

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

Peer Review Report on the Exchange of Information  
on Request

# **MALDIVES**

2022 (Second Round, Phase 1)



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

PEER REVIEW REPORT ON THE EXCHANGE  
OF INFORMATION ON REQUEST

This peer review report was approved by the Peer Review Group of the Global Forum on Transparency and Exchange of Information for Tax Purposes on 11 October 2022 and adopted by the Global Forum members on 7 November 2022. The report was prepared for publication by the Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

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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.

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## Reader's guide

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

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

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

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

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

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

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

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

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

## Consideration of the Financial Action Task Force Evaluations and Ratings

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



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

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

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

## More information

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



## Abbreviations and acronyms

<b>2016 TOR</b>	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015
<b>AA</b>	Association Act
<b>AML</b>	Anti-Money Laundering
<b>AML Act</b>	Law No. 10/2014 on the Prevention of Money Laundering and Financing of Terrorism Act
<b>AML/CFT</b>	Anti-Money Laundering/Countering the Financing of Terrorism
<b>BRA</b>	Business Registration Act
<b>CA</b>	Companies Act
<b>CDD</b>	Customer Due Diligence
<b>CSA</b>	Co-operative Societies Act
<b>DTC</b>	Double Taxation Convention
<b>EOI</b>	Exchange of Information
<b>EOIR</b>	Exchange of Information on Request
<b>FATF</b>	Financial Action Task Force
<b>Global Forum</b>	Global Forum on Transparency and Exchange of Information for Tax Purposes
<b>MBA</b>	Maldives Banking Act
<b>MIRA</b>	Maldives Inland Revenue Authority
<b>MMA</b>	Maldives Monetary Authority
<b>MMA-FIU</b>	Financial Intelligence Unit within the Maldives Monetary Authority

<b>Multilateral Convention</b>	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
<b>MVR</b>	Maldivian Rufiyaa
<b>PA</b>	Partnership Act
<b>SAARC Agreement</b>	Regional Limited multilateral Agreement on Avoidance of Double Taxation and mutual Administrative Assistance in Tax Matters among members of the South Asian Association for Regional Co-operation
<b>TAA</b>	Tax Administration Act
<b>TAR</b>	Tax Administration Regulation
<b>TCSP</b>	Trust and Company Service Providers
<b>TIEA</b>	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 Maldives on the second round of reviews conducted by the Global Forum. As the Maldives joined the Global Forum in 2016, no assessment of the Maldives was conducted under the first round of peer reviews. Therefore, this report is the first assessment of the Maldives.

2. Due to the limited practical experience of the Maldives 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 in the Maldives as at 15 July 2022 against the 2016 Terms of Reference. The assessment of the practical implementation of this framework will be organised at a later date (Phase 2 review).

3. This report concludes that the Maldives has a legal and regulatory framework in place for the access and the exchange of relevant information for tax purposes but that requires improvement in several areas in respect of the availability of this information.

### Findings of the Second Round Phase 1 Report

Second Round Report (2022)	
Element	Determination
A.1 Availability of ownership and identity information	In place but needs improvement
A.2 Availability of accounting information	In place but needs improvement
A.3 Availability of banking information	In place but needs improvement
B.1 Access to information	In place
B.2 Rights and Safeguards	In place
C.1 EOIR Mechanisms	In place
C.2 Network of EOIR Mechanisms	In place
C.3 Confidentiality	In place
C.4 Rights and safeguards	In place
C.5 Quality and timeliness of responses	Not applicable
<b>OVERALL RATING</b>	<b>NOT APPLICABLE</b>

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

## Transparency

4. Maldivian company laws contain obligations that require, in most cases, the availability of information on the identity and legal ownership of the Maldivian entities. Initial owners are known as their details must be included in the constitutive documents of new entities and provided at the time of registration with the Registrar of Businesses. The identity and legal ownership information must also be kept at the level of the entities and changes be regularly communicated to the Registrar of Businesses. Maldivian companies cannot issue bearer shares.

5. The standard requires the availability of information on beneficial owners of legal entities and arrangements. This information may be available from AML-obliged persons, when any such person has a business relationship with the relevant entity or legal arrangement. Under the anti-money laundering law, the Maldivian legal entities must also maintain the information on their beneficial owners. However, some deficiencies have been identified in the AML provisions, in particular in respect of the lack of guidance on these obligations.

6. Company and tax laws also require the availability of accounting information of the legal entities. In terms of banking information, the anti-money laundering and the banking laws also contain an obligation for banks to keep details of their customers' transactions.

## Key recommendations

7. Although the Maldivian legal framework generally ensures the availability of the information on the identity and legal owners of the domestic entities, this information may not always be available for foreign companies having sufficient nexus to the Maldives and foreign partnerships which are carrying on business, or have income, credits or deductions for tax purposes in the Maldives. Moreover, the co-operative societies are not expressly obliged to update their register of members in case of changes.

8. In the Maldives, beneficial ownership information is available primarily thanks to the obligation for the AML-obliged persons to conduct customer due diligence, which includes the identification of the beneficial owners of their clients, including when those clients are foreign entities or legal arrangements. However, there is no clear requirement for the relevant entities and arrangements to use the services of such a person. In addition, the anti-money laundering framework does not provide for any specified frequency for updating beneficial owner information. More generally, there is a lack of guidance on the customer due diligence obligations, including on the definition and methodology of identification of the beneficial owners

and on the consequences of the simplified diligence for low-risk customers, that may lead to situations where the beneficial owners are not identified in accordance with the standard. The same shortcomings affect the availability of the information on the beneficial owners of bank accounts. Although there is also an obligation for the Maldivian legal entities to maintain the information on their beneficial owners, this obligation is not further explained, which may lead to difficulties to implement this obligation. Therefore, although the anti-money laundering framework requires the availability of beneficial ownership information for some relevant entities, the available information may not always be adequate, accurate and up to date. In addition, for foreign trusts, there is no obligation for the trustees that are not AML-obliged persons to identify the parties and the beneficial owners of the trusts.

9. In respect of maintenance of accounting records with underlying documentation, the Maldivian law does not ensure that reliable information is kept for liquidated entities. Similarly, the beneficial ownership information held by the AML-obliged persons on their clients may not be available after the liquidation of such persons (or after a foreign bank has ceased its operation in the Maldives).

10. It is therefore recommended that the Maldives address these shortcomings.

## Exchange of information

11. The Maldives can rely on a specific provision to obtain the information requested in an EOI request, which is in line with the standard.

12. The Maldives has a network of international instruments for the exchange information on request which covers 149 jurisdictions, through the Convention on Mutual Administrative Assistance on Tax Matters (the Multilateral Convention), 3 bilateral EOI instruments and a regional agreement among members of the South Asian Association for Regional Co-operation. Exchange can take place with 138 partners with whom an EOI instrument is in force. This EOI framework has no material deficiencies so that no recommendation was issued on this aspect. The Maldives has not yet received any requests for information but has already sent a few requests to partners.

13. The assessment of EOI in practice is not covered by this report and will be subject to a future Phase 2 review, to be organised at a later date.

## Next step

14. This report only assesses the Maldives' legal and regulatory framework for transparency and exchange of information for tax purposes. The Maldives receives an “in place” determination for elements B.1, B.2, C.1, C.2, C.3 and C.4 and an “in place but needs improvement” determination for elements A.1, A.2 and A.3. Each element will be rated and the overall rating given at the conclusion of the Phase 2 review.

15. This report was approved by the Peer Review Group of the Global Forum on 11 October 2022 and adopted by the Global Forum on 7 November 2022. A follow-up report on the measures taken by the Maldives to implement the recommendations made in this report should be provided to the Peer Review Group by 30 June 2023, and thereafter annually in accordance with the procedure set out in the 2016 Methodology for peer reviews and non-member reviews, as amended in 2020 and 2021.



## Summary of determinations, ratings and recommendations

Determinations	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities ( <i>ToR A.1</i> )		
<b>The legal and regulatory framework is in place but needs improvement</b>	There is no clear obligation for ownership and identity information to be kept on foreign companies having sufficient nexus to the Maldives and foreign partnerships which are carrying on business in the Maldives.	The Maldives should ensure that adequate, accurate and up-to-date legal ownership and identity information is kept for relevant foreign companies and partnerships.
	There is no clear obligation for the co-operative societies to update their register of members in case of change of members. In addition, if a co-operative society ceases to exist, only the last identity and legal ownership status is required to be kept by the Registrar of Businesses	The Maldives should ensure that the register of members of the co-operative societies is updated with all relevant changes in the identity and legal ownership information and that this information is available for at least five years after the co-operative societies have ceased to exist.

Determinations	Factors underlying recommendations	Recommendations
	<p>Beneficial ownership information on legal entities and arrangements may be available with an AML-obliged person in the Maldives to the extent that there is a business relationship with such a person. However, such a business relationship is not mandatory.</p> <p>There is a lack of guidance in the Maldivian legal framework on the implementation of the definition of beneficial owner(s) and the methodology for identifying them in the context of customer due diligence, so the beneficial owners may not always be identified in accordance with the standard. Moreover, there is no specified frequency for AML-obliged persons to conduct customer due diligence, so there could be situations where the available beneficial ownership information is not up to date.</p> <p>The AML-obliged persons are also allowed to conduct simplified due diligence for low-risk customers, but there is no guidance on the content of such due diligence and their impact on the identification of beneficial owners.</p> <p>The trustee of a foreign trust that is not an AML-obliged person is not subject to any obligation to identify the parties and the beneficial owners of the trusts.</p> <p>The legal entities established in the Maldives (companies, partnerships and co-operative societies) have also the obligation to identify their beneficial owners. However, there is no further guidance for the implementation of this obligation by the legal entities, including on the application of the definition of beneficial owner, which may lead to the situation where the beneficial owners are not properly identified.</p> <p>Although the tax law also contains a definition of beneficial owner, this definition is not further explained or associated to a specific record-keeping obligation.</p>	<p>The Maldives should ensure that adequate, accurate and up-to-date information on the beneficial owners for all relevant entities and arrangements be available in line with the standard.</p>

Determinations	Factors underlying recommendations	Recommendations
	<p>In the case where the beneficial ownership information of a legal entity or arrangement is available with an AML-obliged person, the retention of the beneficial ownership information is not ensured for at least five years in the case of the liquidation of the AML-obliged person.</p> <p>Moreover, there is no legal retention period specified for the obligation of the Maldivian legal entities to keep the information on their beneficial owners.</p> <p>Therefore, the legal framework of the Maldives does not ensure that the beneficial ownership information is kept for at least five years in these cases.</p>	<p>The Maldives should ensure that beneficial ownership information for all relevant entities and arrangements is kept for at least five years, including in the case where the AML-obliged person has ceased to exist.</p>
<p>Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)</p>		
<p><b>The legal and regulatory framework is in place but needs improvement</b></p>	<p>The companies and co-operative societies must provide their annual accounts to the Registrar of Businesses, which keeps them for 25 years following the liquidation of a relevant entity. This obligation does not extend to underlying documentation nor to other relevant entities or arrangements, such as partnerships. Therefore, full accounting information is not available in all cases for liquidated entities and arrangements.</p>	<p>The Maldives should ensure that the accounting information, including the underlying documentation, is kept for at least five years following the liquidation or termination of the relevant entities and arrangements.</p>
<p>Banking information and beneficial ownership information should be available for all account-holders (<i>ToR A.3</i>)</p>		
<p><b>The legal and regulatory framework is in place but needs improvement</b></p>	<p>In the case of a liquidation of the bank, the Maldivian law does not contain a requirement that banking information be available after a bank has ceased to exist or after a foreign bank has ceased its operations in the Maldives.</p>	<p>The Maldives should ensure that banking information is kept for at least five years, including in the case where the bank has ceased to exist or a foreign bank has ceased its operations in the Maldives.</p>

Determinations	Factors underlying recommendations	Recommendations
	<p>There is a lack of guidance in the Maldivian legal framework on the implementation of the definition of beneficial owner(s) and the methodology for identifying them, so the beneficial owners may not always be identified in accordance with the standard.</p> <p>Moreover, there is no specified frequency for banks to conduct customer due diligence, so there could be situations where the available beneficial ownership information is not up to date.</p> <p>The banks are also allowed to conduct simplified CDD for low-risk customers, including when entering into a business relationship with their customers, but there is no guidance on the content of such CDD and their impact on the identification of beneficial owners.</p>	<p>The Maldives should ensure that an adequate, accurate and up-to-date information on the beneficial owners of bank accounts be available in line with the standard.</p>
<p>Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1</i>)</p>		
<p><b>The legal and regulatory framework is in place</b></p>		
<p>The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>)</p>		
<p><b>The legal and regulatory framework is in place</b></p>		
<p>Exchange of information mechanisms should provide for effective exchange of information (<i>ToR C.1</i>)</p>		
<p><b>The legal and regulatory framework is in place</b></p>		

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



## Overview of the Maldives

16. This overview provides some basic information about the Maldives, which serves as context for understanding the analysis in the main body of the report. The Maldives counts over 500 000 inhabitants widespread across the atolls with about 200 inhabited islands and more than 100 islands developed as tourist resorts. Each city, island and atoll is governed by a local Council, responsible for the implementation of the law at the local level. The economy of the Maldives is mainly based on tourism, with construction and fishing sectors also making important contributions. The currency of Maldives is Maldivian Rufiyaa (MVR). The capital city of the Maldives is Male.

### Legal system

17. The Maldives is a Presidential Republic based on the Constitution adopted in 2008 and which relies on the executive, legislative and judicial branches. The Constitution of the Maldives is the supreme law of the country. It sets out the rights and duties of the citizens of Maldives and defines the structure of the Government. The domestic legislation also encompasses the Acts passed by the Parliament, the delegated legislation (rules and regulations) and the judicial case laws. The international treaties to which the Maldives is party have effect in the Maldives and the Maldivian authorities confirmed that they take precedence over the domestic legislation.<sup>1</sup>

18. The executive branch consists of the President and the Cabinet of Ministers. The President is both the head of state and the head of the government. The Cabinet comprises the President, Vice President, Attorney General and Ministers. The President appoints the Attorney General and the

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1. The Maldivian authorities explained that Section 68 of the Constitution imposes to a court or tribunal to consider international treaties when interpreting and applying the rights and freedom. In tax matters, the precedence of the international law is confirmed by Section 51-6 of the TAA, which mentions that the international EOI instruments are binding.

Ministers who are then approved by the Parliament. The legislative branch refers to the Parliament or “People’s Majlis” consisting of 87 members elected by a general election held every 5 years. The People’s Majlis is the supreme authority for law-making. A bill passed by the Parliament becomes a law when assented to by the President and such a law must be published in the Government Gazette on the day of the presidential assent. The law comes into force when it is published in the Government Gazette or on a later date mentioned in the law (Section 92, Constitution).

19. The judicial power is vested in the Supreme Court, the High Court and the Trial Courts established by law (Article 141 of the Constitution). Trial courts are the first instance courts and they encompass the Magistrate Courts, located in each inhabited island in the atolls, as well as the superior courts established in Male with specified jurisdiction such as the Criminal Court, Civil Court, Family Court, Juvenile Court and Drug Court. The appeal courts in the Maldivian judicial system are the High Court and the Supreme Court.

20. The tribunal of first instance for tax cases is the Tax Appeal Tribunal (Section 62 of the Tax Administration Act – TAA), which is established in Male but has jurisdiction for all the territory of the Maldives. Section 44 of the TAA gives taxpayers the right to appeal at the Tax Appeal Tribunal the decisions made by the Maldives Inland Revenue Authority (MIRA) in relation to an objection submitted by a taxpayer.<sup>2</sup> In cases where a taxpayer or the MIRA is of the opinion that a decision of the Tribunal is in *ultra vires* of its powers, or in contravention of a law or regulation, the taxpayer or MIRA may appeal these decisions to the High Court (Section 55(a), TAA) and the decisions of the High Court may be appealed to the Supreme Court (Section 55(d)). However, the decisions of the Civil Court on the cases filed by the MIRA to enforce the recovery of unpaid taxes or fines in accordance with the TAA (Section 49) cannot be appealed at the Tax Appeal Tribunal or at a higher court of law.

21. The legal system of Maldives can be broadly defined as encompassing characteristics and principles of Sharia, as Islam forms one of the bases of all laws in the Maldives (Article 10(a) of the Constitution), and a mix of both civil and common law.

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2. Pursuant to Section 42 of the TAA, the taxpayer can object to a decision made by the MIRA within 30 days from the date of this decision. This notice of objection must be submitted to the MIRA which has then 120 days to make a determination of such objection.



## Tax system

22. The Maldives enacted the Tax Administration Act (TAA) in 2010. This Act established the Maldives Inland Revenue Authority (MIRA) as an autonomous body accountable to the parliament. MIRA is responsible for the implementation, the administration and the collection of all taxes and several non-tax revenues in the Maldives. The Tax Policy Unit in the Ministry of Finance work with the MIRA on the implementation of tax policies.

23. In accordance with the Income Tax Act (ITA) of 2019, the persons resident in the Maldives are subject to the income tax on their total worldwide income. The individuals are tax residents in the Maldives when they have their permanent place of living located in the Maldives, when they are present or intend to be present in the Maldives for an aggregate of 183 days or more in any 12-month period commencing or ending during a tax year or when they are employees or officials of the Government of the Maldives and are posted overseas during a tax year. The dividend payment made by a Maldivian company to a resident in the Maldives is exempted from taxation whereas a withholding tax of 10% is applied on the dividend payment made to a non-resident. More generally, non-residents (both individuals and entities) are taxable in the Maldives on the income they derive from the Maldives.

24. The companies that are tax residents in the Maldives are any company incorporated in the Maldives or any company that has its head office in the Maldives or any company that has its control and management in the Maldives. The partnerships that are tax residents in the Maldives are any partnership formed in the Maldives or any partnership that has its control and management in the Maldives.

25. Besides the income tax, the main taxes in the Maldives are the Goods and Services Tax, the Green tax and the Airport taxes and fees.

26. In respect of exchange of information, in addition to EOIR, the Maldives is preparing the implementation of the automatic exchange of financial account information (CRS) for the first exchanges by September 2022 and the implementation of the automatic exchange of Country-by-Country reports in line with BEPS Action 13 (CbC) for the first exchanges by June 2023.

## Financial services sector

27. The Global Financial Centre Index 2021 does not identify any global, regional or local financial centre in the Maldives. The financial sector of the Maldives comprises 8 commercial banks and 13 other Financial Institutions such as insurance companies, securities market intermediaries

and the pension funds. Branches of foreign banks can also operate in the Maldives.

28. The Maldives Monetary Authority (MMA) is the central bank of the Maldives and the main regulator of the financial sector. The MMA Act regulates the scope, the regulatory powers and the mandate of the MMA. All commercial banks and other Financial Institutions are licensed and regulated by the MMA, except for the securities market intermediaries and the Maldives Retirement and Pension Scheme, which are licensed and regulated by the Capital Market Development Authority, which is an independent institution established under the Maldives Securities Act (Law no. 2/2006) responsible for regulating and developing the Maldives Capital Market.

29. As at December 2020, the percentage of the financial service activities in the Gross Domestic Product is 7.1%. Commercial banks form the major component of the Maldivian financial system, and at December 2020 the total assets held by the banks amounted to MVR 68.9 billion (EUR 4 billion) representing 119.6% of the Gross Domestic Product.

## Anti-money laundering Framework

30. Law No. 10/2014 on the Prevention of Money Laundering and Financing of Terrorism Act (the AML Act) is the primary legal instrument in the area of AML/CFT. It is supported by several sectoral or thematic Regulations and Guidelines. The reporting entities (AML-obliged persons) include the financial institutions and non-financial businesses or professions such as the lawyers, notaries, independent accountants, auditors, tax advisors and trust and company service providers.

31. The AML Act also establishes the Financial Intelligence Unit within the MMA (the MMA-FIU). The MMA-FIU is the main regulatory body to ensure that the AML-obliged persons under the AML Act comply with the relevant legal provisions and regulations. In addition, relevant regulatory and supervisory authorities of the AML-obliged persons also bear the responsibility to ensure the compliance by the respective regulated entities with their AML/CFT obligations.

32. The Maldives is a member of the Asia/Pacific Group on Money Laundering. In 2011, the Maldives' AML/CFT mechanism was the subject of a mutual evaluation conducted by the International Monetary Fund (IMF). This evaluation concluded that the Maldives was Non-compliant with Recommendation 5 (now Recommendation 10 on Customer due diligence), Recommendation 12 (now Recommendation 22 on Designated Non-Financial Business and Professions – Customer Due Diligence), Recommendation 33 (now Recommendation 24 on the transparency of

legal entities) and Recommendation 34 (now Recommendation 25 on the transparency of legal arrangements). The AML Act and the related regulations were enacted to address the deficiencies noted in the 2011 mutual evaluation report. The next mutual evaluation of the Maldives in respect of the FATF standard is scheduled in 2024.

## Recent developments

33. During the recent years, the Maldives has brought changes in its legal and regulatory framework to comply with the standard. In particular, these changes aimed at ensuring an appropriate access by the tax administration to the relevant information as well as at broadening the EOI network. They are described in this report.



## Part A: Availability of information

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

### A.1. Legal and beneficial ownership and identity information

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

35. The Maldivian legal and regulatory framework ensures, in most cases, that identity and legal ownership information of relevant entities and arrangements is available in accordance with the standard. In particular, the companies, partnerships and co-operative societies have the obligation to provide this information to the Registrar of Businesses at the time of their registration. The companies must also keep an updated list of their members/shareholders and provide this information annually to the Registrar of Businesses whereas the partnerships must report any changes in the information on their partners within seven days.

36. However, there are certain aspects that need improvement, including the lack of legal requirements for the availability of the identity and legal ownership information of foreign companies and partnerships that have a nexus in the Maldives. In addition, the co-operative societies are not required to update the information on their members.

37. With regards to the beneficial ownership information of relevant entities and arrangements, the main requirements are found in the AML Act which requires the AML-obliged persons to obtain and keep the information on the beneficial owners of their customers and all legal entities (including companies, partnerships and co-operatives) established in the Maldives to maintain accurate, adequate and up-to-date beneficial ownership information. However, these AML requirements raise some concerns due to the lack of guidance on the definition and methodology of identification of the beneficial

owner, on any frequency for updating the beneficial ownership information, on the simplified due diligence and on the obligation for the legal entities to maintain their beneficial ownership information. This lack of guidance may lead to some situations where the beneficial owners of the relevant entities and arrangements are not identified in accordance with the standard. In addition, the retention of the beneficial ownership information is not ensured for at least five years in the case of the liquidation of an AML-obliged person.

38. The availability of the information on the parties and beneficial owners of foreign trusts administered in the Maldives is not ensured in the case where the trustee is not an AML-obliged person.

39. 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 clear obligation for ownership and identity information to be kept on foreign companies having sufficient nexus to the Maldives and foreign partnerships which are carrying on business in the Maldives.	The Maldives should ensure that adequate, accurate and up-to-date legal ownership and identity information is kept for relevant foreign companies and partnerships.
There is no clear obligation for the co-operative societies to update their register of members in case of change of members. In addition, if a co-operative society ceases to exist, only the last identity and legal ownership status is required to be kept by the Registrar of Businesses.	The Maldives should ensure that the register of members of the co-operative societies is updated with all relevant changes in the identity and legal ownership information and that this information is available for at least five years after the co-operative societies have ceased to exist.

Deficiencies identified/Underlying factor	Recommendations
<p>Beneficial ownership information on legal entities and arrangements may be available with an AML-obliged person in the Maldives to the extent that there is a business relationship with such a person. However, such a business relationship is not mandatory.</p> <p>There is a lack of guidance in the Maldivian legal framework on the implementation of the definition of beneficial owner(s) and the methodology for identifying them in the context of customer due diligence, so the beneficial owners may not always be identified in accordance with the standard.</p> <p>Moreover, there is no specified frequency for AML-obliged persons to conduct customer due diligence, so there could be situations where the available beneficial ownership information is not up to date.</p> <p>The AML-obliged persons are also allowed to conduct simplified due diligence for low-risk customers, but there is no guidance on the content of such due diligence and their impact on the identification of beneficial owners.</p> <p>The trustee of a foreign trust that is not an AML-obliged person is not subject to any obligation to identify the parties and the beneficial owners of the trusts.</p> <p>The legal entities established in the Maldives (companies, partnerships and co-operative societies) have also the obligation to identify their beneficial owners. However, there is no further guidance for the implementation of this obligation by the legal entities, including on the application of the definition of beneficial owner, which may lead to the situation where the beneficial owners are not properly identified.</p> <p>Although the tax law also contains a definition of beneficial owner, this definition is not further explained or associated to a specific record-keeping obligation.</p>	<p>The Maldives should ensure that adequate, accurate and up-to-date information on the beneficial owners for all relevant entities and arrangements be available in line with the standard.</p>
<p>In the case where the beneficial ownership information of a legal entity or arrangement is available with an AML-obliged person, the retention of the beneficial ownership information is not ensured for at least five years in the case of the liquidation of the AML-obliged person.</p> <p>Moreover, there is no legal retention period specified for the obligation of the Maldivian legal entities to keep the information on their beneficial owners.</p> <p>Therefore, the legal framework of the Maldives does not ensure that the beneficial ownership information is kept for at least five years in these cases.</p>	<p>The Maldives should ensure that beneficial ownership information for all relevant entities and arrangements is kept for at least five years, including in the case where the AML-obliged person has ceased to exist.</p>

**Practical Implementation of the Standard: no rating is assigned 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***

40. The Companies Act (Law no. 10/96 – CA) provides for two types of companies (Section 3):

- A **private limited company** can be formed by 2 to 50 persons. The shares of a private company may only be transferred in accordance with its articles of association and their sale to the public is prohibited. A private company must appoint at least two directors (Section 45, CA).
- A **public limited company** can be formed by ten or more persons. A public company can trade its shares to the public. It must appoint at least five directors in the Board (Section 45, CA).

41. The members of both private and public companies have a limited liability. As of 1 February 2022, 12 700 private companies and 11 public companies were registered in the Maldives.

### ***Legal Ownership and Identity Information Requirements***

42. The legal ownership and identity requirements for companies are found mainly in the CA. 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<sup>3</sup>**

Type	Company Law	Tax Law	AML Law
Private limited company	All	None	Some
Public limited company	All	None	Some
Foreign companies (tax resident)	Some	None	Some

3. 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.



## Companies Law requirements

43. The Business Registration Act (Law no. 18/2014 – BRA) requires all companies carrying on business in the Maldives to register with the Registrar of Businesses. This requirement also applies to all companies formed under the CA, regardless of their activity (Section 7, CA). The companies can register without the services of a company services provider or of a notary. Upon registration with the Registrar of Businesses, the companies become legal entities distinct from their members and capable of exercising all the powers and functions specified in their memorandum and articles of association (Section 15, CA).

44. At registration, the companies must register their business name and provide to the Registrar of Businesses the memorandum of association and the articles of association (Section 7(a), CA). The memorandum and articles of association of the companies must contain the names of the persons forming the company and these persons must sign them in the presence of two witnesses (Section 4, CA). The memorandum of association must state the name of the company, its form (whether it is a private or a public company), the address of its registered office,<sup>4</sup> its object, the liabilities of the shareholders, the amount of its authorised capital and the manner in which it is to be procured (Section 5, CA). Therefore, although the memorandum of association should contain the name of the shareholders of the company, including as the signatories of the document, the CA does not clearly require that the allocation of the capital for each shareholder be set out in this document. The Maldivian authorities nevertheless indicated that the template of memorandum of association provided by the Ministry of Economic Development, which is not mandatory, includes the information on the share structure of the company (including the allocation of capital).

45. The private and public companies must also provide to the Registrar of Businesses their list of members within 30 days following their annual general meeting (Section 17, CA).<sup>5</sup> They also have the obligation to provide to the Registrar of Businesses their annual directors' report (Section 69(a), CA) which must contain the details of the members of the company in the past year (Section 66(b)(3)). This ensures that the "historical" legal ownership information during the relevant accounting year is available with the Registrar of Businesses. Therefore, the information on the shareholders of the companies and on the allocation of capital among them is available at the level of the company, but also with the Registrar of Businesses once the

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4. Although there is no legal requirement imposing that the registered office be in the Maldives, the Maldivian authorities have indicated that they will not proceed with a registration if the address is abroad.
  5. Pursuant to Section 54 of the CA, all private and public companies must hold a general meeting each year.

first annual general meeting of the company occurs. This legal ownership information is expected to be updated for each annual general meeting, so at least once a year. This information is maintained by the Registrar of Businesses for 25 years, including after the company ceases to exist (Section 25, Archive Act, Law no. 16/2011).

46. If a change in the legal ownership occurs between two annual updates, the companies do not have the legal obligation to inform the Registrar of Businesses of this change. Nevertheless, the Maldivian authorities explained that, in practice, the companies would usually submit all the share transfer documents to the Registrar of Businesses to update the information reflected in the memorandum of association.

47. Once registered, the private and public companies must keep, at their registered office, a register of their members that contains their names and addresses, the number of shares held by each member and the amount paid on the shares of each member. Every person whose name appears in this register is deemed as a member of the company (Section 16, CA). Although the law does not expressly require to update this register in the case of a transfer of shares of the company, a shareholder benefits from the shareholding only if he/she/it is registered as a member of the company. This ensures that the legal ownership information is up to date with the company.

48. In addition to the obligation to keep a list of members, all public listed companies are required to maintain a register of shareholders that directly or indirectly control more than 5% of shareholding in the company (Section 56, Securities Act – Law no. 2/2006). The Stock Exchange Company<sup>6</sup> must also maintain the records on information in relation to its income, business, dealings in securities, and any other information relating to or incidental to the said activities for at least six years to ensure that they may be easily produced where required by the Capital Market Development Authority. This information maintained by the Stock Exchange Company does not contain the information on all legal owners of public listed companies.

49. Consequently, the information on the legal owners of domestic companies is available with the Registrar of Businesses at the time of registration, through the communication of the constitutive documents of the company.

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6. In accordance with the Securities Act, the Stock Exchange Company is a company approved and licensed by the Capital Market Development Authority to establish and operate a stock exchange in the Maldives. This company must be a company incorporated under the CA (Section 22, Securities Act) and registered with the Registrar of Businesses. To date, there is one stock exchange in the Maldives with a related Stock Exchange Company.

Although these constitutive documents do not always contain the information on the allocation of shares, this information is available in the register of members kept and updated by all companies themselves and communicated every year to the Registrar of Businesses. For public listed companies, an additional obligation to maintain a register of shareholders holding directly or indirectly more than 5% of shareholding applies.

### Foreign companies

50. Section 5 of the BRA requires all foreign persons to register, either as a company or as a partnership, before carrying on business in the Maldives. The Maldivian authorities indicated that a foreign company which has its head office or its management in the Maldives is considered as carrying out business in the Maldives. In 2020, 225 foreign companies were registered with the Registrar of Businesses. Section 94 of the CA also requires that the foreign companies submit the following documents for their registration with the Registrar of Businesses and inform the Registrar of any change within 15 days of the change:

- a copy of the permit issued by the Ministry of Economic Development to the company to conduct business in the Maldives
- a copy of the memorandum and articles of association of the company or a copy of the charter or the law if the company is formed by such
- the names and addresses of the members of the Board of Directors
- the name and address of a person who is resident in Maldives and who represents the company in the event of any legal proceedings against the company
- the registered address of the company
- the address of the place of business in the Maldives.

51. Consequently, even though the memorandum and articles of association of the company usually contain legal ownership and identity information, the availability and updating of this information depends on the legal requirements of the jurisdiction of incorporation of the foreign company. In addition, the foreign companies are not expressly covered by the obligation of Section 16 of the CA to keep a register of their members and to provide annually this information to the Registrar.

52. Thus, legal ownership information on foreign companies with sufficient nexus to the Maldives may not be always available. Therefore, **the Maldives should ensure that adequate, accurate and up-to-date legal ownership and identity information be kept for relevant foreign companies.**

### **Companies that cease to exist**

53. The CA provides for three ways to dissolve a company: by decision of the company itself, by order of the court or by decision of the Registrar of Businesses (Section 75). Once dissolved, the company loses its legal personality. It can be restored within a year following the date of dissolution, only if there is a pending litigation that involves the company and only until the conclusion of that litigation.<sup>7</sup> Restored companies are only permitted to conduct transactions related to decisions made in the judicial process and they cannot conduct business or trade. This process of restoration is rarely used as the Maldivian authorities indicated that only around ten companies have been restored so far. The CA does not allow for any transfer of shares after the commencement of the winding up process (Section 87, CA). The Maldivian legislation does not contain any provision that requires the designation of a representative of the company in charge of keeping the legal ownership information of the dissolved companies. Nevertheless, this information is available with the Registrar of Businesses for 25 years after the company ceases to exist (see para. 45).

### **Tax law requirements**

54. The Registrar of Businesses must inform the MIRA, by notice, of all incorporations of companies and of all registrations of foreign companies within two months of these incorporations (Section 21, TAA). Based on this information, the MIRA maintains a Taxpayers Register (Section 23, TAA). The Commissioner General of Taxation can also, at his/her discretion, register any person conducting business in the Maldives and then require the relevant registration information to this person (Section 3, TAR and Section 21, TAA).

55. For the registration with the MIRA, the legal entities use a specific form (MIRA 117) which encompasses several pieces of information on the companies, such as the contact details, the address, the bank account details, the name of the managing director, but not the legal ownership information. Consequently, although Section 23(d) of the TAA provides for the obligation for the responsible person of the entity to inform the MIRA of any changes to the information provided during the registration process within 15 days of the occurrence of the change, this obligation does not cover the legal ownership information. Moreover, the tax returns submitted annually by the legal entities do not provide any information on the members/ shareholders of the entity.

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7. Regulation 2021/R-47 on dissolution of companies by Registrar (first amendment).

### **Anti-Money laundering Law requirements**

56. In accordance with Section 16 of the AML Act, the AML-obliged persons must verify the identification of their customers when establishing a business relation. In particular, they must obtain the corporate name, head office address, information of directors, proof of incorporation or similar evidence of their legal status, legal form, articles of association and memorandum of association and registration number of legal persons, for the identification and verification of their identity. The AML Sectoral Regulations also oblige the AML-obliged persons to understand the nature of the customer's business and its ownership structure (Section 8(g) of the Regulations).

57. As explained in paragraph 44, the articles and memorandum of association contains the names of the initial members of the companies, but it is not clear whether the information on the allocation of the capital between the members is mentioned or not on these documents. In addition, there is no specific guidance for the AML-obliged persons with respect of their obligation to “understand the ownership structure” of the company, which could be interpreted as knowing simply who the main shareholders are. Moreover, the legal entities established in the Maldives do not have the obligation to enter into a business relationship with an AML-obliged person. Consequently, although the legal ownership information may be available with the AML-obliged persons in some cases, the AML requirements do not ensure this availability in all cases.

### **Legal ownership information – Enforcement measures and oversight**

58. Oversight and enforcement activities are performed by the Registrar of Businesses and by the tax administration.

59. The BRA contains several provisions dedicated to the monitoring, inspection and sanctions of the unregistered businesses. Any person carrying out business without registration faces a penalty up to MVR 10 000 (EUR 590 – Section 24, BRA). The Ministry of Economic Development, which is in charge of maintaining the Registrar of Businesses, carries out routine inspections to ensure that the businesses comply with their registration obligations. During the initial inspections, a notice to rectify is issued against the non-compliant business. Then, for the follow-up inspections, the penalty of MVR 10 000 (EUR 590) is applied.

60. For the supervision of the compliance of the obligation to keep and to provide legal ownership information, the Maldivian authorities explained that the repeated failure by the company to provide annually its register of members to the Registrar of Businesses, under Section 17 of the CA could lead to the procedure for winding-up the company (see paragraph 62). In addition,

the failure by the directors of the company to prepare correctly, under Section 66 of the CA, and to provide the annual directors' report, which contains the details of the members of the company, is punished by a fine MVR 10 000 (EUR 590) for a private company and MVR 30 000 (EUR 1 770) for a public company (Section 66(c) and Section 69(b)). The Maldivian legal framework does not contain any other specific sanction, such as fine, for the failure to provide the register of members to the Registrar of Businesses. However, although the obligation for the companies to update their register of members is not a legal requirement this obligation can be considered as self-executing, without any sanction needed, as shareholders are otherwise unable to benefit from the shareholding (see paragraph 47).

61. The CA does not contain any definition of inactive companies. However, the Registrar of Businesses must decide to dissolve a company if the latter fails to commence business within a year of its incorporation or if it fails to carry out the business objectives of the company for a period of two years (Section 75(b)(1), CA). The Registrar usually identifies those companies from the absence of payment of annual fees (see below) or the failure to submit the annual accounts of the company. Depending on whether there are claims or liabilities made against the company or not, the Registrar can itself cancel the registration and dissolve the company or apply to the court to dissolve it (Section 75(b)(2) and (3), CA). In those cases, the company can still use its assets and continues to be subject to its reporting obligations until the process of dissolution starts.

62. In addition, all companies registered in the Business Register must pay annual fees (Section 7, CA and Section 2, Schedule of the CA). If a company fails to pay the annual fee by the end of March, the Registrar of Businesses can determine the company as inactive and publish its name for winding up until payment of the fee. If the annual fee remains unpaid by the end of May and the inactive status of the company is not challenged, the Registrar must apply to the Court for winding up the company (Sections 75(a)(2) and 80(a)(2), CA) and the company is flagged in the Business Register as a company that will be wound up due to non-payment of fees. Then the process of dissolution starts. This procedure can also be applied in other circumstances, including if the company is unable to pay its debts (Section 80(a)(3), CA) or if it is proved that the company has repeatedly failed to perform an obligation required by law (Section 80(a)(4), CA). The Maldivian authorities have confirmed that the repeated failure by a company to maintain its register of members and/or the failure to provide this register to the Registrar after the annual general meeting can lead to the application of the procedure of winding up the company. These processes of dissolving "inactive" and non-compliant companies reduce the risk that legal ownership information would not be available or updated with respect of these companies.

63. The tax administration, in particular the Taxpayer Facilitation and Engagement Department, also regularly conducts compliance visits in order to verify that the taxpayers are properly registered with the tax authorities. The compliance inspections are conducted based on the risk level of the taxpayers. The risk analysis is conducted by the Risk Management Section and can be based on data received from other governmental organisations such as the custom data that can help flag the import activities of unregistered taxpayers for instance. Moreover, each quarter, one day is considered as compliance day where all the staff of the MIRA carries out compliance visits and inspections. During these visits, if non-registration issues are identified, a “registration notice” is issued to the taxpayer which must register with the MIRA within 10 days following the issuance of the notice. A fine of MVR 50 (EUR 3) per day, in the limit of MVR 5 000 (EUR 295), is imposed for each day the business was carried out without being registered with MIRA (Section 7, TAR). This activity of supervision by the MIRA may lead to the registration of the relevant entities with the Registrar of Businesses, if this registration is also legally required.

64. The TAA also requires the taxpayer to maintain documents for the purpose of the MIRA to obtain and review information regarding the tax situation of the company (Section 27, TAA). This obligation does not explicitly refer to the register of members as a document to be maintained by the taxpayer, but it cannot be excluded that this information could be requested by the MIRA to assess the tax situation of the company. In such a case, an entity that fails to maintain records can be penalised with (Section 65(b), TAA):

- a fine of 0.5% of the amount of tax payable for the taxable period
- a fine not exceeding MVR 50 (EUR 3) for each day of delay from the date required to file a tax return or provide the relevant information.

65. Nevertheless, as the obligation to keep the register of members may not be directly in relation to the tax situation of the company, it is unclear whether the fine of 0.5% of the amount of tax payable would be applied in the case of failure to comply with this obligation. In addition, the fine for each day of delay would be applied only if the records are requested. Moreover, the Maldivian authorities indicated that the tax administration does not carry out any compliance checks regarding the maintenance of the legal ownership information. Consequently, this sanction under the TAA may not be effective for ensuring the compliance with the obligation to maintain the list of the members of the company.

66. The effectiveness of the system of enforcement and oversight of the availability of legal ownership information, including for the obligation to provide the register of members to the Registrar of Businesses (in addition to keeping it updated at the registered office) will be further examined in the Phase 2 review (Annex 1).



### Availability of legal ownership information in EOIR practice

67. The implementation of the legal framework and the availability of legal ownership information on companies in EOIR practice will be examined during the Phase 2 review.

### *Availability of beneficial ownership information*

68. The standard was strengthened in 2016 to require that beneficial ownership information be available on companies. In the Maldives, this aspect of the standard is met through the AML framework, which provides for an obligation of the AML-obliged persons to identify the beneficial owners of their clients as well as an obligation for the legal entities to maintain the information on their beneficial owners. The same definition of beneficial owners applies for these two obligations. The TAA complements these requirements by giving a definition of beneficial owners, but without specific record-keeping obligation.

69. Each of these legal regimes is analysed below.

### Companies covered by legislation regulating beneficial ownership information

Type	Company Law	Tax Law	AML Law/ legal entity	AML Law/CDD
Private limited company	None	None	All	Some
Public limited company	None	None	All	Some
Foreign companies (tax resident) <sup>8</sup>	None	None	None	All

### Definition of beneficial owner in the AML Act

70. Law No. 10/2014 on the Prevention of Money Laundering and Financing of Terrorism (the AML Act) is the primary legal instrument on AML in the Maldives. Section 77 of the AML Law defines the concept of beneficial owner:

77. Unless the context otherwise requires, the following words and terms shall have the following meanings.

(a) “Beneficial owner” means the natural person who ultimately controls a customer, or the person on whose behalf a transaction

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



is being conducted, or the person who exercises ultimate effective control over a legal person or arrangement.

71. The AML Law or the sectoral AML regulations<sup>9</sup> do not contain any detail for the identification and the determination of the beneficial owner(s) of legal persons or arrangements, but the sectoral guidelines,<sup>10</sup> which are legally binding, give these details. For instance, the general guidelines for banks explain that the banks must identify and take reasonable measures to verify the identity of beneficial owners through the following information:

a) the identity of the natural person(s) (if any) who ultimately has a controlling ownership interest in a legal person. At minimum, this includes the following:

1- identification document of Directors and major shareholders or partners with controlling interest;

2- authorisation for any person to represent the company or business either by means of a letter of authority or directors' resolution; and

3- relevant documents such as national identity card for Maldivians, permanent resident or passport for foreigners, to identify the identity of the person authorised to represent the company or business in its dealings with the bank.

b) to the extent that there is doubt as to whether the person(s) with the controlling ownership interest is the beneficial owner(s) referred to in Paragraph (a) above or where no natural person(s) exert control through ownership interests, the identity of the

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9. The AML Regulations contain similar wordings on the identification of the customer and its beneficial owners. The relevant Regulations include the Regulation for Banks on Prevention of Money Laundering and Financing of Terrorism, Regulation on Prevention of Money Laundering and Financing of Terrorism for Money Transfer Business and Money Changing Business, Regulation on Prevention of Money Laundering and Financing of Terrorism for Securities Related Businesses and Regulation for life insurance and family takaful insurance businesses on Prevention of Money Laundering and Financing of Terrorism. There is no Regulation for the other professionals such as TCSP, notaries, lawyers and accountants.
10. The AML Guidelines contain similar wordings on the identification of the customer and its beneficial owners. The relevant AML Guidelines include the AMLCFT Guidelines for banks, AMLCFT Guidelines for Consumer Finance Institutions, AMLCFT Guidelines for Money Remittance Institutions, AMLCFT Guidelines for Mobile Payment Service Providers, AMLCFT Guidelines for Securities Institutions. There is no Guidelines for the other professionals such as the TCSP, notaries, lawyers and accountants.

natural person (if any) exercising control of the legal person through other means; and

c) where no natural person is identified under Paragraphs (a) or (b) above, the identity of the relevant natural person who holds the position of senior management.

72. The definition contained in the AML Act is not fully in line with the standard, as it does not refer to the natural person who ultimately “owns” the legal persons or the legal arrangement. This is mitigated by the explanations provided by the sectoral guidelines, which provide for cascading measures for the identification of the beneficial owners of the companies. The first step requires that the AML-obliged person collect the identity of the natural person who ultimately has a controlling ownership interest in a legal person. The two other steps require the identification of the beneficial owner due to the control through other means and the natural person holding the position of senior management. These steps are set out in accordance with the “cascading approach”, i.e. they must be implemented only when the previous step has been taken but has not resulted in the identification of the beneficial owner(s) or leaves doubts as to their identity. This approach is consistent with the standard.

73. However, the explanations in the guidelines are not further detailed. In particular, the concepts of “controlling ownership interest” and “major shareholders or partners with controlling interest” are not further explained or defined and the other documents or information to be kept refer more to the directors and the persons in charge of representing the company than to the persons having a direct or indirect ownership in the legal person. This lack of explanation of these concepts may lead to interpretations according to which only the person holding the majority of the shares in the company is identified as the beneficial owner of the company, while the standard clearly sets that there could be more than one beneficial owner (for example, with a threshold of more than 25% of the shares, there could be three beneficial owners). It may also limit the interpretation of “controlling interest” to the holding of the voting rights and in such a case the person holding a significant amount of shares without voting rights would not be identified as a beneficial owner of the company. Those interpretations would be contrary to the standard. Moreover, it is unclear whether the term “ultimately has a controlling ownership interest” encompasses the joint holding by several persons, including through contract, understanding, relationship, intermediary or tiered entity.<sup>11</sup> Regarding the determination of the beneficial owner in respect of the control through other means (second step), the explanations

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11. See paragraph 33 b) of the FATF Guidance on Transparency and Beneficial Ownership.

of the guidelines do not explicitly mention that this control can be exercised “directly or indirectly” and there are no further guidelines on how to interpret the concept of “control through other means”. Considering these aspects, the definition of beneficial owner does not appear sufficiently clear, practical, workable and enforceable and therefore, the beneficial owner(s) may not always be determined in accordance with the standard.

74. In addition, there are no Regulations or Guidelines issued for the service providers such as trust and company service providers (TCSP), notaries, lawyers and accountants, although they are covered by the AML Act.

### **Customer due diligence**

75. Sections 16, 17 and 18 of the AML Act provide for the CDD requirements to be implemented by the AML-obliged persons. The AML-obliged persons must “identify and take reasonable measures to verify the identity of the beneficial owner” of their clients, including the natural person with a controlling interest and the natural person who manages the legal person (Section 16(f), AML Act). The sectoral regulations require AML-obliged persons to identify the beneficial owner and to verify the identity of the beneficial owner before entering into business relationship with the client. Then, the general sectoral guidelines state that the AML-obliged persons are required to conduct this identification and verification by using the relevant information or data obtained from a reliable source. Those legal and regulatory provisions use only the singular form of the term “beneficial owner”, which may imply that they do not envisage the situation of the identification of multiple beneficial owners for a same customer. The risk of such interpretation, which would not be in line with the standard, is however mitigated by the guidelines on the determination of the beneficial owner, which refer to “the identity of the natural person(s)” and then envisage that several natural persons can be determined as beneficial owners of a customer (see paragraph 71). The Maldivian authorities confirmed that in cases where multiple natural persons are beneficial owners of a legal entity, the identification of a single beneficial owner would not be considered in compliance with the AML obligations.

76. The TCSPs, which are expressly covered by the obligation to conduct CDD requirements under Section 16 of the AML Act (Section 17(f)), have an additional obligation to obtain, verify and retain current information on the beneficial ownership and control structure of legal persons established in the Maldives (Section 26(b), AML Act). However, the AML Regulations or guidelines do not provide for further guidance on the implementation of this TCSP-specific obligation.

77. The persons subject to the AML obligations include the financial institutions and the non-financial professions such as TCSPs, accountants, notaries and lawyers (Section 77(e), AML Act). Although the AML obligations cover a wide range of professionals, there is no specific obligation for the legal entities established in the Maldives to engage in a continuing relationship with an AML-obliged person and the Maldivian authorities could not provide the statistics on the companies holding a bank account in a Maldivian bank. Therefore, the Maldivian legal entities may not always be covered by the obligation of the AML-obliged persons, as part of their CDD requirements, to identify their beneficial owners.

78. In accordance with the sectoral guidelines, the AML-obliged persons may obtain, in conducting CDD on an individual customer and beneficial owner, the relevant information including (but not limited to) the full name, national identity number, passport number or visa number of the customer or beneficial owner, residential and mailing address, date of birth, nationality, occupation type, name of employer or nature of self-employment/nature of business, contact number and purpose of the business relationship or transaction.

79. The AML-obliged persons must verify this information by requiring the customer or beneficial owner, as the case may be, to provide relevant supporting documents for record-keeping purposes. They must also ensure that all the identification documents are valid at the time of obtaining that information. In case of failure by the customer or the beneficial owner to provide the information required, the AML-obliged person will not establish or maintain the business relationship (see paragraph 85).

80. The AML-obliged persons must maintain records on the identification of their clients and their beneficial owners and ensure that the records are maintained, in such form that is readily available to the FIU, supervisory authorities, investigative and law enforcement agencies, for at least five years after the end of the business relationship (Section 20, AML Act, including when the client ceases to exist). These records must include the copies of documents evidencing the identities of customers or beneficial owners. Nevertheless, in the case of a liquidation of an AML-obliged person, the Maldivian law does not contain any requirement that ensures that the beneficial ownership information on its clients is available after the liquidation. Therefore, **the Maldives is recommended to ensure that beneficial ownership information is kept for at least five years, including in the case where the AML-obliged person has ceased to exist.**

81. The AML-obliged persons must exercise on-going due diligence with respect to the business relationship and examine transactions that are carried out in order to ensure that they are consistent with their knowledge of their customer, its commercial activities, risk profile and where

required, the source of its funds (Section 16(h), AML Act). The AML sectoral Regulations further state that the frequency of the on-going due diligence must be commensurate with the level of money laundering or financing of terrorism risks posed by the customer based on the risk profiles and nature of the transactions (Section 14(b) of the Regulations). In assessing risk of the existing customers, the AML-obliged persons may consider the nature and circumstances surrounding the transaction including the significance of the transaction, any material changes in the way the account or business relationship is operated and/or insufficient information held on the customer or change in customer's information. The Regulations further require the AML-obliged persons to perform CDD when doubts exist about the veracity or adequacy of previously obtained customer identification data (Section 7 – “When customer due diligence is required” – of the Regulations). The AML sectoral Guidelines also state that the on-going due diligence must ensure that documents, data or information collected under the CDD process are kept up to date. However, there is no specified frequency required for renewing the CDD requirements, which is not in line with the standard.

82. The sectoral AML guidelines allow the AML-obliged persons to rely on third parties to conduct CDD or to introduce business, provided that the ultimate responsibility and accountability of CDD measures remain with the obliged person relying on the third parties. They must have in place internal policies and procedures to mitigate the risks when relying on third parties, including those from jurisdictions that have been identified as having strategic AML/CFT deficiencies that pose an AML risk to the domestic and international financial system.<sup>12</sup> In addition, the relationship between the AML-obliged person and the third parties must be governed by an arrangement that clearly specifies the rights, responsibilities and expectations of all parties. At the minimum, the AML-obliged person must be satisfied that the third party:

- can obtain immediately the necessary information concerning CDD as required under applicable laws and regulations
- has an adequate CDD process
- has measures in place for record keeping requirements
- can provide the CDD information and provide copies of the relevant documentation immediately upon request
- is properly regulated and supervised by the respective authorities.

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12. The Maldivian authorities explained that the jurisdictions identified as having such strategic AML/CFT deficiencies are the high-risk and other monitored jurisdictions listed by the FATF.

83. Although these conditions appear broadly in line with the requirements of the standard,<sup>13</sup> it is not clear whether the relying AML-obliged person has immediately and automatically the relevant beneficial ownership information provided by the third party, as required by the standard, or whether it must request this information to the third party to obtain it. Therefore, the Maldives should clarify the conditions of the reliance on third parties to ensure that the beneficial ownership information be always immediately obtained by the AML-obliged person from the establishment of the relationship with the customer (see Annex 1).

84. The AML sectoral guidelines, except the guidelines for Mobile Payment service providers, also give the possibility for the AML-obliged persons to conduct simplified CDD on the customer, beneficial owner and beneficiary based on the risks that the AML-obliged persons, its regulator or the FIU have identified. Although this possibility is usually given to the AML-obliged persons only when they conduct a single transaction for the customer, the AML guidelines for the banks and for consumer financial institutions provide for this possibility also for usual business relationships. Nevertheless, there is no further explanation on the content of the simplified CDD and on their impact in terms of identification of the beneficial owners, verification of their identity or frequency for renewing the CDD. This lack of guidance on simplified CDD may result in situations where the beneficial owner is not identified in accordance with the standard.

85. If the AML-obliged persons cannot fulfil their CDD requirements described above, they must not establish or maintain the business relationship and, where appropriate, they must make a report to the MMA-FIU (Section 16(l), AML Act).

### **Obligation on legal entities**

86. In addition to the CDD requirement, the AML Act provides for an obligation for the legal entities established in the Maldives to maintain adequate, accurate and current information on their beneficial ownership and control structure (Section 26(a), AML Act). As this obligation is covered by the AML Act, the definition of the beneficial owner set out above and the shortcomings identified apply (see para. 70 and 72).

87. However, the legal framework of the Maldives does not contain any further guidance for companies on how they should gather their beneficial ownership information. This lack of guidance may lead to difficulties for the Maldivian legal entities to identify their beneficial owners and to maintain properly the relevant records.

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13. FATF Recommendation 17.

## Tax law requirements

88. The TAA contains its specific definition of beneficial owner in Section 86:

86. Definitions (a) In this Act, unless the context otherwise requires:

“Beneficial owner” refers to the natural person who ultimately owns or controls a customer or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.

89. This definition is in line with the definition contained in the standard. Nevertheless, the legal framework of the Maldives does not contain any further guidance on the different steps for the identification and the verification of the identity of the beneficial owners with this TAA's definition, i.e. there is no methodology provided to identify the beneficial owners.

90. In addition, the TAA does not contain any obligation for the legal entities to identify their beneficial owners, to maintain this beneficial ownership information or to report it regularly to the tax administration. The only provision in the TAA in relation to the beneficial owner is the power of the tax administration to obtain and use the information on the beneficial ownership of a legal entity and to share this information with other countries or territories (Section 51-4 TAA and Section 75-1 TAR). Although this access power may allow the tax administration to obtain the relevant information if the legal entity properly maintains it, the access powers cannot remedy a gap in the availability of information. In the absence of a clear record-keeping obligation on beneficial ownership information, this access power would compensate the absence of obligation on a case-by-case basis only and would not guarantee that the information is available in all cases.

## Conclusion

91. Under the AML law, both AML-obliged persons and the legal entities themselves have obligations in relation with the identification of the beneficial owners that require in some instances the availability of the beneficial ownership information. The tax law contains a definition of beneficial owner but without any associated record-keeping obligation. However, several shortcomings are identified in the CDD requirements and there is a general lack of guidance on the AML and tax definitions of beneficial owner, as well as on the obligation of the legal entities to identify their beneficial owners and to keep this beneficial ownership information up to date (refer to paragraphs 73, 74, 77, 81, 84, 87, 89 and 90). **The Maldives is therefore recommended to ensure that an adequate, accurate and up-to-date**



**information on the beneficial owners for all companies be available in line with the standard.**

### **Nominees**

92. The Companies Act does not expressly permit shares to be held by nominees. On the other hand, every person whose name appears in the register of members of a company is deemed as a member of the company (Section 16, CA). It means that the shareholder entered into the register of members of a company would be considered the legal owner of the shares of that company and that all shareholder rights and duties apply in respect of the person recorded as shareholder. Consequently, for domestic companies, it is not possible for a shareholder to declare itself to be acting or owning shares on behalf of another person.

### **Beneficial ownership information – Enforcement measures and oversight**

93. The MMA-FIU is the main regulatory body in charge of the supervision of all AML-obliged persons in relation to their AML obligations and can impose sanctions for non-compliance with the AML obligations. It shares this supervision function with other supervisory authorities such as the MMA (not the FIU side) for the banks, insurance companies, other financial institutions and money changers, the Bar Council of the Maldives for the lawyers and the Institute of Chartered Accountants of the Maldives for the accountants. These supervisory authorities can also carry out examination of the relevant AML-obliged persons and issue sanctions. The Maldivian authorities explained that these supervisory authorities regularly communicate on their supervision activities to avoid any overlap in those activities and the FIU activities.

94. Any person who fails to comply with the provisions of the AML Act, including with the obligation to take reasonable measures to identify the beneficial owners of their customers, is liable to pay a fine between MRV 10 000 and MRV 500 000 (EUR 590 and EUR 29 500) and/or to an imprisonment between 1 and 10 years (Section 57, AML Act).

95. In addition, the MMA-FIU can impose the following administrative sanctions in case of failure to comply with the AML Act or with any related regulation (Section 74, AML Act):

- a warning in writing to comply within a specified period
- a fine between MRV 10 000 and MRV 500 000 (EUR 590 and EUR 29 500)
- if the person fails to comply within the specified period, a fine of an amount between MRV 10 000 and MRV 100 000 (EUR 590 and EUR 5 900) on a daily basis until the person complies.



96. The other supervisory authorities can also apply the following measures or penalties, in case where they determine that an AML-obliged person does not comply with its CDD obligations (Section 47, AML Act):

- written warnings
- order to comply with specific instructions
- ordering regular reports from the AML-obliged person on the measures it is taking to comply with its obligations
- a fine in an amount between MRV 10 000 and MRV 500 000 (EUR 590 and EUR 29 500)
- barring employment within the sector
- restricting the powers of or replacing managers, directors or controlling shareholders, including the appointing of an ad hoc administrator or
- suspending or revoking the licence issued to the AML-obliged person.

### **Availability of beneficial ownership information in EOIR practice**

97. 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.

#### ***A.1.2. Bearer shares***

98. The CA does not provide for the issuance of bearer shares and companies can issue only ordinary shares in registered form in the Maldives.

99. Pursuant to Section 29 of the Companies Act, if a company makes an allotment of its shares, it must within 30 days of such allotment deliver to the Registrar of Businesses a list of names and addresses of the recipients, the number, the nature and the value of the shares allotted. All transfers of shares will be registered in the share registers of the companies. Therefore, shares must be issued in nominative form and there is no bearer share in the Maldives.

#### ***A.1.3. Partnerships***

##### *Types of partnerships*

100. The Partnerships Act (PA – Law no. 13/2011) regulates the creation and the rules of the partnerships in the Maldives. It defines the partnership as a business association of two or more persons to carry on as co-owners

and which is, once established, a separate legal entity that can enter into transactions or acquire or dispose of assets in its own name (Section 2, PA). The PA allows the creation of two types of partnerships:

- **General Partnerships** that can be formed by 2 to 20 partners with unlimited liability and that are jointly liable for the debts and the obligations of the partnership. Only natural persons can be a partner of a general partnership (Section 3, PA).
- **Limited Liability Partnership** that can be formed by 2 to 20 partners with limited liability. The liability of the partners is capped at their level of capital contribution to the partnership. The partners of the limited liability partnership can be natural persons or legal persons (Section 4, PA).

101. As of 1 February 2022, there were 1 409 partnerships (both general partnerships and limited liability partnerships) registered in the Maldives.

### *Identity information*

102. The obligation under the BRA to register with the Registrar of Businesses, as well as the obligation to register with the tax authority, as described above for the companies, also cover the partnerships (Section 4(b), BRA). These obligations apply to all the partnerships formed under the PA (Section 12, PA) and the foreign partnerships conducting business in the Maldives (Section 5, BRA). During the registration process, the domestic partnerships must provide the partnership agreement (Section 13(2), PA), which includes the following information (Section 16, PA):

- name, proposed address for registration, type of partnership, the period of partnership where the partnership is to be established for a fixed term and the objectives of the partnership
- for each partner-natural person: the name, address, nationality and the national identity card number (or passport number for non-Maldivian)
- for each partner-legal person of limited liability partnerships: the registered name, address, country of registration, registration number and postal address
- name of the managing partner
- capital of the partnership and shareholding of each partner
- provisions for distribution of profits and sharing of liabilities
- provisions in relation to entry, retirement and removal of partners.

103. In addition, the managing partner of a domestic partnership must notify the Registrar of Businesses of any change in the particulars of the partnership, including any change of partner, within seven days from that change (Section 11, PA). In particular, where a partnership has admitted a new partner, the name of this partner must be communicated to the Registrar of Businesses within seven days (Section 36, PA). Similarly, a partner is considered retired or removed from the partnership only after the retirement or removal has been registered with the Registrar of Businesses (Section 37, PA). Moreover, although there is no clear legal requirement for the domestic partnerships to keep up to date the information on their partners in their records, it can be assumed that this information would be available at their level considering its impact on the sharing of profit and loss among the partners.<sup>14</sup> As a consequence, the information on all the partners of a Maldivian partnership is available with the Registrar of Businesses at the time of the registration and is updated in case of changes, including in the case where a partner of the partnership is a foreign legal person. This information is kept by the Registrar of Businesses for 25 years after the partnership ceases to exist (Section 25, Archive Act, Law no. 16/2011).<sup>15</sup>

104. In addition, when a partnership has a relationship with an AML-obliged person, the AML Regulations require that the relevant AML-obliged person identify all the partners (Section 8, Identification of customers, beneficial owners and third parties).

105. Regarding the foreign partnerships, although they need to register with the Registrar of Businesses and with the tax administration before conducting business in the Maldives,<sup>16</sup> there is no clear requirement for them to provide and update the information on their partners. As it is the case for foreign companies, the availability of this information depends on whether the legislation of the jurisdiction of incorporation requires that this information be included in the partnership agreement. AML-obliged persons could be a source of identity information in case the foreign partnerships engage with one, but this is not mandatory.

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14. Section 23 states that “profit and loss of the partnership shall be shares among the partners in the proportion in which the partners have contributed or agreed to contribute money (...) and in the manner stated in the partnership agreement.”
  15. A partnership can cease to exist by dissolution, initiated by an agreement between the partners or by a Court order (Sections 38, 39 and 40 of the PA). The lack of activity of the partnership is not listed as a reason to initiate the dissolution.
  16. Chapter 11 of the Income Tax Act lists the categories of income taxable in the Maldives and it appears that only a foreign partnership that conducts business in the Maldives can have income, deductions or credit for tax purposes.

106. Therefore, **the Maldives is recommended to ensure that the information on all partners of the relevant foreign partnerships be available.**

### *Beneficial ownership information*

107. 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. The availability of beneficial ownership information on partnerships in the Maldives relies on the AML framework.

108. First, as they are legal entities, the partnerships must maintain adequate, accurate and current information on their beneficial ownership and control structure (Section 26(a), AML Act – refer to paragraphs 86 and 87). However, no further guidance was issued for partnerships for identifying and verifying the information on their beneficial owners. This lack of guidance may lead to some difficulties for the Maldivian legal entities, including the partnerships, to identify their beneficial owners and to maintain properly the relevant records.

109. Secondly, the CDD requirements that the AML-obliged persons must conduct on the customer, in accordance with Sections 16 and 26 of the AML Act as described in paragraphs 75 to 83, also apply where the customer is a partnership. As explained above in paragraph 77, there is no requirement for a legal entity in the Maldives, including a partnership, to engage such a person. The frequency for renewing the CDD is also not specified so it is not ensured that the beneficial ownership information kept by the AML-obliged person be up to date. Moreover, the lack of guidance on simplified CDD may result in situations where the beneficial owner is not identified in accordance with the standard (see paragraph 84). In addition, although the AML-obliged persons must maintain records on the beneficial owners of their clients for at least five years after the end of the business relationship (Section 20, AML Act), there is not any requirement that ensures that the beneficial ownership information on the clients is available after the liquidation of the AML-obliged person itself (see paragraph 80).

110. Thirdly, the definition of beneficial owners as provided for by the AML framework, including the explanations provided by the sectoral guidelines, contains deficiencies with regard to the standard (see paragraph 73 and 74), including on the lack of clarity of the concept of “major partner with controlling interest” as set out in the explanations provided for by the guidelines on the identification of the beneficial owners of legal entities. These deficiencies are nevertheless mitigated for the general partnerships as the AML Regulations requires that the AML-obliged persons identify all the partners where the customer is a partnership (see paragraph 104) and that this

information is also available with the Registrar of Businesses. Considering that all the partners of the general partnerships are natural persons, the information on the natural persons who ultimately has a controlling ownership interest in the general partnership is, in any case, available. It remains that there is a lack of guidance for identifying the natural persons with a control through other means in the general partnership.

111. The definition of beneficial owner given by the TAA, although broadly in line with the standard, is not further explained by guidance and then it does not clarify how the beneficial owners of a partnership must be identified, taking into account the specificities of the decision-making in the different types of partnerships.

**112. It is therefore recommended that the Maldives ensure that adequate, accurate and up-to-date information on all beneficial owners of partnerships is available in line with the standard.**

### *Oversight and enforcement*

113. Enforcement and oversight of registration and AML obligations are described in paragraphs 59, 60, 63 and 93 to 96. The process for identifying the “inactive” companies, as described in paragraphs 61 and 62, does not apply to partnerships but tax audits could lead to the identification of inactive partnerships. Oversight and enforcement will be assessed in Phase 2 of the review.

### *Availability of partnership information in EOIR practice*

114. The implementation of the legal framework and the availability of identity and beneficial ownership information on partnerships in EOIR practice will be examined during the Phase 2 review.

#### **A.1.4. Trusts**

115. The Maldivian authorities stated that, although the legislation of the Maldives does not provide for the creation of the trusts, they recognise this form of legal arrangements, and the Maldivian legislation does not prevent a resident in the Maldives to act as a trustee of a foreign trust or to administer such a trust. The Maldivian authorities also explained that the Islamic concept of *waqf*<sup>17</sup> *is not recognised under the Maldivian Law and cannot be created in the Maldives.*

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17. Waqf is an Islamic form of charitable endowment which means that once given, the property cannot be dealt with by the owner or his/her heirs, except for the benefit of beneficiaries (who are generally broadly defined, for example, “the poor”).

### *Requirements to maintain identity and beneficial ownership information in relation to trusts*

116. The AML framework contains the main requirements for the availability of identity and beneficial ownership information in relation to foreign trusts and other legal arrangements with a trustee resident in the Maldives or administered in the Maldives. If the trust or trustee is a customer of an AML-obliged person, the AML-obliged person must apply the CDD requirements.

117. As the general definition of the beneficial owner, as provided by Section 77 of the AML Act, is the same for both legal persons and legal arrangements (see paragraph 70), the obligation of the AML-obliged persons to identify the beneficial owner (Section 16(f), AML Act) also covers the customers that are legal arrangements. Section 16(e) of the AML Act provides for the following specific CDD requirements for legal arrangements:

Reporting Entities shall obtain, for the purpose of identification of a legal arrangement and verification of the identity, the name of trustees, the settlor, and the beneficiary of express trusts or other similar arrangements.

118. The AML sectoral Regulations do not contain extensive explanation on the manner to identify the beneficial owners of the trusts or other legal arrangements. They only state that where a customer is a legal arrangement, the relevant AML-obliged person is required to understand the nature of the customer's business and its ownership structure. The AML sectoral guidelines are more detailed and contain the following explanations:

Legal Arrangements and Trusts: For the purposes of this guidance document, legal arrangements refer to express trusts and other similar legal arrangements where a private or court-mediated agreement between a debtor and unsecured creditors, under which the creditors agree to settle for a certain fraction of monies owed by the debtor.

For customers that are legal arrangements, [the AML-obliged persons] are required to understand the nature of the customer's business, its ownership and control structure.

[The AML-obliged persons] shall identify the customer and verify its identity through the following information:

- name, legal form and proof of existence, or any reliable references to verify the identity of the customer
- the powers that regulate and bind the customer, as well as the names of relevant persons having a senior management position

- the address of the registered office, and if different, a principal place of business.

[The AML-obliged persons] must also identify and take reasonable measures to verify the identity of beneficial owners through the following information:

- for trusts, the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership); or
- for other types of legal arrangements, the identity of persons in equivalent or similar positions.

For the purpose of identifying beneficiaries of trusts that are designated by characteristics or by class, [the AML-obliged persons] shall obtain sufficient information concerning the beneficiary in order to be satisfied that it would be able to establish the identity of the beneficiary when the beneficiary intends to exercise vested rights.

119. These explanations provided by the AML guidelines are in line with the definition of the beneficial owners of a legal arrangement given by the standard as they require the identification of all the parties in the trust as well as the natural persons exercising the ultimate effective control over the trust. These explanations appear to require a “look through” approach by covering the natural person exercising ultimate effective control including through a chain of control or ownership. Nevertheless, not all the AML-obliged persons are covered by the AML guidelines (see paragraph 74). Therefore, the lack of guidance for the AML-obliged persons not covered by these guidelines may impede the proper implementation of their CDD obligations in practice.

120. The deficiencies identified in section A.1.1 in the CDD requirements also apply for the identification of the beneficial owners of the legal arrangements. In particular, there is no specified frequency for updating the beneficial ownership information gathered in the context of the CDD and the impact on the simplified CDD on the identification of the beneficial owners is not clear. In addition, although the AML-obliged persons must maintain records on the beneficial owners of their clients for at least five years after the end of the business relationship (Section 20, AML Act), there is not any requirement that ensures that the beneficial ownership information on the clients is available after the liquidation of the AML-obliged person itself (see paragraph 80).

121. In addition to the general CDD requirements set out in Section 16 of the AML Act, applicable to all AML-obliged persons, the TCSPs must also obtain, verify and retain current information on the beneficial ownership and control of legal arrangements established in the Maldives. This information should include in particular the information on the settlor, the trustee and the beneficiary of express trusts established in the Maldives (Section 26(c), AML Act),<sup>18</sup> which means that the protectors and any other natural persons exercising effective control are not captured.

122. This obligation also applies when the Maldivian TCSPs administer legal arrangements established in jurisdictions other than the Maldives (Section 26(d), AML Act), but no further guidance is provided on this TCSP-specific obligation.

123. Moreover, the trustees covered by the AML framework are only the professional trustees, i.e. the trustees providing their services on a commercial basis. The non-professional trustees resident in the Maldives or that administer a foreign trust or another legal arrangement in the Maldives are not covered by any requirement to identify the parties and the beneficial owners of the trusts. In practice, a trustee of a foreign trust that is not a professional will, in most cases, enter into business relationships with a financial institution or another AML-obliged person to carry out transactions with funds or other assets on behalf of the trust. If this relationship is established with a Maldivian AML-obliged person, this latter will identify the beneficial owners of the trust because they have the obligation to identify the person, or persons on whose behalf the customer is acting (Section 16(g), AML Act). Nevertheless, there is no legal obligation for a non-professional trustee to resort to the services of a Maldivian AML-obliged person so that the beneficial ownership information may not be available in the Maldives.

124. Therefore, considering the deficiencies noted in the AML framework and the lack of requirements for non-professional trustees, **the Maldives is recommended to ensure the availability of an adequate, accurate and up-to-date beneficial ownership information for relevant foreign trusts and other legal arrangements.**

### *Oversight and enforcement*

125. The availability of the identity and beneficial ownership information in relation to foreign trusts and other legal arrangements relies on the AML framework. Therefore, the same enforcement and oversight of AML obligations, as described in paragraphs 93 to 96, apply in the case of foreign

18. This TCSP-specific obligation, in Section 26(c), implies that trusts can be established in the Maldives but the Maldivian authorities confirmed that the Maldivian law does not allow for the creation of Maldivian trusts.



trusts and legal arrangements. The application of this in practice will be assessed in Phase 2 of the review.

### *Availability of trust information in EOI practice*

126. The implementation of the legal framework and the availability of identity and beneficial ownership information on foreign trusts and other legal arrangements in practice will be examined during the Phase 2 review.

#### **A.1.5. Foundations and Associations**

127. The legal framework of the Maldives does not foresee the creation of foundations but non-profit associations can be established. The Association Act (Law no. 1/2003 – AA) regulates the registration and the governance of the associations.

128. Considering the rules described below, the associations in the Maldives must pursue a non-profit activity and have no commercial purposes. They do not make distribution to their members or founders and all their assets and liabilities are transferred to a non-profit institution or to the State upon dissolution. Although the constitution of the association is not subject to government approval, they are all subject to an obligation to be registered with the Registrar of Associations and the Ministry of Home Affairs monitors them (Section 23, AML Act). Therefore and to that extent, the associations in the Maldives are not covered in the scope of the Terms of Reference for this peer review and only a brief overview of their legal structure and identity information requirements is given here.

129. All associations must have their own Governing Regulation, which must be in accordance with the rules of the Association Act (Section 4). This Governing Regulation must include the following information and requirements (Section 5):

- the name of the association
- the full address of the registered office of the association
- the objective(s) of the association
- a statement that the income and properties of the association is not to be distributed among the general members nor among the members of the Executive Committee<sup>19</sup>

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19. Although the AA allows the associations to conduct business transactions in aid and pursuance of the objectives of the associations, these transactions must not be done to raise earnings for the members of the association and they should not outweigh other activities or functions carried out by the associations (Section 21, AA).

- a statement that neither the founding members, nor the general members or the members of the Executive Committee have any ownership rights whatsoever to claim on any property or finance belonging to the association
- a statement that any money or property left over after paying off the debts and liabilities of the association after its dissolution shall be given away to another non-profit association or to a government approved charity
- the types of membership and procedures on how to become a member of the association
- the procedures on how to resign from and to terminate membership.

130. Any change or alteration to the Association's Executive Committee must be notified to the Registrar of the Association within 30 days of such a change or alteration (Section 15, AA). All associations must also maintain a registry of their members containing their names and addresses. This registry must be provided upon request of the Registrar of the Association (Section 16, AA).

### ***Co-operatives Societies***

131. The Co-operative Societies Act (CSA – Law no. 3/2007) regulates the creation and the rules of the co-operative societies, which are formed mainly for the purpose of mutual participation, development and the economic well-being of the members or part of the members of a community (Section 6, CSA). As of 1 February 2022, 114 co-operative societies were registered in the Maldives.

### ***Identity and membership information***

132. All the co-operative societies must register with the Co-operative Societies Registrar (Section 5, CSA), which is part of the functions of Registrar of Businesses (Section 4, BRA). Upon registration, a co-operative society becomes a legal entity with legal personality distinct from its members, which implies, among others, the power to hold and to obtain movable and immovable assets or property (Section 19, CSA).

133. The members of co-operatives societies must be a minimum of ten individuals of at least 18-year-old and living in a community<sup>20</sup> or part of a community in which the co-operative society will be operating (Section 18, CSA). The shares of the co-operative society are divided equally among

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20. The Maldivian law does not define “community” but the Articles of association of a co-operative can specify the scope of the relevant community.

members (Section 6(d), CSA). The persons who signed and submitted an application for registration of a co-operative society are deemed members of the society and their names must be entered in the register of its members (Section 17, CSA). This register of members must be freely displayed and disclosed at the registered office of the society at all business hours (Section 41, CSA). Nevertheless, there is no clear obligation to update this information in case of change in the composition of members. The only requirement is that a written acknowledgement be submitted by the society to the new member (Section 18(d), CSA).

134. The Co-operative Societies Registrar can wind up the society under the following circumstances (Section 60, CSA):

- if it finds it necessary following investigations
- upon resolution of the society itself
- failure by the society to commence the main business objectives within one year following the date of registration
- cessation of the main objective for a period of one year
- failure by the society to pay the registration fee or the annual fee.

135. In the case where the Co-operative Societies Registrar decides to wind-up a co-operative society, it must appoint a liquidator who has the obligation to hand over to the Registrar all books, registers and accounts relating to the proceedings (Section 63(a) and (e)). Although this obligation does not explicitly cover the register of members, it is assumed that the list of members of the society should be reported as a necessary piece of information for the dissolution and liquidation proceedings. Therefore, for the co-operative societies that cease to exist, the last ownership information status would be available with the Registrar of Businesses, which must keep this information for 25 years (Archive Act, Law no. 16/2011). Nevertheless, in the case where changes occurred in the ownership information before a co-operative society ceases to exist, this information handed over to the Registrar of Businesses may not include all the “historical” ownership information. Consequently, considering this deficiency and the one identified in paragraph 133, **the Maldives is recommended to ensure that the register of members of the co-operative societies is updated with all relevant changes in the identity and legal ownership information and that this information is available for at least five years after the co-operative societies have ceased to exist.**

### *Beneficial ownership information*

136. The availability of beneficial ownership information on co-operative societies in the Maldives relies on the AML framework. As they are legal entities, the co-operative societies must maintain adequate, accurate and

current information on their beneficial ownership and control structure (Section 26(a), AML Act – refer to paragraphs 86 and 87). However, as for companies and partnerships, no further guidance was issued for identifying and verifying the information on their beneficial owners.

137. The beneficial ownership information on co-operative societies may also be available through the CDD requirements that the AML-obliged persons must conduct on the customer, in accordance with Sections 16 and 26 of the AML Act (as described in paragraphs 75 to 83). However, as explained above in section A.1.1, these requirements as well as the definition of beneficial owners and the related explanations contain deficiencies (see paragraph 91).

138. Although these deficiencies and the lack of guidance may lead to some difficulties for the Maldivian legal entities to comply with this obligation, the situation of the co-operative societies is different than companies and limited liability partnerships as all their members are natural persons with equal participation. Therefore, the beneficial owners having control on the co-operative societies through ownership could be regarded as tantamount to the information contained in the register of members, and then available in all cases, subject to the updating of this information (see paragraph 133). Nevertheless, the deficiencies noted in the AML framework under section A.1.1 (see paragraph 91) remain for the identification of the beneficial owners having control through other means. Consequently, **the Maldives is recommended to ensure that adequate, accurate and up-to-date information on all beneficial owners of co-operative societies is available in line with the standard.**

### *Oversight and enforcement*

139. The Co-operative Societies Registrar is in charge of monitoring the compliance of co-operative societies with their legal obligations. If needed, it can investigate the co-operative society's accounts and any other documents of the society, its structure and framework, activities and financial status (Section 59).

140. Failure to comply with the Co-operative Societies Act or with an order of the Co-operative Societies Registrar can be punished by a fine of MRV 5 000 (EUR 295). In addition, if there is a specific responsible person for the infringement, this person must compensate for any losses and damages caused as a result of his/her actions to the co-operative society (Section 66 and 67).

141. Other enforcement measures and oversight of registration are described in paragraphs 93 to 96. Their application in practice will be assessed in Phase 2 of the review.

## A.2. Accounting records

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

142. The tax law requires that all relevant entities, including the relevant foreign entities and trustees of foreign trusts, maintain their accounting records and underlying documentation, for at least five years. For the companies and the co-operative societies, the tax obligations are supplemented by the obligation under the company law to prepare annual accounts that must be audited and submitted to the Registrar of Businesses.

143. However, the accounting information would not be available after the liquidation of the entities, except in respect of the annual accounts of companies and co-operative societies.

144. 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
<p>The companies and co-operative societies must provide their annual accounts to the Registrar of Businesses, which keeps them for 25 years following the liquidation of a relevant entity. This obligation does not extend to underlying documentation nor to other relevant entities or arrangements, such as partnerships. Therefore, full accounting information is not available in all cases for liquidated entities and arrangements.</p>	<p>The Maldives should ensure that the accounting information, including the underlying documentation, is kept for at least five years following the liquidation or termination of the relevant entities and arrangements.</p>

**Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.**

### A.2.1. General requirements

145. The availability of the accounting records is generally ensured by a combination of the requirements under the Companies Act and the Tax laws. The various legal regimes are analysed below.

### *Company Law*

146. Pursuant to Section 63 of the CA, all companies must maintain proper books of account with respect to:

- all sums of money received and expended daily by the company and the matters in respect of which the receipt and expenditure take place
- a record of assets, liabilities and obligations of the company.

147. These records must be kept at the registered office of the company and must be at all times available for inspection by the directors. A private limited company must keep its accounting records for three years from the date on which they are made whereas a public company must keep its accounting records for six years from the date on which they are made (Section 64, CA). All entities must also comply with the retention period of five years imposed by the tax law (see paragraph 150), including for the maintenance of accounting records.

148. The companies must also prepare annual accounts, showing the income and expenses, profit and loss, the annual balance sheet and annual report (Section 66, CA). The board of directors is responsible for the preparation of these annual accounts. The annual report must contain:

- a review of the business and other activities of the company during the past year
- the amount which the Board of Directors recommend should be paid as dividend and amount they propose to set aside as reserves
- the names of the directors of the company and details of the members of the company in the past year
- the main activities carried out by the company in the past year.

149. Moreover, a report of an auditor of the company must state whether the annual accounts prepared in accordance with Section 66 of the CA are true and show an accurate status of the company, and whether the accounts reflect the real financial status of the company as seen from the books of the company (Section 71, CA). The companies must also deliver to the Registrar of Businesses the annual accounts prepared in accordance with Section 66 of the CA and the report of the auditor prepared in accordance with Section 71 of the CA (Section 69, CA), within 15 days following the annual general meeting.

### *Tax Law*

150. All the relevant entities must register with the tax authority and are subject to the tax requirements. The requirements under the TAA and the TAR ensure that companies, partnerships and co-operative societies as well

as relevant foreign companies and partnerships<sup>21</sup> maintain reliable accounting records. Pursuant to Section 27 of the TAA, all the business taxpayers must maintain, for a period of five years from the end of accounting period to which the records relate, documents and financial accounting records in relation to the following purposes:

- taxable profit or total amount of income, during a taxable period of the taxpayer
- expenses deducted in computing the taxable profit or income of the taxpayer
- additional information specified in the TAR.

151. In addition, Section 14 of the TAR obliges any person that is subject to a tax law, which includes all the relevant entities, to maintain sufficient records necessary to ascertain the person's income, expenditure, capital allowances, tax credits, output tax, input tax, goods and services tax adjustments, tax payable and withholding tax payable. It further states that these records must include:

- records of all assets and liabilities in relation to the person's business or business activity (including details of assets and money withdrawn for personal use and assets in an inoperative state due to damage, loss or any other reason)
- a day-to-day record of all monies received and expended in the course of carrying on the person's business or business activities
- invoices, receipts, payment vouchers, credit notes, debit notes and other such documents relating to goods and services sold and purchased
- accounting records of the transactions of the person's business or business activity, such as journals and ledgers
- chart of accounts, code of accounts, accounting instruction manuals and programming documentation, which describe the accounting system used by the person in carrying on the person's business or business activities
- where a person records transactions using the accrual basis of accounting, details of inventory, debtors (including bad debts written off) and creditors at the end of each accounting period
- details of payments made to or for the benefit of employees or officers of the person (separately identifying payments and benefits made by the person to directors, substantial shareholders, trustees or partners of the person and to other persons associated with them)
- agreements relating to business transactions

21. The foreign companies and partnerships are subject to all tax obligations as long as they are tax residents in the Maldives.

- Import Licence, Export Licence, Bills of Lading, Airway Bills, Customs Export Declarations and other such documents related to import or export
- bank statements and other documents that provide details of all transactions made through the bank account
- financial statements and related documents
- all documents related to transactions conducted over the internet
- any other documents necessary for the verification of income and expenditure and other amounts included in any tax return or in the financial statements of the taxpayer
- other documents required to be maintained by the taxpayer under a tax law.

152. All these records must be kept at the principal place of business in the Maldives of the taxpayer or at any other place in the Maldives where the records are accessible to the MIRA, on demand (Section 15, TAR). This provision requires that there is a person in possession or control of the accounting records within the territory of the Maldives. The records can also be kept in an electronic format in some circumstances, in particular if they can be readily accessed if required by the MIRA (Section 16, TAR).

153. The tax obligations described above require that reliable accounting records are kept in accordance with the standard by all relevant legal entities. In addition, the legal entities subject to the obligation to file an income tax return<sup>22</sup> are also required to submit their financial statements and the report of the auditor (see paragraph 149) with their tax return (Section 102 of the Income Tax Regulation). Therefore, these documents of those entities will be directly available for the tax administration.

### *Partnerships, trusts and co-operative societies*

154. The Partnership Act does not contain specific accounting obligation for the partnerships, although the Partnership Agreement may prescribe such obligations. The partnerships are nevertheless covered by the obligations of the tax law (see above).

155. Similarly, there is no specific accounting obligations for the foreign trusts or arrangements or for the trustee of a foreign trust. A Maldivian resident receiving any taxable income related to a foreign trust is submitted to

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22. Section 101(b) of the Income Tax Regulation exempts the entities from filing an income tax return if their taxable income is less than MVR 500 000 (EUR 29 500) and their annual income less than MVR 2 000 000 (EUR 118 000).



the accounting requirements of the tax law in respect of this income as he/she/it should be in position to justify it. The resident trustee of a foreign trust that receives an income on behalf of the trust should also be in position to justify that this income is not taxable at his/her/its level and then, would be subject to Section 14 of the TAR (see paragraph 151) for the operations of the foreign trusts. The compliance with this accounting obligation by the trustees of foreign trusts will be analysed during the Phase 2 review (Annex 1).

156. The Co-operative Societies Act requires that an audit officer, approved by the Registrar, audit the accounts of the societies annually (Section 54(a), CSA). The purposes of the audit are, among others, to check the accuracy of the cash balances, the shares tally, the assets and liabilities and whether the financial transactions and other business transactions were carried out in accordance with the articles of the co-operative society (Section 56, CSA). The audit report must be submitted to the Co-operative Societies Registrar within 30 days of the annual general meeting (Section 57, CSA). The audited accounts of the past five years must also be freely displayed and disclosed at the registered office of the co-operative society (Section 41, CSA). The co-operative societies must annually publish the audited balance sheet of the society, signed and endorsed by the audit officer (Section 42, CSA). They are also subject of the accounting requirements of the tax law.

### *Entities that ceased to exist and retention period*

157. The tax law contains the requirement, for all relevant entities, to keep the accounting records and the underlying documentation for at least five years from the end of the relevant accounting period. This retention period is in line with the requirements of the standard. However, the entities that ceased to exist have no specific obligation under the Maldivian law for ensuring the availability of their accounting records and related documentation after their dissolution.

158. As described in paragraph 149 and 156, the companies and the co-operative societies must also deliver to the Registrar of Businesses their annual accounts and the report of the auditor (Section 69, CA and Section 57, Co-operative Societies Act). The Registrar of Businesses keeps this information for 25 years following the dissolution of the entity. Nevertheless, there is no similar requirement for partnerships and this accounting information provided annually to the Registrar of Businesses does not contain the underlying documentation. Consequently, **the Maldives is recommended to ensure that the accounting information, including the underlying documentation, is kept for at least five years following the liquidation of the relevant entities.**

### **A.2.2. Underlying documentation**

159. As described above, Section 14 of the TAR ensures the availability of the underlying documentation of the accounting information. It requires from all the relevant entities to keep the relevant documents such as invoices, day-to-day record of monies received and paid, documents related to import or export and bank statements (see the exhaustive list in paragraph 151).

#### ***Oversight and enforcement of requirements to maintain accounting records***

160. The Ministry of Economic Development is the authority in charge of supervising the compliance of the companies with the CA. If a company fails to comply with its obligation to maintain the relevant accounting records, as provided by the CA, every director who is charged by the company to fulfil this requirement are guilty of an offence (Section 63(b), CA). These persons are liable to a fine between MRV 10 000 and MRV 500 000 (EUR 590 and EUR 29 500) or to six months to two years of house arrest, imprisonment or banishment<sup>23</sup> (Section 63(c), CA).

161. In addition, if a company fails to comply with its obligation to provide its annual accounts to the Registrar of Businesses, as required by Section 69 of the CA, the managing director is liable to a fine of MRV 10 000 (EUR 590) in the case of a private company and MRV 30 000 (EUR 1 770) in the case of a public company.

162. As for co-operative societies, a person approved by the Co-operative Societies Registrar must audit annually the accounts of a co-operative society (Section 54 of the Co-operative Societies Act). The account statement and audit report passed at the annual general meeting has to be submitted within 30 days to the Registrar by the auditor. Any failure to these obligations set out in the CSA can be penalised with a sanction of maximum MVR 5 000 (EUR 295).

163. The MIRA is in charge of applying the sanctions provided by the tax law. Paragraph 8 of the Tax Ruling (TR-2013/B26), issued pursuant to the authority granted by the TAA, provides for a fine in the case of failure to keep records in accordance with the requirements of the TAA. This fine, which is multiplied by the number of times a notice is being issued for failure to keep records, is calculated as follows:

- MVR 2 500 (EUR 148) for micro business category, i.e. for business generating an annual turnover of less than MVR 500 000 (EUR 29 500) or employs 5 employees or less
- MVR 5 000 (EUR 295) for the small business category, i.e. for business generating an annual turnover between MVR 500 001

23. Banishment means sending off the person to live in another island of the Maldives for a specified period.

(EUR 29 500) and MVR 5 000 000 (EUR 295 000), or employs 6 to 30 employees

- MVR 10 000 (EUR 590) for the medium-sized business category, i.e. for business generating an annual turnover between MVR 5 000 001 (EUR 295 000) and MVR 20 000 000 (EUR 1 180 000), or employs 31 to 100 employees
- MVR 25 000 (EUR 1 480) for large business category, i.e. for business generating an annual turnover of MVR 20 000 001 (EUR 1 180 000) or more, or employs 101 employees or more.

164. In addition, the failure to maintain documents and financial accounts in accordance with the TAA is considered as an offence (Section 65(a)(5), TAA) for which the civil penalty is:

- a fine of 0.5% of the amount of tax payable for the taxable period, and
- a fine not exceeding MVR 50 (EUR 3) for each day of delay from the date required to file a tax return or provide information or pay withholding tax.

165. The MIRA conducts regular audits and compliance inspections. Large Businesses are audited at least once a year. Other businesses would be audited according to the outcomes of risk profiling carried out by the Risk Management Section of the MIRA. The tax administration can request accounting records during these auditing processes.

166. The implementation of the legal framework and the availability of accounting information on legal entities in practice, as well as the application of the oversight and enforcement measures, will be examined during the Phase 2 review.

### ***Availability of accounting information in EOIR practice***

167. The availability of accounting information in EOIR practice will be examined during the Phase 2 review.

## **A.3. Banking information**

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

168. The Banking legislation and the AML Act require the availability of information on the holders of bank accounts in the Maldives and the transactions carried out through these accounts. Nevertheless, there is no

requirement to maintain this banking information after the bank has ceased to exist or a foreign bank has ceased its operation in the Maldives.

169. Information on beneficial owners of accounts is also collected and verified by banks as part of their AML/CDD obligations. However, the problems identified in section A.1.1, with regards to the definition and methodology of identification of the beneficial owners as well as the customer due diligence of AML-obliged persons, also affect the availability of information on beneficial owners of accounts.

170. 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
<p>In the case of a liquidation of the bank, the Maldivian law does not contain a requirement that banking information be available after a bank has ceased to exist or after a foreign bank has ceased its operations in the Maldives.</p>	<p>The Maldives should ensure that banking information is kept for at least five years, including in the case where the bank has ceased to exist or a foreign bank has ceased its operations in the Maldives.</p>
<p>There is a lack of guidance in the Maldivian legal framework on the implementation of the definition of beneficial owner(s) and the methodology for identifying them, so the beneficial owners may not always be identified in accordance with the standard. Moreover, there is no specified frequency for banks to conduct customer due diligence, so there could be situations where the available beneficial ownership information is not up to date. The banks are also allowed to conduct simplified CDD for low-risk customers, including when entering into a business relationship with their customers, but there is no guidance on the content of such CDD and their impact on the identification of beneficial owners.</p>	<p>The Maldives should ensure that an adequate, accurate and up-to-date information on the beneficial owners of bank accounts be available in line with the standard.</p>

**Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.**

### **A.3.1. Record-keeping requirements**

#### *Availability of banking information*

171. The obligation of the banks to maintain banking information, in particular on the transactions conducted through bank accounts, arises from the Maldives Banking Act (MBA) and the AML Act. These provisions prohibit the financial institutions to keep anonymous accounts or accounts in obviously fictitious names (Section 16(m), AML Act). The banks, as AML-obliged persons, must verify the identity of their customers in the following circumstances (Section 16(a), AML Act):

- They establish a business relationship with a customer.
- The customer wants to carry out a transaction of an amount above MRV 50 000 (EUR 2 950) or a transfer of funds, outside of any business relationship.
- They have doubts about the veracity or adequacy of previously obtained customer identification data.
- There is a suspicion of money laundering or financing of terrorism.

172. The Maldivian legislation also requires that all banks keep on file in the Maldives, the following information (Sections 36, MBA):

- customer identification records
- applications and all other contract documents pertaining to transactions, a signed written record of the decision of the bank approving the transactions and all documents or records relating to suspicious transactions
- financial records of the parties conducting transactions with the bank, and any other documentary evidence on which the bank relied in approving such transactions
- the account agreements with its customers.

173. To be in conformity with this requirement, banks must maintain proper books and records of operations and apply accountancy rules and systems in accordance with the International Standards on Auditing issued by the International Auditing and Assurance Standards Board, including the use of full accrual accounting (Section 45, MBA).

174. In addition, the AML Act requires that all AML-obliged persons, including the banks, maintain records of the documents evidencing the identities of customers and their beneficial owners as well as on information that enables reconstruction of the transactions executed by customers, for at least five years from the date of the transaction (Section 20).The Regulation

for Banks on Prevention of Money Laundering and Financing of Terrorism also requires that the banks maintain relevant records and documentation, including business correspondence and transactions, in particular those obtained during customer due diligence process (Section 16(a)), and that they keep for a period of five years the records and documents collected for their business relationships, including the customer identification information and the transactions history (Section 16(c)). Nevertheless, in the case of a liquidation of the bank or a cessation of a Maldivian branch of a foreign bank, the Maldivian law does not contain a requirement that ensures that this banking information is available after the bank has ceased to exist. Therefore, **the Maldives is recommended to ensure that banking information is kept for at least five years, including in the case where a bank has ceased to exist or a foreign bank has ceased its operations in the Maldives.**

175. The combination of the provisions described above requires that the information on banking information, in particular on the transactions carried out through a bank account, is available in the Maldives.

#### *Beneficial ownership information on account holders*

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

177. Banks are clearly identified by the AML Act as AML-obliged persons (Section 77(e)(1), AML Act). Therefore, they must apply the CDD requirements as described in section A.1.1 of this report (refer to paragraphs 75 to 85) to all their customers, including the foreign customers or customers residing abroad and including if they are legal persons and arrangements.

178. The CDD requirements contained in the AML Act contain deficiencies, as summarised in paragraph 91. First, although the AML guidelines for banks require that they take reasonable measures to ensure that their entire customer CDD information be up to date, there is no specified frequency for conducting the CDD.<sup>24</sup> This lack of specified frequency may lead to situations where the information gathered on beneficial owners of the bank accounts is not up to date.

179. The AML guidelines for banks give them the possibility to conduct simplified CDD on the customer, beneficial owner and beneficiary based on the risks that the banks, the MMA or the FIU have identified. The bank can opt for this possibility for both single transactions and usual business

24. The AML Guidelines for banks only states that the frequency of the on-going due diligence or enhanced on-going due diligence must be commensurate with the level of ML/TF risks posed by the customer based on the risk profiles and nature of transactions.

relationships. There is no further explanation on the content of the simplified CDD and on its impact in terms of identification of the beneficial owners, verification of their identity or frequency for renewing the CDD. This lack of guidance on simplified CDD may result in situations where the beneficial owner is not identified or the information on beneficial ownership not kept up to date in accordance with the standard.

180. In addition, the implementation of the definition of the beneficial owners of the customers and the methodology for identifying them, as explained in the AML guidelines for banks, contain some deficiencies (see paragraph 73) and are not further explained, which may result in situation where the beneficial owners are not identified in accordance with the standard. Therefore, **the Maldives is recommended to ensure that an adequate, accurate and up-to-date information on the beneficial owners of bank accounts be available in line with the standard.**

181. As explained in paragraphs 82 and 83, the AML guidelines for banks allow them to rely on third parties or business introducers to conduct CDD, provided that the ultimate responsibility and accountability of CDD measures remain with the bank. They must have in place internal policies and procedures to mitigate the risks when relying on third parties, including those from jurisdictions that have been identified as having strategic AML/CFT deficiencies that pose an AML risk to the domestic and international financial system. In addition, the relationship between the banks and the third parties must be governed by an arrangement that clearly specifies the rights, responsibilities and expectations of all parties. At the minimum, the bank must be satisfied that the third party:

- can obtain immediately the necessary information concerning CDD as required under applicable laws and regulations
- has an adequate CDD process
- has measures in place for record keeping requirements
- can provide the CDD information and provide copies of the relevant documentation immediately upon request
- is properly regulated and supervised by the respective authorities.

182. Although these conditions appear broadly in line with the requirements of the standard, it is not clear whether the relying bank has immediately and automatically the relevant beneficial ownership information provided by the third party, as required by the standard, or whether it must request this information to the third party to obtain it. Therefore, the Maldives should clarify the conditions of the reliance on third parties to ensure that the beneficial ownership information be always immediately obtained by the bank from the establishment of the relationship with the customer (see Annex 1).

### *Oversight and enforcement*

183. In accordance with the AML guidelines for the banks, the banks must establish and implement written policies, procedures and internal controls approved by their board and subject to continuous or periodic review. The CDD requirements are encompassed in the minimum part of these policies, procedures and internal controls (Section 5 of the Regulation).

184. The regulatory authority of the banks is the MMA. The MMA-FIU can also conduct activities to monitor the compliance of the banks with their record-keeping requirements under the AML framework. The FIU issues guidelines and organises trainings to bank officers on various AML compliance issues including record keeping. In addition, the FIU and the MMA conduct on-site and off-site inspections to check whether the banks are effectively complying with the AML/CFT laws and regulations. The off-site monitoring involves reviewing and analysing the financial reports and other information submitted to the MMA by the banks to evaluate their condition and areas of risk. As a part of the off-site monitoring process, reports are prepared quarterly or on a need basis to assess compliance requirements.

185. The sanctions on non-compliance under the AML framework are described in paragraphs 94 to 96. The implementation of the legal framework and the availability of banking information in practice will be examined during the Phase 2 review.

### ***Availability of banking information in EOIR practice***

186. The implementation of the legal framework and the availability of banking information in EOIR practice will be examined during the Phase 2 review.



## Part B: Access to information

187. 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).

188. The ability of the Maldivian tax authority to obtain information requested by an EOIR partner is mainly based on a specific EOI-related provision, which allows it to obtain information held by third parties, or by the person subject of the EOI request, including banking and beneficial ownership information. Appropriate penalties may be applied for failure to provide the requested information or for the provision of inaccurate information. In addition, professional secrecy can generally be waived under the specific EOI-access power and the domestic definition of the attorney-client privilege is in line with the standard.

189. The conclusions are as follows:

#### Legal and Regulatory Framework: in place

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

**Practical Implementation of the Standard: no rating is assigned 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***

#### *Accessing information generally*

190. The competent authority in the Maldives for EOI purposes is the MIRA. The daily functions of the Competent Authority are carried out by the EOI Unit.

191. The MIRA has a specific power to order any person believed to be in possession of any information that is required under an EOI instrument to deliver such information within 30 days (Section 32(e), TAA). This specific provision was added to the TAA as the domestic powers contain some restrictions that would not have been in line with the standard if they had directly been applied for gathering information for EOIR purposes (i.e. going first to the concerned person, including the reasons of the notice and naming the concerned person in the notice to the information holder, without exceptions).

#### Section 32 TAA:

(a) Subject to this Section, where a notice of enquiry into the tax liability of any person (the taxpayer) has been served on that person, MIRA may, for the purpose of the enquiry, by notice require any other person to deliver the same information to the MIRA or, where the person to whom the notice is given objects to doing so, to make available for inspection by the MIRA, such documents as are in his possession or power. If, in the opinion of the MIRA, such documents contain, or may contain, information relevant to any tax liability to which the taxpayer is or may be, or may have been, subject, or to the amount of any such liability, the MIRA may order the submission of such documents.

(b) A notice under this Section shall name the taxpayer with whose liability the MIRA is concerned, and shall require documents to be delivered or made available, or information to be furnished within such time as may be specified in the notice, which shall not be less than 30 days after the date of the notice.

(c) The MIRA may take copies of, or make extracts from, any document made available to it under this Section.

(d) A notice under this Section shall contain a summary of the reasons why the notice is given, and those reasons shall be sent to the taxpayer together with a copy of the notice.

(e) Notwithstanding subsections (a) to (d), where a person is believed to be in possession of any information that is required

under an agreement made pursuant to Section 51 or 51-1 of this Act, MIRA shall have the power to order such person to deliver such information to MIRA within 30 days, in a manner prescribed in the regulation made pursuant to this Act.

192. The Regulation referred to in Section 32(e) is incorporated in Sections 10, 11 and 13 of the TAR, which contains details on the modalities for submitting the requested information, by electronic communications or by submitting the original documents. The EOI instruments referred to in this provision cover both the double tax agreements (Section 51, TAA) and the bilateral or multilateral agreements for exchange of information (Section 51-1, TAA). Therefore, this provision enables the MIRA to access the relevant information to reply to an EOI request, including from persons not legally required to have such information (as far as they are believed to be in possession of the information requested).

193. The TAA also contains a general provision with limitations to its access powers (Section 34, TAA). This provision mentions that a notice must not be given under Section 32 of the TAA unless the MIRA has reasonable grounds for believing that the taxpayer has failed or may fail to comply with any provision of any tax law and that any such failure is likely to seriously prejudice the proper assessment or collection of tax (Section 34(a)). It is unclear how this requirement would be implemented in the context of gathering information for EOI purpose and, in any case, it provides for a requirement which goes beyond what the standard allows. Moreover, it is stated in Section 34(g) that a notice under Section 32 of the TAA does not oblige a person to produce or make available any document the whole of which originates more than six years before the date of the notice unless the MIRA has reasonable grounds for believing that tax has, or may have been, lost owing to fraud by the taxpayer. This possibility to limit the information to be provided depending on their date of creation is not offered by the standard. As far as the information is foreseeably relevant for the taxable period of the requesting jurisdiction, it must be exchanged unless the requested information is outside the record keeping period and the information holder no longer keeps such information. The other limitations in Section 34(g) relate to legal professional privilege and are examined in Section B.1.5 of this report (see below).

194. These limitations provided for by Section 34 of the TAA relate to a “notice” given under Section 32, without expressly excluding Section 32(e). However, Section 32(e) does not refer to a “notice” but rather to an “order”<sup>25</sup> and the Maldivian authorities confirmed that the main purpose of Section 32(e) is to ensure that any information requested through EOI can

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25. Sections 10, 11 and 13 of the TAR also do not contain the term “notice”.

be obtained without issuing a notice to taxpayers for audit or investigation to get information from them. Therefore, this interpretation of the Maldivian authorities confirms that the limitations set out in Section 34 would not apply to Section 32(e) which sets the relevant access powers for EOI purposes. The implementation of this interpretation in practice will be analysed during the Phase 2 review (Annex 1).

195. In a lesser extent, the MIRA can also rely on general access powers available in the context of a tax audit. For launching a tax audit, the Commissioner General of Taxation informs the taxpayer that its accounts and documents are being audited in respect of the tax law for specific taxable periods (Section 30, TAA). In this context, the MIRA has the power to require the taxpayers to produce documents required by an audit notice (Section 31, TAA) or may order by notice any other person to submit the documents relevant for the tax audit (Section 32(a), TAA) in a minimum timeframe of 30 days. It can also enter the taxpayer's administrative office and business premises to conduct audits (Section 30(e), TAA). The MIRA can exercise these access powers either to determine whether and the extent to which the taxpayer's tax return is correct or, in the absence of any tax return, the amount of the taxable profit for the relevant year. As a consequence, although the MIRA can use this access power to obtain the relevant information, especially if it requires to enter or visit taxpayers' premises to obtain the relevant evidence, it is not the most convenient and comprehensive means to gather the information to answer an EOI request. In addition, they are subject to the limitations of Section 34 of the TAA (see paragraph 193).

196. The MIRA has also the power to summon a person for oral examination by issuing a notice to the taxpayer or any other person that MIRA believes to be in possession of any information relating to the tax affairs of the taxpayer (Section 33, TAA). However, this power is also subject to the limitations of Section 34 of the TAA (see paragraph 193).

### *Accessing legal and beneficial ownership information*

197. The MIRA can directly access the identity and legal ownership information held by the Registrar of Businesses, in particular the constitutive documents of entities. As described in Part A.1, these constitutive documents may contain in many cases the information on the legal owners of the entities. This information is also available in the internal database of the MIRA, in particular in the Taxpayers Register.

198. Under Section 32(e) of the TAA, the legal and beneficial ownership information can also be obtained from the relevant legal entities themselves or from the AML-obliged persons with which the concerned legal person or arrangement has a business relationship. This provision is complemented

by Sections 51-4 and 75-1 of the TAA, which states that the MIRA has the authority to obtain and use the beneficial ownership information of a legal entity, and to share this information with other countries or territories. The Maldivian authorities confirmed that these provisions enable the MIRA to obtain beneficial ownership information from the legal entity itself and from the AML-obliged persons on their clients (legal entities or legal arrangement). The AML Act also authorises the Maldivian legal entities and the TCSPs to provide beneficial ownership information at the request of an investigative authority or law enforcement authority, which includes the MIRA (Section 26(e)). This does not capture AML-obliged persons who are not TCSPs (e.g. financial institutions, lawyers). Nevertheless, as described above, the MIRA can obtain and provide to its EOI partners the legal and beneficial ownership information held by the AML-obliged persons on the basis of the tax law. The articulation of the provisions of the TAA with the provisions of the AML Act and its impact on the ability of the MIRA to obtain beneficial ownership information from all AML-obliged persons in practice will be analysed during the Phase 2 review (see Annex 1).

### *Accessing banking information*

199. The banking information requested by a foreign EOI partner would usually be gathered on the basis of the specific access power for EOI purposes (Section 32(e), TAA). This provision is complemented by Section 51-3 of the TAA, which states that for the purposes of an EOI instrument, the financial institutions must submit to the MIRA the information of taxpayers and that of associates of taxpayers.<sup>26</sup> The Maldivian authorities confirmed that they interpret the term “taxpayers” in Section 51-3 as also covering the taxpayers of foreign jurisdictions.

200. Moreover, where a person is suspected to have committed an offence under the Maldivian tax law, the MIRA can obtain from all banks and other financial institutions the information on bank accounts of this person and the details of the transactions carried out through a bank (Section 48, TAA). As this provision refers to situation where an offence to the Maldivian tax law is suspected, the MIRA would not primarily rely on it to obtain the banking information requested by a foreign partner.

201. Although the MIRA has the authority to request an information directly from a bank, it usually sends such a request (whatever its legal basis) through the MMA to facilitate the communication. The form of the

26. Section 86 of the TAA defines « associates » as any relative of the relevant person, a company within a group of companies, a partner in a partnership with the relevant person and, if the relevant person has an interest in shares or obligations of a company, any other person having an interest in those shares or obligations.

request sent by the MIRA to the MMA usually includes the name and the tax identification number of the taxpayer or account holder, the account number, the name of the relevant bank, the period to which the information relates, the reason of the request, the suspected offence and the description of information requested. The Maldivian authorities indicated that as for the information on the reason of the request, it would be limited to the reference to the domestic legal basis for obtaining the information. Similarly, the description of the suspected offence would not be provided if the information is requested for EOI purposes. The request sent by the MMA to the relevant bank contains the same elements, except the reason of the request and the suspected offence. If the MIRA does not have all the elements, for instance because the treaty partner has provided only the bank account number, it can still send a request to the MMA with the available elements. If the MIRA or the MMA cannot identify the bank which holds the requested information, a request would be sent to all eight banks in the Maldives.

202. The MIRA can usually obtain the banking information within two weeks from the request sent to the MMA. The effectiveness in practice of this procedure for obtaining banking information through the involvement of another authority will be further assessed in Phase 2 (see Annex 1).

### ***B.1.2. Accounting records***

203. Due to the obligation for the companies and the co-operative societies to provide their annual accounting report to the Registrar of Businesses, part of the accounting information can be accessed through the Registrar, including for the entities that ceased to exist.

204. If the accounting information requested by an EOI request is not directly available, the MIRA can request this information to the relevant legal entity (Section 32(e), TAA). A tax audit can also be launched if a visit of the taxpayer's premises is needed to obtain the requested information, for instance if this information involves a tax fraud for which the exercise of the power under Section 32(e) may not be efficient.

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

205. The Maldivian tax legislation does not contain a limitation to gather the information due to the domestic tax interest. On the contrary, Section 32(e) of the TAA clearly provides for the ability of the MIRA to gather the relevant information from any person for the implementation of the EOI instruments. Sections 51-3 and 51-4 of the TAA that enable the MIRA to obtain the relevant banking and beneficial ownership information for EOI purposes complement this provision. These provisions ensure that the MIRA can use its access powers to reply to an EOI request, even in the absence of the domestic tax interest.

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

206. The Maldivian tax legislation provides for dissuasive sanctions in the case where the person holding the information refuses to provide the information requested or provides inaccurate information.

207. A person who fails to provide the information as required by law or provides an incorrect answer or incorrect information commits an offence (Section 65(a), TAA).<sup>27</sup> The sanction for this offence is a fine of 0.5% of the taxable amount for the taxable period and a fine not exceeding MVR 100 (EUR 6) for each day of delay from the date required to provide information (Section 65(b), TAA). The Maldivian authorities confirmed that the fine of 0.5% of the taxable amount would be applied on the information holder, even in the case where the requested information does not directly relate to its tax situation.<sup>28</sup> Moreover, a sanction by imprisonment for a period between one and six months can be applied. The Maldivian authorities have confirmed that “as required by law” covers the information requested by the MIRA under Section 32(e) and that the failure to provide the information, or the provision of incorrect information, following such a request, can be punished under Section 65(b).

208. In addition, a person that intentionally falsifies, conceals, destroys or otherwise disposes of a document that has been required to be delivered or made available by a MIRA’s notice commits an offence (Section 35, TAA). The sanction is a fine not exceeding MVR 250 000 (EUR 14 750) or an imprisonment or house arrest for a period between 3 and 42 months, or both. However, as this legal provision applies only to failure to provide the information required by a “MIRA’s notice”, the sanction cannot be applied in case of a failure to reply to a request of the MIRA made under Section 32(e) which relates only to “order”.

209. These enforcement measures can generally be applied to the persons in possession or control of the information in the Maldives, as the information is required, in most cases, to be held in the Maldives in particular due to the requirement of Section 15 of the TAR (see paragraph 152). The application of these enforcement measures in practice will be assessed in Phase 2 of the review.

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27. Although Section 64 of the TAA refers to the “intention to evade tax or to facilitate a taxpayer to evade tax” for establishing the offence, the Maldivian tax authority clarified that the intention of the taxpayer is not taken into account to establish the offence of failure to provide the requested information or of provision of incorrect information.
28. For instance, if a bank fails to provide information on a bank account held by a foreign taxpayer, a fine of 0.5% of the taxable amount would be applied to the bank.



210. The MIRA has also the power, for domestic tax purposes, to enter premises to obtain documents (Section 36, TAA and Section 11, Tax Appeal Tribunal Regulations). This power is subject to a warrant delivered by the President of the Tax Appeal Tribunal upon request of the MIRA. Such a warrant can be requested by the MIRA only when the following cumulative conditions are met:

- There is a suspicion that an offence involving serious fraud in relation to tax is being or is about to be committed.
- There is evidence that such an offence is being committed.
- MIRA believes that evidence of this offence can be found on premises specified in the information relating to tax.

211. However, the Maldivian authorities explained that the MIRA is not clearly allowed to use this search and seizure power to obtain and exchange information with its EOI partners. Although not strictly a requirement of the standard, the inability to use these powers for EOI may limit the access to the relevant information where the information holder is not co-operative and the financial sanctions would not be effective to encourage a compliant behavior of that person. The impact of this inability on the EOI in practice will be further explored during the Phase 2 review (see Annex 1).

### ***B.1.5. Secrecy provisions***

#### ***Bank secrecy***

212. The general bank secrecy obligation is set out in Section 41 of the MBA (Law no. 24/2010) which states that a bank must maintain confidentiality regarding all accounts, deposits, trusts and safe deposit boxes of customers. This confidentiality obligation applies to current and former administrators, officers, employees and agents of a bank (Section 42). This prohibition applies to any person, including officers and employees of the MMA and bank auditors, who examine such statements and information directly or indirectly by virtue of their profession, position or work.

213. The Banking Act (Sections 41 and 43) provides for exceptions to the bank secrecy, including in the following circumstances:

- The concerned customer gave a written approval for the disclosure of the information.
- A Court of law authorised the disclosure of the information.
- A designated criminal investigative authority or the Prosecutor General made a written request to obtain the information.
- The information and documents are requested by the MMA in connection with its duties under the Banking Act or under the Maldives



Monetary Authority Act. This instance does not cover the requests sent by MMA on behalf of the MIRA (see paragraph 201) which would be based on the provisions of the TAA.

214. These exceptions to the bank secrecy do not expressly cover the requests of the MIRA for replying to an EOI request. The MIRA is nevertheless a “criminal investigative authority”, so that a bank can disclose information to this authority as far as the request relates to tax criminal offences.

215. In addition the Maldivian authorities consider that the access powers of the MIRA set out in the TAA (in particular sections 48 and 51-3) clearly allow the MIRA to access banking information. As the MBA does not have a higher legal position than the TAA, these access powers appear appropriate to access the information held by banks. Nevertheless, the Maldives should clarify the articulation between the MBA and the TAA to clearly provide for the possibility to waive the bank secrecy for tax purposes, including for EOI purposes (see Annex 1).

### *Professional secrecy*

216. The privilege of the legal practitioners, including the lawyers, in the context of criminal proceeding is explained in Section 201 of the Criminal Act, which prevents those legal practitioners to give evidence, without the consent of the person concerned, at criminal proceedings against any person by whom he/she is professionally employed or consulted.

217. Moreover, pursuant to Section 38 of the Legal Profession Act (Law No. 5/2019), the information shared by the client with their lawyer regarding a case they have been assigned, or anything that has been said, or document, photo, video footage or recording must not be disclosed to anyone, except with the written consent of the client or under a Court order. The Legal Profession Act also limits the role of the lawyers to the representation of a client who seeks their legal service and the provision of such service, the representation of a client in front of a lawfully established Court or tribunal or an institution mandated to investigate disciplinary issues and the attestation of true copies (Section 37). Therefore, although the attorney-client privilege covers all the information provided by the client to the lawyers, the scope of this privilege can be considered in line with the standard<sup>29</sup> as far as the functions of the lawyers involve only communications for the purpose of giving legal advice to the client or in contemplation of legal proceedings.

29. In particular with Article 7(3) of the OECD Model TIEA.

218. As for the tax law, Section 34(g) of the TAA limits the ability of the MIRA to obtain an information:

- with respect to which the legal professional privilege could be lifted only with the consent of the lawyer's client
- which is the property of an auditor appointed in accordance with the Companies Act or was created by him/her or on his/her behalf or in connection with the performance of his/her functions under that Act
- which is the property of a tax adviser and consists of relevant communications.

219. Regarding the information and documents that are the property of an auditor or a tax adviser, this information may relate to some documents that would be in possession only of the auditor or the tax adviser, and over which the relevant taxpayer has no claim. These could include working papers and drafts prepared in the course of performing the audit or audit related activities which might be relevant, for example, to establish the purpose for which a corporate restructuring is carried out. However, although the scope of this limitation to the ability of the MIRA to obtain the information is broad, the limitations set out in Section 34 of the TAA do not apply to the power to access information for EOI purposes under Section 32(e) of the TAA (see paragraph 194). Therefore, the professional secrecy contained in the Maldivian legal framework does not impede the MIRA to obtain and exchange the relevant information in accordance with the standard.

## 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.

220. The domestic legislation of the Maldives does not provide that the taxpayer under investigation or examination must be notified of a request. The information holder, who can be the taxpayer, would be usually informed of the existence of the EOI request and can appeal the notice of the tax administration to produce the relevant information. The impact of these rights and safeguards will be further examined during the Phase 2 review.

221. The conclusions are as follows:

### Legal and Regulatory Framework: in place

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

**Practical Implementation of the Standard: no rating is assigned 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*

222. The Maldivian legislation does not provide for an obligation to notify the taxpayer under investigation in the requesting jurisdiction prior or after the exchange of information.

223. As the MIRA would usually use its specific access power dedicated to EOI (Section 32(e), TAA) to gather the requested information, the information holder, who can be the person under tax audit in the requesting jurisdiction, would be notified *de facto* of the existence of an EOI request. The information holder could also inform the person concerned of the existence of this request. That could be considered as an indirect and informal disclosure of the existence of the EOI request to the taxpayer subject to the enquiry. Although the MBA contains an anti-tipping off provisions for the information shared by the banks to the FIU (Section 39, MBA), the Maldivian tax law does not contain any similar anti-tipping off provision for information provided to the tax administration for EOI tax purposes. The probability and the impact in practice of such a disclosure by the information holder will be analysed during the Phase 2 review (see Annex 1).

#### *Appeal rights*

224. A Maldivian taxpayer can object any decision made by the MIRA, including an information order to produce information, by sending a “notice of objection” to the MIRA within 30 days from the date of notification of that decision (Section 42(a), TAA). Then the MIRA has 120 days to make a decision on this objection (Section 43, TAA). If the taxpayer is not satisfied with this decision, an appeal can be lodged with the Tax Appeal Tribunal within 60 days from the date of the decision of the MIRA. The Tax Appeal Tribunal should adjudicate and decide within not more than 180 days, with a possible extension of 90 days (Section 44, TAA). The process of objection and appeal has a suspensive effect, which means that, in an EOI context, the person is not required to provide the information until a definitive decision occurs. This process is available only to the person who received the information order. If the taxpayer concerned by an EOI request is not the information holder, it cannot appeal.

225. In addition to this general right to object a decision of the MIRA, the taxpayer can lodge an appeal at the level of the Tax Appeal Tribunal against the MIRA's request made in the context of a tax audit under Section 31 of the TAA. The taxpayer can appeal within 30 days of the date of the notice (Section 31(h), TAA). If such an appeal is lodged and the Tax Appeal Tribunal upholds the MIRA's request, this request has effect within 30 days from the determination of the appeal. This means that the appeal has a suspensive effect. Nevertheless, as described in paragraph 195, a tax audit would not be, in principle, the power used to reply to an EOI request.

226. Although these appeal rights do not seem to be of a nature to unduly prevent or delay the EOI, the impact of the appeal process in relation to the access powers of the MIRA on the effectiveness of EOI on request will be examined during the Phase 2 review (see Annex 1).

## Part C: Exchange of information

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

228. The Maldives' EOI network covers 149 jurisdictions through the Convention on Mutual Administrative Assistance on Tax Matters (the Multilateral Convention), 2 DTCs (with Bangladesh and the United Arab Emirates), 1 TIEA (with India) and the regional Limited multilateral Agreement on Avoidance of Double Taxation and mutual Administrative Assistance in Tax Matters among members of the South Asian Association for Regional Co-operation (the SAARC Agreement which also covers Bangladesh, Bhutan, India, Nepal, Pakistan and Sri Lanka).

229. The Multilateral Convention, which fully meets the standard, was signed by the Maldives on 11 August 2021 and entered into force on 1 January 2022 in respect of this jurisdiction.

230. As Maldives is a very recent party to the Multilateral Convention, the present section analyses the three bilateral instruments and the regional instruments that have been applicable for some time in the Maldives, as they are the ones on which basis exchange of information took place so far.

231. The SAARC Agreement contains deficiencies, which are compensated by the existence of other EOI instruments that meet the standard for India and Pakistan, but not for Bhutan, Nepal and Sri Lanka. The DTC with Bangladesh will meet the standard once in force. The DTC with the

United Arab Emirates contains restrictions but is supplemented by the Multilateral Convention. The TIEA with India fully meets the standard.

232. Maldives has not yet received requests for information, even though it has already sent a few requests to partners. The implementation and interpretation of the EOI provisions by the Maldives competent authority will take place during the Phase 2 of the review of the Maldives at a later stage.

233. The conclusions are as follows:

#### Legal and Regulatory Framework: in place

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

**Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.**

#### ***C.1.1. Standard of foreseeable relevance***

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

235. The Multilateral Convention and the three bilateral EOI instruments of the Maldives (i.e. the DTCs with Bangladesh and United Arab Emirates and the TIEA with India) allow for an exchange of information that is “foreseeably relevant” whereas the SAARC Agreement provides for exchange of information that is “necessary”. The Maldivian authorities have confirmed that “necessary” is in practice considered to carry the same meaning as the wording “foreseeably relevant”.

236. All the EOI instruments of the Maldives allow for an exchange of information for carrying out the provisions of the instruments or of the domestic laws of the Parties to the instruments. Nevertheless, the DTC with United Arab Emirates and the SAARC Agreement limit the EOI to the taxes covered by these instruments, i.e. all the income taxes of the EOI partners of the Maldives. This limitation still enables the Maldives to provide its partners relevant information for the purpose of the standard, i.e. related to their direct taxes on income of natural persons and of business income. In addition, only the EOI relationships with Bhutan, Nepal and Sri Lanka are not supplemented by other EOI instruments that do not contain this restriction to the taxes covered by the instrument.

237. The EOI Guide does not contain specific checklist for the EOI officers to appreciate the foreseeable relevance of the incoming or outgoing

EOI requests. It recommends assessing the foreseeable relevance of the request in respect of the principles set out in the Commentary of Article 26 of the OECD Model Tax Convention, i.e. as allowing the exchange of information to the widest possible extent while excluding “fishing expeditions” or requests that are unlikely to be relevant to the tax affairs of a given taxpayer. In the case where the foreseeable relevance of an EOI request is not well demonstrated by the requesting jurisdiction, a request for clarification would be sent by the Maldivian Competent Authority.

### *Group requests*

238. None of the Maldives’ exchange agreements exclude the possibility to exchange information pursuant to a group request, and the Maldives confirms that it would apply the latest OECD commentary on Article 26 to all existing treaties, including the SAARC Agreement.

239. The MIRA EOI Guide provides guidance to the EOI officers for assessing the foreseeable relevance of group requests. This guidance is similar to the explanation provided by Commentary (paragraph 5.2) of Article 26 of the OECD Model Tax Convention<sup>30</sup> and is therefore in line with the standard.

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

240. For exchange of information to be effective, it is necessary that a jurisdiction’s obligation to provide information be not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested.

241. The Multilateral Convention explicitly provides for EOI in respect of all persons and the DTC with Bangladesh clearly states that the EOI is not restricted by Article 1 (persons covered) of this DTC. The DTC with the United Arab Emirates, the SAARC Agreement and the TIEA with India do not contain a similar provision, but only the EOI relationships with Bhutan,

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30. Section 10 of the MIRA EOI Guide mentions that the requests must contain a detailed description of the group of taxpayers, the facts and circumstances that led to the request, an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law supported by a clear factual basis, and a demonstration that the requested information would assist in determining compliance by the taxpayers in the group. The MIRA EOI Guide also explains that usually, although not necessarily, a third party will have actively contributed to the non-compliance of the taxpayers in the group, in which case such circumstance should also be described in the request.

Nepal and Sri Lanka (covered by the SAARC Agreement) are not supplemented by any other EOI instrument that clearly provides for exchange of information in respect of all persons.<sup>31</sup>

242. The Maldives interprets Article 2 of the TIEA with India in accordance with the Commentary of the OECD Model of TIEA, which states that the requested Party's obligation to provide information is not restricted by the residence or the nationality of the person to whom the information relates or by the residence or the nationality of the person in control or possession of the information requested (paragraph 7 of the Commentary). Therefore, this EOI instrument is in line with the standard.

243. In addition, as explained above (paragraph 236), the DTC with United Arab Emirates and the SAARC Agreement provide for exchange of information for carrying out the provisions of the Agreement/Convention or of the domestic laws of the Parties in respect of income taxes. To the extent that the domestic tax laws are applicable to non-residents as well as to residents, information under these agreements can be exchanged in respect of all persons and these EOI instruments meet the standard. Consequently, all the EOI relationships of the Maldives are in line with the standard with respect to exchanging information in respect of all persons.

### ***C.1.3. Obligation to exchange all types of information***

244. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity (see Article 26(5) of the OECD Model Tax Convention).

245. All the bilateral EOI instruments signed by the Maldives and the Multilateral Convention contain language akin to Article 26(5) of the OECD Model Tax Convention.

246. The SAARC Agreement does not contain a similar provision, but it does not necessarily create restrictions on exchange of banking and other types of information. India and Pakistan, which are Parties to the SAARC Agreement, are also participating jurisdictions to the Multilateral Convention which is in line with the standard. Bangladesh, another Party to the SAARC Agreement, is also covered by a DTC containing a provision similar to Article 26(5) of the OECD Model Tax Convention. Only the EOI relationships with Bhutan, Nepal and Sri Lanka are not covered by another EOI instrument.

31. The other EOI relationships are covered either by the Multilateral Convention or, in the case of Bangladesh, by a DTC, which both explicitly provide for EOI in respect of all persons.



247. The exchange of bank information in the absence of language akin to the Article 26(5) of the OECD Model Tax Convention in respect of Bhutan, Nepal and Sri Lanka will be subject to reciprocity and will depend on the domestic limitations (if any) in the laws of these partners. Restrictions to access bank information for EOI purposes may exist under their domestic laws and as they are non-Global Forum members, no peer reviews have been conducted in respect of them.

248. No discussions were undertaken with Bhutan or Nepal, to update the EOI relationships but the Maldives reported that the negotiation for the conclusion of a DTC with Sri Lanka was already initiated. Therefore, the Maldives should ensure that its EOI relations with Bhutan and Nepal are in line with the standard (see Annex 1).

#### **C.1.4. Absence of domestic tax interest**

249. A contracting state may not decline to supply information solely because it does not have an interest in obtaining the information for its own tax purposes (see Article 26(4) of the OECD Model Tax Convention).

250. All the bilateral EOI instruments signed by the Maldives and the Multilateral Convention contain language akin to Article 26(4) of the OECD Model Tax Convention, which obliges the contracting parties to use their access powers to obtain and provide information even in cases where the requested party does not have a domestic tax interest in the requested information.

251. The SAARC Agreement does not contain a similar provision. Among the 6 EOI relationships provided by the SAARC Agreement, 2 (India and Pakistan) are also covered by the Multilateral Convention and one is covered by a DTC containing a provision similar than Article 26(4) of the OECD Model Tax Convention. Only the EOI relationships with Bhutan, Nepal and Sri Lanka are not covered by another EOI instrument.

252. As EOI in the Maldives is subject to reciprocity and will depend on the domestic limitations (if any) in the laws of its treaty partners, the wording of the SAARC may conflict with the standard for the EOI relationships with Bhutan, Nepal and Sri Lanka. There are no domestic tax interest restrictions in the Maldives in respect of obtaining and providing information requested under EOI agreements (see element B.1, paragraph 205).

253. No discussions were undertaken with Bhutan or Nepal to update the EOI relationships but the Maldives reports that the negotiation for the conclusion of a DTC with Sri Lanka was already initiated. Therefore, the Maldives should ensure that its EOI relations with Bhutan and Nepal are in line with the standard (see Annex 1).

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

254. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as “civil tax matters”).

255. The Maldives’ network of agreements provides for exchange in both civil and criminal matters and there are no EOI agreements that contain a dual criminality requirement. On the contrary, the TIEA with India clearly stipulates that the information must be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party (Article 5(1)).

**C.1.7. Provide information in the specific form requested**

256. The Maldives’ network of agreements has no restrictions that would prevent it from providing information in a specific form.

257. The TIEA with India contains a wording similar to the OECD Model TIEA in respect of the form of the information, and is therefore in line with the standard. Article 5(6) sets out the information which a requesting jurisdiction must provide, and this includes “the form in which the requesting Party wishes to receive the information” (sub-paragraph c)). Article 5(3) further provides that: “If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.” The TIEA with India also defines the “information” as “any fact, statement, document or record in whatever form” (Article 4(1)(p)).

258. The DTC with Bangladesh states that the competent authorities will develop, through consultation, appropriate methods and techniques concerning EOI.

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

259. All the EOI instruments signed by the Maldives are in force, except the DTC signed with Bangladesh on 23 December 2021, which was ratified by the Maldives on 9 January 2022. In addition, the Maldives can already exchange information with Bangladesh through the SAARC Agreement, although this instrument is not in line with the standard.

260. The process of ratification of international EOI instruments by the Maldives appears efficient. As an example, the Multilateral Convention entered into force in respect of the Maldives on 1 January 2022, after the instrument of ratification was deposited less than 2 months after the signature on 11 August 2021.

261. In terms of process, once the negotiation of an international agreement is concluded and if both parties agree to all the articles of the agreement, the authority in charge of the negotiation (the Ministry of Finance) seeks the approval of the Attorney General's office for the signature of the agreement. Once the Attorney General's office gives its approval, the President's office is informed and appoints a person to sign the agreement. If the Agreement is a multilateral agreement or if it imposes obligations on citizens, it is also submitted to the Parliament for approval. Once the international agreement is signed, the President ratifies the international instrument (Section 115, Constitution).

262. Although the international treaties do not have prevalence on the domestic provisions, the Maldives has the legislative and regulatory framework in place to give effect to all of its current agreements, mainly through the access powers described under Section B.1 and Section 51-6 of the TAA that clearly states that the EOI instruments are binding.

263. The table below summarises outcomes of the analysis under Element C.1 in respect of Maldives' bilateral EOI mechanisms.

### EOI mechanisms

<b>Total EOI relationships, including bilateral and multilateral or regional mechanisms</b>	<b>149</b>
In force	138
In line with the standard	134
Not in line with the standard	4 <sup>32</sup>
Signed but not in force	11 <sup>33</sup>
In line with the standard	11
Not in line with the standard	0
<b>Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms</b>	<b>0</b>

32. The EOI relationships with Bangladesh, Bhutan, Nepal and Sri Lanka are not in line with the standard. The EOI relationship with Bangladesh will be aligned with the standard when the related DTC enters into force. The negotiation for the conclusion of a DTC with Sri Lanka has been initiated.
33. For 11 partner jurisdictions, the Multilateral Convention has been signed but it is not in force (see Annex 2).

## 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.

264. The Maldives has an extensive EOI network covering 149 jurisdictions, with 138 relationships in force. The Maldives' EOI network covers a wide range of counterparties including its main trading partners, all OECD members and all G20 countries.

265. A Global Forum member indicated, in the preparation of this report, that it proposed to Maldives to negotiate a TIEA in August 2019. Maldives replied to this proposal in January 2021 that they were working on the signature of the Multilateral Convention, to which that member was already a Party. The Maldives signed the Multilateral Convention eight months later, in August 2021 and the Multilateral Convention entered into force in the Maldives in January 2022, i.e. one year and a half after the TIEA proposal. This is in line with the standard, considering that the Global Forum member which proposed the negotiation of the TIEA did not revert to the Maldives after January 2021.

266. 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, Maldives should continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

267. The conclusions are as follows:

### Legal and Regulatory Framework: in place

The network of information exchange mechanisms of the Maldives covers all relevant partners.

**Practical Implementation of the Standard: no rating is assigned 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.

268. The Maldives' EOI instruments contain confidentiality provisions to ensure that the information exchanged is kept secret and only disclosed as authorised by the agreements. Section 15 of the TAA properly protects the confidentiality of all the information obtained through an EOI instrument.

269. 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 Maldives concerning confidentiality.

**Practical Implementation of the Standard: no rating is assigned 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**

270. All of the Maldives' EOI instruments have confidentiality provisions modelled on Article 26(2) of the OECD Model Tax Convention to ensure that the information exchanged will be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes, or the oversight of the above.

271. At the domestic level, Section 15 of the TAA protects the confidentiality of all the information held by the MIRA. It clearly states that any information obtained under an EOI instrument must be considered confidential and that the employees of the MIRA (including the persons appointed by the MIRA for specific period to undertake a specific task) must not disclose such an information. The Maldivian authorities confirmed that this obligation also covers the former employees of the MIRA.

272. The circumstances under which the disclosure of an information held by the tax administration is allowed, including the disclosure of the information during tax criminal proceedings or the transmission of the information requested under an EOI instrument (Section 15(b), TAA), are in line with the standard as they all relate to tax purposes.

273. 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 for the party supplying the information to authorise the use of information for purposes other than tax purposes and where tax information may be used for other purposes in accordance with their respective laws. The Multilateral Convention, the DTC with Bangladesh and the TIEA with India provide for this possibility. The Maldives has advised that there is no provision in the domestic legal framework preventing it from granting authorisation to use the information for other purposes if a requesting partner seeks the Maldives' consent. In addition, Section 16 of the TAA strengthens the confidentiality rules of the exchanged data by explaining

that the information received or exchanged pursuant to an EOI instrument may only be disclosed to another person in a manner prescribed in such agreement. This provision ensures that the MIRA will comply with the confidentiality rules of the EOI instruments before sharing the information received with a non-tax governmental authority.

274. The sanctions in the case of failure for an employee of the MIRA to comply with the confidentiality rules are, depending on the gravity of the breach:<sup>34</sup>

- termination of employment and a fine up to MVR 100 000 (EUR 5 900)
- termination of employment and imprisonment or house arrest for a period between 3 and 24 months, or
- termination of employment and a fine up to MVR 100 000 (EUR 5 900) and imprisonment or house arrest for a period between 3 and 24 months.

275. In the case of a former employee of the MIRA who failed to comply with the confidentiality rules, the sanction would be limited to a fine and/or imprisonment or house arrest. An employee whose employment has been terminated due to a confidentiality breach cannot be employed by the MIRA for a period of 5 years from the date of the termination.

276. The MIRA conducts background checks before the new employees (including temporary staff, consultants and interns) sign their contracts and commence work at the MIRA, including in respect of the criminal history records for the past 5 years (Section 27(a) of the Staff Regulation of the MIRA). Checks are not conducted specifically for the changes of position within the MIRA, but may be covered under the random checks. All employees of the MIRA, including the EOI unit staff, must sign a confidentiality agreement in relation to their employment prior to commencing their duties under the tax laws (Section 15(c), TAA). An additional clause added in the confidentiality agreement clearly indicates the consequences of any breach in the confidentiality of the exchanged information.

277. All staff of the MIRA undertake a confidentiality and information security training as part of their induction programme, as well as refresher trainings twice a year. They are also regularly informed on general confidentiality and security rules through internal e-mails and e-learning. A clear screen and desk policy is highlighted and encouraged by a confidentiality flyer that is internally circulated every quarter. In addition, policies on information security and confidentiality are communicated to staff via email and memos, and the policies are made available on the MIRA's intranet.

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34. The gravity of the breach would be assessed in respect of the scope of the information disclosed, the recipient of the information disclosed, etc.

278. Only the officials with the quality or delegation of Competent Authority within the MIRA have access to the EOI Unit governmental e-mail address. An access would be granted to the EOI staff once the Competent Authority assigns a case to them. EOI unit staff have participated in multiple trainings, including in respect of confidentiality rules applicable to the EOI information. The EOI unit used encrypted email to send the outgoing requests and received encrypted answers to these requests. It could also use regular post to communicate with other jurisdictions.

279. As per the Document Classification Policy of the MIRA, all EOI related information is classified as “Secret”, which means that its use is limited to the EOI staff. Nevertheless, the tax auditor can access the relevant information received through an internal application (“EOI Manager”) which sends a notification for informing the tax auditor of the availability of the information. The documents that a tax auditor uploads are marked with the record card number of this tax auditor. All documents, either paper or electronic, received from a foreign jurisdiction are stamped or watermarked with a confidentiality stamp in all pages. The first page of the information received is stamped with the label “CONFIDENTIAL – This information is furnished under the provisions of a tax treaty and its use and disclosure are governed by the provisions of such treaty”. The other pages are marked with a smaller stamp that reads “EOI Information – Secret”. The international rules of confidentiality of exchanged information are also reminded in the EOI Guide.

280. Where information received via EOI instruments are no longer needed, the information would be archived in an electronic database, and in the case of physical documents, they would be securely stored in cabinets within the EOI room. Such stored information can only be accessed with the permission of the Competent Authority. If the tax auditor took copy of the exchanged information, this copy must be sent back to the Competent Authority once no longer used. If the information is required to be destroyed, when no longer needed or under any specific circumstance, the information would be shredded in the EOI room.

### ***C.3.2. Confidentiality of other information***

281. The confidentiality provisions in the Maldives’ EOI agreements and in the TAA (Section 15) 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 requested jurisdictions and within the tax authorities, are treated confidentially.

282. When the MIRA exercises its access powers under Section 32(e) of the TAA, the request sent to the information holder would contain only the minimum information necessary to gather the requested information. As this access power is dedicated to the EOI purpose, the information holder would be informed of this purpose but the name of the requesting jurisdiction, the identity of the taxpayer under the investigation in this jurisdiction and the details of the investigation would not be disclosed in the MIRA's request. The taxpayer would not be informed of the existence of the EOI request, except if the MIRA must gather the information with this taxpayer. Therefore, the confidentiality of the EOI request received from a foreign partner would be protected in accordance with the standard.

283. In addition, the Maldivian legislation does not provide for the right of the taxpayer to access to the EOI file, so that there is no risk that the information exchanged under the EOI instrument be disclosed through such a process.

284. No material deficiencies have been identified in the EOI mechanisms and legislation of the Maldives concerning confidentiality and their implementation in practice will be assessed during 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.

285. The standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege, as provided in Article 26(3) of the OECD Model Tax Convention.

286. All of the EOI instruments of the Maldives include a provision equivalent to the exception provided in Article 26(3) of the OECD Model Tax Convention.

287. The term “professional secrecy” is not defined in the EOI agreements and therefore would derive its meaning from the Maldivian domestic law. As explained in section B.1.5, the definition of the items subject to legal professional privilege is broadly in line with the standard and the limitations in relation to the information and documents that are the property of an auditor or a tax adviser do not apply for EOI purposes (see paragraphs 217 and 219). Consequently, the scope of the professional secrecy under the Maldivian treaties complies with the standard.



288. The conclusions are as follows:

**Legal and Regulatory Framework: in place**

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

**Practical Implementation of the Standard: no rating is assigned 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.

289. The Maldives has not received any incoming request and sent only four requests. This low experience has been taken into account in accordance with the Methodology to conduct the review of this jurisdiction in two phases. As a consequence, this report focuses on the legal and regulatory aspect of the EOI framework of the Maldives.

290. The evaluation of the effectiveness of the requests and of the responses to requests for information involves issues of practice that will be dealt with in the Phase 2 review.

291. 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: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.**

#### **C.5.1. Timeliness of responses to requests for information**

292. The EOI instruments of the Maldives<sup>35</sup> do not contain any provision on the timeline for answering to an EOI request. However, the EOI Guide sets out the following timelines, which appear to be in line with the standard, for the treatment of the EOI requests by the Maldives' Competent Authority:

35. except the TIEA with India.

- Where a request is considered invalid or incomplete, the requesting jurisdiction would be notified of the deficiency of the request within 30 days of its receipt. If the request is incomplete in part, the case would be worked to provide information for the part of the request that is valid.
- Where it has not been possible to obtain the information requested, a response would be prepared to inform the requesting authority, as soon as possible, that the information cannot be provided and the reasons of this failure.
- Within 90 days of receipt of the request, an update (if no information is available), an interim reply (if some information is available) or a final reply (if all information is available) would be issued. Updates/interim replies would be issued every 90 days until final reply is issued. If partial information was sent in several batches, a reference of that would be made in the letters so that the requesting jurisdiction knows that some information has already been sent with regard to that particular case.
- After 15 days of the final reply, if no issues are claimed by the requesting jurisdiction, the case would be closed and the physical documents filed.

### ***C.5.2. Organisational processes and resources***

#### ***Organisation of the competent authority***

293. The Competent Authority, as designated in the EOI instruments, is either the MIRA or more specifically the Commissioner General of Taxation. By delegation of power, the Deputy Commissioner General of Taxation and the Deputy Director General of Planning and Development Department of the MIRA are also the delegated competent authorities of the Maldives.

294. The daily function of the Competent Authority is carried out by the EOI Unit established within the International Relations and Co-operation Division of the MIRA, which is itself part of the Planning and Development Department, under the Support Service Directorate. The EOI Unit is in charge of all forms of EOI.

#### ***Resources and training***

295. The EOI Unit consists of four officials, including a Competent Authority (the Deputy Director General of Planning and Development Department) and a senior manager. Considering the low experience of the Maldives in EOIR, one of the main difficulties of the EOI Unit is to ensure an appropriate

level of knowledge of the EOI process and of the standard by the EOI staff. To address this difficulty, the international trainings related to EOI and the workshops organised by the Global Forum are recommended for all the staff. In accordance with this recommendation, all members of the EOI Unit have already attended such trainings or workshops.

296. The staff of the EOI Unit can also rely on a comprehensive EOI Guide that describes the process for handling an EOI request. This EOI Guide includes a checklist for examining the validity and the completeness of the request in light of the relevant treaty requirements and, as described above, it sets out the timelines for the treatment of the EOI requests. It also contains the confidentiality rules applicable to the information received and exchanged under the EOI instruments.

297. The EOI activity is not tracked by a specific IT tool but the MIRA is working on developing an internal application to manage the data received under EOI. The objective is to set up adequate controls and to measure the number of requests received from each jurisdiction, the number of requests sent to each jurisdiction, the number of pending requests, the number of requests assigned to each staff and the time taken for providing the answer in each case.

### *Outgoing requests*

298. Once the EOI unit receives a request from a tax auditor, the EOI manager ensures that the request satisfies all the requirements of an outgoing request, in particular if:

- An EOI arrangement exists with the requested jurisdiction.
- The request should be sent to a different jurisdiction.
- The request deals with periods or taxes which are covered by the EOI instrument.
- The request has been approved by the respective Director/Director General.
- The background information provided is sufficient and the request is clear and specific.
- The auditor has used all possible means available to obtain the information.
- The information is “foreseeably relevant”.

299. If the information provided by the tax auditor is insufficient, the EOI manager requests the additional details to complete the request.

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

300. There are no factors or issues identified in the Maldives that impose unreasonable, disproportionate or unduly restrictive conditions.

301. An analysis of the organisational process and resources implemented by the Maldives in practice, including whether any unreasonable, disproportionate, or unduly restrictive conditions exist in practice, will be carried out during the Phase 2 review.

## 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.

- **Elements A.1 and A.3:** The Maldives should clarify the conditions of the reliance on third parties to ensure that the beneficial ownership information be always immediately obtained by the AML-obliged person from the establishment of the relationship with the customer (paragraphs 83 and 182).
- **Element B.1:** The Maldives should clarify the articulation between the Maldives Banking Act and the Tax Administration Act to clearly provide for the possibility to waive the bank secrecy for tax purposes, including for EOI purposes (paragraph 215).
- **Element C.1:** The Maldives should ensure that its EOI relations with Bhutan and Nepal are in line with the standard (paragraphs 248 and 253).
- **Element C.2:** The Maldives should continue to conclude EOI agreements with any new relevant partner who would so require (paragraph 266).

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

- **Element A.1:** The effectiveness of the system of enforcement and oversight of the availability of legal ownership information, including for the obligation of companies to provide the register of members to the Registrar of Businesses (in addition to keeping it updated at the registered office) (paragraph 66).

- **Element A.2:** The compliance with the accounting obligations under the tax law by the trustees of foreign trusts (paragraph 155)
- **Element B.1:** The implementation of the interpretation of the Maldivian authorities that the general limitations to access powers would not apply to the access powers for EOI purposes (paragraph 194).
- **Element B.1:** The articulation of the provisions of the Tax Administration Act with the provisions of the AML Act and its impact on the ability of the MIRA to obtain the beneficial ownership information from all AML-obliged persons (paragraph 198)
- **Element B.1:** The effectiveness in practice of the procedure for obtaining banking information through the involvement of another authority (paragraph 202).
- **Element B.1:** The impact of the inability to use search and seizure powers for EOI purposes (paragraph 211).
- **Element B.2:** The probability and the impact in practice of an informal and indirect notification of the person concerned by the information holder (paragraph 223).
- **Element B.2:** The impact of the appeal process in relation to the access powers of the MIRA on the effectiveness of EOI on request (paragraph 226).

## Annex 2: List of the Maldives' EOI mechanisms

### Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Bangladesh	DTC	23 December 2021	Ratified by the Maldives on 9 January 2022
2	India	TIEA	11 April 2016	1 August 2016
3	United Arab Emirates	DTC	17 October 2017	21 June 2018

### 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).<sup>36</sup> The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation 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 Maldives on 11 August 2021 and entered into force on 1 January 2022 in respect of this jurisdiction.

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

The Maldives 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,<sup>37</sup> Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Eswatini, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Jordan, Kazakhstan, Kenya, Korea, Kuwait, Latvia, Lebanon, Liberia, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), North Macedonia, 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, 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.

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37. 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”.

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.



In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Benin, Burkina Faso, Gabon, Honduras, Madagascar, 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).<sup>38</sup>

## Regional EOI instrument

The Maldives is a signatory to the Limited multilateral Agreement on Avoidance of Double Taxation and mutual Administrative Assistance in Tax Matters among members of the South Asian Association for Regional Co-operation (SAARC Agreement) which provides for administrative assistance between signatories including exchange of information. The SAARC covers Bangladesh, Bhutan, India, Pakistan, Nepal, Sri Lanka and the Maldives. The SAARC Agreement was signed on 12-13 November 2005. The agreement entered into force on 10 January 2011 in respect of all signatories and its provisions have effect in the Maldives from 1 January 2012.

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

## 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 in November 2021, and the Schedule of Reviews.

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 15 July 2022, the Maldives's responses to the EOIR questionnaire and inputs from peers on the negotiation of EOI arrangements with the Maldives. As the Maldives has limited experience in exchange of information on request, the review of this jurisdiction in two phases, in accordance with the new section V of the Methodology, as amended in 2021. As the first Phase of the review only refers to the legal and regulatory framework, no questionnaire peer input was required at the launch of this review.

### List of laws, regulations and other materials received

- Tax Administration Act (Law no. 3/2010)
- Tax Administration Regulation
- Business Registration Act (Law no. 18/2014)
- Business Registration Regulation (2013/R-45)
- Companies Act (Law no. 10/96)
- Maldives Securities Act (Law no. 02/2006)
- Partnerships Act (Law no. 13/2011)
- Association Act (Law no. 1/2003)
- Co-operative Societies Act (Law no. 2/2007)
- Prevention of Money Laundering and Terrorism Financing Act (Law no. 10/2014)

- Maldives Banking Act (Law no. 24/2010)
- Regulation for Banks on Prevention of Money Laundering and Financing of Terrorism
- Regulation on Prevention of Money Laundering and Financing of Terrorism for Money Transfer Business and Money Changing Business
- Regulation on Prevention of Money Laundering and Financing of Terrorism for Securities Related Businesses
- AMLCFT Guidelines for banks
- AMLCFT Guidelines for Consumer Finance Institutions
- AMLCFT Guidelines for Money Remittance Institutions
- AMLCFT Guidelines for Mobile Payment Service Providers
- AMLCFT Guidelines for Securities Institutions
- Criminal Procedure Act (Law no. 51/1997)
- Legal Profession Act (Law no. 5/2019)
- Tax Appeal Tribunal Regulation

## Current review

Due to the limited practical experience of the Maldives in EOIR, this report analyses only the Maldives' legal and regulatory framework in relation to the standard of transparency and EOIR, in the second round of reviews conducted by the Global Forum. As the Maldives joined the Global Forum in 2016, it was not assessed in the first round.

In accordance with the 2016 Methodology for peer reviews and non-member reviews, as amended in 2021, a Phase 2 review, on the practical implementation of the legal and regulatory framework, will be scheduled at the earlier of: (i) the expiry of a period of four years from the date of launch of the Phase 1 review, i.e. December 2025 in the case of the Maldives, and (ii) the establishment of EOIR experience in respect of criteria that include the number of requests received (around ten requests over a three year review period); the number of taxpayers involved in the requests; the amounts involved; and the complexity of the requests received, as well as the existence of outgoing requests and their nature and characterisation, subject to a contrary indication by the Steering Group of the Global Forum. Progress made since the adoption of the Phase 1 report will be assessed during the Phase 2 review.

Information relating to the review of the Maldives is listed in the table below

### Summary of reviews

Review	Assessment team	Period under review	Legal framework as of	Date of adoption by Global Forum
Round 2	Mr Abdulrahman B. Almutairi (Saudi Arabia)	Not applicable	15 July 2022	7 November 2022
Phase 1	Mr David McTeigue (New Zealand) Ms Carine Kokar (Global Forum Secretariat)			

## Annex 4: The Maldives' response to the review report<sup>39</sup>

Maldives would like to express our appreciation for the outstanding work and collaboration by the assessment team in evaluating Maldives for this review. We would like to further extend our gratitude to the Global Forum Secretariat and Peer Review Group for their contributions to the assessment report.

Maldives acknowledges the recommendations made in the Phase 1 report and will continue to work together with the Global Forum in our continued effort to improve the framework to bring Maldives fully in line with the standard requirements in preparation for the Phase II review.

Maldives is fully committed to the international standard for transparency and exchange of information for tax purposes. Maldives will continue the efforts put forth in combatting tax evasion and avoidance.

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39. 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 MALDIVES 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 on the Exchange of Information on Request for the Maldives. It refers to Phase 1 only (Legal and Regulatory Framework).



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