GLOBAL FORUM ON
TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

COOK ISLANDS

2022 (Second Round, Phase 1)

OECD

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

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

OECD
BETTER POLICIES FOR BETTER LIVES

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the Member countries of the OECD.

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Note by the Republic of Türkiye
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. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye shall preserve its position concerning the "Cyprus issue".

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

Please cite this publication as:
OECD (2022), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Cook Islands 2022 (Second Round, Phase 1): Peer Review Report on the Exchange of Information on Request*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, https://doi.org/10.1787/3474f433-en.

ISBN 978-92-64-44025-8 (print)
ISBN 978-92-64-72449-5 (pdf)

Global Forum on Transparency and Exchange of Information for Tax Purposes
ISSN 2219-4681 (print)
ISSN 2219-469X (online)

Photo credits: OECD with cover illustration by Renaud Madignier.

Corrigenda to publications may be found on line at: www.oecd.org/about/publishing/corrigenda.htm.

© OECD 2022

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at https://www.oecd.org/termsandconditions.

Table of contents

Reader's guide 5

Abbreviations and acronyms 9

Executive summary 11

Summary of determinations, ratings and recommendations 15

Overview of Cook Islands 23

Part A: Availability of information 31

A.1. Legal and beneficial ownership and identity information 31
A.2. Accounting records 63
A.3. Banking information 74

Part B: Access to information 81

B.1. Competent authority's ability to obtain and provide information 81
B.2. Notification requirements, rights and safeguards 89

Part C: Exchange of information 91

C.1. Exchange of information mechanisms 91
C.2. Exchange of information mechanisms with all relevant partners 95
C.3. Confidentiality 96
C.4. Rights and safeguards of taxpayers and third parties 98
C.5. Requesting and providing information in an effective manner 99

Annex 1: List of in-text recommendations 103

Annex 2: List of the Cook Islands' EOI mechanisms 105

Annex 3: Methodology for the review 108

Annex 4: The Cook Islands' response to the review report 110

Reader's guide

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

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

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

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

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

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

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

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

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

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

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

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

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

More information

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

Abbreviations and acronyms

2016 TOR	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
APGML	Asia Pacific Group on Money Laundering
BTIB	Business Trade and Investment Board
CA	Companies Act 1970-71
CDD	Customer Due Diligence
DTC	Double Taxation Convention
EOI	Exchange of Information
EOIR	Exchange of Information on Request
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FIUA	Financial Intelligence Unit Act
FSC	Financial Supervisory Commission
FTRA	Financial Transactions Reporting Act
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
GDP	Gross Domestic Product
ICA	International Companies Act
IPA	International Partnership Act
ISA	Incorporated Societies Act

ITA	Income Tax Act
LLCA	Limited Liability Companies Act
MoJ	Ministry of Justice
Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
NZD	New Zealand dollar
PA	Partnerships Act
RI	Reporting Institutions
RMD	Revenue Management Division
TIEA	Tax Information Exchange Agreement

Executive summary

1. This report analyses the implementation of the standard of transparency and exchange of information on request (the standard) in the Cook Islands on the second round of reviews conducted by the Global Forum. Because of the COVID-19 pandemic, the onsite visit that was scheduled to take place in December 2021 was cancelled. Furthermore due to the limited practical experience of the Cook Islands in exchange of information on request (EOIR), and in accordance with the 2016 Methodology for peer reviews and non-member reviews, as amended in 2021, this report only assesses the legal and regulatory framework in force as of 6 May 2022 against the 2016 Terms of Reference (Phase 1). The assessment of the practical implementation of the legal framework of the Cook Islands will take place separately later (Phase 2 review).

2. This report concludes that overall the Cook Islands has a legal and regulatory framework in place that generally ensures the availability, access and exchange of all relevant information for tax purposes in accordance with the standard, but needs improvements in several areas.

3. In 2015, the Global Forum evaluated the Cook Islands against the 2010 Terms of Reference and rated the Cook Islands Largely Compliant overall, with some improvements needed in its legal and regulatory framework (see Annex 3 for details).

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

	Element	First Round Report (2015)		Second Round Report (2022)
		Determinations	Ratings	Determinations
A.1	Availability of ownership and identity information	In place	Compliant	Needs improvement
A.2	Availability of accounting information	Needs improvement	Largely 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	In place
C.2	Network of EOIR Mechanisms	In place	Compliant	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	Not applicable	Largely Compliant	Not applicable
	OVERALL RATING	LARGELY COMPLIANT		Not applicable

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

Progress made since previous review

4. The 2015 Report concluded that the legal and regulatory framework of the Cook Islands was in place but needed improvement, with a few recommendations made in relation to the availability of accounting information, which have not been addressed yet. There remains a lack of an obligation on limited liability companies, international trusts and foundations to maintain all underlying source documentation of accounting records and a lack of penalty for failure of a foundation to maintain reliable accounting records for at least five years.

5. The 2016 Terms of Reference added requirements in respect of the availability of beneficial ownership information. The Cook Islands strengthened its transparency framework in 2019 with the introduction of the obligation for all companies to keep a register of their beneficial owners.

6. The Cook Islands signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 28 October 2016 and ratified it on 29 May 2017 with entry into force date on 1 September 2017. The Multilateral Convention extended significantly the EOI network.

Key recommendations

7. As noted above, the recommendations related to the maintenance of all underlying documentation for accounting records for limited liability companies, international trusts and foundations have not been addressed. There is no penalty for failure to maintain accounting records and underlying documentation for foundations. The recommendations continue to apply. In addition, the accounting records retention requirements are not clear in the case of domestic companies that are liquidated. It is not clear who is the person responsible for keeping the accounting books and the underlying documentation of liquidated companies between one and five years. There is also no requirement to keep accounting records for at least five years upon liquidation of international and limited partnerships and foundations.

8. The Cook Islands has a centralised register for collecting legal and beneficial ownership information for companies, however the interpretation of the definition of beneficial owners under company law and anti-money laundering law is uncertain, and beneficial ownership information on domestic partnerships, trusts and foundations may not be available in certain cases. An analysis including the practical aspects of the implementation of the standard by the Cook Islands will be conducted in the Phase 2 review.

9. International companies may be restored after being struck off without limit of time, and there is no explicit obligation to maintain and provide ownership information during the entire period. The Cook Islands is recommended to ensure the availability of ownership information upon the restoration of an international company following the strike off from the register, as well as establishing a time limit for the revival of international companies following their dissolution.

10. Nominee shareholding is allowed in the Cook Islands but the Companies Act does not set any specific obligations on nominees, nominators, or companies that have nominee shareholders. The tax and anti-money laundering requirements do not ensure that information on nominees and nominators would be available. The Cook Islands should ensure that ownership and identity information is available in respect of nominee shareholdings.

Exchange of information in practice

11. The Cook Islands received nine exchange of information (EOI) requests from two partners between 1 April 2018 and 31 March 2021. The answers were provided on time and both partners were satisfied with information. During the same period, the Cook Islands made three EOI requests, which were all group requests. The assessment of the exchange of

information in practice is not covered by this report and will be the object of the upcoming Phase 2 review at a later stage.

Next steps

12. This review assesses only the legal and regulatory framework of the Cook Islands for transparency and exchange of information. The Cook Islands has achieved a determination of “in place” for elements B.1, B.2, C.1, C.2, C.3, C.4 and “in place but needs improvement” for A.1, A.2 and A.3. Overall, the Cook Islands has a legal and regulatory framework in place that generally ensures the availability, access and exchange of all relevant information for tax purposes in accordance with the standard. The rating for each element and the Overall Rating will be issued once the Phase 2 review is completed.

13. This report was approved at the Peer Review Group of the Global Forum on 8 July 2022 and was adopted by the Global Forum on 5 August 2022. A follow-up report on the steps undertaken by the Cook Islands to address the recommendations made in this report should be provided to the Peer Review Group no later than 30 June 2023 and thereafter in accordance with the procedure set out under the Methodology for Peer Reviews and Non-Member Reviews.

Summary of determinations, ratings and recommendations

Determinations	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place but needs improvement.	There is no time limit for the restoration of an international company once struck off, nor is there an explicit obligation to maintain and provide ownership information during the entire period the company is struck off.	The Cook Islands is recommended to ensure the availability of ownership information upon the restoration of an international company following the strike off from the register, as well as establishing a time limit for the revival of international companies following their dissolution.
	The legal requirements in tax and anti-money laundering law do not require nominees to disclose their nominee status and information on their nominator.	The Cook Islands should ensure that ownership and identity information is available in respect of nominee shareholdings.

Determinations	Factors underlying recommendations	Recommendations
	Beneficial ownership information is provided under the Companies Act and the anti-money laundering (AML) law. With respect to the identification of beneficial owner(s) of domestic companies, the company law does not specify if the definition refers to natural persons or legal persons. As the law refers to the beneficial ownership of each share rather than of the company, persons having ultimate control of the company through means other than ownership are not covered. The law also does not specifically indicate that control includes any person who controls the company acting directly or indirectly, and acting individually or jointly. In the AML law, the aspect of control in the definition is too narrow. In addition, the requirement to identify persons holding a senior managerial position when the beneficial owner cannot be identified is not contemplated.	The Cook Islands should ensure that the definition of beneficial owner for Companies Act and AML law purposes is in line with the standard.
	The Cook Islands relies upon the AML framework as the basis for availability of beneficial ownership of partnerships. However, there is no requirement for domestic and foreign partnerships to engage an AML-obliged person. Consequently, there may be situations where beneficial ownership information of relevant partnerships would not be available.	The Cook Islands should ensure that beneficial ownership information in line with the standard is always available for all partnerships.

Determinations	Factors underlying recommendations	Recommendations
	The obligation to have information on all parties to a trust stems from the AML requirements and the Income Tax Act. However, the AML definition of beneficial ownership does not require to identify the natural persons behind all the parties to a trust as beneficial owners, but only those behind the trustee and any natural person who exercises effective control over the trust, which does not explicitly cover all parties to the trust. More generally, there is no obligation for domestic and foreign trusts with a resident trustee to engage in a relationship with an AML-obliged person at all times or file tax returns.	The Cook Islands should ensure that identity and beneficial ownership information in line with the standard is always available for all relevant trusts.
	The AML obligations imposed on the Cook Islands' foundation council member require that information on the identity of the founders, members of the foundation council, as well as any beneficial owners of the foundation or persons with the authority to represent the foundation is available to the competent authorities and up to date. However, the definition of beneficial ownership in the context of foundations does not fully meet the standard. In particular, the beneficiaries (where applicable) do not appear to be covered.	The Cook Islands is recommended to ensure the availability of information on the beneficiaries of foundations.
	Information on beneficial owners of incorporated societies would be available to the extent that the society has a relationship with an AML-obliged person. In addition, the same gaps as identified in the AML law regarding the identification of beneficial owners apply.	The Cook Islands should ensure that beneficial ownership information is available in respect of incorporated societies.

Determinations	Factors underlying recommendations	Recommendations
	The availability of beneficial ownership information for all entities and arrangements except for domestic companies is dependent on customer due diligence obligations of a subset of AML-obliged persons consisting of banks and other financial institutions. However, there is no specified frequency for updating beneficial ownership information.	The Cook Islands should ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant legal entities and arrangements in line with the standard.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place but needs improvement.	Limited liability companies, international trusts and foundations are not explicitly required to keep all underlying documentation.	The Cook Islands should require all relevant legal entities and arrangements to keep all underlying documentation in line with the standard.
	No penalty exists for failure of a foundation to maintain reliable accounting records for at least five years.	The Cook Islands should ensure that the failure of a foundation to maintain all accounting records and underlying documentation for at least five years is subject to effective enforcement measures.
	The accounting records retention requirements are not clear in the case of domestic companies that are liquidated. Under the company law, a liquidator is required to maintain the records for a period of at least one year. Under the tax law, the retention period is at least five years. It is not clear who is the person responsible for keeping the accounting books and the underlying documentation of liquidated companies between one and five years.	The Cook Islands is recommended to ensure that the record keeping requirements are applied in such a way that accounting records are kept for five years for domestic companies that cease to exist.

Determinations	Factors underlying recommendations	Recommendations
	The accounting records retention requirements for international and limited partnerships and foundations is at least one year after liquidation is complete.	The Cook Islands is recommended to ensure that accounting records are kept for at least five years upon liquidation of international and limited partnerships and foundations.
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place but needs improvement.	The anti-money laundering law definition of beneficial owner includes the principal elements required by the standard with respect to the identification of beneficial owner(s) of legal entities, but the law does not specifically indicate that control includes any person who controls the company acting directly or indirectly, and individually or jointly. The requirement to identify persons holding a senior managerial position when the beneficial owner cannot be identified is not contemplated in the definition. In addition, there is no requirement to identify the beneficial owner of an account held by a natural person (noting however that reporting institutions are required to identify a person who acts on behalf of a customer).	The Cook Islands should ensure that beneficial ownership information on bank accounts is available in line with the standard.
	While the AML framework requires an ongoing and effective monitoring of information held for the purpose of customer due diligence to ensure that it is up to date and appropriate, there is no guidance on the frequency of updates of the beneficial ownership information.	The Cook Islands should ensure that information on beneficial owners of bank accounts is up to date in line with the standard.
	In case of a bank insolvency, the banking records retention requirements for banks is at least one year after liquidation is complete.	The Cook Islands is recommended to ensure that banking records are kept for at least five years upon liquidation or winding up of a bank.

Determinations	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is in place		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place		

Determinations	Factors underlying recommendations	Recommendations
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	

Overview of Cook Islands

14. This overview provides some basic information about the Cook Islands that serves as context for understanding the analysis in the main body of the report. The Cook Island consists of 15 islands scattered over 2.2 million square kilometres of the Pacific Ocean, Northeast of New Zealand. The total population of the Cook Islands, as at June 2020, was 17 900.[1] The population dropped by 17.9% over December quarter 2019 due to closure of overseas boarders to people entering the country and to help stop the spread of the COVID-19 pandemic. As a result, the number of nationals abroad increased and it is estimated that an additional 80 000 Cook Islanders live in New Zealand (2020 figures) and 22 000 in Australia (2019 census).[2]

15. The Cook Islands' GDP is derived principally from tourism, with international financial services making a contribution amounting to approximately 6.7% of GDP as per December 2021.[3] The Cook Islands' main trading partners are Australia, China, Hong Kong (China), Fiji, Japan, New Zealand and the United States.[4]

1. Cook Islands Vital Statistics and Population Estimate, June quarter 2020, www.mfem.gov.ck/statistics/social-statistics/vital-stats-pop-est.
2. See respectively https://www.mfat.govt.nz/fr/countries-and-regions/australia-and-pacific/cook-islands/ and https://www.dfat.gov.au/geo/cook-islands/cook-islands-country-brief#:~:text=The%20latest%20census%20records%20that,28%2C000%20Australians%20visited%20Cook%20Islands.
3. Cook Islands Ministry of Finance and Economic Management: www.mfem.gov.ck/statistics/134-economic-statistics/national-accounts. The contribution of the offshore sector to the economy fluctuates over time. It contributed to 8% of GDP in 2012 and 3.2% in 2015.
4. Cook Islands Ministry of Finance and Economic Management: www.mfem.gov.ck/statistics/economic-statistics/overseas-trade-stats.

Legal system

16. The Cook Islands' Government is both a Constitutional Monarchy and a Parliamentary Democracy. The Head of State is the Queen in Right of New Zealand, Her Majesty Queen Elizabeth II. The Queen's personal representative in the Cook Islands is the Queen's Representative. The system of Government is based on the Westminster model, which provides for a separation of powers between the Legislature, the Executive and the Judiciary.

17. Prior to 1965 (when the Cook Islands was a dependent territory of New Zealand), the legal system was established by means of a New Zealand enactment, the Cook Islands Act 1915, which provided that the English system of common law was to apply. The Act also listed a select number of New Zealand statutes that, suitably modified, were to apply in the Cook Islands.

18. On independence in 1965, the Constitution conferred full law-making powers on the Cook Islands, but also provided that existing law was to continue to apply. Hence, the Cook Islands Act 1915, remained in effect, as did common law and those New Zealand enactments specified in the Cook Islands Act, such as the Partnership Act 1908 and the Trustee Act 1956. Since 1965, many of the provisions of the Cook Islands Act have been progressively repealed as the Cook Islands has developed its own statute law.

19. The Legislature (the Parliament of the Cook Islands) makes laws by examining, debating and enacting Bills. The Parliament is unicameral and consists of 24 elected Members every four years. The Executive initiates and administers the law by deciding policy, drafting Bills and administering Acts. It is exercised on behalf of the Queen by the Queen's Representative who, in turn, appoints a Cabinet comprising the Prime Minister and no more than six other Ministers.

20. The Cook Islands Constitution, as contained in the Cook Islands Constitution Act 1964, is the supreme law of the Cook Islands. The hierarchy of the laws is, in decreasing order of rank: (i) the Constitution, (ii) legislation enacted by Parliament, (iii) subsidiary legislation, (iv) common law in accordance with section 615 of the Cook Islands Act 1915 and as declared by the Courts from time to time, and (v) Cook Islands custom in relation to customary land, titles and succession in accordance with section 422 of the Cook Islands Act 1915. Under section 68 of the Cook Islands Constitution, taxation may only be imposed by law (that is, by or under an Act of Parliament). Once an EOI agreement has entered into force, its provisions have effect "according to their tenor", i.e. meaning and content, and prevail over any enactments (Income Tax Act, s. 86(1)).

21. The Judiciary applies the law by hearing and deciding cases. The judiciary consists of the High Court and a Court of Appeal. Appeals from

the Court of Appeal may be made to the Judicial Committee of the (British) Privy Council. The High Court has Civil, Criminal and Land Divisions with the Ministry of Justice being responsible for administration of the Courts. Prosecutions for tax offences are heard at first instance by the High Court.

Tax system

22. Taxes in the Cook Islands are all levied at a national level. Cook Islands taxes consist of an income tax, a value added tax (VAT[5]), customs duties, import levies and departure tax, all of which are administered by the Revenue Management Division of the Ministry of Finance and Economic Management. The Cook Islands generally does not tax capital gains. However, some capital gains may be taxed under ordinary income tax rules (such as income from property purchased for the purpose of resale). There are no export incentives or investment holidays in the Cook Islands tax system. Tax credits are allowed for foreign taxes paid (Income Tax Act, s. 85) and charitable donations (Income Tax Act, s. 70).

23. All income tax is imposed under the Income Tax Act 1997. The rules for determining taxable income are generally the same for both individuals and companies. Residents are taxed on their worldwide income, but non-residents are taxable only on their Cook Islands sourced income (Income Tax Act, s. 80). An individual is resident in the Cook Islands for tax purposes if the individual's home is in the Cook Islands and the person is personally present in the Cook Islands for 183 days in a 12-month period (Income Tax Act, s. 82). A company is resident in the Cook Islands for tax purposes if a) the directors exercise control of the company from within the Cook Islands, even if the directors' decision-making also occurs outside the Cook Islands;[6] or b) the place of effective management is in the Cook Islands; or c) the company is a Cook Islands company and, at any moment in time during the income year, three or more of its directors are resident in the Cook Islands (Income Tax Act, s. 82 as amended by the Income Tax (Company Residence) Amendment Act 2021). Progressive tax rates are applied for individuals: 0% to 30% for residents and non-residents (Income Tax Act, First Schedule). The company tax rate is 20% for resident companies and 28% for non-resident companies. Partnerships are treated as transparent for tax purposes (Income

5. VAT is imposed under the Value Added Tax Act 1997. VAT is a value added tax based on the standard European model, but with a single rate of tax and few exemptions. The tax rate is 15%.
6. In case the directors' decision-making occurs outside the Cook Islands, the control test is based on where board meetings take place and the decision making takes place.

Tax Act, s. 11). Trustees are taxed on trust income at 30% (Income Tax Act, First Schedule).

24. Final withholding tax at 15% rate is generally imposed on withheld income (dividends, interest and royalties) derived from the Cook Islands by a non-resident (Income Tax Act, s 100). Otherwise, the requirements for non-residents to file tax returns are the same as for residents. Withholding tax applies for a resident only if banking interest is paid to the resident and the resident has not registered their Taxpayer Identification Number with the bank. For administrative purposes, all taxpayers (whether individual or non-individual) are allocated a unique taxpayer identification number, known as a Revenue Management Division (RMD) number (Income Tax Act, s. 218). The number applies for VAT as well as income tax purposes.

Domestic and international financial services sector

25. The Cook Islands has no Central Bank, and it uses the New Zealand currency.[7]

26. The Cook Islands financial sector is divided into two parts: domestic and international. The financial sector is relatively small compared to international standards. In terms of GDP, the financial sector contributes 6.7% to the Cook Islands' GDP as per December 2021. The contribution of the financial sector to GDP was 8% in 2012 and 3.2% in 2015. The increase in 2021 is due to the drop of tourism during the COVID-19 pandemic.

27. There are three commercial banks (one of which is a Government-owned bank), one private investment bank, one insurer, four approved external insurers, six insurance intermediaries (agents or brokers),[8] six captive insurance companies, three Money or Value Transfer Services providers (which provide money changing and remittance services), seven trustee companies[9] and one national superannuation fund. They are all licensed and

7. Exchange rate on 31 December 2021, USD 1 = NZD 0.6822; Source: www.xe.com. The Cook Islands has also its own currency, the Cook Islands dollar, which is in circulation alongside the New Zealand dollar and pegged to it, but it has not legal tender outside the jurisdiction.
8. The majority of insurance agents and insurance brokers are based in New Zealand and provide access for the commercial sector (resorts, construction projects, etc.) with more complicated or higher risk insurance coverage. While there are no life insurance companies in the Cook Islands, residents are serviced by an insurance agent of a New Zealand licensed and operating insurance company.
9. Most countries do not classify trustee companies as financial service providers but they have been included here because the Cook Islands licenses and regulates them as financial service providers.

supervised by the Financial Supervisory Commission (FSC) except for the national superannuation fund.

28. The primary business of the three commercial banks is retail services for the domestic market, including deposit taking, savings and lending services. While three banks hold international banking licences, since mid-2014 only the private investment bank utilises its international banking licence to service international clients and operate in the international sector. It provides custodian and asset management services for international clients. The other participants in the international finance sector are the trustee companies which provide trust and corporate services to international clients and captive insurance companies which provide insurance products to their own parent or related companies. Total assets held by banks is approximately NZD 1.205 million (USD 0.82 million) as per December 2021.

Trust and corporate service providers (trustee companies)

29. Trustee companies are licensed and supervised by the FSC in accordance with the Trustee Companies Act 2014. Trustee companies are required to be licensed to be able to provides services relating to Foundations, International Companies, International Trusts, International Partnerships, and Limited Liability Companies.

30. The primary market for trustee companies (90%) still remains asset protection trusts for high net worth clients from the United States with Asia and then European clients coming in after that in small percentages.

Money changing and remittance businesses

31. Money changing (forex) and remittance businesses is still a small sector in the Cook Islands with three licensees, most cross border transactions being conducted through the formal banking sector. However, with a growth internationally in money value services such as digital payment platforms, trading platforms, reforms are being undertaken in this area to reflect an increasing digital environment[10].

Captive insurers

32. Captive Insurers and insurance managers are licensed and supervised by the FSC under the Captive Insurance Act 2013. Captive insurers can be either foreign companies or domestic companies. There are six licensed captive insurers with the majority based in New Zealand.

10. For digital payment platforms this amount would be approximately NZD 40 000 (USD 27 288) for 2020/2021.

Lawyers and accountants

33. Cook Islands practising lawyers are administered by the Cook Islands Law Society pursuant to the Law Practitioners Act 1993/94. The lawyers in private practice service mainly the domestic market for legal advice and representation in land, commercial and criminal matters. There is a number of lawyers working in the trust and corporate service providers, however they are captured as employees of a licensed financial entity and are not treated separately.

34. There are currently no entry requirements for accountants. They provide most accountancy services to local businesses and some provide auditing services to licensed financial institutions.

Anti-Money Laundering Framework

35. The primary legislation for Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) in the Cook Islands is the Financial Transactions Reporting Act (FTRA) 2017 and regulations along with the Financial Intelligence Unit Act 2015 (FIUA 2015). The FIU is an administrative part of the FSC, which is operationally independent and is responsible for the administration and enforcement of the FTRA 2017.

36. The Cook Islands underwent its third round mutual evaluation assessment of the FATF Recommendations by the Asia Pacific Group on Money Laundering (APGML) in 2017-18.[11] The report was concluded as positive for the Cook Islands with a technical compliance rating as following: Compliant for 5 recommendations, Largely Compliant for 33, Partially Complaint for 2 out of the 40 Recommendations. In terms of implementation and effectiveness of its AML/CFT regime, the Cook Islands attained 5 substantial ratings, 4 moderate ratings and 2 low ratings for the 11 Immediate Outcomes. This resulted in the Cook Islands being one of only three countries within the APGML membership to be placed on regular follow up.

37. The Cook Islands was found to have compliant laws and a highly effective regime for the Recommendations and Immediate Outcomes relating to legal persons and legal arrangements and beneficial ownership information. The Cook Islands was rated Largely Compliant on Recommendations 10 (Customer due diligence), 24 (Transparency and beneficial ownership of legal persons) and 25 (Transparency and beneficial ownership of legal

11. APG (2018), Anti-money laundering and counter-terrorist financing measures – Cook Islands, Third Round Mutual Evaluation Report, APG, Sydney, www.apgml.org/includes/handlers/get-document.ashx?d=efd47cd0-a195-4e71-8eb0-0612f98caf61.

arrangements), and the report concluded a substantial level of effectiveness for Immediate Outcome 5.

38. On transparency of legal persons and arrangements, it was concluded that competent authorities are able to obtain access to basic and beneficial ownership information on almost all legal persons and arrangements in a timely manner through customer due diligence (CDD) collected by reporting institutions. However, understanding of beneficial ownership varied across competent authorities and reporting institutions (Recommendations 24 and 25).

Recent developments

39. The Cook Islands implemented the new Companies Act in 2017 as part of a three-pronged package of legislative reform aimed at improving the overall business environment in the country. The former statutory basis of company law in Cook Islands was the Companies Act 1970-1971. That statute merely applied the New Zealand Companies Act 1955 to the Cook Islands with some minor modifications. New Zealand began a process of reforming its company legislation in the late 1980s and in 1993 enacted a new Companies Act. The new Cook Islands Companies Act 2017 is based upon the New Zealand 1993 Act, but streamlined and customised for a jurisdiction the size of the Cook Islands.

40. The Financial Transactions Reporting Act was amended in 2017. The main changes have been done in relation to more detailed customer due diligence (CDD) requirements to be performed by reporting institutions under the FTRA 2017.

41. In 2019, an amendment was made to the International Companies Act 1981-82 which removed the tax exemption for foundations, international companies, international partnerships, international trusts and limited liability companies beginning 1 January 2022.

42. The company residence rules have been amended as from 1 January 2022 (Income Tax (Company Residence) Amendment Act 2021). Under the previous residence rules International Companies were deemed residents and taxable on foreign income (with allowable foreign tax credits). According to the 2021 amendment a company is now only a taxpayer if there is an economic or management nexus with the Cook Islands.

Part A: Availability of information

43. 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.

44. The 2015 Report had found that information on the legal ownership of legal entities and arrangements in the Cook Islands was generally available. There were no recommendations issued on this aspect.

45. Not discussed in the 2015 Report, but now an integral part of the standard as strengthened in 2016, is the availability of beneficial ownership information on all relevant entities and arrangements. In the Cook Islands, amendments to the Companies Act in 2019 require companies to keep a register of beneficial owners and lodge a copy with the Registrar of Companies. However, the methodology of identification of beneficial owners is not in line with the standard. In relation to legal arrangements, gaps exist on the availability of beneficial ownership information for domestic partnerships, trusts and foundations.

46. This report also analyses the ways in which a company ceases to exist. International companies may be restored after being struck off without limit of time, and there is no explicit obligation to maintain and provide ownership information during the entire period.

47. Finally, nominee shareholding is allowed in the Cook Islands but the Companies Act does not set any specific obligations on nominees, nominators, or companies that have nominee shareholders. The tax and anti-money laundering requirements do not ensure that information on nominees would be available.

48. The Cook Islands is recommended to remedy these legal gaps.

49. The conclusions are as follows:

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

Deficiencies identified/Underlying Factor	Recommendations
There is no time limit for the restoration of an international company once struck off, nor is there an explicit obligation to maintain and provide ownership information during the entire period the company is struck off.	The Cook Islands is recommended to ensure the availability of ownership information upon the restoration of an international company following the strike off from the register, as well as establishing a time limit for the revival of international companies following their dissolution.
The legal requirements in tax and anti-money laundering law do not require nominees to disclose their nominee status and information on their nominator.	The Cook Islands should ensure that ownership and identity information is available in respect of nominee shareholdings.
Beneficial ownership information is provided under the Companies Act and the anti-money laundering (AML) law. With respect to the identification of beneficial owner(s) of domestic companies, the company law does not specify if the definition refers to natural persons or legal persons. As the law refers to the beneficial ownership of each share rather than of the company, persons having ultimate control of the company through means other than ownership are not covered. The law also does not specifically indicate that control includes any person who controls the company acting directly or indirectly, and acting individually or jointly. In the AML law, the aspect of control in the definition is too narrow. In addition, the requirement to identify persons holding a senior managerial position when the beneficial owner cannot be identified is not contemplated.	The Cook Islands should ensure that the definitions of beneficial owner for Companies Act and AML law purposes is in line with the standard.
The Cook Islands relies upon the AML framework as the basis for availability of beneficial ownership of partnerships. However, there is no requirement for domestic and foreign partnerships to engage an AML-obliged person. Consequently, there may be situations where beneficial ownership information of relevant partnerships would not be available.	The Cook Islands should ensure that beneficial ownership information in line with the standard is always available for all partnerships.

Deficiencies identified/Underlying Factor	Recommendations
The obligation to have information on all parties to a trust stems from the AML requirements and the Income Tax Act. However, the AML definition of beneficial ownership does not require to identify the natural persons behind all the parties to a trust as beneficial owners, but only those behind the trustee and any natural person who exercises effective control over the trust, which does not explicitly cover all parties to the trust. More generally, there is no obligation for domestic and foreign trusts with a resident trustee to engage in a relationship with an AML-obliged person at all times or file tax returns.	The Cook Islands should ensure that identity and beneficial ownership information in line with the standard is always available for all relevant trusts.
The AML obligations imposed on the Cook Islands' foundation council members require that information on the identity of the founders, members of the foundation council, as well as any beneficial owners of the foundation or persons with the authority to represent the foundation be available to the competent authorities and up to date. However, the definition of beneficial ownership in the context of foundations does not fully meet the standard. In particular, the beneficiaries (where applicable) do not appear to be covered.	The Cook Islands is recommended to ensure the availability of information on the beneficiaries of foundations.
Information on beneficial owners of incorporated societies would be available to the extent that the society has a relationship with an AML-obliged person. In addition, the same gaps as identified in the AML law regarding the identification of beneficial owners apply.	The Cook Islands should ensure that beneficial ownership information is available in respect of incorporated societies.
The availability of beneficial ownership information for all entities and arrangements except for domestic companies is dependent on customer due diligence obligations of a subset of AML-obliged persons consisting of banks and other financial institutions. However, there is no specified frequency for updating beneficial ownership information.	The Cook Islands should ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant legal entities and arrangements in line with the standard.

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

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

50. The 2015 Report found that ownership information in respect of all domestic, foreign, international and limited liability companies was available in line with the Standard.

51. There are three types of companies which may be formed in the Cook Islands: (i) domestic companies; (ii) international companies; and (iii) limited liability companies. In addition, this section also analyses foreign companies and nominees.

52. Domestic companies are essentially companies which trade locally or that have local shareholders. They may be incorporated under the Companies Act (CA 2017). A company must have one or more shares; one or more shareholders, having limited or unlimited liability for the obligations of the company; and one or more directors, of whom at least one must (i) live in the Cook Islands or (ii) live in New Zealand and be a director of a company that is registered (except as the equivalent of a foreign company) in New Zealand (CA 2017, s. 6).

53. International companies may be incorporated for any lawful purpose under the International Companies Act 1981-82 (ICA). Resident Cook Islanders are prohibited from holding a beneficial interest in an international company. Section 13(3) of the ICA provides for the incorporation of the following types of international company:

- company limited by shares
- no-liability company[12]
- company limited by guarantee
- company limited by both shares and by guarantee
- unlimited company
- mutual company.

54. Limited liability companies may be incorporated for any lawful purpose under the Limited Liability Companies Act 2008 (LLCA, s. 6) and be registered with the Registrar of Limited Liability Companies (LLCA, s. 3), which is part of the FSC. One or more persons who do not reside in the Cook Islands may form a limited liability company through a trustee company acting on their behalf. The person or persons on whose behalf the trustee company is acting need not be members of the limited liability company

12. In the case of a no-liability company, members have no liability to the international company (ICA, s. 18).

after formation has occurred (LLCA, s. 11). The trustee company is always recorded as an initial member at the time of formation (alone or together with other members). The membership is then transferred to the client or a representative of the client. The client may choose to keep the trustee company as a nominee member, similar to a nominee shareholder. This form of corporate vehicle offers simpler provisions for determining rights between members, which are allocated a share of company profits, losses or distributions on the basis of the value of their contributions. The limited liability company legislation also contains a number of asset protection features. The Cook Islands authorities explain that limited liability companies are typically set up to limit the ability of creditors and lawsuits being made against the assets held within the structures. Only international companies may be formed as limited liability companies.

55. A foreign company means a company incorporated outside of the Cook Islands. If a foreign company (referred to as "overseas companies") is resident in the Cook Islands for tax purposes by virtue of its centre of management and control, it is subject to the general return filing requirement for resident companies. Furthermore, foreign companies deriving income from the Cook Islands (whether resident there or elsewhere) are assessable for income tax in the Cook Islands (Income Tax Act 1997, ss. 80(2) and 83).

Statistics on legal companies registered in the Cook Islands as per 11 November 2021

Type of company	Description	Governing law	Number	Source of the data
Domestic companies	Refer 2015 Report, para. 55	Companies Act 2017	1 050	Company Register
International companies	Refer 2015 Report para. 67	International Companies Act 1981-82	622	Financial Supervisory Commission
Limited Liability Companies	Refer 2015 Report para. 74	Limited liability Companies Act 2008	421	Financial Supervisory Commission
Foreign companies	Refer 2015 Report para. 79	International Companies Act 1981-82	4[13]	Financial Supervisory Commission

13. In 2015 the number of foreign companies was 390. The drop in the number is due to a decision by one intermediary to move its companies to another jurisdiction after the uncertainty around the outcome of the tax reforms in 2020/2021.

Legal ownership and identity information requirements

56. Legal ownership and identity information is required to be available to the competent authority based on registration and filing requirements under the laws governing the creation and ongoing legal requirements of legal entities. The 2015 Report concluded that all domestic, international, foreign and limited liability companies are obliged to maintain up-to-date ownership information. The legal ownership and identity requirements for companies are found mainly in company law, i.e. the Companies Act 2017 (CA 2017), the International Companies Act 1981-82 (ICA) and the Limited Liability Companies Act 2008 (LLCA). The following table shows a summary of the legal requirements to maintain legal ownership information in respect of companies:

Companies covered by legislation regulating legal ownership information[14]

Type	Company Law	Tax Law	AML Law
Domestic companies	All	All	Some
International companies	All	All	Some
Limited Liability Companies	Some	None	Some
Foreign companies (tax resident)	Some	All	Some

Company Law requirements on domestic companies

57. Domestic companies are required to maintain three categories of information as provided under the CA 2017. Category A records include the company's certificate of incorporation, certificate of re-registration (in case a company was registered prior the Companies Act 2017 implementation), the constitution of company, the share register, the full names and residential and postal addresses of the current directors, details of the company's registered office and postal address (CA 2017, s. 144). The retention period for Category A records is not mentioned in the law, with the exception of the share register, which must be maintained for seven years (see para. 59). Categories B and C include the minutes of all meetings and resolutions of shareholders and directors, copies of all written communications to all shareholders, copies of all financial statements, accounting records and other documentation for the last seven years (CA 2017, s. 144).

14. 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.

58. A company must keep the company records at (i) its registered office in the Cook Islands[15] or (ii) another place in the Cook Islands that is not its registered office, provided the company has filed with the Registrar a notice of the location of the records within 10 working days after the records are first kept there (CA, s. 145).

59. Domestic companies are required to keep a share register in the Cook Islands. The entry of the name of a person in the share register as holder of a share is evidence that legal title to the share vests in that person (CA 2017, s. 50). The share register must include (i) the names and the last known address of each person, who is, or has within the last seven years been, a shareholder; (ii) the number of shares of each class held by each shareholder within the last seven years; (iii) the date of each transaction (the issue of shares, the repurchase or redemption of shares from a shareholder, the transfer of shares) within the last seven years; (iv) in relation to the transfer of shares by or to a shareholder, the name of the person to or from whom the shares were transferred (CA 2017, s. 49). The share register may be maintained by an agent on behalf of the company (CA 2017, s. 49). Although there is no explicit requirement for the agent to be in the Cook Islands, the registered office must be in the Cook Islands (CA 2017, s. 142(1)). It is an offence if company records (including share register) are not kept in the Cook Islands (CA 2017, s. 145).

60. Companies must also disclose ownership information to the Registrar of Companies upon registration and then on an annual basis. The Registrar of Companies is part of the Ministry of Justice (MoJ).

61. Any person may apply for the registration of a company under the Companies Act (CA 2017, s. 7). To file an application to incorporate a new company, first a person must have a client account with the Cook Islands Companies and Incorporated Societies Registry.[16] Once the client account is opened, the person can complete online application to incorporate a company or to register a foreign company. The company registration forms have tabs for the types of information (company name and contact details, the names of company's directors and shareholders, company constitution, primary business activity, etc.[17]), that companies must provide and after all information is collected, it must be submitted for the Registrar for review. Upon approval of application, the Registrar issues a Certificate of Incorporation stating

15. A company must always have a registered office and postal address in the Cook Islands (CA 2017, s. 142).
16. The Cook Islands Companies and Incorporated Societies Registry provides for online searching and registration of companies and incorporated societies.
17. Cook Islands Ministry of Justice, Incorporate a New Company or Register an Overseas Company https://registry.justice.gov.ck/public/howto.aspx?cn=RegisterCompany&ctk=CompanyHowTo.

that all the requirements under the Companies Act have been complied with and from the date of incorporation stated on the certificate, the company is incorporated under the Companies Act (CA 2017, s. 9).

Company Law requirements on international companies

62. All international entities created in accordance with the International Companies Act 1981-82 are registered with the Financial Supervisory Commission (FSC).

63. Registrations of international companies must be conducted through a trustee company[18] (International Companies Act 1982, s. 9), which is required to conduct customer due diligence (CDD) procedures to identify and verify the beneficial owners (FTRA 2017, ss. 25 to 30). Registrations are carried out and records are maintained electronically by the trustee companies to notify FSC on changes to the international companies' registers of directors, resident directors and secretaries (ICA 1982, s. 91). Trustee companies must carry out ongoing and effective monitoring, including review of information held for the purpose of CDD to ensure that it is up to date and appropriate (FTRA 2017, s. 32).

64. International companies are required to register their members in a register to be kept at the registered office of the company in the Cook Islands (International Companies Act 1981-82, s. 106).

Company Law requirements on limited liability companies

65. Limited Liability Companies are required to keep at their registered office (which is the office of the trustee company acting as registered agent, LLCA, ss. 2 and 18) a current list of the full name and business, residence, or mailing address of each member and manager, including copies of the articles of association and operating agreement (Limited Liability Companies Act 2008, s. 32). Changes to the ownership rights happen at the moment of transferability of interest. The interest of each member in a limited liability company constitutes the personal property of the member. The interest is transferable at the moment of its acquisition by a new person, or upon the written consent of all members if the acquisition is not possible under the operating agreement of the limited liability company (LLCA, ss. 43 and 44).

66. In addition, these entities must be established through and registered by a Cook Islands trustee company, which is subject to comprehensive FTRA obligations, including customer due diligence requirements.

18. A trustee company must be a company (not a trust) and may be an international or domestic company or incorporated in any other country (and, regardless, must be licensed to carry on trustee company business).

67. All limited liability companies are registered with the Registrar of Limited Liability Companies (LLCA, s. 3), which is part of the Financial Supervisory Commission (FSC). No identification of members or owners is required as part of the registration process, or when the company files its annual report (LLCA, ss. 11(1) and 20). Limited liability companies must file with the Registrar articles of organisation which includes (i) the name of the limited liability company; (ii) the name and business address of the registered agent; (ii) the period of the duration of the limited liability company, which may be perpetual (LLCA, s. 12).

68. The Cook Islands should ensure that changes of ownership are properly recorded and kept by the LLC. A monitoring mechanism should be in place to make sure that the information kept by the limited liability company is accurate and up to date. This will be reviewed in the Phase 2 review at a later stage (see Annex 1).

Company Law requirements on foreign companies

69. Foreign companies carrying on business in the Cook Islands are required, within 20 working days of commencing to carry on business, to provide the Registrar of Companies with a certified copy of the instrument constituting or defining the constitution of the company (CA 2017, s. 358). There is no legal requirement for the registration of a foreign company through a service provider or a legal practitioner. Therefore, in such instances, the availability of ownership information will depend on the law of the jurisdiction in which the company is incorporated (but see tax law requirements below). Nevertheless, upon registration, they must disclose the full name and address of each director, as well as of one or more persons in the Cook Islands authorised to accept service of documents on behalf of the company (CA 2017, s. 364). The Registrar of Companies is to be notified of any change in the directors of the company (name, residential address or postal address) and sanctions apply for non-compliance (a late filing fee to the Registrar and a fine not exceeding NZD 4 000 (USD 2 703) (CA 2017, s. 364)).

70. Under section 14 of the Development Investment Act, any foreign enterprise (whether or not a company) with more than one third foreign ownership and wishing to invest in or carry on a business in the Cook Islands must register with the Business Trade and Investment Board. The information to be filed on registration, and annually thereafter, includes detailed ownership information, such as the names, addresses and passport numbers of all legal owners of the shares (Development Investment Act, s. 34 and Regulation 3(d) of the Development Investment Regulations 1996).

Tax Law requirements

71. Domestic companies are required to register with RMD for tax purposes and the same applies to international companies since 1 January 2022.[19] There are 1 706 domestic companies registered with RMD as per 20 April 2022. With respect to international companies 182 out of 499 have registered with RMD as per 20 April 2022. RMD is working with a tax working group which includes industry representatives to expedite registrations. The discrepancy between the number of companies registered with the Registrar and with the Revenue Management Division will be reviewed in the Phase 2 at a later stage (see Annex 1).

72. The legal ownership information is collected by RMD on registration and as part of the application for a tax identification number; this includes supporting evidentiary information (such as passport bio page(s)) on all shareholders of a company. Changes to legal ownership and identity information must be updated when filing the company annual tax return.

73. Limited liability companies are not subject to Cook Islands taxation, and are therefore under no requirement to furnish returns of income (LLCA, s. 76(1)).

74. If a foreign company is resident in the Cook Islands for tax purposes by virtue of its centre of management and control, it is subject to the general return filing requirement for resident companies. In addition, foreign companies deriving income from the Cook Islands (whether resident there or elsewhere) are assessable for income tax in the Cook Islands (Income Tax Act 1997, ss. 80(2), and 83). Such foreign companies will be required to furnish an annual return of income including the full names and addresses of the shareholders (Income Tax Act, ss. 2 and 8).

75. RMD is required to keep company information for a minimum of five years.

Obligations under anti-money laundering legislation

76. The scope of the FTRA 2017 applies to Reporting Institutions (RIs) which include all financial institutions licensed by the FSC except general insurers, other financial services such as financial leasing and the superannuation fund not regulated by FSC, businesses such as high value products dealers (jewellers, car dealers), lawyers, accountants and real estate agents. The core requirements under the FTRA 2017 are summarised as follows.

---

19. International Companies (Removal of Tax Exemptions) Amendment Act 2019 removes preferential tax treatment of international companies, tax exemptions that were ring-fenced from domestic tax.

77. RIs are required to have an AML/CFT compliance programme overseen by a Money Laundering Reporting Officer. It needs to set out in detail how the RI complies with the FTRA 2017, and internal policies relating to auditing of their AML/CFT compliance programme, vetting of new staff and training staff for their AML/CFT compliance programme.

78. RIs are required to undertake risk assessments for their business as a whole, and for each of their customers prior to establishing an ongoing relationship, and a technology risk assessment when implementing new technology in relation to their operations. In addition, RIs are required to have procedures in place to undertake customer due diligence prior to establishing a relationship or conducting a one-off transaction.

79. When dealing with a customer that is not a natural person, RIs are required to obtain sufficient information to understand the customer’s business and its ownership structure. They must verify the legal status of the customer, using relevant information obtained from a reliable independent source, and obtain sufficient information to understand the nature of the customer’s business and its ownership and control structure. This would however not amount to availability of information on all legal owners as the RIs can consider that roughly understanding the ownership structure is enough, i.e. the main owners.

80. RIs must maintain records for six years after the completion of an isolated transaction, the end of ongoing business relationship, in the absence of any formal end to an ongoing business relationship, the completion of the last transaction in that relationship (FTRA 2017, s. 41). A RI that breaches these requirements commits an offence and is liable to the penalty not exceeding NZD 1 000 000 (USD 680 000) (FTRA, s. 63).

Companies that cease to exist

81. Various parts in the Companies Act relate to closing a business. Liquidation of a **domestic company** begins with the appointment of the liquidator (CA 2017, s. 202). The Act details how liquidation is proceeded and the periodic filings that a liquidator must make with the court (CA 2017, ss. 200 to 295). In general, once appointed, a liquidator must soon afterwards prepare a report that includes:

- a statement of company’s affairs
- proposals for conducting the liquidation
- estimated completion date
- alert investors to their statutory right to call a meeting of creditors or shareholders

- a list of every known creditor of the company with each creditor's address (if known).

82. The liquidator must subsequently prepare six-month reports advising interested parties of the progress of the liquidation and file these with the Registrar. This brings transparency to the entire process for all creditors and the Registrar to see.

83. When a company ceases to exist, the final step is the removal from the Cook Islands register. A company can be automatically removed from the register for the failure to file an annual return within the period of six months after the month allocated for filing the return (CA 2017, s. 338). No one may object to this removal. Automatic removal for failure to file an annual return keeps the Registrar up to date. Any third party seeking to know the status of a company can easily see if it is registered or struck off. There is no intermediary status as "inactive".

84. A company may request to be removed from the register when it is finished doing business. The request may be made by a shareholder, a person authorised to make the request under a special resolution, or by a director if the constitution allows this. The request can be made on the grounds that the company has: i) ceased doing business, discharged in full its liabilities, and distributed its assets; or ii) no surplus assets after paying its debts in full or in part, and no creditor has sought to put the company into liquidation. The request for removal is filed with the Registrar (CA 2017, s. 339).

85. The company's ownership information filed through the online Registry is kept on the online Register indefinitely, whatever the reason that led to its removal from the register.

86. A domestic company may be restored to the register if the company was removed from the register for failing to file an annual return and upon the Court's order. For a failure to file an annual return, the application for restoration must be filed with the Registrar within two years after its removal. If the removal was due to the failure to file an annual return, a company files an application to be restored with the Registrar together with back due annual returns and all fees and late filing fees. Thus, the latest ownership information is available with the Registrar within the two-year period after the company's removal from the register (CA 2017, Detailed Analysis of the Law, clause 350).

87. If the removal was for a reason other than the failure to file an annual return, or if it has been more than two years since a removal for failure to file an annual return, then the party seeking restoration must seek a court order (CA 2017, Memorandum, Detailed Analysis of the Law, clause 351). The Court can order to restore the company to the register for any reason that is just and equitable (e.g. at the time of removal the company was still carrying on

business or there was other reason for it to continue its existence, the company was a party to a legal procedure, etc.) (CA 2017, ss. 350 to 351). The court may make restoration conditional on compliance with any provisions of the Companies Act or of regulations made under the Companies Act if the company had failed to comply with those provisions before it was removed from the register (CA 2017, s. 351 (3)). In these cases the filing of outstanding returns is not prescribed by law but it is expected that the court would so require. Confirmation will be sought in Phase 2. A company is restored to the register when the Registrar receives a notice stating that the company is restored to the register. The restored company is treated as if it has not been removed from the register and as having continued in existence (CA 2017, s. 352).

88. An **international company** may be wound up either compulsorily or voluntarily (ICA, s. 139). The process for liquidation is similar to the one for domestic companies and involves a liquidator who should notify the Registrar. The Registrar, upon application lodged by any person in the prescribed form and upon payment of the prescribed fee, issues a certificate stating whether at the date of the certificate an international company is being wound up, or a petition has been presented for the winding-up of the company and is pending (ICA, s. 141).

89. An international company may be restored to the register if the Registrar is satisfied that no person will be prejudiced and that due cause has been shown (ICA, s. 197 (3)). The restored international company is deemed to have continued in existence as if its name had not been struck off, and unless the Registrar at the time of restoration orders to the contrary, the international company and all other persons are deemed to be in the same position as nearly as may be as if the international company had not been struck off (ICA, s. 197 (3A)). In addition, there is no time limit for the restoration of an international company after being struck off the register by the Registrar. In the case of dissolved and struck off companies, there is a risk that an adequate retention of ownership information will not be ensured as there is no explicit obligation to maintain and provide ownership information at that time. Since the retention period after dissolution is six years, any reinstatement after that date does not allow checking whether there was a change of ownership (ICA, s. 197 (6). Therefore, **the Cook Islands is recommended to ensure the availability of ownership information upon restoration of international companies following the strike off from the register, as well as establishing a time limit for the restoration following the strike off**.

90. A **limited liability company** can be dissolved upon the occurrence of any of the following events: (i) by the unanimous written agreement of all members and managers, or (ii) at the time or upon the occurrence of events specified in writing in the articles of organisation or operating agreement of the limited liability company (LLCA, s. 49). As soon as possible following the occurrence of any of the events effecting the dissolution of the limited

liability company, the company must execute a statement of intent to dissolve in such form as prescribed by the Register. A manager of the limited liability company must execute the statement of intent to dissolve (LLCA, s. 49). All records of the limited liability company are kept at the Registrar for six years following the dissolution (LLCA, s. 32). Online records are kept indefinitely. There are no legal provisions in the Cook Islands for restoration of a limited liability company.

91. A **foreign company** can be revoked and removed from the register as a result of a successful prosecution of the company for breaching the law, failing to comply with the conditions of the BTIB approval, going into liquidation or bankruptcy or ceasing to do business. Deregistration occurs where the foreign enterprise is no longer a foreign enterprise because the foreign investors have become a Cook Islander (granted Permanent Residence status), or Cook Islanders have beneficially owned or controlled more than two thirds of the enterprise (Development Investment Act, s. 26). There are no legal provisions in the Cook Islands for restoration of a foreign company. The availability of legal ownership information for foreign companies is ensured under the tax law requirements. RMD is required to keep company information for a minimum of five years, please see paragraph 75.

Legal ownership information – Enforcement measures and oversight

92. The authorities ensuring compliance with the requirements to keep legal ownership information for all domestic, international, limited liability and foreign companies are the Ministry of Justice (MoJ), RMD, FSC and Business Trade and Investment Board. These organisations co-ordinate together where possible. The Ministry of Justice oversees domestic companies. The RMD monitors all companies except for limited liability companies, which are not subject to taxation in the Cook Islands. The Business Trade and Investment Board oversees limited liability and foreign companies. The FSC is responsible for the ongoing monitoring or supervision of licensed financial institutions' compliance with the obligation to file updated legal ownership and identity information for themselves with the Commission.

93. After the implementation of the Companies Act in 2017, all previously registered domestic and foreign companies were obliged to be re-registered within one year after the new act commenced or by 9 December 2020. The re-registration process required the submission of the same data elements as would be required for a new company formed under the new law. In this way, all active existing companies provided information into the registry that is up to date and in compliance with the new law. By the 10 December 2020 deadline, 887 companies had re-registered. This deadline was extended to 31 March 2022, by an amendment to the Act in November 2021 because the COVID-19 pandemic slowed down registrations; this allowed an additional

176 companies to re-register. This process also had the positive effect of aging-off the companies that were no longer active as failure to re-register would have resulted in a company being struck off the registry.[20] It remains that this represents only about 60% of the companies registered with RMD (see paragraph 71) and this discrepancy between the number of companies registered with the Registrar and with the Revenue Management Division will be discussed during the Phase 2 of the review (see Annex 1).

94. The FSC conducts desk-based reviews and onsite inspections of licensed financial institutions. Prior to the March 2020 or COVID-19 pandemic these onsite and offsite activities were undertaken annually to all financial institutions operating from an office in the Cook Islands. Post March 2020, onsite visits were targeted to areas of greater risk, but most institutions underwent some sort of offsite review.[21]

95. Domestic companies are required to keep a register of their shareholders (CA 2017, s. 49, see paragraph 59). A company that fails to comply with this requirement commits an offence and is liable on conviction to a fine not exceeding NZD 4 000 (USD 2 703) (CA 2017, s. 49(4)).

96. International companies are required to keep at their registered office a share register (ICA, ss. 105 and 106, see paragraph 64). Failure to maintain the share register in accordance with the legislative requirements is an offence and, on conviction, a fine of NZD 500 (USD 338) will apply (ICA, ss. 105(3) and 219). A NZD 29 (USD 20) penalty per month applies for a late filing of the annual renewal of an international company's registration, and a NZD 29 (USD 20) penalty per month applies for a late notification to the Registrar of a change of registered agent or registered office, both calculated according to each month or part thereof that the filing is outstanding (International Companies (Prescribed Fees) (Amendment) Regulations 2014).

97. Limited liability companies are also required to keep at their registered office a current list of members (LLCA, s. 32(1), see paragraph 65). Failure to comply with any legal requirement imposed by the LLCA is an offence and, on conviction, punishable with a fine not exceeding NZD 10 000 (USD 6 822) or imprisonment for a term not exceeding one year, or to both (LLCA, s. 78). A NZD 37 (USD 25) penalty per month applies for a late filing of the annual renewal of a LLCA's registration.

---

20. https://registry.justice.gov.ck/documentation/ck/Company_Act_Registry_Reform_Highlights_Dec10_2019.pdf.
21. In 2020 and 2021 all 4 banks and all 7 trustee companies had an onsite inspection (with some done virtually), both domestic insurers had an onsite review and all captive insurers had an offsite review and prudential meeting with board of directors in country. All licensed money changers and remitters had an onsite inspection.

98. Under tax law, a person who fails to file a tax return with ownership information or gives false information is liable to a fine not exceeding NZD 10 000 (USD 6 822) and not less than NZD 5 000 (USD 3 380) (ITA, s. 206).

99. The implementation of the legal obligations on the availability of legal ownership information and related monitoring and enforcement measures will be assessed in the Phase 2 review.

Nominees

100. Nominee shareholding is allowed in the Cook Islands but the Companies Act, ICA or LLCA do not set any specific obligations on nominees, nominators, or companies that have nominee shareholders. The ITA considers the nominee and nominator indistinctly.[22]

101. There are requirements for domestic companies and foreign companies which are resident for tax purposes in the Cook Islands to furnish an annual return of income, including the full names and addresses of shareholders or, if held by a nominee, trustee or otherwise, of the beneficial owners of the shares under tax law (Income Tax Act, s. 8). This does not ensure the availability of the information on nominators, as they can be entities that would need to be looked through when determining the beneficial owners behind them, and/or their shareholding might be lower than the set threshold to meet the definition of beneficial owner.

102. Under the AML framework, trustee companies are obliged to conduct CDD on international companies and limited liability companies and thus maintain information on the persons for whom, or for whose ultimate benefit, the transaction is being conducted (FTRA, s. 4(5)).In these cases, the trustee company which acts as a nominee has an obligation to identify the nominator. However, when a third party must maintain information on a company in which a nominee intervenes, that person would not know whether the shareholder is the legal owner or a nominee, which would prevent that person from maintaining accurate information. Typically, the shareholder register would contain the name of the nominees without a mention of their function. **The Cook Islands should ensure that ownership and identity information is available in respect of nominee shareholdings**.

22. ITA, s. 3(3): "Where a nominee of any person holds any shares, nominal capital, paid-up capital or voting power in a company, or has by any other means whatsoever any power of control of a company, or is entitled to a share of profits distributed by a company then, for the purposes of this section, those shares or that capital or that voting power or that power of control or that title to profits as the case may be, shall be deemed to be held by that person, and in every such case that person and the nominee or nominees of that person shall be deemed to be one person."

103. As described in the 2015 Report, nominee arrangements are very rare for domestic companies, many of which are small and owned by a husband and wife. On the opposite, nominee arrangements are common in limited liability companies and international companies (see paragraphs 54 and 63).

Availability of legal ownership information in EOIR practice

104. The implementation of the legal framework and the availability of legal ownership information on companies in practice will be examined during the Phase 2 review. During the last three years, the Cook Islands received requests for legal ownership information from one partner. The answers were provided on time and the partner was satisfied with information.

Availability of beneficial ownership information

105. The standard was strengthened in 2016 to require that beneficial ownership information be available on companies. Beneficial ownership information in the Cook Islands is collected primarily through the AML framework. Because this source of information would not necessarily capture all domestic companies, the Cook Islands introduced in 2017 an additional mechanism with the Companies Register's collection of some beneficial ownership information, but the definition does not meet the standard. In order to comply with obligations under the Companies Act, domestic companies must keep beneficial ownership information and submit it and any changes to it to the Companies Register. The tax law does not provide for the availability of beneficial ownership information in the Cook Islands. The following table shows a summary of the legal requirements to maintain beneficial ownership information in respect of companies:

Companies covered by legislation regulating beneficial ownership information[23]

Type	Company Law	Tax Law	AML Law
Domestic companies	All	None	Some
International companies	None	None	All
Limited Liability Companies	None	None	All
Foreign companies (tax resident)	None	None	All

23. 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

106. Domestic companies must obtain and maintain sufficient information to identify the beneficial owner of a share issued by the company and disclose that information in a written notice to the Registrar (CA 2017, s. 49). The beneficial ownership information disclosed by domestic companies in a written notice to the Registrar has to be held by the Registrar for a minimum of six years. Section 52(3) of the Companies Act defines a beneficial owner as:

> the person who ultimately owns or controls the share

107. This definition and related obligation depart from the standard. The Cook Islands legislation does not require domestic companies to keep information about their beneficial ownership but about the beneficial ownership of each share.

108. While the definition of beneficial owner refers to "person", it is not clear if that means a natural person or could also be a legal person. There is no ownership threshold in the law as the obligation refers to the beneficial owner of each share, not of the company. There is also no default position where an individual in managerial position would be identified. Individuals having either ultimate ownership or control of the share appear to be covered. However, persons having ultimate control of the company through means other than ownership would not be identified in this case.

109. It is not clear whether "ultimately" is interpreted as meaning any person who controls the share acting directly or indirectly, and acting individually or jointly. The beneficial ownership information is not maintained in line with the standard under the company law requirements.[24]

110. **The Cook Islands should ensure that the definition of beneficial owner is in line with the standard**.

Anti-money laundering law requirements

111. The AML framework is primarily provided by the FTRA 2017 and the regulations made under that Act. Section 25 of the FTRA requires reporting institutions to carry out customer due diligence (CDD) when entering into an ongoing business relationship or an isolated transaction with or on behalf of a customer. The due diligence requirements include identifying the beneficial owners.

24. No ordinance (secondary legislation/by-laws), guidance or case law was provided in the framework of this review that explain the definition of the beneficial ownership as provided under the company law.

112. A reporting institution (RI) is defined to mean:

- a licensed financial institution
- a person who, in the course of carrying on business, enters into transactions with or on behalf of customers in respect of one or more specified activity[25]
- any other person that may be prescribed (FTRA 2017, s. 5).

113. Registrations of international companies and limited liability companies must be conducted through a licensed trustee company, which is required to conduct CDD procedures to identify and verify the beneficial owners (FTRA 2017, ss. 25 to 30). Thus the information on beneficial ownership of these companies is kept with the licensed trustee companies and, where relevant, with financial institutions if they provide banking services to legal persons. Trustee companies stay in contact with international and limited liability companies throughout their cycle of existence.

114. For domestic companies, beneficial ownership will be available only if they have an ongoing relationship with a reporting institution, for instance a bank. As the requirements under the CA do not meet the standard, the availability of beneficial ownership on domestic companies is not ensured in the Cook Islands.

115. Service providers are required to maintain up-to-date and current CDD information on their clients (FTRA 2017, s. 32). The retention period is six years from end of relationship or one-off transaction (FTRA 2017, s. 44).

116. RIs must carry out ongoing and effective monitoring of any ongoing business relationship, including the review of information held for the purpose of CDD to ensure that it is up to date and appropriate. The RI must make sure that the extent and frequency of the monitoring appropriately reflects: (i) the type of CDD conducted when the ongoing business relationship with the customer was established, and (ii) the customer level of risk (FTRA 2017, s. 32(2, 3)).

117. Pursuant to FTRA 2017, when dealing with a customer that is not a natural person, RIs are required to do the following:

- identify and verify any "ultimate principal" of the customer
- verify the status of the customer using relevant and reliable independent information
- obtain sufficient information to understand the customer's business and its ownership structure

25. Specified activity means an activity that is prescribed under the FTRA.

- obtain information concerning the person(s) by whom, and the method by which, binding obligations may be imposed on the customer[26] (FTRA 2017, s. 25).

118. The term "ultimate principal" is defined as (FTRA 2017, s. 8)

> one or more natural persons who ultimately own or effectively control the customer, or on whose behalf a transaction or activity is being conducted and includes:
>
> (i) in the case of a legal person, other than a company whose securities are listed on a recognised stock exchange, any natural person who ultimately owns or effectively controls (whether through direct or indirect ownership or control, including through bear share holdings) 25% or more of the shares or voting rights in the legal person;
>
> (ii) In the case of any legal person, it includes any natural person who otherwise exercises effective control over the management of the legal person;

119. Section 8 therefore operates to clarify the definition of beneficial owner in the Act, including providing a threshold for ownership or control. It also makes it clear that ownership or control may be direct or indirect. While the definition contains the principal elements required by the standard, it is not clear that control will include a person acting individually or jointly, although this could be captured by the term "otherwise" and should be clarified. There is a simultaneous approach to the definition of beneficial owner in the case of a legal person which is in line with the standard.

120. The definition does not contemplate the identification of the individuals holding a senior managerial position in cases where a beneficial owner cannot be identified. The Companies Act does not compensate this absence, as it does also not require the names of senior managers to be registered with the Registrar. In addition, the Companies law foresees the possibility for a "shadow director" or a "controller of director powers" to control or exercise director powers, and is not required to be named in the registry or company record as director (CA 2017, Memorandum, Detailed Analysis of the Law, clauses 96-98). This allows the possibility that no beneficial owner is identified in some cases.

121. Furthermore, the availability of beneficial ownership information for all entities and arrangements except for domestic companies is dependent

26. This includes information that explains the management and control structure of the legal person. It can include mergers and acquisition, organisational chart, internal policies, etc.

on customer due diligence obligations of a subset of AML-obliged persons consisting of banks and other financial institutions. However, there is no specified frequency for updating beneficial ownership information.

122. **The Cook Islands is recommended to ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant legal entities and arrangements in line with the standard.**

Beneficial ownership information – Enforcement measures and oversight

123. If a domestic company fails to obtain and maintain sufficient information to identify the beneficial owner and disclose that information in a written notice to the Registrar, (i) the company commits an offence and is liable on conviction to a fine not exceeding NZD 10 000 (USD 6 822), and (ii) every director commits an offence and is liable on conviction to a fine not exceeding NZD 10 000 (USD 6 822) or to a term of imprisonment not exceeding 12 months, or both (CA 2017, s. 52).

124. There are two oversight bodies – the Financial Supervisory Commission (FSC) and the Financial Intelligence Unit (FIU). The FIU was merged with the FSC in 2012. Despite being merged, each body has its own responsibilities and focuses on specific areas. The FSC is a body responsible for the supervision of regulated financial entities and financial services in the Cook Islands. The FIU's function is to facilitate the prevention, detection, investigation and prosecution of money laundering, the financing of terrorism and other serious offences (any offence with a term of imprisonment of 12 months or more) in the Cook Islands.

125. The FSC is the administration in charge of the enforcement and penalties upon conviction of offence are (i) in the case of individuals, a fine not exceeding NZD 250 000 (USD 170 000), or imprisonment for a term not exceeding five years, or both; or (ii) on any other case, a fine not exceeding NZD 1 000 000 (USD 680 000) and other measures such as revocation of licence if they are licensed (FTRA 2017, s. 63).

126. The FIU is responsible to ensure that all reporting institutions are complying with all legislative requirements under the FTRA. To do this, the FIU is empowered under the Financial Intelligence Unit Act 2015 (FIUA 2015) to examine their compliance with the FTRA and the Regulations. The FIU may request information from reporting institutions, conduct on-site examinations and provide reports for this purpose.

127. The FIU is empowered under section 31 of the FIUA 2015 to enforce compliance on reporting institutions that have failed to comply in whole or in part with any of the obligations under the FTRA, or have failed to undertake directives issued by the FIU to take remedial actions.

Availability of beneficial ownership information in EOIR practice

128. The implementation of the legal framework and the availability of beneficial ownership information on companies in practice will be examined during the Phase 2 review. Over the last three years, the Cook Islands received requests for beneficial ownership information from one partner. The answers were provided on time and the partner was satisfied with information.

A.1.2. Bearer shares

129. The Cook Islands permits the issuance of bearer shares, however the FSC runs a policy (until the legislation is amended) which prohibits the registration of any company with bearer shares. In 2016 and 2017 the FSC monitored bearer share companies that were managed by licensed trustee companies, reviewing the nature and purpose of both the company and the structures with which they were placed, the records relating to recorded beneficial ownership and bearers, and conducted independent checks on those recorded.

130. The FSC released a policy (non-binding) on 15 November 2017 encouraging the Cook Islands' legal persons to phase out bearer instruments by 1 July 2018 for conversion, redemption or surrender of existing bearer instruments. There were four companies with bearer shares in 2018. Although there is still a provision of issuance of bearer shares in the company law, the Cook Islands reports that the last bearer share company was converted in 2019 and there are no companies registered with bearer shares as per December 2021. There is therefore no impediment to transparency related to bearer shares in the Cook Islands. The Cooks Islands is nonetheless invited to proceed with its planned amendments to abolish the legal possibility to issue bearer shares (see Annex 1).

A.1.3. Partnerships

131. The 2015 Report found that the legal and regulatory framework in the Cook Islands required the identification of partners of a partnership in accordance with the standard and that the legal framework had been adequately implemented in practice. There has been no change in the requirements.

Types of partnerships

132. The following types of partnerships may be established under the Cook Islands' laws: (i) domestic partnerships; (ii) international partnerships and (iii) limited partnerships. In addition, this section also covers foreign partnerships. None of the forms of partnership is a legal entity separate from the individual partners that comprise the partnership.

133. Partnership law in the Cook Islands for domestic entities is governed primarily by a New Zealand enactment, the Partnership Act 1908 (PA). That Act defines a partnership as "the relation which subsists between persons carrying on a business in common with a view to profit" (PA, s. 4(1)). A partnership is a distinct commercial entity for accounting purposes, with each partner jointly and severally liable for the liabilities of the partnership.

134. The International Partnership Act 1984 (IPA 1984) provides for the creation of two types of partnerships (see also 2015 Report, paragraph 111):

i. international partnership – every partner is jointly and severally liable for the liabilities of the partnership (IPA, s. 22);

ii. limited partnership – every general partner is jointly and severally liable for the liabilities of the partnership, but a limited partner is generally only liable to contribute in money or money's worth to the common stock, as capital (IPA, s. 62).

Identity Information Requirements

135. All international and limited partnerships carrying on a business in the Cook Islands must be registered with the Registrar of Partnerships and upon registration, details of all partners must be submitted. In addition, the conduct of onshore business by an international partnership or limited partnership is governed by the Development Investment Act and they must be registered with the Business Trade and Investment Board. The information to be filed on registration, and annually thereafter, includes detailed ownership information, with the names, addresses and passport numbers of all legal owners of the shares of the partnership income (Development Investment Act, s. 34 and Regulation 3(d) of the Development Investment Regulations 1996). All accounts and records of international partnership or limited partnership must be retained for a period of not less than six years following the completion of the transaction to which the records and underlying documentation relate (IPA, s. 7). There were two international partnerships and one limited partnerships registered under the International Partnership Act 1984 as on 11 November 2021. There is no obligation to register with the Registrar for domestic partnerships.

136. All domestic partnerships must be registered with the RMD for tax purposes. Upon registration, all partners are identified and each partner is separately assessed and liable for the tax payable on the share of the partnership income (ITA, s. 11). Every person chargeable with income tax under the Income Tax Act must furnish a return of income (ITA, ss. 2 and 8). International partnerships and limited partnerships are not subject to Cook Islands taxation and therefore there are no requirements for them to furnish returns on income (IPA, s. 72).

137. In practice, the tax office reported that only around a dozen tax returns for domestic partnerships are received annually, and this number has been steady over recent years. The RMD monitors the filing obligations of partnerships by cross-referencing to the filing of income tax returns of the partners and with the registration of partnerships for VAT and PAYE purposes (pay-as-you-earn withholding tax on salary payment to employees of the partnership).

138. Foreign partnerships deriving income in the Cook Islands must be registered with the Business Trade and Investment Board and file annual tax returns containing identity information. The individual partners, including the foreign ones, are also required to file annual tax returns, as the partners are taxed individually on their share of the partnership's income (Income Tax Act, s. 8). The foreign partners are taxed on their share of Cook Islands sourced income.

139. In practice, systems are in place to manage the availability of information in respect of domestic, international, limited and foreign partnerships. There are 136 partnerships registered with RMD under domestic tax law as per March 2021.

140. RMD is required to keep partnership information for a minimum of five years.

Beneficial ownership

141. The standard requires that information in respect of each beneficial owner of a relevant partnership be available. Where any partner is a company or other entity or arrangement, information on the beneficial owners of that entity or arrangement should be available.

142. There is no obligation under tax law to report information on the beneficial ownership of partnerships. The Cook Islands' AML framework therefore provides the primary basis for the availability of beneficial ownership on partnerships.

143. International partnerships and limited partnerships are created under the IPA 1984 and only licensed trustee companies are permitted to provide services. No partnership can be registered unless the Registrar has received a certificate completed by a trustee company. The beneficial ownership information on international partnerships and limited liability partnerships is kept with licensed trustee companies (which is an RI for the purposes of the FTRA).

144. CDD requirements under the section 25 of the FTRA 2017 require RI to identify and verify any ultimate principal of the customer. The definition of ultimate principal was discussed in paragraphs 117 and 118. As neither

form of a partnership is a legal entity separate from the individual partners, the definition of ultimate principal in the case a legal arrangement would apply for partnerships.

145. The term "ultimate principal" is defined as (FTRA 2017, s. 8):

> one or more natural persons who ultimately own or effectively control the customer, or on whose behalf a transaction or activity is being conducted and includes:
>
> (iii) in the case of a legal arrangement or similar type of arrangement, the trustee, or any natural person who exercises effective control over the legal arrangement including through a chain of control or ownership.

146. The deficiency described in paragraphs 119, 120 and 121 in the context of companies may also apply in the context of international partnerships and limited partnerships. In partnerships, control flows from the partnership agreement (with the default rule being the unanimous consent of all partners). There does not seem to be any guidance on how the definition should apply to the different types of partnerships. The Cook Islands should ensure that beneficial ownership is determined in line with specific "form and structure" of the partnerships. This will be analysed in the Phase 2 review (see Annex 1).

147. Foreign partnerships deriving income in the Cook Islands must be registered with the Business Trade and Investment Board and information on identity of partners is obtained through the approval process to qualify as a foreign enterprise and is updated annually as described in paragraph 70.

148. For domestic and foreign partnerships there is no legal requirement for engaging on a continuous basis with a service provider. Thus beneficial ownership information will not be available under the AML law. **The Cook Islands is should ensure that beneficial ownership information in line with the standard is always available for all relevant partnerships**.

Oversight and enforcement

149. International partnerships and limited liability partnerships must provide the partnership agreement to the Registrar of Partnerships (IPA 1984, ss. 12 and 57). This registration must be arranged through a trustee company who, in turn, is subject to FTRA obligations (IPA 1984, ss. 10 and 55). Failure to comply with any legal obligations imposed by the IPA is an offence and, on conviction, punishable with a fine not exceeding NZD 10 000 (USD 6 822) and/or to imprisonment for a term not exceeding one year (IPA 1984, s. 79).

150. The RMD monitors domestic partnerships. Under tax law, a person who fails to file a tax return or gives false information is liable to a fine

not exceeding NZD 10 000 (USD 6 822) and not less than NZD 5 000 (USD 3 380) (ITA, s. 206).

151. The Financial Supervisory Commission (FSC) with the Financial Intelligence Unit (FIU) plays a role in supervising partnerships service providers to ensure compliance with all regulatory requirements including the obligation to obtain and maintain identity information and the retention of these records as required under the Financial Transactions Reporting Act 2017. Non-compliance with the FTRA requirements is an offence and trustee companies can be liable on conviction of a fine up to NZD 1 000 000 (USD 680 000) (FTRA 2017, s. 63).

Availability of partnership information in EOIR practice

152. The implementation of the legal framework and the availability of information on partnerships in practice will be examined during the Phase 2 review. No EOI requests were received over the last three years in respect of partnerships.

A.1.4. Trusts

153. The Cook Islands allow for the creation of common law trusts, domestic trusts and international trusts, and also recognises foreign trusts. The Cook Islands has adopted the equity laws of the United Kingdom and New Zealand, which allow for the creation of trust relationships. There are 84 domestic trusts and no foreign trusts registered with RMD as per April 2022. There are 7 licensed trustee companies administering 2 201 international trusts.

Identity information

154. A common law trust settled in the Cook Islands is not required to register unless the trustees derive income in the Cook Islands, in which case the trust must be registered with RMD.

155. Domestic trusts are required to be registered with RMD if they qualify as a taxpayer, which means a person chargeable with income tax, whether on that person's own account or as the agent or trustee of any other person, and includes the executor or administrator of a deceased taxpayer. For domestic trusts the requirement to keep and report trust records arises whenever the trustees file annual returns of income and financial reports. Before that, there are no requirements for domestic trusts to obtain and retain information on identity of parties to the trust. The trustees are under a general requirement to maintain information under section 219 of ITA 1997 and file an annual tax return and disclose settlor and beneficiary information under sections 2 and 8 of ITA 1997.

156. In order to qualify as an international trust, a trust (whether settled in the Cook Islands or elsewhere) must be registered on the International Trust Register with the FSC and, on so doing, becomes subject to the provisions of the International Trusts Act 1984 (ITA, s. 15). However, the provisions of this Act do not apply to a trust whose beneficiary is domiciled or ordinarily resident in the Cook Islands (ITA, ss. 2 and 22). Only a licensed trustee company may register an international trust. A trustee company is a reporting entity under the Financial Transaction Reporting Act 2017 and therefore subject to the requirements of the Act to maintain identity information on all its trust customers.

157. The Cook Islands law recognises foreign trusts generally. Under section 17 of the Development Investment Act, any foreign enterprise (including domestic and foreign trusts) with more than one third foreign ownership and wishing to invest in or carry on a business in the Cook Islands must register with the BTIB. The information to be filed on registration, and annually thereafter, includes detailed ownership information, such as the names, addresses and passport numbers of all participants to the trust (Development Investment Act, s. 34 and Regulations 3(d) and 8 of the Development Investment Regulations). However, foreign trusts with less than one third foreign ownership or foreign trusts investing exclusively abroad would not be subject to such registration requirements. A trust that is settled outside of the Cook Islands (a foreign trust) must register with the RMD whenever the trust derives income within the Cook Islands, i.e. not systematically. In the case of a foreign trust, a Cook Islands resident may act as a trustee, however, should the foreign trust have a resident trustee and at any point in time a settlor is resident, then the trust must register with RMD and submit a return on world-wide income (ITA 1997, s. 77, as amended by the Income Tax Amendment Act 2017), i.e. the obligation does not apply if no settlor is resident in the Cook Islands.

158. Licensed trustee companies (and financial institutions) are required to keep their customer CDD information (as outlined above) up to date and monitor any subsequent information to ensure it stays in line with what they understand of the structure and those involved (FTRA 2017, s. 32). The scope of the persons to be identified according to the AML/CFT legislation includes the trustee or any natural person exercising ultimate effective control on a trust, including through a chain of control or ownership, but does not explicitly require identification of the settlor and protector (FTRA 2017, s. 8(c)). The CDD procedures must ensure that the reporting institution verifies the identification information using reliable independent source documents (FTRA 2017, s. 25(2)). If a trust service arrangement is terminated with a licensed service provider, the service provider is required to retain records on that trust arrangement for six years.

Availability of beneficial ownership information

159. International trusts must meet the requirements under the relevant international Acts and they must have a Cook Islands licensed trustee company as trustee or registered agent and the trustee company (which is an RI for the purposes of the FTRA) must have fulfilled their AML/CFT requirements prior to registering the entity.[27] The AML-based retention rules described earlier in this report, ensure that the relevant information is retained for the period required by the standard.

160. Where a customer is not a natural person, the RI must identify and verify any ultimate principal of the customer and verify the legal status of the customer using relevant information obtained from reliable independent sources, and obtain sufficient information to understand the nature of the customer's business and control structure. As noted in paragraph 145, "ultimate principal" includes any natural person who exercises effective control over the legal arrangement including through a chain of control or ownership. The deficiency described in paragraphs 119, 120 and 121 in the context of companies may also apply in the context of trusts if a person connected to a trust is a legal entity.

161. The term "ultimate principal" is defined as (FTRA 2017, s. 8):

> one or more natural persons who ultimately own or effectively control the customer, or on whose behalf a transaction or activity is being conducted and includes:
>
> (iii) in the case of a legal arrangement or similar type of arrangement, the trustee, or any natural person who exercises effective control over the legal arrangement including through a chain of control or ownership.

162. According to the 2016 Terms of Reference, beneficial ownership information on trusts includes information on the identity of the settlor, trustee(s), protector (if any), all of the beneficiaries or class of beneficiaries and any other natural person exercising ultimate effective control over the trust. The AML definition in the Cook Islands requires to identify the trustee or any natural persons exercising ultimate effective control on a trust, but does not explicitly require to identify the settlor and protector, and natural persons behind these parties to a trust, as beneficial owners.

163. For domestic trusts, the requirement to keep and report trust records arises whenever the trustees file annual returns of income and financial reports. Before that, there are no requirements for domestic trusts to obtain

27. The licensed trustee company's registered office and postal address must always be in the Cook Islands (FTRA 2017, s. 142).

and retain information on beneficial ownership. Furthermore, trustees generally not being AML-reporting entities themselves (unless they otherwise meet the definition of AML-reporting entity), the above provisions will only apply when a trustee engages an AML-obliged person. There is no legal requirement for a domestic trustee of a domestic or foreign trust to have a local bank account, nor is there any other requirement to engage an AML-obliged person. Therefore, in situations where an AML-obliged person has not been engaged, beneficial ownership information would not be available and in situations where an AML-obliged person has been engaged, beneficial ownership information may not be accurate and up to date.

164. Considering that (i) the identification of participants to domestic trusts and foreign trusts with resident trustee is not ensured when they do not meet some criteria in the Income Tax Act and do not have a relationship with an AML-obliged person, and (ii) the coverage of the definition of beneficial ownership for trust is not complete, **the Cook Islands should ensure that identity and beneficial ownership information in line with the standard is always available for all relevant trusts**.

Oversight and enforcement

165. The RMD monitors domestic and foreign trusts and the same penalties apply as mentioned in paragraph 150. Both FIU and FSC play a role in the licensing and ongoing monitoring/supervision of Trustee Companies or trust and corporate service providers to ensure compliance with all regulatory requirements including the obligation to obtain and maintain legal ownership and identity information and the retention of these records as required under the FTRA 2017, the Trustee Companies Act 2014, International Companies Act 1981-82, International Trusts Act 1984, International Partnerships Act 1984, Limited Liability Companies Act 2008, and Foundations Act 2012. Oversight and enforcement for beneficial ownership information on trusts are similar to those described for the AML framework relevant to companies under A.1.1.

166. International trusts must register with the Registrar of Trusts and a copy of the trust deed is provided to the Registrar as part of the registration requirements (ITA, s. 17). A NZD 74 (USD 50) penalty per month applies for a late filing of the annual renewal of an international trust's registration, calculated according to each month or part thereof that the filing is outstanding (International Trusts (Prescribed Fees) (Amendment) Regulations 2014). The registration and its annual renewal must be arranged through a trustee company who is subject to FTRA obligations and at least one trustee must be in the Cook Islands (ITA, ss. 2 and 15(1)(a)). Failure to comply with any legal obligations imposed by the ITA is an offence and, on conviction, punishable

with a fine not exceeding NZD 10 000 (USD 6 822) or to imprisonment for a term not exceeding one year, or to both (ITA, s. 28).

Availability of trust information in EOIR practice

167. The implementation of the legal framework and the availability of information on trusts in practice will be examined during the Phase 2 review. The Cook Islands received requests for identity and beneficial ownership information on a trust from one partner over the last three years. The answers were provided on time and the partner was satisfied with information.

A.1.5. Foundations

168. Cook Islands introduced foundations in 2012 pursuant to the Foundations Act 2012. A foundation receives its initial capital from one or more founders, and, at any time after the creation of the foundation, any other person (known as a dedicator) may transfer assets to the foundation (Foundations Act s. 14). Founders can be nationals or foreigners. The objects of a foundation may be charitable, non-charitable or both. A foundation's object may be to benefit a person or class of persons, to carry out a specified purpose, or both (Foundations Act s. 7). A foundation may only directly engage in commercial trading if it is incidental to the attainment of the foundation's objects (Foundations Act s. 35(3)). A foundation will have a council to administer the foundation's assets and carry out its objects (Foundations Act s. 22).

169. Foundations are not subject to tax in the Cook Islands, and therefore not required to submit a tax return. However, a foundation must have a trustee company residing in the Cook Islands as its registered agent, and which will provide the foundation's registered office in the Cook Islands (Foundations Act s. 27). According to the FSC, there are 44 registered foundations in the Cook Islands as per November 2021.

170. The legal framework governing foundations ensures the availability of identity information through the Foundations Act and through the obligations imposed on trustee companies by the FTRA. Information is also updated where a change to the governance of the foundation occurs, and as beneficiaries become entitled to distributions. Foundations are required to keep documents and records at the registered office, including a register showing the names and addresses of the members of its council and all dedicators to the Foundation (Foundations Act 2012, s. 42).

171. An application for the creation and registration of a foundation is submitted by a trustee company resident in the Cook Islands (Foundations Act 2012 s. 4). The application is submitted to the Registrar of Foundations,

located in the FSC. The application must be accompanied by the foundation instrument, which sets out the name and objects of the foundation, the beneficiaries to benefit from the foundation (if any), and the name and address of the registered agent (Foundations Act 2012 ss. 7 and 8). The trustee company must also submit a declaration that it is in possession of the foundation rules, which includes the rules governing the appointment and functioning of the council, registered agent, enforcer, dedicators and may set out further details as to the method of determining beneficiaries (Foundations Act 2012 ss. 9 to 13). The records are kept at the Registrar of Foundations for at least ten years upon the dissolution of a foundation (Foundations Act 2012, s. 49).

172. There are no requirements on beneficial ownership information under the Foundations Act 2012. Oversight and enforcement for beneficial ownership information on foundations are similar to those described for the AML framework relevant to companies under A.1.1.

173. The CDD requirements under section 25 of the FTRA 2017 require a trustee company to identify and verify any ultimate principal of the foundation. The term "ultimate principal" is defined as (FTRA 2017, s. 8):

> one or more natural persons who ultimately own or effectively control the customer, or on whose behalf a transaction or activity is being conducted and includes:
>
> (i) in the case of a legal person, other than a company whose securities are listed on a recognised stock exchange, any natural person who ultimately owns or effectively controls (whether through direct or indirect ownership or control, including through bearer share holdings) 25% or more of the shares or voting rights in the legal person;
>
> (ii) In the case of any legal person, it includes any natural person who otherwise exercises effective control over the management of the legal person;

174. Whilst the threshold approach in the context of foundations which have legal personality is accepted under the standard, doubts remain as to whether the AML law requirements of the Cook Islands ensure that information on beneficial owners of foundations is available in accordance with the standard. If members of the foundation council (and by extension any persons with the authority to represent the foundation) are captured by the requirement to identify any person who controls the foundation acting directly or indirectly, and acting individually or jointly, the beneficiaries (where applicable) do not appear to be covered. **The Cook Islands is recommended to ensure the availability of information on the beneficiaries of foundations**.

175. The interpretation and implementation of that definition in practice will be reviewed in the Phase 2 review at a later stage (see Annex 1).

Incorporated societies

176. Another type of legal entity which can be created in Cook Islands is an incorporated society, i.e. any society consisting of not less than 15 persons associated for any lawful but not pecuniary purpose (ISA, s. 3). The application for registration is to be made to the Registrar in accordance with the Incorporated Societies Act (ISA). There are 254 incorporated societies registered with the Registrar of Incorporated Societies in the Cook Islands as per June 2022.

177. Incorporated societies are relevant for EOIR purposes. They are non-profit and on tax exempt status if set up exclusively for charitable purpose. Nevertheless, the members of the society are entitled to divide between them the property of the society on its dissolution (Incorporated Societies Act, s. 3), and on the revocation of the dissolution of a society, the society continues in existence as if no dissolution had taken place (Incorporated Societies Amendment Act 2017, s. 30D).

178. Incorporated societies are treated as legal persons for tax purposes but are not taxable if set up exclusively for charitable purposes (ITA 1997 s. 42(1)(g)-(j)), and therefore not required to submit a tax return. However, incorporated societies must disclose ownership information to the Registrar of Incorporated Societies upon registration and then on an annual basis. Furthermore, every society must keep a register of its members at its registered office in the Cook Islands. The register must contain the names, addresses and occupations of those members, and the dates at which they became members (ISA, s. 24). The retention period to maintain the register is at least six years.

179. Any person may apply for the registration of an incorporated society under the Incorporated Societies Act. To file an application to incorporate a new society, first a person must have a client account with the Cook Islands Companies and Incorporated Societies Registry (please see also paragraph 61). The application must specify the full name of each person who is a subscriber (i.e. member of an incorporated society) to the application and in the case of each subscriber who is an individual, his/her residential and postal addresses, and in the case of each subscriber who is a body corporate, its corporate registration number (if any), and the address of its registered office and its postal address, and any other information that may be prescribed by regulations (ISA, s. 8). All hard records filed with the Registrar are kept for minimum six years while online records are kept indefinitely.

180. The standard requires that information in respect of each beneficial owner of an incorporated society be available. Where any member is a company or other entity or arrangement, information on the beneficial owners behind that entity or arrangement should be available.

181. As described in paragraph 118-121, information on beneficial owners of incorporated societies would be available to the extent that the society has a relationship with an AML-obliged person. In addition, the same gaps as identified in the AML law regarding the identification of beneficial owners apply. **The Cook Islands should ensure that beneficial ownership information is available in respect of incorporated societies**.

Availability of identity and beneficial ownership information on foundations and incorporated societies in EOIR practice

182. The implementation of the legal framework and the availability of information on foundations and incorporated societies in practice will be examined during the Phase 2 review. No EOI requests were received over the last three years neither in respect of foundations nor incorporated societies.

A.2. Accounting records

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

183. The 2015 Report had concluded that the legal framework for maintaining reliable accounting records with underlying documentation by all relevant legal persons and arrangements was in place in the Cook Islands but certain aspects of the legal implementation of the element needed improvement. The element was rated Largely Compliant.

184. The Cook Islands was recommended to require limited liability companies, international trusts and foundations to keep underlying documentation in respect of all transactions. In addition, the report concluded that the Cook Islands should ensure that the failure of a foundation to maintain all accounting records and underlying documentation for at least five years be subject to effective penalties. The recommendations remain as the Cook Islands has not made progress on these issues.

185. Further deficiencies have been identified. The accounting records retention requirements are not clear in the case of domestic companies that are liquidated. Under the company law, a liquidator is required to maintain the records for a period of at least one year. Under the tax law, the retention period is at least five years. It is not clear who is the person responsible for keeping the accounting books and the underlying documentation of

liquidated companies between one and five years. There is also no requirement to keep accounting records for at least five years upon liquidation of international and limited partnerships and foundations.

186. The conclusions are as follows:

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

Deficiencies identified/Underlying Factor	Recommendations
Limited liability companies, international trusts and foundations are not explicitly required to keep all underlying documentation.	The Cook Islands should require all relevant legal entities and arrangements to keep all underlying documentation in line with the standard.
No penalty exists for failure of a foundation to maintain reliable accounting records for at least five years.	The Cook Islands should ensure that the failure of a foundation to maintain all accounting records and underlying documentation for at least five years is subject to effective enforcement measures.
The accounting records retention requirements are not clear in the case of domestic companies that are liquidated. Under the company law, a liquidator is required to maintain the records for a period of at least one year. Under the tax law, the retention period is at least five years. It is not clear who is the person responsible for keeping the accounting books and the underlying documentation of liquidated companies between one and five years.	The Cook Islands is recommended to ensure that the record keeping requirements are applied in such a way that accounting records are kept for five years for domestic companies that cease to exist.
The accounting records retention requirements for international and limited partnerships and foundations is at least one year after liquidation is complete.	The Cook Islands is recommended to ensure that accounting records are kept for at least five years upon liquidation of international and limited partnerships and foundations.

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

The Phase 2 recommendations issued in the 2015 Report are reproduced below for the reader's information.

Deficiencies identified/ Underlying Factor	Recommendations
The requirements to maintain accounting information for at least five years for international companies, limited liability companies, international partnerships, limited partnerships, international trusts and foundations have been introduced only recently.	The Cook Islands should monitor the operations of the new provisions for international companies, limited liability companies, international partnerships, limited partnerships, international trusts and foundations.

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

187. In the Cook Islands, the requirement to keep accounting records in accordance with the standard is ensured by a combination of the Company, Tax and AML law requirements. The various legal regimes are analysed below.

Company Law

188. For domestic companies, the directors of companies must ensure that accounting records are kept in compliance with the Companies Act requirements. In particular, the accounting records must:

- correctly record the company's transactions
- at any time, enable the company's financial position to be determined with reasonable accuracy
- enable directors to ensure that within four months after the company's balance date, the financial statements give a true and fair view of the matters, comply with any applicable regulations made under this Act and are dated and signed on behalf of the company by the director(s)
- enable the company's financial statements to be readily and properly audited (CA 2017, s. 159).

189. The accounting records must contain entries of money received and spent each day and the matters to which the money relates, a record of company's assets and liabilities, a record of all transactions affecting the assets and liabilities, all sales and purchases of goods and services (CA 2017, s. 159(2)). In addition, domestic companies are required to keep all underlying documents of transactions under tax law as long as they carry on business or receive income other than salary or wages (see paragraph 206).

190. The accounting records must be kept at the registered office of the company or another place in the Cook Islands that is not its registered office, provided the company has given the Registrar a notice of the location of the records within 10 days after the records are first kept there (CA 2017, s. 145(1)(2)). The accounting records must be kept for the current accounting period and for the last seven completed accounting periods of the company. The Registrar may approve by notice in writing to the company a shorter period than seven years or seven completed accounting records (CA 2017, s. 144). There were no such exceptions granted as per April 2022.

191. International companies are required to keep accounts and records relating to:

- all sums of money received and expended by the company
- all sales and purchases of goods by the company
- all assignments of rights or assumption of liabilities by the company
- all transactions of the company affecting the assets or liabilities of the company
- the assets and liabilities of the company (ICA, s. 113(1)).

192. The keeping of accounts and records must be "sufficient to show and explain the international company's transactions, which gives a true and accurate record" of the above details, and that "will at any time enable the financial position of an international company to be determined with reasonable accuracy" (ICA, s. 113). Thus, the ICA explicitly refers to the requirement to maintain both accounting records and underlying documentation.

193. International Companies must in principle keep the company records in the Cook Islands for a period of not less than six years following the completion of the transaction to which the records and underlying documentation relate. The accounts must at all times be open to inspection by any director and must be kept in such manner as to enable them to be conveniently and properly audited (ICA, s. 113(2)). However, an international company may with the prior written approval of the Registrar keep its accounts at such place outside the Cook Islands as its directors think fit. Any approval of the Registrar may be given (subject to the terms of any regulations governing the keeping of accounts outside the Cook Islands) upon such terms and conditions as may from time to time be imposed by him (ICA, s. 113(2)). The Cook Islands confirmed that no authorisation had been provided in relation to this requirement as per April 2022. Accounting records can be kept outside the Cook Islands. Although no authorisation to keep accounting records outside the Cook Islands has been granted by the Registrar, the Cook Islands should ensure that accounting records of such a company are accessible in a timely manner by the authorities (see Annex 1).

194. A limited liability company must keep accounting records that are sufficient to show and explain its transactions, which give a true and accurate record of:

- all sums of money received and expended by the company
- all sales and purchases of goods by the company
- all assignments of rights or assumption of liabilities by the company
- all transactions of the company affecting the assets or liabilities of the company
- the assets and liabilities of the company (LLC Amendment Act 2013, s. 31(1)).

195. All the records must at any time enable the financial position of a limited liability company to be determined with reasonable accuracy.

196. The accounts of a limited liability company must be retained by the resident agent within the Cook Islands either in hard copy or in electronic format with hard copy easily and immediately printable from it (LLC Amendment Act 2013, s. 31(2)). Such records are subject to inspection and copying at the reasonable request, and at the expense, of any member.

197. Foreign companies are required to keep reliable accounting records, including underlying documents, for at least five years (see section on Tax law). In practice, the Business Trade and Investment Board (BTIB) inspects accounting records when considering a new application, in particular to assess the sufficiency of assets and level of borrowing, and financial statements are received by the BTIB each year thereafter.

198. Although limited liability companies are required to keep accurate records of expenditures, sales and purchases and all transactions affecting assets and liabilities, as concluded in the 2015 Report, there is no explicit reference to the requirement to maintain all underlying source documentation evidencing these transactions, such as invoices and contracts. **This remained the case in relation to limited liability companies during the review period. The Cook Islands should require all relevant legal entities and arrangements to keep all underlying documentation in line with the standard.**

Partnerships, trusts and foundations

Record keeping requirements for different partnerships, trusts and foundations

Types of companies	Commercial law	Tax law	AML/CFT
Domestic partnerships		Section 217 of the Income Tax Act 1997	
International partnerships, Limited partnerships	Section 7A of the International Partnerships Act 1984 (as amended in 2013)		Section 41, 42 FTRA 2017
Foreign partnerships	Section 2 of the Development Investment Act 1995-96	Sections 2, 8, 11, 80 and 83 of the Income Tax Act 1997	
Domestic trusts		Section 217 of the Income Tax Act 1997	
International trusts	Section 27C of the International Trusts Act 2013 (as amended in 2013)		Section 41, 42 FTRA 2017
Foreign trusts		Sections 2, 8, 11, 80 and 83 of the Income Tax Act 1997	Section 41, 42 FTRA 2017
Foundations	Section 42(2)(f) of the Foundations Act 2012		Section 41, 42 FTRA 2017

199. The International Partnership Amendment Act 2013 (IPA) foresees an obligation to maintain accounting records. International partnerships and limited partnerships must keep accounting records that are sufficient to show and explain the partnership’s transactions, which gives a true and accurate record of:

- all sums of money received and expended by the partnership
- all sales and purchases of goods by the partnership
- all assignments of rights or assumption of liabilities by the partnership
- all transactions of the company affecting the assets or liabilities of the partnership
- the assets and liabilities of the partnership and that will at any time enable the financial position of the partnership to be determined with reasonable accuracy (section 7A).

200. The IPA requires that the accounts and records must be retained within the Cook Islands by the trustee company which is the partner or provides the registered office for a partner. Section 7A(4) requires that “the

accounts and records must be retained within the Cook Islands, for a period of not less than six years following the completion of the transaction to which the records and underlying documentation relate." Thus, the IPA explicitly refers to the requirement to maintain both accounting records and underlying documentation. Any partner of an international partnership, or any general partner of a limited partnership, that fails to take all reasonable steps to secure compliance with this obligation, commits an offence against the IPA (IPA 1984, ss. 7A(3), see para. 221).

201. Foreign Partnerships need to be registered with the Business Trade and Investment Board (BTIB) and the individual partners, including the foreign ones, are also required to file annual tax returns, as the partners are taxed individually on their share of the partnership's income (see paragraph 138). Accounts and records must be provided by foreign partnerships when filing application to the BTIB (see paragraph 197).

202. The Trustee Act does not explicitly require the keeping of accounting records. Under the common law, however, there is a general duty on trustees to maintain proper accounts and records which is linked to the duty to inform beneficiaries.

203. The International Trusts Amendment Act 2013 introduced an obligation on trustees of an international trust to maintain accounting records. The trustee must ensure that there is, at the registered office of the international trust, a true, accurate and current record of:

- income of the trust, whether in cash or kind
- assets held by the trust
- assets made available for use by any beneficiary of the trust
- advances made by the trust
- distributions made
- all transactions of the trust affecting its assets or liabilities and which will at any time enable the financial position of the international trust to be determined with reasonable accuracy (section 27C).

204. Foundations are required to keep financial records at their registered office under the Foundations Act 2012, section 42(2). Foundations are obliged to keep financial records which (i) enable the financial position of the foundation to be determined with reasonable accuracy at any time, and (ii) allow financial statements to be prepared (Foundations Act 2012, s. 43(1)). The records must be kept for a minimum period of six years (Foundations Act 2012, s. 43(4)).

205. The requirements in paragraphs 203 and 204 are broad enough to require records of all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place, all sales and purchases and other transactions, and the assets and liabilities of the legal entities. However, as it was found in the 2015 Report, there is no general requirement to maintain underlying documentation evidencing the transactions of international trusts and foundations, such as invoices and contracts. **This remained the case during the review period.**

Tax Law

206. In addition, all domestic companies are required to keep accounting records under the Income Tax Act (ITA). The Income Tax Act record keeping requirements apply to "every person carrying on business or receiving income other than salary or wages" (ITA, s. 217(1)). This includes domestic and foreign companies. It also applies to domestic partnerships. These general tax obligations equally apply to resident trustees with respect to income and allowable deductions pertaining to the domestic trust, as well as to beneficiaries of any domestic trusts deriving income sourced in the Cook Islands, who are required to furnish annual tax returns (ITA, ss. 2 and 8).

207. The records must be sufficient "to enable that person's assessable income and allowable deductions to be readily ascertained by the Collector" (ITA, s. 217(1)). In particular, such records include underlying documents such as the asset schedule and "books of account, recording receipts documents or income or expenditure or purchases or sales, and also includes vouchers, invoices, receipts, and such other documents as are necessary to verify the entries in any such books of account and, in the case of an agent, records of all transactions carried out on behalf of that agent's principal" (ITA, ss. 60(2) and 217(3)). The ledgers and journals must be able to adequately explain each transaction.

208. Resident trustees of foreign trusts and beneficiaries of foreign trusts, and partners of foreign partnership deriving income from the Cook Islands are required to furnish annual tax returns (ITA, ss. 2, 8, 11, 80 and 83). Such trustees, partners and beneficiaries are, therefore, required to keep reliable accounting records, including underlying documents, for at least five years.

Anti-money laundering law

209. Under the Financial Transactions Reporting Act (FTRA), a reporting institution (RI), including trustee companies, must retain a record of all isolated transactions and transactions carried out in the course of an ongoing business relationship, including identification information, account files, business correspondence records and the results of any analysis undertaken

(including risk assessment) and such other records that are sufficient to permit the reconstruction of individual transactions and compliance with the FTRA to a standard that allows a competent authority to investigate and prosecute financial misconduct (FTRA 2017, s. 41).

210. The information and records in the above paragraph must be retained for six years (FTRA 2017, s. 41(2)). However, under certain conditions (such as a suspicious activity report, the matter being under investigation by a competent authority, etc.) the reporting institution must retain relevant information and records until otherwise notified in writing by the FIU (FTRA 2017, s. 41(3)). These records must be kept in the Cook Islands or, if kept elsewhere, they must be kept in a manner and form that allows the FIU to reproduce them, within three working days, in a usable form in the Cook Islands.

Companies and arrangements that cease to exist

211. When a domestic company is wound up, a liquidator is appointed who must keep the company accounts and records for not less than one year after completion of the liquidation (CA 2017, s. 253). When a receiver is appointed by a secured creditor to take control of the property of the company, the receiver must at all times keep accounting records that correctly record and explain the receipts, expenditure, and other transactions relating to the property in receivership. The receiver must retain the accounting records for not less than seven years after the receivership ends (CA 2017, s. 311).

212. Section 217(2)(b) of the Income Tax Act was amended in December 2013 to obligate wound up and finally dissolved companies to maintain accounting records for a period of at least five years after the completion of the transactions, acts, or operations to which they relate. A person is not required to retain any records in respect of which the Collector has notified the person, in writing, that retention is not required (Income Tax Amendment 2013, s. 217). The Cook Islands authorities indicate that this possibility is not used in practice.

213. Under the Income Tax Act, domestic companies are required to maintain the company accounts and records for at least five years. However, under the company law, in the case of liquidated companies, a liquidator is required to keep the accounting records for at least one year from the liquidation since in this case the standard statute of limitation would apply (i.e. not less than one year). Thus, there is a gap in the retention period. A liquidator is allowed to maintain the company accounts and records for a period more than a year but less than five years. As the taxpayer (i.e. the company) ceases to exist, it is not clear who will be the person that will be responsible for keeping the accounting books and the underlying documentation for liquidated

entities between one and five years. **The Cook Islands is recommended to ensure that the record keeping requirements are applied in such a way that accounting records are kept for five years for domestic companies that cease to exist.**

214. Where an international company is wound up, the liquidator must return all books and papers of the company to the resident secretary of that company[28] who must ensure that those books and powers are retained by a trustee company for a period of six years from the commencement of the winding-up (ICA, s. 185).

215. When a limited liability company is wound up, the resident agent must retain the records of the limited liability company for six years following the dissolution (LLCA, s. 32(2)).

216. The requirements for domestic partnerships, domestic trusts and foreign companies (including foreign partnerships and foreign trusts) to keep accounting records upon dissolution fall under the tax law (see paragraphs 206-208).

217. When an international trust is terminated, or the Cook Islands trustee is removed or has resigned, each trustee must ensure that the records in the possession of that trustee are retained by that trustee for a period of six years from the date of termination, removal or resignation as the case may be (The International Trusts Amendment Act 2013, s. 4(1B).

218. For international and limited partnerships, and foundations, the process for liquidation involves a liquidator who should notify the Register. A liquidator must retain the company records for at least one year after liquidation is complete. These entities are not subject to tax in the Cook Islands, and therefore not required to maintain accounting records for a period of at least five years after termination as prescribed under the Income Tax Act. **The Cook Islands is recommended to ensure that the record keeping requirements are applied in such a way that accounting records are kept for at least five years upon liquidation of international and limited partnerships and foundations**.

Oversight and enforcement of requirements to maintain accounting records

219. RMD carries out the monitoring activities to ensure that all domestic companies which are required to maintain accounting records and underlying documentation under the company law are compliant with their accounting

28. Resident secretary means a trustee company, any wholly owned subsidiary thereof or any officer of a trustee company.

requirements. For international companies and legal arrangements the supervision lies with the FSC as part of FSC's onsite inspections for trustee companies. All trustee companies have at least one onsite inspection each year, except for 2020; due to COVID-19 pandemic only three largest trustee companies were inspected. There have been no prosecutions for failing to keep records. The Cook Islands has issued remedial action plans and recommendations where minor deficiencies have been found during onsite inspections.

220. In case of failure to take all reasonable steps to secure compliance with the record keeping requirements of section 159 of the Companies Act, each director commits an offence and is liable on conviction to a fine not exceeding NZD 4 000 (USD 2 703) or to a term of imprisonment not exceeding three months, or both (CA 2017, s. 158). A director of an international company who fails to take all reasonable steps to secure compliance by the company with the requirements of section 113 commits an offence against the ICA and is liable on conviction to a fine of NZD 1 000 (USD 680) and to imprisonment for six months (ICA, s. 113(3) and 219(2)). Failure to comply with any legal obligations imposed by the LLCA is an offence and, on conviction, punishable with a fine not exceeding NZD 10 000 (USD 6 822) or to imprisonment for a term not exceeding one year, or to both (LLCA, s 78).

221. Failure to comply with any legal obligation imposed by the IPA is an offence and, on conviction, punishable by a fine not exceeding NZD 10 000 (USD 6 822) or imprisonment for a term not exceeding one year, or both (IPA 1984, s. 79).

222. Failure to comply with the record keeping obligations under the FTRA is considered an offence and punishable by: (i) in the case of an individual, to a fine of up to NZD 250 000 (USD 170 000) or to imprisonment for a term not exceeding five years, or both; (ii) in any other case, to a fine of up to NZD 1 000 000 (USD 680 000) (FTRA 2017, s. 63).

223. Failure to comply with any legal obligation imposed by the International Trust Act is an offence and, on conviction, punishable by a fine not exceeding NZD 10 000 (USD 6 822) or imprisonment for a term not exceeding one year, or both (ITA, s. 28).

224. The Foundations Act does not impose a penalty for failure to keep the accounting records as required in sections 42 and 43 of the Foundations Act 2012. It was recommended in the 2015 Report that the Cook Islands amend the appropriate legislation to ensure that failure to maintain all accounting records and underlying documentation for at least five years is subject to effective enforcement measures. **This remained the case during the review period.**

225. Finally, there is no requirement in the Income Tax Act to maintain records in the Cook Islands, but records have to be kept so that income and deductions can be "readily ascertained by the Collector" (Income Tax Act, s. 217(1)). Failure to comply with any obligation established by the Income Tax Act is considered an offence, punished by fines ranging from NZD 1 000 (USD 680) to NZD 10 000 (USD 6 822) (Income Tax Act, s. 206).

Availability of accounting information in EOIR practice

226. The implementation of the legal framework and the availability of accounting information in practice will be examined during the Phase 2 review. The Cook Islands received requests for accounting information from one partner over the last three years. The answers were provided on time and the partner was satisfied with information.

A.3. Banking information

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

227. The 2015 Report concluded that the legal and regulatory framework in the Cook Islands requires the availability of banking information to the standard. Identity information on all account-holders and transaction records continue to be made available through anti-money laundering (AML) obligations.

228. Since the 2015 Report, the standard was strengthened in 2016 with an additional requirement of ensuring the availability of beneficial ownership information on all account holders. As discussed in A.1, there are several issues identified with respect to customer due diligence (CDD) which may impact on the availability of beneficial ownership in certain instances. One relates to a lack of clarity on the meaning of person who controls the company acting individually or jointly. The second is an absence of the requirement to identify persons holding a senior managerial position when no individual meets the definition of beneficial owner. The third one is the absence of the requirement to identify the beneficial owner of a bank account held by a natural person. The Cook Islands is recommended to take suitable actions to address these gaps in its legal framework.

229. The conclusions are as follows:

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

Deficiencies identified/Underlying Factor	Recommendations
The anti-money laundering law definition of beneficial owner includes the principal elements required by the standard with respect to the identification of beneficial owner(s) of legal entities, but the law does not specifically indicate that control includes any person who controls the company acting directly or indirectly, and individually or jointly. The requirement to identify persons holding a senior managerial position when the beneficial owner cannot be identified is not contemplated in the definition. In addition, there is no requirement to identify the beneficial owner of an account held by a natural person (noting however that reporting institutions are required to identify a person who acts on behalf of a customer).	The Cook Islands should ensure that beneficial ownership information on bank accounts is available in line with the standard.
While the AML framework requires an ongoing and effective monitoring of information held for the purpose of customer due diligence to ensure that it is up to date and appropriate, there is no guidance on the frequency of updates of the beneficial ownership information.	The Cook Islands should ensure that information on beneficial owners of bank accounts is up to date in line with the standard.
In case of a bank insolvency, the banking records retention requirements for banks is at least one year after liquidation is complete.	The Cook Islands is recommended to ensure that banking records are kept for at least five years upon liquidation or winding up of a bank.

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

A.3.1. Record-keeping requirements

230. As mentioned in the Overview part, the Cook Islands has four banks, which are licensed and supervised by the FSC under the provisions of the Banking Act 2011.

Availability of banking information

231. The 2015 Report concluded that the Cook Islands' law requires banks to keep records in line with the standard. Following the amendments to the Financial Transaction Reporting Act (FTRA) in 2017, the requirements on reporting institutions (RI) concerning record keeping were broadened.

232. Banks are subject to the accounting requirements as explained under A.2 and must keep proper accounting records that show and explain their transactions. In addition, under the FTRA, all banks are subject to Anti-Money Laundering (AML) obligations as RIs.

233. As RIs, banks are required to keep records of all transactions for six years from the date the relevant transaction was completed, the end of an ongoing business relationship, or in the absence of any formal end to an ongoing business relationship, the completion of the last transaction in that relationship (FTRA 2017, s. 41(2)). Section 41(1) requires reporting institutions to establish and maintain records including the following information in respect of all transactions:

- a copy of evidence of identity obtained or produced under CDD, or information that enable a copy to be obtained without significant delay (no longer than five working days)
- a record of all isolated transactions and transactions carried out in the course of an ongoing business relationship, including identification information, account files, business correspondence records and the results of any analysis undertaken (including risk assessment)
- such other records that are sufficient to permit the reconstruction of individual transactions and compliance with this Act to a standard that allows a competent authority to investigate and prosecute financial misconduct.

234. In case of a bank insolvency, the record keeping requirements are transferred to a court-appointed manager or to a liquidator (Banking Act 2011, s. 23). There is no indication on the records retention requirements by a court-appointed manager in the Banking Act. Under the company law, a liquidator is required to maintain the records for a period of at least one year. **The Cook Islands is recommended to ensure that banking records are kept for at least five years upon liquidation or winding up of a bank**.

Beneficial ownership information on account holders

235. The standard was strengthened in 2016 to specifically require that beneficial ownership information be available in respect of all account holders.

236. As explained under Element A.1 with regard to the availability of beneficial ownership information for companies under AML law, the FTRA establishes the Cook Islands' AML legal framework. Banks are required, under that framework, to ensure that beneficial ownership information on all of their customers is obtained and verified in accordance with the prescribed CDD measures. These requirements apply for all customers – domestic or foreign – legal persons and arrangements including partnerships, trusts and foundations.

237. A bank, as reporting institution (RI), must establish, maintain and operate procedures to ensure it conducts CDD before entering into an ongoing business relationship or an isolated transaction with a customer or a person acting on behalf of a customer (FTRA, s. 25). The retention period is six years from end of relationship or one-off transaction (FTRA 2017, s. 44).

238. A RI may rely on a third party to undertake CDD as required under AML law. The third party must be an AML-obliged person and compliant with Financial Action Task Force regulations (FTRA 2017, s. 34(1)). If a RI relies on a third party to undertake CDD, it must: (i) document the basis for its satisfaction that the requirements[29] to rely on third party information have been met except where the third party is a licensed financial institution, and (ii) obtain the necessary information required for the relevant level of CDD before it enters into the ongoing business relationship or isolated transaction, and (iii) ensure that copies of necessary information obtained in relation to the customer will be made available to it from the third party upon request without delay (FTRA 2017, s. 34(3)). The reporting institution relying on the third party to conduct CDD, and not the third party, is responsible for ensuring that CDD is carried out in compliance with the requirements of the FTRA 2017. The requirements when a RI can rely on a third party's performance of the CDD is in line with the standard.

29. A reporting institution may rely on a third party to undertake CDD procedures if the following requirements are met: a) the reporting institution is satisfied that the third party it intends to rely upon is subject to and supervised for compliance with combating money laundering, financing of terrorism and proliferation of weapons of mass destruction consistent with the standards set by the FATF and has adequate measures in place to comply with those requirements; and b) the reporting institution takes appropriate steps to identify, assess and understand the financial misconduct risks particular to the jurisdictions that the third party operates in; and c) the third party is able and willing to provide, without delay, upon the reporting institution's request any data, documents or information obtained by the third party with respect to the measures applied on the reporting institution's customer, which the reporting institution would be required or would want to obtain (FTRA, s. 34(2)).

239. RIs may undertake simplified CDD procedures. The main distinction with the standard CDD procedure is that under the simplified CDD there is no requirement to verify the identity of the ultimate principal. Simplified CDD procedures may be undertaken by RIs when: (i) they are sure that there are no circumstances preventing them to do so (e.g. the case falls under the enhanced CDD or the customer is a legal arrangement for holding personal assets); (ii) the level of risk associated with the person or persons is low; and (iii) they obtain information on the nature and intended purpose of the ongoing business relationship or isolated transaction (FTRA, s. 27(2)). Further, a RI may undertake simplified CDD on a legal person whose securities are listed on a recognised stock exchange or any other person that may be prescribed (FTRA, s. 27(4)).

240. There are three issues identified with respect to CDD in the AML framework which may affect the availability of beneficial ownership in certain instances. First, it is not clear whether the concept of ultimate principal is interpreted as meaning any person who controls the company acting directly or indirectly, and acting individually or jointly. Second, there is no requirement to identify a person holding a senior managerial position when no individual meets the definition of beneficial owner. Third, RIs are not required to identify the beneficial owner of a bank account held by a natural person (noting however that they are required to identify a person who acts on behalf of a customer).

241. **The Cook Islands is recommended to ensure the availability of up-to-date beneficial ownership information of account holders in line with the standard.**

242. Reporting institutions are required to carry out ongoing and effective monitoring of any ongoing business relationship, including review of information held for the purpose of customer due diligence to ensure that it is up to date and appropriate (FTRA, s. 32(2)). However, there is no guidance in the FTRA on the frequency of updates of the beneficial ownership information. **The Cook Islands is recommended to ensure that information on beneficial owners of bank account holders is up to date in line with the standard**.

Oversight and enforcement

243. The FSC and FIU conduct joint inspections to monitor compliance of banks with all relevant obligations. Banks must establish and maintain a register that contains a copy of every report submitted to the FIU and all related records. A reporting institution must keep the reports for a period of six years after the date on which the report or the enquiry is made (FTRA 2017, s. 43).

244. Failure to comply with the FTRA obligations is considered an offence and punishable by: (i) in the case of an individual, to a fine of up to NZD 250 000 (USD 170 000) or to imprisonment for a term not exceeding five years, or both; (ii) in any other case, to a fine of up to NZD 1 000 000 (USD 680 000) (FTRA 2017, s. 63).

Availability of banking information in EOIR practice

245. The implementation of the legal framework and the availability of banking information in practice will be examined during the Phase 2 review. The Cook Islands received requests for banking information from one partner over the last three years. The answers were provided on time and the partner was satisfied with information.

Part B: Access to information

246. 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).

247. The 2015 Report concluded that the Competent Authority in the Cook Islands has broad access powers to obtain all types of relevant information, including ownership, accounting and banking information from any person, in order to comply with obligations under Cook Islands' EOI instruments. These access powers can be used regardless of domestic tax interest. In case of failure on the part of the information holder to provide the requested information, the Competent Authority has adequate powers to compel the production of information. Finally, secrecy provisions contained in Cook Islands' law are compatible with effective exchange of information.

248. The ability of the Revenue Management Division to obtain information for exchange of information purposes derives from its general access powers under sections 86 and 219 to 222 of the Income Tax Act coupled with the authority provided by the relevant exchange of information agreements. In 2016, sections 219 and 220 were amended to extend the access powers in order to comply with obligations under the Convention on Mutual Administrative Assistance in Tax Matters and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (Income Tax (Automatic Exchange of Financial Account Information and Other Matters) Amendment Act 2016, s. 6). In 2017, the Income Tax Act was

amended to enhance access to electronic storage media with an obligation to provide reasonable assistance and any basis for authentication and decryption. There have been no administrative rulings or judicial decisions related to accessing information for exchange.

249. Over the last few years, the Cook Islands accessed information for EOIR purposes to the satisfaction of its peers. The practical application will be considered in the Phase 2 review.

250. The conclusions are as follows:

Legal and Regulatory Framework: In place

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

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

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

251. The competent authority designated under the Cook Islands' EOI agreements is the Collector of Inland Revenue who belongs to the Revenue Management Division (RMD) or an authorised representative of the Collector. Subsection 219(1) of the Income Tax Amendment Act 2011 sets out the Competent Authority's access powers as follows:

> "Notwithstanding anything to the contrary in any other Act, including without limitation Sections 227 and 249 of the International Companies Act 1981-82, Section 23 of the International Trusts Act 1984, the Foundations Act 2012, the Captive Insurance Act 2013 and Section 72 of the Limited Liability Companies Act 2008, the Collector or any officer of the Department authorised in that behalf shall at all times have full and free access to records for the purpose of inspecting such books or documents, whether in the custody or under the control of a public officer or a body corporate or any other person, for the purposes of inspecting any records which the Collector or the officer of the Department considers necessary, relevant, or likely to provide information, for the purposes of (a) collecting any tax or duty which the Collector is authorised to collect; (b) giving

> effect to agreements described in section 86[30] or giving effect to Part VIA."[31]

252. This subsection ensures that the Competent Authority has access powers in respect of any information held by "a public officer or a body corporate or any other person" who is believed to be in possession or control of that information. There is no variation of the powers between instances where the information is required to be kept pursuant to an explicit legal obligation, or not. Also, the power of the Competent Authority to obtain the information covered by this subsection extends to any person and any third parties, such as accounting firms. This is expressly provided under section 220(1) of the Income Tax Act which further enhances section 219:

> "Every person (including any officer employed in or in connection with any department of the Government or by any public authority, and any other public officer) shall, if required by the Collector or by any officer of the Department authorised in that behalf, furnish in writing any information and produce any records which the Collector or officer considers necessary or relevant for any purpose relating to the enforcement of this Act (including giving effect to agreements described in section 86 or giving effect to Part VIA) or any other Act administered by the Collector, and which may be in the knowledge, possession, or control of that person."

253. Section 220(1) was amended in 2017 by inserting the following subsections:

> "(1A) If a person fails to furnish information or produce records as required under subsection 1, the Collector or an authorised officer may seize any electronic information storage media on which the information or records are stored and retain the media for as long as is necessary to copy the information or records.

30. In the Income Tax (Automatic Exchange of Financial Account Information and Other Matters) Amendment Act 2016, the reference is made to the section 186. The Cook Islands confirmed that section 86 is the placement reference that should be used in the 2016 Amendment Act and communicated this drafting error to competent authorities.
31. Section 86 authorises the entry into international agreements for relief from double taxation and the exchange of information, i.e. DTCs. Part VIA refers to the "Implementation of arrangements to exchange tax information or provide other mutual assistance in tax matters" and thus covers bilateral TIEAs, the Multilateral Convention and Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information.

> (1B) A person whose electronic information storage media has been seized under subsection 1A must provide reasonable assistance to enable the Collector or authorised officer to access the information or records stored on the media, including the entering of the password or other basis of authentication for access to the media, or providing decryption information necessary to decrypt data on the media".

254. Storage media was extended to include portable devices such as computers, phones, cameras and storage media and other facilities such as cloud storage (Income Tax Amendment Act 2017, ss. 22 to 24).

255. Section 220(2) of the ITA further provides that "information in writing which may be required under this section shall include lists of shareholders of companies, with the amount of capital contributed by and dividends paid to each shareholder, copies of balance sheets and of profit and loss accounts, and other accounts and statements of assets and liabilities of any person".

256. The Income Tax Amendment Act was introduced in 2017 which amended sections 219 and 220(1) by substituting "records" to "books and documents".[32] The reference to "books and documents" had a wide meaning. This included all books, accounts, rolls, records, registers, electronic information storage media, papers and other documents (Income Tax Act, s. 2). The term "records" includes books of account, recording receipts documents or income or expenditure or purchases or sales, and also includes vouchers, invoices, receipts, and such other documents as are necessary to verify the entries in any such books of account and, in the case of an agent, records of all transactions carried out on behalf of that agent's principal (Income Tax Act, s. 217(3)). In comparison to "books and documents", "records" also provide underlying documentation. Access to any electronic information storage media where information or records is separately covered under Section 220(1) (see paragraph 252). Thus, substituting "records" to "books and documents" does not affect the Cook Islands' compliance with the standard.

257. The ITA provides the Collector with comprehensive information gathering powers. They are very wide and not limited to persons who are required to maintain this information.

---

32. The change mainly happened for new subsections 219(1C) and (2A) removing impediments to power to inspect and copy business records regardless of hard or electronic storage, passwords, encryption and provision of reasonable assistance from owner or manager. Also for new subsections 220(1A) and (1B) extend use of seize and copy electronic and cloud forms of media storage.

Accessing information generally

258. After receiving a valid EOI request, the process for accessing information is as follows. The Collector or his/her authorised representative would determine whether the information is already in the possession of the RMD by accessing RMD records. If the information is not already within the possession of the RMD, an official request for information under section 220 of the Income Tax Act is issued. The RMD has a template it uses for this purpose, which states that the information request is pursuant to section 220 of the Income Tax Act. The request may be done electronically (Income Tax Amendment Act 2017, s. 26). A response is due within 14 days from the day after the date of the RMD request (being the allotted time for the requested party to challenge the request in the High Court) and a reminder would set for the due date for the response.

259. Having due regard to the facts and circumstances of the case, the Collector issues requests to the persons most likely to have this information under its possession or control. Depending on the nature of the request, the information may be held by the Financial Supervisory Commission (FSC) or by the trustee company acting for an international entity or arrangement (for instance ownership and identity information). In the latter case, the FSC would provide the RMD with the identity of the relevant trustee company. With respect to domestic companies, the RMD may also use its access powers to obtain information from the Ministry of Justice where the Registrar of Companies with ownership information is maintained (see paragraph 60). As it is located a short walk from the RMD, and the relevant staff are well known to one another, this is actioned by way of instant on-site request.

260. When the name of the relevant trustee company has been provided by the FSC, a new official request for information under section 220 is issued by the RMD to the relevant trustee company. The request would state that information is being requested pursuant to section 220 of the Income Tax Act and that the underlying EOI request complies with the provisions of a valid Tax Information Exchange Agreement (TIEA) or the Multilateral Convention. The request would not usually state the identity of the EOI partner (and certainly not so, where the EOI partner had requested this to be omitted). RMD receives all information to its requests in electronic format.

Accessing beneficial ownership information

261. Information held by the Registrar relating to beneficial ownership may be made available to a competent authority upon written request in electronic format. The Collector may also use the general powers described above to access the beneficial ownership information held by the company itself and service providers that are AML-obliged persons. The AML secrecy provisions in Cook Islands legislation are overridden by the Income Tax Act

(ss. 86, 219 and 220). Notwithstanding anything contrary in the AML legislation RMD must have access for the purposes of collecting any tax or giving effect to section 86 agreements (DTA) and part VIA agreements (TIEA, Multilateral Convention, Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information).

Accessing banking and accounting information

262. The aforementioned powers of the Collector are also sufficient to effectively access banking and accounting information. The Cook Islands authorities added that they can access information even if only the bank account number is known to the requesting jurisdiction, provided that the necessary relevance of the requested information and reasons behind the request are likely to give effect to a tax matter under investigation are explained in the request.

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

263. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its tax purposes. The standard requires a jurisdiction to be able to use its information gathering powers, notwithstanding that it may not need the information for its tax purposes.

264. The Cook Islands has no domestic tax interest limitation with respect to its information gathering powers. The broad access powers provided to the Collector under the Income Tax Amendment Act 2011 can be used to obtain and provide information for the express purpose of giving effect to Cook Islands' EOI agreements (Income Tax Act, ss. 86, 219 and 220).

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

265. The Cook Islands has enforcement provisions, including monetary penalties and search and seizure powers, to compel the production of information (refer to the 2015 Report, paragraphs 264 to 268).

266. The Collector has the authority to enter premises without going through any special process, except for private premises (Income Tax Act, s. 219(1B)). Private premises may only be entered with the consent of the occupier or pursuant to a warrant. A Judge of the High Court is authorised to provide the Collector with an access warrant, on written application made under oath, if the judge is satisfied that the Collector's request is valid (Income Tax Act, s. 219(3)).

267. In 2017, the penalty for failure to provide information for EOI purposes on request of the Collector was increased from NZD 1 000 (USD 680) to NZD 10 000 (USD 6 822). Under section 206 of the Income Tax Act, this fine is imposed on every person who commits one of the following offences:

- refuses or fails to furnish any return or information as and when required by this Act, or any regulation made under this Act, or by the Collector
- wilfully or negligently makes any false return, or gives false information, or misleads or attempts to mislead the Collector or any other liability to taxation
- refuses or fails without lawful jurisdiction to duly attend and give evidence to the person, or to produce any book or paper required
- obstructs any officer acting in the discharge of the officer's duties or in the exercise of the officer's powers under this Act
- commits any other breach of this Act for which no other penalty is expressly provided
- aids, abets, or incites any other person to commit any offence against this Act or against any regulation made under this Act.

268. In addition, every person who commits an offence in relation to sections 219 to 222 of the Income Tax Act, for which no other penalty is prescribed, is liable on conviction to a fine not exceeding NZD 10 000 (USD 6 822) (Income Tax Act, s. 223, Income Tax Amendment Act 2017, s. 25). An Amendment to the Income Tax (Automatic Exchange of Financial Account Information and Other Matters) in 2016 further introduced the penalties for non-compliance with the regulations under specific Part VIA on the "Implementation of arrangements to exchange tax information or provide other mutual assistance in tax matters" as fines not exceeding NZD 10 000 (USD 6 822) for an individual and not exceeding NZD 100 000 (USD 68 220) for a body corporate (Income Tax (Automatic Exchange of Financial Account Information and Other Matters) Amendment Act 2016, s. 6).

269. A certificate in writing signed by the Collector certifying that a person refused or failed to furnish any return or information as and when required by the Act or by the Collector will, in the absence of proof to the contrary, be accepted as sufficient evidence in any proceedings against this person (Income Tax Act, s. 206(3)). All proceedings for offences against the Income Tax Act will be taken by way of prosecution in the High Court (Income Tax Act, s. 207).

B.1.5. Secrecy provisions

270. The 2015 Report found that there were no secrecy provisions which would prevent the Cook Islands' Competent Authority from obtaining information (refer to paragraph 269). There are various secrecy provisions in Cook Islands legislation,[33] but these are overridden by the Income Tax Act (ss. 86, 219 and 220). The Income Tax Amendment Act 2011 specifically overrides any obligation to secrecy that may be imposed by any other Act (Income Tax Act, s. 86(5)).There have been no material changes to the relevant legal framework since that report.

Bank secrecy

271. Under the Banking Act 2011, "no person shall disclose information relating to the banking business of a licensee or of a depositor or other customer of the licensee" (Banking Act, s. 54). However, a number of exceptions apply. In particular, disclosure is permitted for the purpose of discharging any duty, performing any function or exercising any power under the Banking Act or any other Act (Banking Act, s. 54(2)(b)). Therefore, banking secrecy is no impediment to access powers of the competent authority under the Income Tax Act, as required under the standard.

Professional secrecy

272. Legal privilege (attorney-client privilege) exists in the Cook Islands under the Code of Ethics set out in the Schedule to the Law Practitioners Act 1993-94. Section 6 provides that "any oral or written communication between practitioners shall be accorded confidentiality, unless agreed otherwise by a client, or as may be required by law". Furthermore, section 18 establishes that "a practitioner should never disclose, unless lawfully ordered to do so by the Court or as required by law, what has been communicated to him in his capacity as a practitioner, even after he has ceased to be the client's counsel. This duty extends to his partners, to practitioners assisting him and to his employees".

273. As found in the 2015 Report, the scope of these restrictions are in line with the standard. Privilege is not an impediment to the exercise of access powers of the competent authority, particularly given the override in the Income Tax Act and by the Cook Islands' TIEAs and the Multilateral

33. International Companies Act (ss. 227 and 249), International Trusts Act (s. 23), Limited Liability Companies Act (s. 72), Foundations Act, International Partnership Act (s. 74), Financial Transaction Reporting Act (s. 33), Financial Supervisory Commission Act 2003 (s. 31), Financial Services Development Authority Act 2009 (s. 24), the Captive Insurance Act 2013.

Convention on Mutual Administrative Assistance in Tax Matters (Income Tax Act, s. 86(1)). The limits on information which must be exchanged under the Cook Islands' TIEAs mirror those provided for in the OECD Model TIEA and the Multilateral Convention. Accordingly, communications between a client and an attorney or other admitted legal representative are only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Therefore, the attorney-client privilege in the Cook Islands is no impediment to access powers of the competent authority as required under the standard. Practical application of professional secrecy will be examined during Phase 2 review.

B.2. Notification requirements, rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

274. The 2015 Report found that there were no issues regarding prior notification requirements or appeal rights and the element was determined to be in place. This continues to be the case.

275. The conclusions are as follows:

Legal and Regulatory Framework: In place

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

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

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

Notification of the information holder

276. There are no legal requirements for the Cook Islands' RMD to inform the person concerned with a request for information from the Collector of the existence of an exchange of information request prior and after exchange. Likewise, the RMD is not obliged to inform the taxpayer concerned prior and after contacting third parties to obtain information. In practice, where information is held by another government authority (such as the Financial Supervisory Commission), the taxpayer would not be notified.

Appeal rights

277. If a person or a public authority who receives a request from the Collector believes that the request is improper, he/she may apply to the High Court to have the request discharged or varied within 14 days from the date of receipt (Income Tax Act, s. 220(4)). A request may be considered to be improper where the Collector does not have a legal basis for obtaining the information, for example because the request for information is not in conformity with the terms of the relevant Tax Information Exchange Agreement (TIEA).

278. On hearing such application, the Court may discharge the request or make such variation to it as it thinks fit. If the Court decides that the request is proper, the person or public authority may not appeal this decision.

279. Practical aspects of rights and safeguards will be examined again in the Phase 2 review, including appeals to the High Court related to EOI requests. Although the court has the power to discharge an EOI request, the appellant would be required to satisfy the court that the request was improper. If the Court decides that the request is proper, the person or public authority may not appeal from this decision. This provision remains untested in practice since no applications to the High Court to vary or discharge a request have been made to date. In summary, the Cook Islands' legal framework is determined to be in place for ToR B.2.1.

Part C: Exchange of information

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

281. The 2015 Report identified that the Cook Islands has a network of EOI agreements that allow for EOI on request in accordance with the international standard, resulting in a determination of the legal framework as "in place" and rated as Compliant.

282. In 2015, the Cook Islands' EOI network covered 18 jurisdictions. The Cook Islands signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention) on 28 October 2016, which entered into force on 1 September 2017. The EOI network now covers 143 jurisdictions through the Multilateral Convention and 21 TIEAs (i.e. 3 new TIEAs compared to the previous review report, with Belgium, Canada and the Czech Republic; see Annex 2). All TIEA partners are also covered by the Multilateral Convention, therefore all EOI relationships of the Cook Islands meet the standard.

283. The Cook Islands legal framework does not present any issue that would compromise the effective exchange of information or otherwise frustrate the application of these EOI mechanisms.

284. The legal basis on which EOI requests took place between the Cook Islands and two partners over the last few years were Tax Information Exchange Agreements (TIEA) and the Multilateral Convention.

285. The conclusions are as follows:

Legal and Regulatory Framework: In place

No material deficiencies have been identified in the EOI mechanisms of the Cook Islands.

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

Other forms of exchange of information

286. In addition to exchange of information on request, the Cook Islands is also involved in automatic exchange of financial account information. The first non-reciprocal exchanges took place in September 2018 and reciprocal exchanges started as from 2019. There is no use of spontaneous exchanges.

C.1.1. Standard of foreseeable relevance

287. The 2015 Report concluded the Cook Islands' TIEAs allowed for exchange of information in accordance with the standard of foreseeable relevance. This is also the case for the three TIEAs signed since that report, as well as for the Multilateral Convention.

288. All Cook Islands' TIEAs include the term "foreseeably relevant" in their EOI Article and clarify information to be provided to the competent authority of the requested party to demonstrate the foreseeable relevance of the information to the request:

- the identity of the person under examination or investigation
- 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
- grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party
- to the extent known, the name and address of any person believed to be in possession of the requested information

- a statement that the request is in conformity 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 it is in conformity with this Agreement
- a statement that the applicant Party has pursued all means available in its own territory to obtain information, except those that would give rise to disproportionate difficulties.

289. The Cook Islands confirmed that RMD verifies all information to establish the foreseeable relevance of incoming and outgoing requests. There is a manual giving guidance by referring to Article 26 of the Model Taxation Convention and its Commentary on fishing and foreseeable relevance. The Cook Islands require incoming EOI requests to include background information, including an explanation of the tax purpose for which the information is requested, the type of investigations carried out by the requesting authority and a description of the efforts made by the requesting jurisdiction to obtain the information domestically. The Cook Islands confirmed that it has never sought clarifications to incoming EOI requests as per April 2022.

Clarifications and foreseeable relevance in practice

290. The peer input received for the current review did not raise any concerns with the Cook Islands' interpretation or practices with foreseeable relevance of requests made by peers. The practical application of the foreseeable relevance standard in the Cook Islands' exchange of information practice will be considered in the Phase 2 review.

Group Requests

291. The Cook Islands' EOI agreements and domestic law do not contain language prohibiting group requests. The EOI Manual of the Cook Islands interprets them as allowing the provision of information requested pursuant to group requests and refers to Article 26 of the Model Taxation Convention and its commentaries.

292. The Cook Islands has not received group requests over the last three years. Such group requests would be treated in the same way as individual requests. The practical application of responding to group requests will be examined in the course of the Cook Islands' Phase 2 review.

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

293. All TIEAs signed by the Cook Islands contain a provision concerning jurisdictional scope which is equivalent to Article 2 of the OECD Model TIEA and which conforms to the international standard. The Multilateral Convention also allows for exchange of information in respect of all persons.

294. The practical application of this issue will be examined in the course of the Cook Islands' Phase 2 review.

C.1.3. Obligation to exchange all types of information

295. All TIEAs signed by the Cook Islands contain a provision similar to Article 5(4) of the OECD Model TIEA, which ensures that the requested jurisdiction shall not decline to supply the information requested solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person. The Multilateral Convention also foresees the obligation to exchange all types of information.

296. The practical application will be further examined during Phase 2 review at a later stage.

C.1.4. Absence of domestic tax interest

297. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An inability to provide information based on a domestic tax interest requirement is not consistent with the standard.

298. All TIEAs concluded by the Cook Islands contain a provision similar to Article 5(2) of the OECD Model TIEA, which allows information to be obtained and exchanged notwithstanding it is not required for a domestic tax purpose. The Multilateral Convention also allows for exchange of information regardless of a domestic tax interest.

299. Practical application of concerns as to domestic tax interest will be examined during Phase 2 review.

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

300. The Cook Islands' network of agreements provide for exchange in both civil and criminal matters, with no dual criminality restriction.

C.1.7. Provide information in specific form requested

301. The Cook Islands' network of agreements have no restrictions that would prevent it from providing information in a specific form.

302. The Collector has not been requested to provide information in a particular form during the review period, but does not foresee difficulties in providing information in a requested form, for example as a sworn affidavit.

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

303. All the EOI instruments of the Cook Islands are in force, except for the TIEA with Greece not ratified by the Cook Islands, but the two jurisdictions can exchange information based on the Multilateral Convention.

304. The Cook Islands has in place domestic legislation necessary to give effect to the terms of its EOI instruments, as described in paragraphs 315-319 in the 2015 Report. The following table summarises outcomes of the analysis under element C.1 in respect of the Cook Islands' EOI mechanisms.

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	143
In force	134
In line with the standard	134
Not in line with the standard	-
Signed but not in force	9 (Multilateral Convention)
In line with the standard	9
Not in line with the standard	-
Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms	-

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

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

305. The 2015 Report recommended the Cook Islands to continue expanding its EOI network. The Cook Islands signed the Multilateral Convention on 28 October 2016 and ratified it on 29 May 2017 with entry into force date on 1 September 2017. The Multilateral Convention extended significantly the EOI network.

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

307. The conclusions are as follows:

Legal and Regulatory Framework: In place

Deficiencies identified/ Underlying Factor	Recommendations
The network of information exchange mechanisms of the Cook Islands covers all relevant partners.	

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

C.3. Confidentiality

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

308. The 2015 Report concluded that the confidentiality provisions in the Cook Islands' EOI instruments and domestic laws were in line with the standard. This continues to be the case.

309. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the EOI mechanisms and legislation of the Cook Islands concerning confidentiality of information received.

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

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

310. All of the Cook Islands' TIEAs have secrecy provisions ensuring the confidentiality of information exchanged and limiting the disclosure and use of information received. In addition, section 86(1) of the Income Tax Act, as amended, provides that TIEA provisions have effect "according to their tenor" notwithstanding anything to the contrary in any enactment. This means that the TIEA provisions pertaining to confidentiality of information form part of the body of Cook Islands domestic law. The same applies with respect to the Multilateral Convention.

311. The confidentiality provisions of the Cook Islands' EOIR instruments are backed up by the general secrecy provisions in section 7 of the Income Tax Act. The Income Tax Act expressly provides that the above secrecy provisions shall not prevent the Collector from disclosing such information "as is required to be disclosed" under EOIR instruments (Income Tax Act, s. 86(5)). The Collector and every officer shall not communicate any matters relating to the Income Tax Act to any person, except for the purpose of giving effect to this Act or any other enactment imposing taxes or duties payable to the Crown (Income Tax Act, s. 7). In 2017, an Income Tax Amendment Act was introduced to further enhance the secrecy provisions to expressly prevent the unauthorised disclosure of information held under EOI instruments with other jurisdictions and increase penalty for contravening the secrecy provision from NZD 500 (USD 338) to NZD 5 000 (USD 3 380) (Income Tax Amendment Act 2017, s. 5). The Cook Islands confirmed that the secrecy provisions continue to apply after the cessation of employment.

312. The Cook Islands has an Official Information Act 2008[34] that applies to the communications between jurisdictions. The disclosure of such information is not required if, for example, it would prejudice the entrusting of information to the Government of Cook Islands on a basis of confidence by the government of any other country or an agency of such a government or by any international organisation (Official Information Act, s. 6). The Cook Islands authorities have never received a request for disclosure of information received pursuant to a TIEA or the Multilateral Convention, but are confident that the exception of section 6 would apply. In addition, section 7 of the Income Tax Act specifies that information can be communicated only for the purpose of giving effect to this Act or any other enactment imposing taxes or duties payable to the Crown. The Official Information Act does not impose taxes or duties payable to the Crown. In practice, freedom of information requests received in the domestic tax context have been refused where appropriate, including where a request was not made in good faith.

34. Under the section 5 of the Official Information Act 2008, a person has rights to access information relating to himself unless there is a good reason to withhold it under section 6.

313. The Terms of Reference, as amended in 2016, clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax 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 competent authority supplying the information authorises the use of information for purposes other than tax purposes. The Cook Islands' competent authority is restricted from granting authorisation to use the information for other purposes, also when a requesting partner seeks the Cook Islands' consent, by the section 7 of the Official Information Act 2008 maintaining secrecy provisions which has effect on the competent authorities' ability to authorise requests for non-tax purposes. In general, use of information for non-tax purposes is not permitted in the Cook Islands pursuant to section 7(1) of the Income Tax Act 1997. There are no other domestic legal provisions giving effect to use of information for non-tax purposes. In practice, the Cook Islands reported that over the review period there was one request, where the requesting partner sought the Cook Islands' consent to utilise the information for non-tax purposes, which was declined by the Cook Islands.

C.3.2. Confidentiality of other information

314. The confidentiality provisions in the Cook Islands' EOI instruments and domestic law do not draw a distinction between information received in response to requests and information forming part of the requests themselves. All other information, such as background documents, communications between the requesting and the requested authorities and within the tax authorities, are treated confidentially.

315. The Cook Islands' authorities indicate that EOI data is treated separately from the rest of the tax data and stored securely in the Collector's office.

316. The practical implementation of confidentiality provisions will be assessed in the Phase 2 review.

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.

317. The standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other legitimate secret arises.

318. Pursuant to all of the Cook Islands’ EOI instruments, the contracting parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy. The 2015 Report concluded that the Cook Islands’ legal framework and practices concerning rights and safeguards of taxpayers and third parties was in line with the standard.

319. Communication between an attorney or other legal representative and a client are only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Where attorney-client privilege is more broadly defined, it does not provide valid grounds on which to decline a request for exchange of information (see also element B.1.5).

320. As was described in the 2015 Report, the TIEAs concluded by the Cook Islands at that time met the standard for the protection and rights of taxpayers and third parties. This remains the case with EOI agreements concluded since then. This protection of the rights and safeguards of taxpayers and third parties is in accordance with the standard and does not hinder access for EOI purposes. The practical implementation of rights and safeguards provisions will be assessed in the Phase 2 review.

321. The conclusions are as follows:

Legal and Regulatory Framework: In place

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

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

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.

322. The 2015 Report issued a “Largely Compliant” rating for element C.5 and did not identify specific issues or legal restrictions on the ability of the Cook Islands’ competent authority to provide information in an effective manner. As requesting and providing information in an effective manner is a matter of practice, it will be considered in the course of the Phase 2 review.

323. The conclusions are as follows:

Legal and Regulatory Framework

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

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

The Phase 2 recommendations issued in the 2015 Report are reproduced below for the reader's information.

Deficiencies identified/ Underlying Factor	Recommendations
The Cook Islands has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with incoming EOI requests. The Cook Islands received relatively few requests during the review period.	The Cook Islands should continue to monitor the practical implementation of the organisational processes of the EOI unit, in particular taking account of any significant changes to the volume of incoming EOI requests, to ensure that they are sufficient for effective EOI in practice.

C.5.1. Timeliness of responses to requests for information

324. In order for EOI to be effective, it needs to be provided in a time-frame that allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time, the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

325. There are no legal restrictions on the ability of the Cook Islands' Competent Authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request. The Cook Islands' EOI agreements require the provision of the requested confirmations, status updates and the provision of the requested information, within the timeframe foreshadowed in Article 5(6)(b) of the OECD Model TIEA.

326. In addition, the Cook Islands has a document outlining the procedure for responding to an EOI request. Since the 2015 Report, the document has

been updated to include a reference to providing an update within 90 days. In addition, the Cook Islands does refer to the Global Forum manual where its own procedural document does not address an issue. The Global Forum manual does include an instruction to provide a status update within 90 days, and the Collector confirmed that this practice would be followed in the event that a full response was not able to be provided within 90 days.

327. The two exchange partners did not raise any concerns with respect to the timeliness of responses from the Cook Islands to requests for information when providing inputs for this review. An analysis of the practice of the Cook Islands' authorities to respond promptly to requests for information sent to them and, if any, to send status updates and to ensure relevant communication with partners will be carried out during the Phase 2 review.

C.5.2. Organisational processes and resources

328. The Competent Authority for EOI purposes is the Collector of the RMD which is a division of the Ministry of Finance and Economic Management. The RMD is the tax and customs collection authority for the Cook Islands. Two additional personnel (out of 35 staff in the RMD in total) are allocated the responsibility for EOI matters, each being Senior Tax Auditors who report directly to the Collector. The Collector has been engaged in tax treaty negotiations for ten years and attends Global Forum meetings as well as EOI training sessions. The two staff members have completed university studies in tax and accounting, and have on the job training, both in the RMD and in previous jobs with a revenue administration and a large business respectively.

329. Procedures for handling EOI requests are set out in a step-by-step guide developed by the Collector. Where relevant, the Global Forum manual on EOI has also been consulted.

330. All EOI requests are sent to, or by, the Collector. The details of the Competent Authority are identifiable on the tax section of the Ministry of Finance and Economic Management website, and with the Global Forum. Updates as to contact details of the EOI unit are provided to most frequent EOI partners, usually by telephone conferences.

331. The 2016 ToR includes an additional requirement to ensure the quality of requests made by assessed jurisdictions. Over the last three years, the Cook Islands made three outbound EOI requests; all were addressed to the same partner. All three were group requests and met the foreseeably relevant standard. One request was a complex group request, so clarification was sought before the request was accepted. The request for clarification caused a minor delay as it related to the name of the competent authority, and confirmation of exhaustion of domestic means. Outbound requests are co-ordinated

through the EOI unit, with documented procedures included in the EOI manual. The manual includes a template which must be used by the RMD when submitting requests to the EOI unit.

332. The 2015 report concluded that the Cook Islands had committed resources and had in place organisational processes for exchange of information that appeared to be adequate for dealing with incoming EOI requests. Since the Cook Islands has received relatively few requests during the review period, it was recommended to continue to monitor the practical implementation of the organisational processes of the EOI unit, in particular taking account of any significant changes to the volume of incoming EOI requests, to ensure that they are sufficient for effective EOI in practice. The Cook Islands should continue this monitoring to ensure an effective EOI in practice. This element will be further assessed during the Phase 2 (see Annex 1).

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

333. There are no factors or issues identified in the Cook Islands that could unreasonably, disproportionately or unduly restrict effective EOI.

Annex 1: List of in-text recommendations

The Global Forum may identify issues that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, it should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be stated in the text of the report. A list of such recommendations is reproduced below for convenience.

- **Element A.1.2**: Even through in practice there are no longer any bearer share in existence, the Cooks Islands is nonetheless invited to proceed with its planned amendments to abolish the legal possibility to issue bearer shares (see paragraph 130).
- **Element A.2**: Accounting records of international companies can be kept outside the Cook Islands. Although no authorisation has been granted by the Registrar, the Cook Islands should ensure that accounting records of such a company are accessible in a timely manner by the authorities (para. 193).
- **Element C.2**: Cook Islands should continue to conclude EOI agreements with any new relevant partner who would so require (para. 306).

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

- Element A.1: A monitoring mechanism to make sure that the information kept by the Limited Liability Companies is accurate and up to date (para. 68).
- Element A.1: The discrepancy between the number of companies registered with the Registrar and with the Revenue Management Division (para. 71 and 93)
- Element A.1: The determination of beneficial ownership in line with specific “form and structure” of the partnerships (para. 146).

- **Element A.1.5**: The interpretation in practice of the definition of beneficial owners of foundations (para. 175).
- Element C.5: Cook Islands should continue to monitor the practical implementation of the organisational processes of the EOI unit to ensure that they are sufficient for effective EOI in practice (para. 332).

Annex 2: List of the Cook Islands' EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI PARTNER	Type of agreement	Signature	Entry into force
1	Australia	TIEA	27-Oct-09	02-Sept-11
2	Belgium	TIEA	8-Sept-15	18-Dec-15
3	Canada	TIEA	15-Jun-15	16-Dec-17
4	Czech Republic	TIEA	24-Feb-15	10-May-16
5	Denmark	TIEA	16-Dec-09	02-Oct-11
6	Faroe Islands	TIEA	16-Dec-09	12-Nov-13
7	Finland	TIEA	16-Dec-09	02-Oct-11
8	France	TIEA	15-Sep-10	16-Oct-11
9	Germany	TIEA	03-Apr-12	11-Dec-13
10	Greece	TIEA	12-Feb-13	Not in force
11	Greenland	TIEA	16-Dec-09	10-Jan-13
12	Iceland	TIEA	16-Dec-09	25-Jun-12
13	Ireland	TIEA	08-Dec-09	02-Sep-11
14	Italy	TIEA	17-May-11	17-Feb-15
15	Korea	TIEA	31-May-11	05-Mar-12
16	Mexico	TIEA	22-Nov-10	02-Mar-12
17	Netherlands	TIEA	23-Oct-09	07-Sep-11
18	New Zealand	TIEA	09-Jul-09	13-Dec-11
19	Norway	TIEA	16-Dec-09	06-Oct-11
20	South Africa	TIEA	25-Oct-13	08-Jan-15
21	Sweden	TIEA	16-Dec-09	06-Oct-11

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).[35] 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 the Cook Islands on 28 October 2016 and entered into force on 1 September 2017. The Cook Islands can exchange information with all other Parties to the Multilateral Convention.

The Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Armenia, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Bosnia and Herzegovina, 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,[36] Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Eswatini, Faroe Islands (extension

35. 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.

36. Note by Türkiye: 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. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye shall preserve its position concerning the "Cyprus issue".

by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Jordan, Kazakhstan, Korea, Kuwait, Latvia, Liberia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), Malaysia, Maldives, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Montserrat (extension by the United Kingdom), Morocco, Namibia, Nauru, Netherlands, New Zealand, Nigeria, Niue, North Macedonia, Norway, Oman, Pakistan, Panama, Paraguay, 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, Thailand, Tunisia, Türkiye, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Benin, Burkina Faso, Gabon, Mauritania (entry into force on 1 August 2022), Papua New Guinea, Philippines, Rwanda, Togo, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).[37]

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 Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

37. 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, which is the case for the Cook Islands.

Annex 3: Methodology for the review

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

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as of 6 May 2022, Cook Islands' responses to the EOIR questionnaire, and inputs from partner jurisdictions. Since this assessment was launched in the final quarter of 2021, peer review contributions were received for the period 1 April 2018 to 31 March 2021. As the Cook Islands has limited experience in exchange of information on request, the review of this jurisdiction is conducted in two phases, in accordance with the new section V of the Methodology, as amended in 2021. Although implementation in practice is not assessed in this report, the assessment team has considered these contributions to confirm the compliance of the legal and regulatory framework.

Summary of reviews

Review	Assessment team	Period under review	Legal Framework as of	Date of adoption by Global Forum
Round 1 Phase 1	Mr Oscar Echenique Quintana (Mexico); Mr Bevon Sinclair (Jamaica); Ms Renata Fontana (Global Forum Secretariat)	Not applicable	.	June 2012
Round 1 Phase 2	Mr Diego Marvan Mas (Mexico); Mr Jon Swerdlow (United Kingdom); Mr Mikkel Thunnissen and Ms Melissa Dejong (Global Forum Secretariat)	1 July 2010-30 June 2013	December 2014	March 2015
Round 2 Phase 1	Mr Hiroyuki Nakamichi (Japan); Ms Nangalama Phioner (Uganda); Ms Kuralay Baisalbayeva (Global Forum Secretariat)	Not applicable	6 May 2022	5 August 2022

List of laws, regulations and other materials received

Companies Act 1970-71

International Companies Act 1981-82 (ICA)

International Companies (Evidence of Identity) Regulations 2004

International Companies Amendment Act 2013

Limited Liability Companies Act 2008 (LLCA)

Limited Liability Companies Amendment Act 2013

International Partnership Act 1984 (IPA)

International Partnership Amendment Act 2013

Trustee Companies Act 2014

International Trusts Act 1984 (ITA)

International Trusts Amendment Act 2013

Foundations Act 2012

Foundations Amendment Act 2013

Captive Insurance Act 2013

Financial Transactions Reporting Act 2004 (FTRA)

Financial Transactions Reporting Amendment Act 2013

Mutual Assistance in Criminal Matters Act 2003

Bank of the Cook Islands Act 2003

Banking Act 2011

Insurance Act 2008

Anti-money laundering and counter-terrorist financing measures – Cook Islands, Third Round Mutual Evaluation Report, APG (2018)

Income Tax Act 1997

Income Tax Amendment Act 2011

Income Tax Amendment Act 2013

Income Tax (Automatic Exchange of Financial Account Information and Other Matters) Amendment Act 2016

Income Tax Amendment Act 2017

Income Tax (Company Residence) Amendment Act 2021

Value Added Tax Act 1997

Annex 4: The Cook Islands' response to the review report[38]

In response to the review report the Cook Islands wishes to express our appreciation to the assessment team and the Secretariat for their constructive collaboration and support during this assessment phase of the review. The Cook Islands will attend to the phase 1 review report recommendations and continue to commit to phase 2 and its schedule.

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

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request COOK ISLANDS 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 for the Cook Islands. It refers to Phase 1 only (Legal and Regulatory Framework).

PRINT ISBN 978-92-64-44025-8
PDF ISBN 978-92-64-72449-5