that would prevent the exchange of all types of information or that would prevent the exchange of information that Gabon may not need for its own tax purposes.

273. There is no restriction on information exchange in Gabonese domestic law, and the powers attributed to the tax authorities under the CGI enable them to access and exchange information of all kinds, including banking information and information held by nominees, agents and fiduciaries. Additionally, there is no provision requiring a domestic tax interest (cf. section B.1.3 above).

274. In practice, Gabon generally received requests for information for which there was an immediate domestic tax interest.

C.1.5 and C.1.6. Exchange of Information in civil and criminal tax matters and Absence of the dual criminality principle

275. All the EOI mechanisms entered into by Gabon provide for EOI for both civil and criminal tax purposes.

276. Neither the EOIR instruments to which Gabon is party nor Gabonese domestic legislation provide for the application of the dual criminality

18. DTCs with China, Korea, Mauritius, Saudi Arabia, Singapore and the United Arab Emirates.

principle as a pre-requisite for responding to a request for information in criminal tax matters. Gabon therefore interprets these instruments and its own legislation as allowing EOI even where the act under investigation would not be a criminal offence under Gabonese law if it had been committed in Gabon.

C.1.7. Provision of information in the specific form requested

277. The tax agreements concluded by Gabon do not contain any stipulations concerning the provision of information in a form specifically requested by a contracting party to satisfy its evidentiary or other legal requirements to the extent allowable under the laws of the requested Party. However, there is nothing to prevent the Gabonese authorities from providing information in the form requested, provided that it is consistent with their administrative practice, but this situation has not arisen in recent years.

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

278. The Constitution of Gabon vests the President of the Republic with the power to sign and ratify treaties (Article 113). Article 114 of the Constitution provides that the treaties that commit state finances, such as double taxation conventions, can be ratified or approved only pursuant to a law. Gabon indicated that this was not the case with the Multilateral Convention because it does not involve revenue foregone. Once the Council of Ministers has adopted the draft law, the Ministry of Foreign Affairs is responsible for initiating and continuing the ratification procedure before Parliament (Article 2 of Decree No. 456/PR/MAEFIR on the Responsibilities and Organisation of the Ministry of Foreign Affairs).

279. In order for international conventions concluded by Gabon to be ratified, the signed instrument must first be approved by the Government and then presented to Parliament, a bicameral institution comprising the National Assembly and the Senate. If, after having been consulted by the President of the Republic, the President of the National Assembly, the President of the Senate or one third of deputies or senators, the Constitutional Court finds that an international agreement includes a clause that is incompatible with the Constitution, authorisation to ratify or approve it may be forthcoming only after the Constitution has been revised.

280. Once parliamentary authorisation (by simple majority) has been obtained, the act of ratification is promulgated within 25 days by the President of the Republic (Article 17 of the Constitution). Then, a date of entry into force is decided jointly with the signatory country by exchange of ratification instruments, a procedure overseen by the two countries'

Ministries of Foreign Affairs. The agreement finally enters into force on the agreed date.

281. Gabon has indicated that the process of shuttling back and forth between the two houses of parliament can often result in a lengthy spell averaging three years between the date of signature of an agreement and its ratification. Additionally, six months elapse on average between the promulgation and the exchange or deposit of the instruments of ratification.

282. Only six of the 14 bilateral conventions entered into by Gabon are in force. Of the eight that have not yet entered into force, three¹⁹ were signed at least three years ago, but five²⁰ were signed in 2013 or earlier.

283. Gabon signed the Multilateral Convention in July 2014 and completed the domestic ratification process two years later in July 2016; however, the Convention has not yet entered into force because the instrument of ratification has not been deposited with one of the depositaries. The Gabonese authorities have explained that this delay was linked to internal administrative malfunctions.

284. **Gabon should ensure that its EOIR instruments are ratified and enter into force without delay.**

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	147
In force	13 ^a
In line with the standard	13
Not in line with the standard	0
Signed but not in force	134
In line with the standard	134
Not in line with the standard	0
Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms	0

Note: a. Six DTCs are in force with Belgium, Canada, Korea, France, Morocco and Saudi Arabia. Five relationships are in force with the CEMAC Convention with Cameroon, the Central African Republic, Chad, Equatorial Guinea and Congo. Three relationships are in force with Congo (also covered by the CEMAC), Côte d'Ivoire and Senegal.

19. DTCs with China, Singapore and the United Arab Emirates.

20. DTCs with Italy, Lebanon, Mauritius, South Africa and Tunisia.

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

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

285. As a result of its signature of the Multilateral Convention, regional instruments and bilateral agreements, Gabon currently has an extensive EOIR network that has the potential to cover 147 jurisdictions. However, the Multilateral Convention and eight of the 14 bilateral agreements are not in force. Consequently, only 13 jurisdictions are covered by the network of instruments in force, chiefly under regional instruments.

286. Gabon is currently negotiating DTC incorporating EOI using the updated OECD and UN model texts with five countries.

287. At the time of writing, one member of the Global Forum indicated that it had contacted Gabon in 2019 with a view to concluding an EOI agreement. Gabon did not yet respond. As the standard requires jurisdictions to establish an EOI relationship that complies with the standard with all partners who are interested in entering into such a relationship, **Gabon is recommended to continue to extend its network of EOI agreements to all relevant partners.**

288. Another member indicated that it would be able to exchange information with Gabon once Gabon has ratified the Multilateral Convention. Currently, no fewer than 134 of Gabon's partners are unable to send it a request for information because Gabon has not ratified the applicable instruments or has failed to deposit instruments of ratification (see section C.1.8). **Gabon should ensure that it has effective EOI agreements with all its partners.**

289. The conclusions are as follows:

Legal and regulatory framework: not in place

Underlying factor/ Deficiencies identified	Recommendations
Gabon has not yet responded to a proposal from a peer about concluding an EOI agreement.	Gabon should continue to extend its network of EOI agreements to all relevant partners.
Although Gabon has signed agreements that potentially allow for exchanges of information with 147 jurisdictions, the network of instruments in force is restricted to 13 countries and is therefore largely ineffective.	Gabon should ensure that it has effective EOI agreements with all its partners.

Practical implementation of the standard: The assessment team is not able to give a rating for this element because an evaluation in practice is required, which is to be conducted in Phase 2.

C.3. Confidentiality

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

290. All EOI mechanisms include provisions on confidentiality, and Gabon's domestic legislation also includes rules in that regard. These provisions apply in the same manner to the information and documents that are the subject of the request received by the competent Gabonese authority and to the responses actually conveyed to the treaty partner.

291. Since the 2016 Report, Gabon has adopted an EOI Manual which sets out in further detail the conditions of confidentiality that apply to the information exchanged.

292. The conclusions are as follows:

Legal and regulatory framework: in place

No material deficiencies have been identified in the EOI mechanisms and legislation of Gabon concerning confidentiality.

Practical implementation of the standard: The assessment team is not able to give a rating for this element because an evaluation in practice is required, which is to be conducted in Phase 2.

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

293. The 2016 Report concluded that all of Gabon's EOI mechanisms included provisions on confidentiality in compliance with the standard.

294. All the bilateral conventions entered into by Gabon as well as the Multilateral Convention ensure the confidentiality of exchanged information, in compliance with the international standard. In particular, they establish that the information obtained will be kept secret under the same conditions as those established for information obtained pursuant to domestic law and will be provided only to the persons or authorities that assess or collect tax.

295. The CEMAC and OCAM Conventions do not contain a clause on the use of information exchanged within the judicial framework, contrary

to the standard. According to Gabon, the persons responsible for assessing and collecting tax are not only tax officials but also the judicial authorities (prosecution service and court registries), since the two conventions state that information exchange also applies to the “enforcement of legal rules for the prevention of tax fraud”.

296. The 2016 ToR clarified that, although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI agreement provides that the information may be used for such other purposes under the laws of both contracting parties and the authority supplying the information authorises such use. Gabon’s EOI Manual states that “information received cannot be used for purposes other than tax purposes unless otherwise expressly provided in the EOI instrument”. It also states that “the tax confidentiality provisions included in the exchange of information instruments prevail over any domestic rules allowing disclosure to persons not referred to in the confidentiality provisions of the exchange of information instruments”.

297. Gabon has indicated that there were no requests where the requesting partner sought Gabon’s consent to utilise the information for non-tax purposes; similarly, Gabon has not sought to use information received for non-tax purposes.

298. Information obtained under administrative assistance agreements must be kept secret in the same way as information obtained under domestic law. In this regard, Article P-887 of the CGI clearly states that tax officials are bound by professional secrecy and may not communicate information gathered in the performance of their duties, including after they leave office. This requirement also applies to information obtained from a foreign tax authority under procedures for mutual administrative assistance in tax matters in accordance with international conventions.

299. Communications between the competent authorities of partner jurisdictions in the context of information exchange (other than the requested information *per se*) are also covered by professional secrecy.

300. The penalties for failing to comply with the professional secrecy obligation are applicable to civil servants and provided for in the Public Service General Statutes. These penalties include warnings, reprimands and dismissals. In addition, offenders may be subject to criminal charges, pursuant to Article 289 of the Criminal Code. The criminal penalties may include a period of imprisonment of between six months and one year, and a fine of between XAF 5 million (EUR 7 630) and XAF 20 million (EUR 30 530).

301. Since the 2016 Report, specific measures have been taken in respect of the exchange of information on request in order to ensure optimum compliance with the rules on confidentiality:

- Before the IEU provides information (subject to authorisation from the competent authority) or forwards it to the Director-General (for approval and signature), it attaches a warning or a statement in a covering letter and on all attachments (contextual information, copies of contracts, etc.). The warning or statement also appears on all documents received by Gabon addressed to tax officials, including where the officials themselves initiated the request by making a reference to the IEU. These can take the form of a stamp on each page for paper-based correspondence or a watermark for an electronic exchange. The stamps or watermarks read as follows: “This information is communicated pursuant to a tax agreement. Its use and disclosure is governed by the said agreement.”
- During the provision of the information: written correspondence is sent exclusively using a tracked international postal system. The confidentiality of information requests and all attachments sent electronically is protected through the use of encryption or a secure platform during transmission between the DGI IT systems and the IT systems of the jurisdiction of destination.
- Upon receipt of information: mail received from the foreign competent authorities is forwarded directly to the IEU and stored securely. Information obtained from other competent authorities in paper or electronic form is filed in secure cabinets or in a dedicated EOI database to which only authorised personnel (IEU and Director-General) have access.
- Access to information received: information is retained in paper and electronic form. All requests for information and all information received is stored in EOI software that can be accessed only by members of the IEU using their own individual login and password. Where the information is stored electronically, paper copies of it are made only where necessary.

C.3.2. Confidentiality of other information

302. The provisions concerning confidentiality which are included both in the relevant agreements and in Gabon’s domestic legislation do not distinguish between information received in reply to a request and information that forms part of the request. These provisions apply in the same manner to requests, attached documents and all communications between the jurisdictions involved in the exchange.

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.

303. All treaties concluded by Gabon provide that the parties concerned will not be required to disclose information covered by industrial, business or professional secrecy or information covered by attorney-client privilege; or to disclose information which would contravene public policy.

304. The conclusions are as follows:

Legal and regulatory framework: in place

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

Practical implementation of the standard: The assessment team is not able to give a rating for this element because an evaluation in practice is required, which is to be conducted in Phase 2.

C.4.1. Exceptions to the requirement to provide information

305. The information exchange mechanisms concluded by Gabon ensure that the parties concerned are not required to supply information whose disclosure would reveal an industrial, business or professional secret or would be contrary to public policy.

306. Under Article P-887 of the CGI, information relating to medical records or national security may not be disclosed either in a domestic context or for information exchange purposes. Likewise, under tax information exchange agreements, any information whose disclosure would reveal an industrial, business or professional secret or would be contrary to public policy is excluded from the scope of administrative assistance and may not therefore be communicated in response to an information request.

307. Although the provisions of Articles P-886 et seqq. of the CGI clearly do not state that attorney-client privilege may be invoked against the tax authorities acting in accordance with their right to information, they should not be interpreted as authorising the tax authorities, for information exchange purposes, to obtain information covered by attorney-client privilege or relating to legal proceedings.

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.

308. The 2016 Report assessed the practice of exchange of information of Gabon for the period 1 January 2012-31 December 2014 and rated it as Largely Compliant with the standard. Gabon had not received any request during the assessment period, but had the resources and organisational processes in place to deal with requests. Gabon was recommended to monitor the operation of this new organisation for processing EOI requests, including the new EOI unit, in order to ensure that requests are processed quickly and efficiently.

309. The extent to which the practice of requesting and providing information in an effective manner is achieved will be assessed during Phase 2.

Legal and regulatory framework

This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.

Practical implementation of the standard: The assessment team is not able to give a rating for this element because an evaluation in practice is required, which is to be conducted in Phase 2.

The Phase 2 recommendation issued in the 2016 report is reproduced below for information:

Underlying factor/ Deficiencies identified	Recommendations
Gabon did not actually respond to an EOI request as it did not receive any request during the peer review period. However, it appeared that the current resources and the organisational process put in place to deal with requests for information at the end of the peer review period are adequate given the low number of demands received after the peer review period.	Gabon must monitor the operation of this new organisation for processing EOI requests, including the new EOI unit, in order to ensure that requests are processed quickly and efficiently.

C.5.1. Timeliness of responses to requests for information

310. For EOI to be effective, it must take place within a time frame that allows the requesting tax authorities to make good use of the information. If the response is received too late, the information may no longer be of use to the requesting authority. This aspect is particularly important in the context of international co-operation.

311. Since the 2016 Report, Gabon has adopted in April 2016 an EOI Manual and EOI software in which the requests it receives can be registered and tracked.

312. Gabon has stated that the statistics and reports on progress with the various files are submitted monthly (when a request is received) to the Director General of Taxation for presentation to the Minister for the Economy. These include statistics on incoming requests, outgoing requests, feedback, compliance with request processing times (20 days for information held in-house, 90 days for other information), closed files and files in progress. Each item of mail received is regarded as one request, regardless of the number of taxpayers involved.

C.5.2. Organisational processes and resources

Organisation of the competent authority

313. Under the tax agreements concluded by Gabon, the competent authority is the Minister for the Economy or her authorised representatives. From an administrative point of view, the Director General of Taxation assumes the mantle of competent authority. The International Relations Service within the Directorate for Legislation and Litigation of the Directorate General of Taxes is responsible for EOI through the Information Exchange Unit (IEU). The Unit has a Unit Director and three Chief Inspectors.

Incoming requests

314. When an EOI request is received at the office of the Director General of Taxation, it is lodged that very day with the IEU. The mail service official who receives the request must affix the date of receipt to the request before immediately passing the file to the IEU Director. The request is booked in on a physical list that is kept in a safe on secure IEU premises or in the IT system. The IEU Director allocates the file to a manager in the Unit having at least the rank of Inspector, who sends an acknowledgement of receipt of the request, in accordance with the procedure defined in the manual.

315. The IEU starts the process of examining the validity of the request and whether it is complete; during that time, the competent authority may

also consider whether there are any reasons for refusing the request (which did not happen thus far). Gabon has a checklist of points that the request must meet (see paragraphs 264 and 266).

316. Once validated, the IEU sets about collecting the information. The IEU, under the authority of the Director General of Taxation, is the only body with competence to perform all the procedures necessary (right of discovery, right to information, right of investigation, right of entry and seizure). If necessary, the IEU may request other services from the tax administration to search for and collect the information requested by the partner jurisdiction.

317. Information already in the taxpayer's file must be exchanged within 20 days of receipt of the request for information. Where the information is not available in the file and must be obtained from other people, including the taxpayer who is the subject of the request, the response time is 90 days.

318. With regard to banking information, the requested documents are either asked to the taxpayer, or the request is made directly to the bank, specifying a response time of 20 days. In the event that the bank fails to comply with the terms of the request, a reminder is sent seven days after the expiry of the initial 20-day deadline. This time, the bank has 15 days to provide the documents requested of it.

319. Once the information has been received, the process is as follows:

- The accuracy and completeness of the information are verified before the information is exchanged with the partner jurisdiction. Even if incomplete, the information given by the taxpayer or a third party must be exchanged immediately with the partner jurisdiction.
- Complete information must be exchanged with the partner jurisdiction within a period not exceeding 90 days. Where it has not been possible to obtain and provide the partner jurisdiction with all the requested information within the 90-day period, the partner jurisdiction must immediately be informed of the reasons for the situation and the reasons for the extension by e-mail or registered letter with acknowledgement of receipt.
- The EOI letter is signed by the Director General of Taxation or, if absent, by the acting Director General of Taxation. An EOI letter must always include a statement that the information exchanged must be used only for the purposes laid down in the tax agreement.

Outgoing requests

320. When a request is received from a tax authority department, the IEU Director allocates the file to a manager in the Unit having at least the rank of Inspector. A registered letter or e-mail acknowledging receipt must then be sent to the tax official or department that made the request.

321. A note is sent to the Minister for the Economy informing him/her of the request(s) initiated by the DGI departments.²¹

322. The Managing Inspector at the IEU checks that the request satisfies all the necessary conditions and requirements (see paragraphs 264 and 266). The IEU may ask the tax inspector making the request for any clarification necessary. As soon as the request is validated, it is forwarded to the Director General of Taxation, to be sent to the competent authority in the foreign country.

323. The IEU official must track the progress of the request. To that end, he/she may ask the foreign competent authority for progress reports by stating the reference number:

- after seven days where an acknowledgement of receipt of the request has not been received
- after 20 days, if the information or a status report on the request has not been forwarded
- and then at regular intervals depending on the circumstances.

324. Each time an action is performed in the EOI software or on the physical Register, the IEU official responsible for the file must update the EOI software database.

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

325. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. No factor or issue has been identified that would act as an unreasonable, disproportionate or unduly restrictive condition for EOI in Gabon.

21. Gabon explained that this provision would be removed from the manual, as it was introduced before the Minister of Economy delegated her authority to the Director General of Taxes.

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 provided below for convenience. For Gabon, this report does not contain such recommendations.

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

- **Element A.1.1:** In 2020, Gabon introduced the obligation for any individual or legal entity liable as a legal taxpayer to pay a tax to attach to its annual return a statement of ownership at the beginning and end of each fiscal year must specify the identity of the ultimate holder of the shares (art. P-818 quarter CGI); the Gabonese authorities have indicated that, in the absence of a definition, this should be understood to mean the beneficial owner, but this is not explained in the documents provided to the taxpayer (see paragraph 69).
- **Element A.1.1:** The CGI provides for the possibility of companies to be made inactive. This means a voluntary, temporary suspension of activities enabling the inactive company to be exempt from taxes. Inactivity may last no longer than two years and is not renewable. After two years, the taxpayer automatically becomes liable in compliance with the rules of ordinary law unless it initiates the procedure for definitive cessation of activities or is automatically struck off. The practice of striking off does not consist in a liquidation or dissolution, and the company retains its legal personality. Gabon has stated that close to 1 000 companies have been declared inactive in the past three years (202 in 2018, 195 in 2019 and 580 in 2020). This aspect will be further analysed during the Phase 2 assessment (see paragraph 84).

- **Element A.1.1:** The identity of a beneficial owner behind a nominee should be identified as part of the due diligence procedures (see paragraph 114).
- **Element A.1.2:** The practical implementation of the legal provisions for bearer shares (see paragraph 126).

Annex 2: List of Gabon’s EOI mechanisms

Bilateral international agreements for the exchange of information

List of the bilateral international agreements for the exchange of information signed by Gabon as at July 2021.

	EOI partner	Type of agreement	Signature	Entry into force
1	Belgium	DTC	14 January 1993	13 May 2005
2	Canada	DTC	14 November 2002	22 December 2008
3	China (People’s Republic of)	DTC	5 September 2018	Not in force
4	France	DTC	20 September 1995	1 March 2008
5	Italy	DTC	29 June 1999	Not in force
6	Korea	DTC	25 October 2010	2 December 2015
7	Lebanon	DTC	20 February 2001	Not in force
8	Mauritius	DTC	18 July 2013	Not in force
9	Morocco	DTC	3 June 1999	1 February 2008
10	Saudi Arabia	DTC	17 December 2015	1 February 2021
11	Singapore	DTC	28 August 2018	Not in force
12	South Africa	DTC	22 March 2005	Not in force
13	Tunisia	DTC	13 February 1986	Not in force
14	United Arab Emirates	DTC	1 March 2019	Not in force

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

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).²² The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

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

The Multilateral Convention was signed by Gabon on 3 July 2014, ratified by Gabon through domestic channels on 14 July 2016, but has not yet entered into force because Gabon has not deposited its instruments of ratification.

The Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Armenia, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Bosnia and Herzegovina, Botswana, Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Cabo Verde, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People’s Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus,²³ Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Eswatini,

22. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention (the Multilateral Convention), which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention, which sets out the amendments separately.
23. Note by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Faroe Islands (extension by Denmark), Finland, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Kenya, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), North Macedonia, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Montserrat (extension by the United Kingdom), Morocco, Namibia, Nauru, the Netherlands, New Zealand, Nigeria, Niue, Norway, Oman, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, the United Arab Emirates, the United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Benin, Burkina Faso, Gabon, Jordan (entry into force on 1 December 2021), Liberia (entry into force on 1 December 2021), Maldives (intro into force on 1 January 2022), Mauritania, Papua New Guinea, Philippines, Rwanda, Thailand, Togo, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).²⁴

CEMAC Convention

The CEMAC Convention was signed on 14 December 1965 by Cameroon, the Central African Republic, Chad, Equatorial Guinea, Gabon and Congo and entered into force on 13 December 1966. The Convention provides for the exchange of information for tax purposes, enabling Gabon to exchange information with five jurisdictions. The Convention does not contain the most recent version of Article 26 of the OECD Model Convention.

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

24. Since the United States is a Party to the original Convention but only a signatory to its Protocol, the Convention does not apply between the United States and Parties to the amended Convention that are not OECD or Council of Europe members, as is the case for Gabon.

The General Convention on Co-operation in Taxation between the members of the Afro-Malagasy and Mauritian Common Organization (OCAM)

The General Convention on Co-operation in Taxation between the members of the Afro-Malagasy and Mauritian Common Organization (OCAM) of 29 July 1971 is in force in four jurisdictions. Although OCAM has been dissolved, Congo, Côte d’Ivoire, Gabon and Senegal continue to apply the tax convention that arose from it.

Annex 3: Review methodology

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 exchange of information arrangements signed, laws and regulations in force or effective as at 26 November 2021, Gabon’s responses to the EOIR and transparency questionnaire, as well as inputs from partner jurisdictions.

List of laws, regulations and other materials received

- OHADA Uniform Act on the Law of Commercial Companies and Economic Interest Groupings (AUDSCGIE)
- OHADA Uniform Act on General Commercial Law (AUDCG)
- OHADA Uniform Act on Co-operative Societies (AUSC)
- OHADA Uniform Act on Accounting Law and Financial Reporting (AUDCIF)
- General Tax Code (CGI)
- Regulation No. 01/CEMAC/UMAC/CM of 11 April 2016 on the Prevention and Suppression of Money Laundering and the Financing of Terrorism and Proliferation in Central Africa (“AML/CFT Regulation”)
- Decree No. 0739/PR/MEFBP of 22 September 2005 defining the Organisation, Operation and Funding of the National Financial Investigation Agency
- Additional Act No. 09/00/CEMAC-086/CCE 02 establishing the Task Force on Money Laundering in Central Africa (GABAC)
- Regulation No. 06/03 CEMAC-CAMU relating to the Organisation, Operation and Oversight of the Central African Financial Market

CEMAC Regulation No. 01/14/CEMAC-UMAC-CM establishing a system for the registration of transferable securities and other financial instruments in CEMAC.

Current and previous review(s)

This report analyses Gabon’s legal and regulatory framework against the standard on transparency and exchange of information on request, as part of the second round of reviews conducted by the Global Forum. An initial assessment of Gabon’s legal and regulatory framework was carried out in 2016 using the 2010 Terms of Reference, followed immediately by an evaluation of the practical implementation of the legal framework in 2016.

Information on the reviews of Gabon is given in the table below.

Summary of reviews

Review	Assessment team	Period under review	Legal framework as at	Date of adoption by Global Forum
Round 1 Phase 1	Nisrine Roudies (Morocco), Pascal Feurtet (Monaco) and Séverine Baranger (Global Forum Secretariat)	N/A	August 2015	October 2015
Round 1 Phase 2		1 January 2012 to 31 December 2014	May 2016	July 2016
Round 2 Phase 1	Romain Perret (France), Ayetout Ogoutchéout Akakpi (Togo) and Mathilde Sabouret (Global Forum Secretariat)	N/A	November 2021	March 2022

Annex 4: Gabon’s response to the review report²⁵

Gabon would like to express its gratitude and sincere thanks to the Global Forum Secretariat, the members of the Peer Review Group (PRG), the assessment team as a whole and all the partner jurisdictions in the area of exchange of information for their support, advice and contributions throughout this first phase of our second round peer review.

This phase 1 of Gabon’s second round peer review marks the continuation of a process that started in 2014 and which has allowed Gabon to know where it stands with regard to common standards of transparency and exchange of information to combat tax evasion and avoidance.

At this stage, we can express a sense of satisfaction that our legal framework and information exchange practices have evolved positively and that we are, as an organisation, much better than we were before the peer review process started.

Indeed, since the first round of peer reviews, we can say that taxpayer management and tax administration in Gabon have improved qualitatively, thanks in particular to the implementation of new provisions aimed at better monitoring taxpayers’ obligations in order to curb and sanction reprehensible tax behaviours.

Gabon therefore largely shares the conclusions, observations and recommendations of the assessment team on its Phase 1 review report of this second round peer review. These conclusions reflect, on the one hand, the efforts made by the Gabonese authorities to bring our legal framework and practices in line with the standard and, on the other hand, the need for Gabon to continue the reforms and complete the projects launched since the first round of reviews.

This is why Gabon welcomes the recommendations made to it, particularly the one relating to the ratification and rapid entry into force of its EOIR instruments.

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

The end of this phase 1 of the second round of the review of Gabon also heralds the beginning of phase 2. It is with the same zeal and determination that Gabon intends to organise this next stage of its review.

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report on the Exchange of Information
on Request GABON 2022 (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 2022 Second Round Peer Review Report on the Exchange of Information on Request of Gabon. It refers to Phase 1 only (Legal and Regulatory Framework).



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