GLOBAL FORUM ON
TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

SOUTH AFRICA

2022 (Second Round, Combined Review)

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: South Africa 2022 (Second Round, Combined Review)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

OECD
BETTER POLICIES FOR BETTER LIVES

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 10 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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Reader's guide

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

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

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

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

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

1. The implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.

2. The implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

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

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

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

Consideration of the Financial Action Task Force Evaluations and Ratings

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

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

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

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

More information

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

Abbreviations and acronyms

2016 TOR	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015.
AMATM	African Tax Administration Forum Agreement on Mutual Assistance in Tax Matters
AML/CFT	Anti-Money Laundering and counter-terrorist financing
Banks Act	Banks Act, 1990 (Act No. 94 of 1990)
CCA	Close Corporations Act
CDD	Customer Due Diligence
CIN	Corporate Identification Number
CIPC	Companies and Intellectual Property Commission established by section 185 of the Companies Act
CIS	Collective investment schemes
CoA	Co-operatives Act, 2005 (Act No. 14 of 2005)
Companies Act	Companies Act, 2008 (Act No. 71 of 2008)
Company Regulation	Regulations issued under the Companies Act
Constitution	The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)
DTC	Double Taxation Convention
EOIR	Exchange Of Information on Request
EOICMS	Exchange of Information Core Management Systems
FATF	Financial Action Task Force
FIC	Financial Intelligence Centre

FIC Act	Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001)
FSCA	Financial Sector Conduct Authority
FSP	Financial services provider
FSR Act	Financial Sector Regulation Act, 2017 (Act No. 9 of 2017)
ITA	Income Tax Act, 1962 (Act No. 58 of 1962)
Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
POCA	Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998)
RMCP	Risk Management and Compliance Programme
SADC	Southern African Development Community
SARS	South African Revenue Service
SOPs	Standard Operating Procedures
TA Act	Tax Administration Act, 2011 (Act No. 28 of 2011)
Tax Acts	The Acts listed in Schedule 1 of the SARS Act and when used in reference to the TA Act, excluding customs and excise legislation
TIEA	Tax Information Exchange Agreement
TIN	Taxpayer Identification Number
TPC Act	Trust Property Control Act, 1988 (57 of 1988)
VAT	Value-added tax
VAT Act	Value-added tax Act, 1991 (Act 89 of 1991)
ZAR	South African Rand

Executive summary

1. This report analyses the implementation of the standard of transparency and exchange of information on request in South Africa on the second round of reviews conducted by the Global Forum. Due to the COVID-19 pandemic, the onsite visit that was scheduled to take place in March 2020 could not take place. Hence, the review of South Africa was phased, starting with a desk-based Phase 1 review on the compliance of the legal and regulatory framework that culminated in June 2021 with the adoption of the report assessing the legal and regulatory framework of South Africa against the 2016 Terms of Reference (Phase 1 report). The onsite visit to South Africa has since taken place in May 2022 and the present review complements the first report with an assessment of the practical implementation of the standard, including in respect of exchange of information requests received and sent during the review period from 1 October 2018 to 30 September 2021, as well as any changes made to the legal framework since the Phase 1 review, as at 29 July 2022 (see Annex 3 for details).

2. This report concludes that overall South Africa is rated **Largely Compliant** with the standard. In 2013, the Global Forum evaluated South Africa in a combined review against the 2010 Terms of Reference for both the legal implementation of the EOIR standard as well as its operation in practice. That evaluation (the 2013 Report) concluded that South Africa was rated Compliant overall (see Annex 3 for details).

Comparison of determinations and ratings of First and Second Round Reports

Element	First Round Report (2013) Ratings	Second Round Report (2022) Ratings
A.1 Availability of ownership and identity information	Compliant	Partially Compliant
A.2 Availability of accounting information	Compliant	Largely Compliant
A.3 Availability of banking information	Compliant	Largely Compliant
B.1 Access to information	Compliant	Compliant
B.2 Rights and Safeguards	Compliant	Compliant
C.1 EOIR Mechanisms	Compliant	Compliant
C.2 Network of EOIR Mechanisms	Compliant	Compliant
C.3 Confidentiality	Compliant	Compliant
C.4 Rights and safeguards	Compliant	Compliant
C.5 Quality and timeliness of responses	Compliant	Largely Compliant
OVERALL RATING	**COMPLIANT**	**LARGELY COMPLIANT**

Note: the four-scale ratings are Compliant, Largely Compliant, Partially Compliant, and Non-Compliant.

Progress made since previous review

3. Although the 2013 Report concluded that the legal and regulatory framework of South Africa was fully in place and implemented in a way that was compliant with the standard, the report made two recommendations. One was in respect of monitoring the availability of ownership information on partnerships, in particular where one or more of the partners is a trust (element A.1) and the other was with respect to continuing to develop its EOI network with all relevant partners (element C.2). South Africa has implemented the recommendation concerning the continued development of its EOI network with all relevant partners and now has a broad EOI network, especially with the entry into force of the Multilateral Convention in 2014. In relation to element A.1, while some monitoring has taken place in respect to the availability of information on partnerships, in particular where one or more of the partners is a trust, concerns remain regarding their overall effectiveness. It is not established that the supervision and enforcement activities conducted across the board by the South African authorities would ensure that ownership and accounting information would always be available in line with the standard.

4. In addition, the present review identified other issues concerning the implementation of the standard, including on the new aspect of the standard introduced in 2016, i.e. the availability of information on beneficial owners of relevant entities and arrangements.

Key recommendations

5. The standard was strengthened in 2016 to require that beneficial ownership information on all relevant entities and arrangements be available, in addition to identity and legal ownership information. The South African legal and regulatory framework provides for the availability of beneficial ownership information through its anti-money laundering (AML) framework. South Africa's AML legislation requires AML-obliged persons to collect and maintain beneficial ownership information while entering into customer relationships. While the definition of beneficial ownership as it applies to legal entities like companies is in line with the standard, in respect of partnerships and trusts, there is lack of clarity that where non-natural persons are partners of a partnership or parties to a trust agreement, beneficial owners will always be suitably identified. Hence, South Africa is recommended to ensure that the beneficial owners of all types of partnerships and trusts are always identified. Supervision and enforcement activities to support the availability of accurate and current beneficial ownership information also need improvement. The same holds true in relation to the supervision and enforcement of the availability of identity information for trusts, in addition to the partnerships, as mentioned above. These recommendations are relevant in respect of elements A.1 and A.3.

6. In South Africa, since the AML legislation is the only source of availability of beneficial ownership information on all relevant legal entities and arrangements, up-to-date and accurate beneficial ownership information can only be available if all relevant legal entities and arrangements are engaged with AML-obliged persons on an on-going basis. No such legal requirement exists. Hence, South Africa is recommended to ensure that accurate and up-to-date beneficial ownership information on all relevant legal entities and arrangements in line with the standard is always available.

7. Other key recommendations in this report relate to improvements to supervision and enforcement to ensure availability of legal ownership and accounting records considering that there is a large number of inactive companies. Further, South Africa has provisions permitting companies incorporated in South Africa to redomicile to another jurisdiction without losing their legal personality. While some information may be with the registrar of companies, it is not ascertained that accounting records for all companies would be available in line with the standard.

Exchange of information in practice

8. From 1 October 2018 to 30 September 2021, South Africa received 154 requests and fully replied to 40% of all EOI requests within 90 days, 50% of all EOI requests within 180 days and 82% within a year. South Africa

has a dedicated centralised EOI unit and adequate procedures in place for handling requests. While no practical difficulties were experienced in obtaining information and responding to requests, in some cases status updates were not provided to partners within 90 days. The COVID-19 pandemic and the associated lockdown presented some difficulties during the review period in providing status updates. Hence, overall South Africa has continued to demonstrate effectiveness in the exchange of information by providing all requested information in almost all cases although there is some room for improvement in the timeliness of answering requests and in providing timely status updates.

Overall rating

9. South Africa has achieved a rating of Compliant for six elements (B.1, B.2, C.1, C.2, C.3 and C.4) Largely Compliant for three elements (A.2, A.3 and C.5) and Partially Compliant for one element (A.1). In view of the ratings for each of the essential elements taken in their entirety, the overall rating for South Africa is Largely Compliant.

10. This report was approved by the Peer Review Group of the Global Forum on 10 October 2022 and was adopted by the Global Forum on 7 November 2022. A follow up report on the steps undertaken by South Africa to address the recommendations made in this report should be provided to the Peer Review Group no later than 30 June 2023 and thereafter in accordance with the procedure set out under the 2016 Methodology for Peer Reviews and Non-Member Reviews.

Summary of determinations, ratings and recommendations

Determinations	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place but needs improvement	The Anti-Money Laundering legislation provides for special guidance on identification of beneficial ownership information on partnerships and trusts. However, the guidance applies only to those partnerships that have natural persons as partners and trusts formed on the basis of trust agreements among natural persons. This could prevent adequate identification of beneficial owners where partners of a partnership or persons in a trust agreement are other legal persons or legal arrangements. Further, neither the Trust Property Control Act, Financial Intelligence Centre Act nor the Financial Intelligence Centre Guidance Note 7 ensures that the definition of beneficial ownership for trusts covers any natural person(s) exercising ultimate effective control over the trust (not being settlor/founder/trustee/beneficiary).	South Africa should ensure that the legal and regulatory framework for the identification of beneficial owners of partnerships and trusts is suitably applicable to situations where legal entities and legal arrangements are partners of a partnership; or are the settlor, trustees or beneficiaries of a trust. South Africa is also recommended, to ensure that the beneficial ownership definition of trusts (domestic or foreign) include any natural person(s) exercising ultimate effective control over the trust.

Determinations	Factors underlying recommendations	Recommendations
	The Anti-Money Laundering legislation (the Financial Intelligence Act) is the only source of beneficial ownership information on all relevant legal entities and arrangements. However, there is no requirement in law for all legal entities and arrangements to engage an Anti-Money Laundering obliged person at all times for ensuring the availability of up-to-date beneficial ownership information. In addition, in respect to trusts where a South African resident is a trustee of a foreign trust and the trust property is not held in South Africa, beneficial ownership information may not be available. Furthermore, there is no specified frequency for updating beneficial ownership information; hence, there could be situations where the available beneficial ownership information is not up to date.	South Africa should ensure that up-to-date beneficial ownership information on all relevant legal entities and arrangements in line with the standard is available at all times.
Partially Compliant	Supervisory and enforcement activity on legal ownership information in South Africa is ensured by the Companies and Intellectual Property Commission and the South African Revenue Service. However, compliance with companies' annual return filings active is very low and minimal enforcement action is taken by the Companies and Intellectual Property Commission. Administrative penalties and sanctions for non-compliance can only be launched through the court with one successful case concluded and three others in process of the determination of the quantum of the fine during the review period. Further, the significant number of inactive companies in South Africa coupled with the ability for Companies and Intellectual Property Commission to reinstate a deregistered company at any time without verifying the accuracy of the outstanding information filed, raises concerns on the accuracy of the information submitted. In addition, compliance with tax return filings is also very low. The lack of supervision and enforcement to ensure the availability of ownership information also affects partnerships and legal arrangements. As such, the availability of legal ownership and identity information in all cases is not assured.	South Africa is recommended to effectively implement adequate oversight and enforcement measures to ensure the availability of legal ownership information for all relevant entities and arrangements.

Determinations	Factors underlying recommendations	Recommendations
	South Africa has different levels of oversight to ensure availability of beneficial ownership information, depending on the service provider. However, the oversight may not be sufficient in all cases i.e. while banks are adequately supervised by the Prudential Authority of the South African Reserve Bank, other Anti-Money Laundering obliged persons are yet to be subjected to systematic oversight by the Financial Intelligence Centre. In respect of trusts, the Master of High Court does not carry out any supervisory checks on the adequacy and accuracy of the information first submitted to it. The Anti-Money Laundering obliged persons reported facing practical difficulties in ensuring the accuracy of beneficial ownership information in respect of trusts.	South Africa should put in place a comprehensive and effective supervision and enforcement programme to ensure the availability of adequate, accurate and up-to-date beneficial ownership information for all legal entities and legal arrangements.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place but needs improvement	South Africa allows companies incorporated in South Africa to redomicile to another jurisdiction without losing their legal personality. Such companies are struck-off from the Companies Register and technically cease to exist in South Africa. In respect of such companies, only accounting information submitted with the Registrar by way of annual returns would be available. However, financial statements are required to be filed only by public companies and certain other companies meeting criteria pertaining to turnover, workforce and nature of activities. Further, it is unclear if underlying documentation would be available in respect of such companies. Thus, it is not ascertained if accounting information in line with the standard would be available for all companies that redomicile out of South Africa for a period of five years after doing so.	South Africa should ensure that accounting information in line with the standard is available to South Africa for a period of five years for all relevant companies, including companies that redomicile out of South Africa.

Determinations	Factors underlying recommendations	Recommendations
Largely Compliant	There is scope for improvement in supervision for availability of reliable accounting records for all relevant legal entities and arrangements in South Africa. Only about 45% of active companies were filing their accounting records to the Companies Register in the review period. In addition, accounting and tax supervision should be strengthened, especially considering that the annual tax return filing over the years is at about 38%. Further, the significant number of inactive companies raises concerns that accounting records information would be available in all cases.	South Africa is recommended to enhance the supervision in respect of compliance with the legal and regulatory requirements for maintaining accounting information by all relevant entities and arrangements.
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place but needs improvement	The Anti-Money Laundering legislation provides for special guidance on identification of beneficial ownership information on partnerships and trusts. However, the guidance applies only to those partnerships that have natural persons as partners and trusts formed on the basis of trust agreements among natural persons. This could prevent adequate identification of beneficial owners where partners of a partnership or persons in a trust agreement are other legal persons or legal arrangements.	South Africa should ensure that the legal and regulatory framework for the identification of beneficial owners of partnerships and trusts is suitably applicable to situations where legal entities and legal arrangements are partners of a partnership; or are the settlor, trustees or beneficiaries of a trust.
	There is no specified frequency for updating beneficial ownership information; hence, there could be situations where the available beneficial ownership information is not up to date.	South Africa should ensure that up-to-date beneficial ownership information on all bank accounts in line with the standard is available at all times.
Largely Compliant		

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

Determinations	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place		
Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework:	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	
Largely Compliant	During the review period, South Africa was able to respond to about 40% of the incoming requests within 90 days while the remaining requests were mostly answered within one year or beyond one year in each of the three years of the review period suggesting room for improvement in timeliness of responding to requests. While status updates were provided in all cases that could not be fully answered within 90 days, in about 22% of the cases such updates were provided after 90 days.	South Africa is recommended to monitor the timeliness of responding to requests and to systematically provide status updates to its treaty partners in all cases where a full response is not able to be provided within 90 days.

Overview of South Africa

11. This overview provides some basic information about South Africa that serves as context for understanding the analysis in the main body of the report. The Republic of South Africa (South Africa) is a country on the southernmost tip of the African continent, with a population of over 59 million people. South Africa has a gross domestic product (GDP) of ZAR 6 210 billion (EUR 345 billion) in the period January to December 2021.[1] The official currency is the South African Rand (ZAR).[2]

12. Since the 2013 Report, South Africa has gone through a phase of political and economic instability that has affected the functioning of several public authorities in South Africa. Amidst allegations of "state capture", since January 2018, a judicial commission has been investigating matters of public and national interest concerning allegations of corruption and fraud in the public sector, including organs of the state. More recently, economic challenges have been compounded by the pandemic. These circumstances have had an adverse impact on available resources that have translated into important challenges to enforce and implement the legal and regulatory framework with a similar level of effectiveness as was noted in the 2013 Report. Notwithstanding some slippage, South Africa has remained committed to the implementation of the standard.

Legal system

13. South Africa has a common law system. South African law originates from various sources including the Constitution, legislation and subsidiary legislation passed by the Parliament or lower legislative bodies, common law (case law and customary law), as well as indigenous law. It is historically influenced by both Roman-Dutch and English law.

14. In terms of hierarchy, the Constitution is the highest source of law, followed by national laws and regulations, provincial laws and regulations,

1. Source of GDP: Statistician-General/Department of Statistics South Africa.
2. Average exchange rate during 2021, EUR 1 = ZAR 16.2; Source: SA Reserve Bank.

and municipal by-laws, supplemented by common law. South Africa is a unitary state with nine provinces. According to section 231 of the Constitution of the Republic of South Africa, 1996, an international agreement, such as a Double Taxation Convention (DTC), becomes a law in South Africa if enacted under domestic legislation. Under section 233 of the Constitution, international agreements have precedence over domestic law in resolving interpretative conflicts. DTCs and other international tax agreements are enacted under section 108 of the Income Tax Act (ITA) and become part thereof.

15. The Constitution recognises the separation of powers between the executive, the legislature, and the judiciary. The Constitution vests the executive authority in the President elected from amongst the National Assembly members. The President leads the Cabinet and forms the national government holding executive power together with the Cabinet members.

16. The Constitution vests the legislative authority in the Parliament, the Provincial Legislatures (for provincial matters) and the Municipal Councils (for local matters). South Africa has a bicameral legislature. The Parliament consists of the National Assembly (which passes national legislation, and scrutinises and oversees executive action), and the National Council of Provinces (which represents the provinces in respect of issues affecting them). Both the National Assembly and the National Council of Provinces approve most of South Africa's legislation.

17. The courts in South Africa exercise judicial power, are independent, and are subject only to the Constitution and the law. In terms of hierarchy, the Magistrates' Courts are courts of first instance over both criminal and civil cases with certain exceptions. Regional Magistrates' Courts deal only with criminal cases while District Magistrates' Courts deal with both criminal and civil matters. Appeals from the Magistrates' Courts can be made to High Courts.

18. In respect to tax matters, the Tax Court deals with all tax appeals[3]. The tax court is a court established by the Tax Administration Act (TA Act). Appeals against judgments given by such courts are to the High Court, and further to the Supreme Court of Appeal, or with leave from the President of the Tax Court, directly to the Supreme Court of Appeal. To judicially review administrative actions by the South African Revenue Service (SARS), a review application under the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), or section 33 of the Constitution must be brought. The High Court hears such reviews, and further appeals made to a full bench of the High Court. This is only if all other internal remedies provided for in any

3. Although direct access the High Court of South Africa is allowed in limited matters and only with leave of the High Court.

other law, such as the objection of an appeal remedy under the TA Act, have first been exhausted (section 7 of the Promotion of Administrative Justice Act). Further appeal lies thereafter, with the Supreme Court of Appeal. In exceptional matters, an appeal against a judgment of the Supreme Court of Appeal may be pursued before the Constitutional Court.

Tax system

19. South Africa's national level taxes are imposed by means of separate, dedicated tax Acts.[4] The TA Act governs the general administration of taxes and contains generic administrative provisions applicable to all tax acts other than customs and excise legislation. Some of the tax acts retain administrative provisions where these are unique to the specific tax type imposed by the tax Act.

20. The exercise of powers and the performance of duties under tax legislation are assigned in the first instance to the Commissioner for SARS. The Commissioner may then delegate those powers and functions to SARS officials who exercise such powers and duties under the control, direction or supervision of the Commissioner, as provided for by section 3 of the TA Act. Nonetheless, some administrative powers are assigned directly to a SARS official by the TA Act although these powers must still be exercised under the control, direction, or supervision of the Commissioner pursuant to section 3 of the TA Act.

21. SARS is a semi-autonomous institution responsible for administering the tax policy as set by its National Treasury under the direction of the Minister of Finance. SARS' responsibility for the development of tax administration laws concerning the assessment, collection and enforcement of all taxes in South Africa reflects its autonomy. SARS also has the authority to provide tax law interpretations through both binding public and binding private rulings and through official publications such as interpretation notes, practice notes or public notices.

22. South African residents are subject to income tax on their worldwide income and gains, and non-residents are taxable on their South African sourced income and gains. Individuals and special trusts[5] are taxed at progressive rates, which, from 1 March 2019, range from 18% on taxable

4. At http://sars.mylexisnexis.co.za/.
5. A special trust is a trust that is created for a person or persons with a disability that incapacitates them from earning sufficient income for their maintenance or managing their own financial affairs or a trust created on the death of the testator for the benefit of a minor relative or relatives, who have been conceived or are alive on the date of death, until they are no longer minors. The primary benefit of a special trust

income up to ZAR 195 850 (EUR 12 090) with a maximum tax rate of 45% on taxable income above ZAR 1 500 000 (EUR 92 593). Other trusts are taxed at a rate of 45%. The tax period for income tax (year of assessment) is generally 1 March to the end of February of the subsequent year. Tax for employees is deducted at source. Individuals in receipt of income other than remuneration in excess of prescribed thresholds, trusts, and companies pay tax under a provisional tax system.

23. Companies are considered resident if they are incorporated or if they have their place of effective management or a permanent establishment in South Africa. Foreign/external companies that do not have their place of effective management in South Africa are subject to source-based income tax. The standard tax rate for both resident and non-resident companies was 28% as at 30 September 2021 but is currently 27% with lower and progressive rates applicable to resident small business corporations and to micro-businesses. Small business corporations are taxed at progressive rates, which, over the review period, ranged from 0% on taxable income up to ZAR 79 000 (EUR 4 877) with a maximum tax rate of 28% on taxable income above ZAR 550 000 (EUR 33 951). After the review period, the maximum rate has been revised down marginally to 27%. Micro-businesses are taxed at progressive rates, which, from 1 March 2019, range from 0% on taxable turnover up to ZAR 335 000 (EUR 20 679) with a maximum tax rate of 3% on taxable turnover above ZAR 750 000 (EUR 46 296). A qualifying micro-business's turnover may not exceed ZAR 1 000 000 (EUR 61 728), although a discretion exists to permit a nominal and temporary excess. Tax is paid at the company level, and again at the shareholder level when profits are distributed, by means of dividend withholding tax.

24. Partnerships are not seen as separate legal entities, and are considered tax transparent, except partnerships incorporated under the Companies Act[6] (which are regarded as companies subject to corporate income tax). Except if the partnership is a VAT vendor or is an employer liable for employees' tax,[7] tax obligations and liabilities therefore generally

is that the trust is taxed on the progressive rate table applicable to individuals. Other trusts are taxed at the maximum marginal rate applicable to individuals.

6. These are partnerships that decide to incorporate as a company under the Companies Act and are subject to regulation by this Act in the same manner as other companies. Certain professions do not permit members to practice in corporate form unless it is by way of a "personal liability company". As with a partnership, the directors of such a company are responsible for the debts of the company.

7. Where a partnership is a VAT registered vendor or an employer, for VAT and employees' tax purposes, such a partnership is registered as a separate entity and has the primary liability for VAT and employees' tax. The partners will have secondary liability for the tax debts of the partnership.

fall on the partners upon whom income tax is directly imposed rather than the partnership.

25. Non-residents are subject to withholding tax on South African sourced income, including on the following:

- foreign entertainers and sportspersons (15% of gross amount payable to them)
- on disposal of immovable property in South Africa by non-residents (individuals 7.5%; companies 10% and trusts 15% of purchase price)
- interest (15% of gross amount of interest payable to non-resident)
- royalties (15% of gross amount of royalty payable to non-resident).

Financial services sector

26. The financial services sector represents a very important part of South Africa's economy. It comprises mainly banks, insurance businesses, security exchange businesses and financial service providers. As of 30 November 2021, South Africa had 40 banks (local, branches of foreign, mutual, and co-operative banks) holding assets of more than ZAR 6 547 billion (EUR 356 billion). This represents an approximate percentage of 221% of South Africa's GDP. Notwithstanding the importance of the financial sector, South Africa is not an international financial centre as the financial sector is primarily domestically oriented.

27. Commercial banks, including branches of foreign banks, are governed by the Banks Act and the Financial Sector Regulation Act (FSR Act). In 2018, the FSR Act established a dual regulatory system by creating two new authorities, the Prudential Authority in the South African Reserve Bank (Central bank) and the Financial Sector Conduct Authority (FSCA). The Prudential Authority established in terms of section 32 of the FSR Act, is responsible for regulating banks (commercial, mutual and co-operative), insurers, co-operative financial institutions, financial conglomerates, and certain market infrastructures under sections 1 (definition of "eligible financial institution"), 33 and 34. The FSCA, established in terms of section 56 of the FSR Act, is responsible for conducting supervision of authorised users of securities exchanges, managers of collective investment schemes (CIS) and financial service providers (FSPs).

28. All banks must be authorised by the Prudential Authority to conduct the business of a bank. In addition, it is also possible to establish other deposit taking institutions such as mutual banks licensed by the Prudential Authority in terms of the Mutual Banks Act as well as member-based deposit-taking institutions such as co-operative banks and co-operative

financial institutions licensed by the Prudential Authority in terms of the Co-operative Banks Act.

29. Financial institutions other than banks include insurance companies, pension funds, mutual funds and securities traders such as securities companies, investment advisers or dealers. As of December 2021, other than banks, there were 174 Short-term (non-life) insurance and Long-term (life) insurance companies, 49 CIS Managers in securities and 1 739 portfolios, 13 CIS Hedge Fund Managers and 206 hedge fund portfolios, 7 securities companies, 5 087 retirement funds and pension funds and 11 608 financial service providers. The assets of entities held in these sectors amounted to approximately EUR 1 300 billion an estimated 784.72% of South Africa's GDP.

Anti-Money Laundering Framework

30. The South African Anti-Money Laundering and Counter-Terrorism Financing (AML/CFT) framework is based on the Financial Intelligence Centre (FIC) Act which contains the main principles and requirements applying to all accountable institutions. Section 1 of the FIC Act defines accountable institutions to mean a person referred to in Schedule 1 where they are detailed. Among the categories of persons as provided for in Schedule 1 of the FIC Act that are relevant for the availability of information under the international standard, are banks, long term insurance businesses, securities exchange, Managers of collective investment schemes, attorney/legal practitioners, and financial service providers (FSPs). These entities are expected to comply with AML/CFT obligations provided for under the FIC Act and carry out necessary customer due diligence (CDD) while establishing new customer relationships and during the existence of such relationships.

31. The FIC Amendment Act amended the FIC Act in 2017 to, amongst others, comply with the revised 2012 Financial Action Task Force (FATF) United Nations Security Council (UNSC) Recommendations. It was implemented in phases from June 2017 to April 2019. The first set of amendments (mainly to expand the range of institutions with which the FIC may share its confidential information) came into operation on 13 June 2017. The second set of amendments (introducing the definition of a beneficial owner, and the risk-based approach to CDD among others) came into operation on 2 October 2017 and the last set of amendments (introducing targeted financial sanctions pursuant to Resolutions of the UNSC) came into operation on 1 April 2019.

32. South Africa underwent a mutual evaluation in the FATF's 4th round of mutual evaluations between 2019 and 2021. This was a joint mutual

evaluation by the FATF and the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and the detailed assessment for the mutual evaluation was led by the International Monetary Fund. The FATF adopted the report in June 2021[8] and the ESAAMLG adopted it in September 2021.

33. The report rated South Africa as Partially Compliant on Recommendations 24 (transparency and beneficial ownership of legal persons) and 25 (transparency and beneficial ownership of legal arrangements). Effectiveness of Immediate Outcome 5 (legal persons and arrangements) was rated "Low" and that of Immediate Outcome 3 (supervision) as "moderate". Challenges were noted in obtaining beneficial ownership information on companies and trusts. While the authorities relied on accountable institutions to obtain the beneficial ownership information, the measures in place were found insufficient to ensure that accountable institutions are always able to provide adequate, accurate, up-to-date and verified beneficial ownership information in a timely manner. The results of the mutual evaluation place South Africa in the FATF's and ESAAMLG's enhanced follow-up processes. They also place South Africa in the pool of countries that are eligible to be identified by the FATF as a jurisdiction under increased monitoring in its International Co-operation Review Group process.

34. South Africa has established an inter-departmental working group to co-ordinate the actions of the South African authorities in addressing the recommended actions in the mutual evaluation report to improve the effectiveness of South Africa's AML/CFT measures. These actions cover all 11 immediate outcomes that the FATF assesses in its mutual evaluations.

Recent developments

35. In respect of availability of beneficial ownership information on companies, South African authorities have informed that pursuant to the 2021 second round EOIR peer review report on the legal and regulatory framework (phase 1) and the FATF mutual evaluation report, they are considering putting in place from 2022 necessary requirements of maintaining beneficial ownership under the Companies Act, and a Companies Amendment Bill to the effect has been drafted. Amendments to other relevant Acts such as the Financial Intelligence Centre Act (FIC Act, i.e. the AML/CFT legislation), the Trust Property Control Act, 1988, and the Non-profit Organisations Act, 1997 are also under consideration.

8. https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-South-Africa.pdf.

Part A: Availability of information

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

A.1. Legal and beneficial ownership and identity information

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

37. The 2013 Report concluded that South Africa's legal and regulatory framework was in place to ensure the availability of legal ownership and identity information for all relevant entities and arrangements. The 2013 Report had, however, noted that in the case of partnerships, identity information was comprehensively available only after 2011-12. In addition, where one of the partners was a trust, information on the name(s) of partner(s) was only available after an automatic, system-generated query by the tax authorities. South Africa received a Compliant rating with the standard on element A.1, but a recommendation was made that South Africa should monitor the availability of identity information on partnerships, in particular where one or more of the partners was a trust.

38. In respect of this recommendation, while some monitoring in respect of availability of identity information on the partners of partnerships, in particular where one or more of the partners is a trust, has taken place since the 2013 report, there has been no significant change, as concerns remain regarding the overall effectiveness. Further, the supervision and enforcement activities conducted across the board by the South African authorities were not found adequate to ensure that identity and ownership information would always be available. South Africa has many inactive companies. Although some efforts have been reported to clean up the register by removing the inactive companies, the de-registration process has not been very successful due to some practical challenges faced by the Companies Registrar (see paragraph 79). The 2013 report recommendation is therefore

maintained and subsumed under the broader recommendation in respect of overall supervision and enforcement in this report.

39. Not discussed in the 2013 Report, but now an integral part of the standard as strengthened in 2016, is the availability of beneficial ownership information on all relevant entities and arrangements. In South Africa, beneficial ownership information is available through the provisions of the Financial Intelligence Centre Act (FIC Act). In respect of companies, the definition of beneficial owner and identification requirements on AML-obliged persons are in line with the standard. In respect of partnerships and trusts, the FIC Act provides for identification of beneficial owners in line with the standard in cases where natural persons are partners of the partnerships or natural persons are parties to a trust agreement. It does not address situations where non-natural persons are partners of a partnership, or the trust agreement involves non-natural persons. While the binding FIC Guidance Note 7 issued by the FIC provides some guidance for identification of beneficial owners of partnerships and trusts, it is not ascertained that natural persons will always be identified as beneficial owners in all cases when the FIC Act is read together with the Guidance. Hence, South Africa is recommended to ensure that beneficial owners are suitably identified for all partnerships and trusts.

40. Furthermore, there is no requirement under law that all relevant entities and arrangements always engage an AML-obliged person on an ongoing basis. In addition, although the FIC Act provides for risk-based updating of CDD, there is no specified frequency for updating such information, which means that beneficial ownership information may not be up to date in all cases. South Africa is recommended to ensure that accurate and up-to-date beneficial ownership information is always available in respect of all relevant entities and arrangements.

41. While the South African Reserve Bank and the Financial Sector Conduct Authority (FSCA) have undertaken some supervision on financial institutions and capital market participants to identify beneficial owners of their customers, the supervision of other AML-obliged persons is not adequate. In addition, the supervision of trust and corporate service providers' obligations to identify beneficial owners of their customers was not undertaken during the period under review. South Africa is recommended to address these gaps.

42. During the review period, South Africa received 87 requests related to legal and beneficial ownership information. South Africa was able to provide the requested information in all these cases and peers did not raise any concerns about the information received.

43. The conclusions are as follows:

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

Deficiencies/Underlying factor	Recommendations
The Anti-Money Laundering legislation provides for special guidance on identification of beneficial ownership information on partnerships and trusts. However, the guidance applies only to those partnerships that have natural persons as partners and trusts formed on the basis of trust agreements among natural persons. This could prevent adequate identification of beneficial owners where partners of a partnership or persons in a trust agreement are other legal persons or legal arrangements. Further, neither the Trust Property Control Act, Financial Intelligence Centre Act nor the Financial Intelligence Centre Guidance Note 7 ensures that the definition of beneficial ownership for trusts covers any natural person(s) exercising ultimate effective control over the trust (not being settlor/founder/trustee/beneficiary).	South Africa should ensure that the legal and regulatory framework for the identification of beneficial owners of partnerships and trusts is suitably applicable to situations where legal entities and legal arrangements are partners of a partnership; or are the settlor, trustees or beneficiaries of a trust. South Africa is also recommended, to ensure that the beneficial ownership definition of trusts (domestic or foreign) include any natural person(s) exercising ultimate effective control over the trust.
The Anti-Money Laundering legislation (the Financial Intelligence Act) is the only source of beneficial ownership information on all relevant legal entities and arrangements. However, there is no requirement in law for all legal entities and arrangements to engage an Anti-Money Laundering obliged person at all times for ensuring the availability of up-to-date beneficial ownership information. In addition, in respect to trusts where a South African resident is a trustee of a foreign trust and the trust property is not held in South Africa, beneficial ownership information may not be available. Furthermore, there is no specified frequency for updating beneficial ownership information; hence, there could be situations where the available beneficial ownership information is not up to date.	South Africa should ensure that up-to-date beneficial ownership information on all relevant legal entities and arrangements in line with the standard is available at all times.

Practical Implementation of the Standard: Partially Compliant

Deficiencies identified/Underlying factor	Recommendations
Supervisory and enforcement activity on legal ownership information in South Africa is ensured by the Companies and Intellectual Property Commission and the South African Revenue Service. However, compliance with companies' annual return filings is very low and minimal enforcement action is taken by the Companies and Intellectual Property Commission. Administrative penalties and sanctions for non-compliance can only be launched through the court with one successful case concluded and three others in process of the determination of the quantum of the fine during the review period. Further, the significant number of inactive companies in South Africa coupled with the ability for Companies and Intellectual Property Commission to reinstate a deregistered company at any time without verifying the accuracy of the outstanding information filed, raises concerns on the accuracy of the information submitted. In addition, compliance with tax return filings is also very low. The lack of supervision and enforcement to ensure the availability of ownership information also affects partnerships and legal arrangements. As such, the availability of legal ownership and identity information in all cases is not assured.	South Africa is recommended to effectively implement adequate oversight and enforcement measures to ensure the availability of legal ownership and identity information for all relevant entities and arrangements.
South Africa has different levels of oversight to ensure availability of beneficial ownership information, depending on the service provider. However, the oversight may not be sufficient in all cases i.e. while banks are adequately supervised by the Prudential Authority of the South African Reserve Bank, other Anti-Money Laundering obliged persons are yet to be subjected to systematic oversight by the Financial Intelligence Centre. In respect of trusts, the Master of High Court does not carry out any supervisory checks on the adequacy and accuracy of the information first submitted to it. The anti-money laundering obliged persons reported facing practical difficulties in ensuring the accuracy of beneficial ownership information in respect of trusts.	South Africa should put in place a comprehensive and effective supervision and enforcement programme to ensure the availability of adequate, accurate and up-to-date beneficial ownership information for all legal entities and legal arrangements.

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

44. The legal framework to ensure the availability of legal ownership and beneficial ownership for various types of companies in South Africa is analysed below.

Types of Companies

45. Section 8(1) of the Companies Act provides for the formation of two types of companies: the profit companies examined below and the non-profit companies[9] that are not relevant for this review. Section 8(2) distinguishes four types of profit companies:

Type of profit company	Description	Numbers registered with CIPC as at December 2021
Private Companies	are those whose memorandum of incorporation prohibits them from offering their securities to the public and restricts the transferability of its security.	1 784 775
Personal Liability Companies	are private companies whose memorandum of incorporation states that they are personal liability companies. They are mainly used by intermediary associations such as lawyers and accountants.	17 903
Public Companies	are companies whose shares are freely traded on a stock exchange.	1 626
State-owned Companies	are companies owned by either the central or local government and are subject to the same rules as public companies.	132

Source: Numbers registered with Companies and Intellectual Property Commission (CIPC) as at December 2021.

46. Before the Companies Act of 2008 came into effect, it was also possible to form "close corporations" under the Close Corporations Act, 1984 (CCA) which commenced on 1 January 1985. Close corporations are companies with a maximum of ten members, who must be either natural persons or trustees of a trust (sections 28 and 29 CCA). Members can be residents or non-residents. Where trustees are members, the trustee may be a juristic person or a foreign person. However, two restrictions apply in respect of such trusts, in that a) no juristic person may be a beneficiary of such a trust; and b) in the case of an *inter vivos* trust, the limit of ten natural persons as members includes the beneficiaries of the trust. However, under

9. Non-profit companies may only be established for a public benefit purpose or for one or more cultural, social, communal or group activities and must apply all their income and assets for that purpose. As at 30 December 2021, there were 66 973 non-profit companies.

amended section 13 of the CCA, no new close corporations can be formed effective 1 May 2011. There are currently 291 300 active close corporations and 2 336 177 inactive close corporations registered at the CIPC[10] as at June 2022 and the number of registered close corporations is expected to continue to decline following the decision to eliminate most differences with small private companies and the CCA no longer allowing the formation of new close corporations. All active close corporations are required to comply with the requirements of the CCA as well as the Companies Act as amended in 2011. Hence, all the legal requirements applicable to companies under the Companies Act apply in respect of close corporations. South African authorities have indicated that historically, close corporations have mainly been used for local business operations and therefore it is unlikely that foreign tax authorities would have an interest in the ownership information of close corporations. They have never received any EOI requests for ownership information in respect of close corporations.

47. The Companies Act requires all external (foreign registered) companies carrying on business or non-profit activities in South Africa to register in the national Company Registry – the CIPC. As at end of June 2022, 1 799 (active) and 5 294 (inactive) external companies were in the CIPC database.

Legal Ownership and Identity Information Requirements

48. Companies and close corporations are all required to register with the Companies and Intellectual Property Commission (CIPC). Availability of ownership and identity information in respect of these types of entities is ensured by the requirement to keep an up-to-date register of members. Close corporations must also furnish full details of their owners to the CIPC.

49. As described in the 2013 Report (see paras. 42 to 49), the requirements to maintain legal ownership and identity information for companies are mainly found in the South African Company Act. Since the previous review, the Tax Administration (TA) Act and the Financial Intelligence Centre (FIC) Act have had amendments made to obtain, maintain or update legal ownership and identity information of companies. The following table shows a summary of the legal requirements to maintain legal ownership information in respect of companies.

10. Under the amended Companies Act, those Close Corporations that choose to convert to normal companies, are deregistered from the Close Corporation register of CIPC and are included in the list of “inactive close corporations”. Hence, the number of inactive close corporations includes close corporations that converted to normal companies.

Companies covered by legislation regulating legal ownership information[11]

Type	Company Law	Tax Law	AML Law
Private company	All	All	Some
Personal Liability company	All	All	Some
Public company	All	All	Some
State owned companies	All	All	Some
Foreign companies (tax resident)	All	All	Some

Companies Law requirements

50. Section 1 of the Companies Act defines a company as a juristic person, implying it is a separate legal entity. It comes into existence and can commence business from the date that it is registered and continues to exist until its name is removed from the companies register held by the Companies and Intellectual Property Commission (CIPC) (section 19(1)(a)). Persons wishing to incorporate a company must file a completed and signed memorandum of incorporation, a notice of incorporation and the prescribed fee with the CIPC (section 13(2)). The Memorandum of a private, profit or non-profit company must contain the names and identity numbers/ registration numbers assigned at registration to the incorporators for both domestic and foreign residents. The notice of incorporation must contain the names and identity numbers of the directors and the company secretary, as well as the names of their auditor or members of their audit committee, if any. The registered companies are required to file with CIPC amendments to their memorandum of incorporation regarding subsequent owners within 10 business days of amendment as stipulated in section 16(7) read with Company Regulation 15(3) of the Companies Act. The amendment takes effect when the notice of amendment is filed, or on a date specified in the notice. In addition, the companies are required to keep information concerning current and past directors (section 24(3)).

51. Since 2019, the CIPC has put in place an online registration process for registering a company via the online platform "BizPortal". All services are online and integrated with SARS database. Registration of a new company with the CIPC automatically allows registration with SARS in real time and generation of a unique corporate identification number (CIN) which serves as the tax registration number of the newly incorporated company. CIPC

11. 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.

registers about 400 000 new companies on average every year. Founders may opt to register a company with a name, or confirm the name later, or choose to register the company without a name.[12] At the time of registration, the CIN functions as the company name pending the request for a formal registered name. Companies pay a fee of ZAR 125 (EUR 8) at registration for a registration number (registration of a company without a name) and an additional ZAR 50 (EUR 3) which is ZAR 175 (EUR 11) for a registered name. This means that registration can take place without a registered name, in which case the registration number serves as the company name. Hence, it is possible to have companies in South Africa that do not have a registered name but just the CIN. The CIPC authorities informed that the companies with only a registration number are mainly for holding assets and investments and may not require a business name. The authorities also indicated that businesses that opt to have only the unique registration number in practice are few, and when the business decides to register a name in future, the changes would be indicated on both the CIPC and SARS platforms (see also paragraph 57). As at 5 September 2022, there were 4 816 789 companies on the register of which 133 977, accounting for 2.78%, are registered with the unique registration number.

52. The legal ownership information on companies is required to be kept by the companies who must keep a register of issued securities and names of those who own them. Sections 24 and 25 of the Companies Act require records of a company, including the security register, to be kept for seven years either at the registered office of the company or at any other location in South Africa (provided the CIPC is informed about such location). Any entries pertaining to persons who cease to hold securities may be disposed of seven years after that person last held any securities of the company. Penalties and sanctions are applicable in case of default with these requirements (see paragraphs 58 and 59). All company records must be accessible at a location within South Africa. Section 50(2)(b) requires that the securities register contains:

- the names and addresses of the persons to whom the securities were issued
- the number of securities issued to each of them
- the number and prescribed circumstances relating to any securities transferred.

53. The CIPC is mandated to monitor that companies properly comply with the Act and that they establish and maintain the company's register into which all documents required for filing under the Act must be deposited. Section 33(2) requires all companies to file an annual return to the CIPC.

12. This situation is however different for non-profit companies which must have a name.

54. The Companies Act under section 13 also requires companies incorporated outside South Africa to register with CIPC if they are carrying on business or non-profit activities in South Africa. A foreign/external company must be regarded as conducting operations in South Africa (i.e. being an external company) if it is a party to any employment contract(s) within South Africa; or engaged in a course of conduct, or a course or pattern of activities within South Africa over a period of six months or longer in line with section 23(2).

55. Registration of the foreign/external company with the CIPC must be within 20 business days after it first begins operations in South Africa (section 23). The registration notice must contain the address of the foreign/external company's principal office outside South Africa, the names of its directors, the address of its registered office in South Africa, as well as the name and address of the person within South Africa who has consented to accept service of documents on behalf of the company. If the company fails to register within three months after commencing its activities in South Africa, CIPC can issue a compliance notice to it, and can require that it ceases its operations if it fails to comply with this notice within 20 business days of receipt (section 23(6)). Foreign/external companies must also file annual returns, which must contain information regarding their principal office, the location of their records, the foreign jurisdiction in which they are primarily registered, and their local contact person (section 33(2) read with Company Regulation 30(6)). Further, where foreign/external companies have a place of effective management in South Africa, or are subject to source-based income tax, if they have a permanent establishment under the applicable DTC, they have similar compliance responsibilities as for tax residents and are required under the tax law obligations to disclose ownership information (see paragraph 65).

56. Any changes in location of domestic or foreign/external companies should be registered with the CIPC as provided for by section 23(3)(b) Companies Act.

57. In respect of companies that are registered without a name (see paragraph 51), the South African authorities indicated that none of the EOI requests they have received so far has related to companies with only CINs. However, if such a request for information were to be received, there would not be any particular difficulties in identifying the company and obtaining and sharing its legal ownership information. In any case, multiple search criteria (like address, contact information or identity information of a person) could also be used to search the CIPC database and in the instance there was no result or there were any doubts on the accuracy of the information obtained, the competent authority may further engage the requesting partner to establish any other search criteria to identity the company. The situation would be similar as in the case of named companies.

Company Law enforcement and oversight provisions

58. Any person who knowingly provides false information to the CIPC regarding any incorporation or registration requirement or any other document to be filed with CIPC is subject to a fine or to imprisonment for a period not exceeding 12 months (sections 215(2)(e) and 216(b) Companies Act). The amount of fine that can be imposed is 10% of the Company's turnover up to a maximum of ZAR 1 million (EUR 61 728), as provided for under Company Regulation 163, section 175(1) and (5) and section 216, in which case the Magistrates' Court will have jurisdiction to impose the penalty as provided for in section 217. In addition, there are sanctions in place for failure to keep and provide the required information. Sanctions vary from the application of a fine, imprisonment to deregistration of a company (see 2013 Report paragraphs 107 to 117 for details).

59. Section 171 allows the Commissioner of CIPC or the Executive Director of the Takeover Regulation Panel (Chapter 8, Part C of the Companies Act) to issue compliance notices in the event of violations of the Act. The notice may direct the addressee to cease, correct, or reverse an act in contravention of the Act, take a required action under the Act, or restore assets or their value to a company or person. Where a person fails to comply with the notice, the matter may be escalated to a court for an administrative fine not exceeding 10% of turnover for the period of non-compliance to a maximum of ZAR 1 million (EUR 61 728) (section 175(1)(b) read with section 175(3) and Company Regulation 163) or referred to the National Prosecuting Authority for criminal prosecution.

60. In the event of conviction for contraventions relating to breach of confidence, false statements, reckless conduct, and non-compliance, criminal sanctions of a fine or imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment are prescribed. Other offences attract a fine or imprisonment of up to 12 months, or to both a fine and imprisonment (section 216).

61. Companies that fail to file their annual returns with CIPC, as required by section 33 of the Companies Act, for a continuous two-year period can be deregistered under section 82 of the Act under certain conditions. The CIPC may proceed to de-register such a company when it has neither given a satisfactory explanation for its continued non-compliance nor has explained why it should be allowed to remain registered when CIPC has sought an explanation for non-filing of annual returns. Thus, as a sanctioning mechanism, CIPC can de-register such a company and the company may lose its legal personality. In respect of such a de-registered company, an interested party may apply to CIPC for the reinstatement of the company by correcting the defaults pertaining to filing of annual returns and complying with the regulatory requirements (section 82(4); see also deregistration process below).

As at March 2022, out of about 1 900 552 active companies required to file annual returns[13] with the CIPC, about 827 790 companies accounting for 45% complied with their filing requirements (see also paragraph 180).

62. In practice, the Companies Division, Corporate Disclosure Regulation and Compliance Unit within CIPC deals with monitoring of compliance, investigations of complaints, and enforcement in cases of non-compliance with the Companies Act. The unit has 19 officials. In the review period, eight onsite visits were undertaken by CIPC. All these on-site examinations have been in respect of important public listed companies. CIPC officials informed that during investigations the company is guided in advance to make available its key records including the securities register. As a result, in the majority of cases investigated by CIPC, compliance is achieved before issuance of a compliance notice. In some cases where compliance is not achieved, the company can be sanctioned.

63. However, to impose all types of administrative penalties and sanctions, proceedings must be launched through the court. During the review period, CIPC pursued four matters through the courts due to non-compliance with an issued compliance notice. CIPC successfully concluded one case while the three others were still in process of the determination of the quantum of the fine. The procedure of imposing sanctions and penalties for non-compliance is lengthy and this has led to fairly infrequent use of sanctions by CIPC on non-compliant companies. This lack of practical application of sanctions may lead to lack of deterrence. South African authorities have indicated that they are reviewing CIPC's procedures for imposing sanctions. This limited oversight and difficulties in enforcement pose concerns for the availability of legal ownership information on companies in practice (see paragraph 81).

Tax law requirements

64. The legal obligations under tax law are provided for under the Tax Administration Act (TA Act) and related acts. Chapter 3 of the TA Act requires any person who is or may be liable to tax to register with the South African Revenue Service (SARS) as a taxpayer. Section 66 of the Income Tax Act (ITA) read with section 22(2) of the TA Act require a company that has registered with SARS to provide information including that of the three main directors, shareholders or members. In addition, all companies

13. South African authorities have explained that the annual return filing rate has been estimated based on the number of companies with active status that filed their annual returns against those that became due for filing their annual return in each month of the financial year ending March 2022. The number of companies in the CIPC database varies from time to time due to creation of new companies.

registered with SARS have a Public Officer appointed as required under section 246 of the TA Act who is responsible for all acts, matters, or things that the public officer's company must do under a tax Act, and in case of default, the public officer is subject to penalties for the company's defaults. Such Public Officer must be an individual who is residing in South Africa and is usually a senior managerial person of the company. Such officer must be approved by SARS. The CIPC informs SARS on a daily basis about new registrations and any updates thereafter. SARS then issues a tax identification number (TIN) for the new registered company irrespective of whether the company has income or assets at that time. After registration, the company is obliged to submit a tax return declaring its financial position for the relevant year of assessment.

65. At registration, foreign/external companies are subject to the same rules regarding the provision and updating of shareholder/ownership information as those of domestic companies when they are resident as per section 1 of the ITA for tax purposes. This means that foreign/external companies being effectively managed in South Africa as well as foreign/external companies having a permanent establishment in South Africa or deriving any other taxable income from South Africa (and therefore regarded as tax resident) must keep ownership information to substantiate their income tax returns.

66. The annual income tax returns require the (domestic or foreign) company to submit a schedule containing details of all changes in shareholding/members' interest during the year of assessment (not just the main shareholders mentioned at the time of registration with tax authorities in paragraph 64). Although this annual tax return reporting only captures changes to legal ownership during the tax year, and not necessarily full current legal ownership information, the requirement for all companies to maintain information about all shareholders in order to meet tax obligations is confirmed by section 29 of the TA Act, which additionally requires that all records relevant to returns must be kept for a period of at least five years from the date of filing the return to which the records relate (section 29(3)). Such ownership information is relevant to SARS, for example because the carry forward of losses may be disallowed when a change of ownership has occurred (section 103(2) of the ITA).

67. Therefore, this information held by the tax authorities is an additional source for legal ownership information for companies in South Africa (although not all shareholders must be disclosed at tax registration).

68. As at 2021, the tax authorities had 3 185 757 domestic and foreign/external companies registered.

Implementation in practice, enforcement measures and oversight

69. Where a person obliged to register with SARS under a tax Act fails to do so, the TA Act provides for penalties and sanctions as below:

- register the person (section 22(5) of the TA Act) and
- impose a fixed amount administrative non-compliance penalty of up to ZAR 16 000 (EUR 884) under Chapter 15 of the TA Act, which penalty increases monthly by the same amount until the non-compliance (registration) is remedied and
- impose a percentage based administrative non-compliance penalty under Chapter 15 of the TA Act if it is established that the failure to register resulted in outstanding tax.

70. If a taxpayer fails to register and submit returns, SARS may issue an "estimated" assessment based on readily available information, such as third-party information, and a taxpayer may not object to or appeal against such assessment without submitting the required returns (section 95 TA Act). SARS may also sanction the company administratively under section 210 of the TA Act and criminally under section 234(d) of the TA Act for failure to submit a return as well as impose an understatement penalty under section 222 of the TA Act of up to 200% of tax understated.

71. In the 2013 Report, an in-text recommendation pertaining to implementation aspects was made to require South Africa to use enforcement measures to ensure that all entities continue to comply with the obligations to file tax returns. South Africa has reported that since the 2013 report, the SARS Compliance Evaluation and Monitoring Information System (CEMIS) has been developed to determine the compliance levels of taxpayers and measure filing compliance. The results obtained from the CEMIS form an integral part in the identification of risk areas, and making informed strategic decisions on education, service and enforcement actions needed to arrest the decline, increase or at least maintain the compliance levels of taxpayers whose compliance is found deficient. While these are welcome measures, the tax return filing rates have remained fairly low at only about 38% (see paragraph 177), suggesting that the recommendation has not been adequately addressed by the reported measures. This in-text recommendation is now subsumed under the broader recommendation on supervision and enforcement measures (see paragraph 81).

Inactive companies, companies that cease to exist, deregistration and re-registration process

72. In order to allow for cleaning up the company register of **inactive companies**, section 82(3)(b) of the Companies Act empowers the CIPC to

deregister a company that has been determined to be inactive[14] where CIPC learns that a company has not been carrying on any commercial activity (e.g. no trading or assets) for at least seven years and no person has demonstrated a reasonable interest in, or reason for, its continued existence. Deregistered companies are retained on the CIPC business register for historical reference or re-activation.

73. South Africa has informed that for companies that have **ceased to exist**, all information that has been submitted to the CIPC at the time of incorporation or any further updates to that information would be maintained by CIPC for an indefinite period and beyond the taxpayer retention period of its supporting documents for five years. In any event, the tax registration and return information is kept for 10 years and therefore this information will remain available.

74. The deregistration process entails publication of a list of companies being intended to be deregistered for non-compliance with annual returns to give relevant entities time to comply. If there is failure to comply with such notification, it results in the deregistration of the companies being finalised and entities being removed from the Companies Registry. The effect of deregistration is that the company ceases to exist, it being dissolved as of the date of the removal of its name from register (section 19(1)(a)) of the Companies Act. The deregistration of companies and close corporations that voluntarily select to be deregistered can take up to three months before an entity is finally removed from the register of active entities. In the cases whereby CIPC refers companies and close corporations for deregistration, the process can take a couple of years due to technical challenges which are explained under paragraph 79. Removal from the Companies Registry does not affect liability of directors, shareholders or any other persons in respect of an act or omission, which took place before the company was removed from the register. In case it relates to failure to provide mandatory required records, they can be requested to provide the records even after the company has been deregistered.

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14. The South African authorities inform that CIPC and SARS use the same term inactive differently. The term as understood by CIPC is broader in scope and includes all companies deregistered, in deregistration, in liquidation or in business rescue, and dissolved. Deregistered companies are also retained on the CIPC business register for historical reference or re-activation, which is not the case with SARS. For SARS, "inactive companies" means companies reported to SARS as "inactive" (deregistered after consultation with SARS) by CIPC or companies in respect of which SARS detects there is no indication of trading, income or assets as well as have no outstanding tax debt. A SARS Standard Operating Procedures (SOPs) must then be followed to determine if an "inactive" company on this register is in actual fact "dormant". Only once SARS' criteria for being considered dormant are met *and* the company no longer exists pursuant to dissolution, is it removed from the SARS "inactive company" register.

75. Under the Companies Act, there are certain provisions to **re-instate** a deregistered company under some circumstances. South African authorities inform that there is no time limit set for reinstating a deregistered company. A party interested to reinstate a deregistered company may apply to CIPC seeking reinstatement as provided for under section 82(4) of the Companies Act. South African authorities have informed that in general, only applications made by the companies or closed corporations or their authorised representatives, are considered by the CIPC. All other interested persons (like creditors or persons interested in bringing any legal action against a deregistered company) are advised to approach the court for a reinstatement order. The liquidator of a company or any another person with an interest may, therefore, apply for a court order declaring the company's deregistration void (section 83(4)).

76. The request for re-instatement of a company or a closed corporation can be made only upon satisfaction of specific criteria. First, CIPC will reinstate a deregistered company or closed corporation if it is demonstrated that such company was in business at the time of deregistration. Bank statements from six months prior to deregistration and for six months after deregistration must be submitted with the reinstatement application or any other documentation confirming that the company or close corporation had economic value on the date of final deregistration. Second, CIPC may also reinstate a deregistered company if it is demonstrated that an immovable property was registered in the name of such deregistered entity. Lastly, CIPC would reinstate a deregistered company or closed corporation if a court has ordered such reinstatement.

77. In terms of Company Regulation 40(6), the company or close corporation is fully re-instated (and its legal personality restored), only when all outstanding annual returns are filed. It is only the company or close corporation or its duly appointed representative that can file the annual returns. Further, after filing of all the overdue annual returns, the records of the entity must be updated by filing certain statutory amendment forms and any amendments to the company's memorandum of incorporation. Hence, in order to reinstate a deregistered company, all past defaults are to be corrected and all changes in past information intimated to the CIPC. The same was reiterated during the on-site discussions with the authorities from CIPC. However, there is no requirement for the CIPC to verify the accuracy of the information submitted by the entities while seeking reinstatement. South African authorities informed that an entity reinstated in terms of these provisions will revert to its previous status having a legal personality. South African authorities have informed that in general, they discourage reinstatement applications and the advice to the general public is to register a new company instead of seeking reinstatement.

78. South Africa legislation provides for South African companies to redomicile to a foreign jurisdiction without losing legal personality. Therefore, the only time that deregistration will not lead to dissolution is when the company transfers its registration to a foreign jurisdiction under section 83(1). In such situations, the company is struck-off from the CIPC's register and ceases to exist in South Africa. South Africa has informed that all ownership information submitted to the CIPC at the time of registration and through the filing of annual returns will remain available in the Commission's database indefinitely. Hence, legal ownership information on such companies for the time they were registered in South Africa would be available.

79. South Africa has 2 078 141 active domestic companies registered with CIPC as at 30 June 2022 and 5 330 external/foreign companies. South Africa also has 2 434 311 inactive domestic companies on the database as at 30 June 2022. South African authorities inform that 770 862 inactive companies were deregistered over the last three years as "Annual Return Deregistration". While this de-registration exercise was indicated by South Africa, in practice, challenges have been experienced in an attempt to clean up the register. During the 2021-22 financial year, CIPC had tried to deregister 350 000 companies and close corporations due to noncompliance to annual return filing, without success. As per the existing law, the notification process involves issuance of two separate letters. The first notification letter for de-registration must be given by postal mail by the South African Post Office who has the sole right to process registered mail in South Africa before the second letter is issued. However, postal issues created a bottleneck, and such first notifications could not be served on all the companies as South African Post Office was able to serve only about 126 000 companies and close corporations. This anomaly was identified at the expiration of the contractual period for the service and hence a new tender required to be issued before the deregistration process could be completed. Hence, the CIPC was unable to continue the procedure and de-register any of these companies. Therefore, despite being inactive, these companies continue to retain their legal personality.

80. Contrary to CIPC that keeps track of companies even after they have ceased to exist, SARS regularly removes from its register the companies that ceased to exist. As a transition measure, it keeps them as "inactive" when SARS is not yet satisfied that the companies have no outstanding tax debts, never traded or hold/held no assets. The number of inactive companies registered with SARS is 1 086 777. Of these, as at 30 June 2019, 850 695 were deregistered by CIPC but still on SARS' register. There were also 724 430 other companies classified as "inactive" as they were considered dormant by SARS. South African authorities have informed that the number of inactive or dormant companies on the SARS register is currently being verified as part of a "cleaning up" of the register

and is not currently available. Even if a company is indicated as “inactive” or “deregistered” by CIPC, SARS still needs to ensure it is dormant.

81. Annual tax return filing rate with SARS is low at about 38% (see paragraph 177) and largely driven by non-compliance by corporates. This suggests a significant number of potentially inactive companies. In addition, concerns as indicated in paragraph 63 remain as the supervision by the CIPC is on a very limited scale and enforcement measures have hardly been applied as they are procedurally complex. It takes a long time to deregister companies which have not been filing their annual returns. This allows such companies to continue retaining their legal personality until they are deregistered. The existence of a significant number of inactive companies poses challenges to the availability of accurate and up-to-date legal ownership information in all cases. Such inactive companies might not be carrying out any operations in South Africa, but present risks of potential activities outside of South Africa (like being used for holding investments or assets). The efforts to clean up the register have not been adequate. Further, deregistered companies can be reinstated at any time in the future. Although they are required to correct all past defaults of annual return filing, there is no oversight in this regard by any authority. **South Africa is recommended to effectively implement adequate oversight and enforcement measures to ensure the availability of legal ownership information for all companies.**

Availability of beneficial ownership information

82. The standard was strengthened in 2016 to require that beneficial ownership information on companies be available. In South Africa, this aspect of the standard is covered only through the Financial Intelligence Centre (FIC) Act.

Companies covered by legislation regulating beneficial ownership information

Type	Company Law	Tax Law	AML Law
Private company	None	None	Some
Personal liability company	None	None	Some
Public company	None	None	Some
State owned company	None	None	Some
Foreign companies (tax resident) [15]	None	None	All

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

Anti-Money laundering Law requirements

83. The AML framework in South Africa is legislated in the Financial Intelligence Act (FIC Act). Certain identified accountable institutions as defined in Schedule 1 of the Act are AML obliged and covered by the AML obligations. Accountable institutions include banks, long term insurance businesses, attorney/legal practitioners/notaries, boards of executors or trust companies or any other person that invests, keeps in safe custody, controls or administers trust property, estate agents, insurers, authorised users of an exchange, managers of collective investment schemes, persons dealing in foreign exchange and financial service providers (FSPs).[16] These AML-obliged persons are required to carry out CDD prior to establishing customer relationships. As part of the CDD obligations, they are required to ascertain the beneficial owner(s) of their customers where such customers are legal entities or legal arrangements.

84. Section 1 of the FIC Act defines "beneficial owner" in respect of a legal person to mean "a natural person who, independently or together with another person, directly or indirectly owns the legal person or exercises effective control over the legal person". In the context of CDD, this definition of beneficial owner is further elaborated under section 21B(2) (inserted in the FIC Act from October 2017) which describes the process of identification of beneficial owners when a client is a legal person. Section 21B(2) of the FIC Act requires an AML-obliged person to identify the following as beneficial owners of a legal person (like a company):

> (i) determine the identity of each natural person who, independently or together with another person, has a controlling ownership interest in the legal person
>
> (ii) if in doubt whether a natural person contemplated in subparagraph (i) is the beneficial owner of the legal person or no natural person has a controlling ownership interest in the legal person, determine the identity of each natural person who exercises control of that legal person through other means or
>
> (iii) if a natural person is not identified as contemplated in subparagraph (ii), determining the identity of each natural person who exercises control over the management of the legal person,

16. A Financial Service Provider is a person who carries on the business of a financial services provider requiring authorisation in terms of the Financial Advisory and Intermediary Services Act, 2002, to provide advice and intermediary services in respect of the investment of any financial product (but excluding a short term insurance contract or policy referred to in the Short-term Insurance Act, 1998 and a health service benefit provided by a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998.

including in his or her capacity as executive officer, nonexecutive director, independent nonexecutive director, director or manager.

85. In addition to section 21B(2) of the FIC Act, Chapter 2 (paragraph 103) of the FIC Guidance Note 7 provides for the "process of elimination" which accountable institutions must follow to determine who the beneficial owners of a legal person is, in line with the three-step cascade approach:

- The process starts with determining the natural person(s) who, independently or together with another person, have a controlling ownership interest in the legal person. The percentage of shareholding with voting rights is a good indicator of control over a legal person as a shareholder with a significant percentage of shareholding, in most cases, exercises control. In this context, ownership of 25% or more of the shares with voting rights in a legal person is usually sufficient to exercise control of the legal person.
- If the ownership interests do not indicate a beneficial owner, or if there is doubt as to whether the person with the controlling ownership interest is the beneficial owner, the accountable institution must establish who the natural person is who exercises control of the legal person through other means, for example, persons exercising control through voting rights attaching to different classes of shares or through shareholders agreements.
- If no natural person can be identified who exercises control through other means, the accountable institution must determine who the natural person is who exercises control over the management of the legal person, including in the capacity of an executive officer, non-executive director, independent non-executive director, director or manager.

86. A combined reading of the provisions of section 21B(2) and the FIC Guidance Note 7 indicates that the definition of beneficial owners in respect of companies is in line with the standard and provides suitable guidance on the process of identification of beneficial owners.

87. The FIC Guidance Note 7 issued by South Africa on the risk-based compliance by accountable institutions permits them to have provisions for simplified CDD, normal CDD and enhanced CDD. All of them require identification for beneficial owners of legal entities like companies and legal arrangements like partnerships and trusts. The FIC Guidance Note 7 explains that where the money laundering and terrorist financing risks are higher, enhanced measures must be taken to mitigate those risks, and where the risks are lower, simplified measures may be applied.

88. The FIC Guidance Note 7 clarifies that simplified CDD requires that the usual CDD measures be applied but the degree, frequency and/or the intensity of the controls conducted may be relatively lighter. In all cases, the accountable institution must verify the identity (name and first name, date of birth, address, TIN, ground for identification as beneficial owner, etc.) of the beneficial owner(s) of the client so that the AML-obliged person is satisfied that it knows who the beneficial owner(s) is. According to Paragraph 83 of the FIC Guidance Note 7, the verification of the client's identity entails that the accountable institution corroborates the person's identity information by comparing this information with information contained in documents or electronic data issued or created by reliable and independent third-party sources.

89. The FIC Act provides for the necessary CDD obligations that all accountable institutions must apply while dealing with their customers under section 21 of the FIC Act. Accountable institutions must not establish a business relationship or conclude any transaction with an anonymous client or a client with a false or fictitious name. Suitable identification documents must be collected and retained by the accountable institutions all through the existence of the business relationship with their customers. (Refer to the discussion under A.3 for further details on CDD). The South African authorities further informed that an accountable institution may make use of information obtained by another accountable institution and passed on to it in the process of introduction when it carries out its own CDD process in respect of the customer, but it must apply its own mind and determine the adequacy and reliability of the information to meet its CDD obligations in accordance with its own risk-profile of the customer. Thus, the responsibility of carrying out adequate CDD on its customers remains with the AML-obliged person who establishes the customer relationship.

90. Accountable institutions are required to ensure that all CDD documents are kept up to date and conduct ongoing due diligence under section 21C of the FIC Act, although there is no specified frequency for updating CDD. The FIC Guidance Note 7 provides guidance under paragraph 129 to the effect that the intensity and frequency of ongoing due diligence in respect of a given business relationship must be determined on the basis of the accountable institution's understanding of Money Laundering and Terrorist Financing risks associated with that relationship. An accountable institution must include, in its Risk Management and Compliance Programme, the manner in which and the processes it will have in place to conduct ongoing due diligence and account monitoring of business relationships. There is no specified periodicity for updating CDD on customers by accountable institutions in the FIC Act, but the South African authorities inform that in practice it is specified in RMCPs as it is implied in an ongoing monitoring process. This could lead to situations where the available beneficial ownership information is not up to date.

91. In practice, banks are the main accountable institutions that are somewhat more supervised and have a better understanding of CDD obligations. Besides major banks, the understanding across different types of accountable institutions could not be well-ascertained. Larger banks' Risk Management and Compliance Programmes typically specify that due diligence on customers must be carried out at least once in five years for low-risk customers, once in three years for medium risk customers, and once every year for high-risk customers. While this seems to be the usual practice for the larger banks, it is not necessarily the same across the board and for all AML-obliged persons as such frequency is not specified under the legal and regulatory framework. Considering that the AML law is the only source of beneficial ownership information in South Africa, in the absence of a specified frequency for updating beneficial ownership information, there could be situations where the available beneficial ownership information might not be up to date, especially when such information is maintained by an accountable institution other than banks.

92. The FIC Act provides for a record retention period of five years after the termination of the business relationship. Hence, beneficial ownership information on a customer as collected by accountable institutions should be available for at least five years after the business relationship comes to an end with such a customer. This would mean that where a business relationship is terminated because the company ceases to exist, beneficial ownership information on such a company would be available with the accountable institution for at least five years. The same obligation extends to instances where an accountable institution terminates business in South Africa (See also paragraph 189). This would be in line with the standard.

93. There is no requirement in South Africa that all companies must always engage an AML-obliged person. The Companies Act does not provide for any specific requirement for ensuring the availability of beneficial ownership information. The South African authorities informed that given the overlap between the AML law, the tax law and the commercial law, the incidence of a registered and trading company not engaging an AML-obliged person is very low. The authorities also inform that they are in the process of extending the scope of AML-obliged persons by means of proposed amendments to Schedule 1 to the FIC Act. The authorities further inform that SARS always requires and seeks to obtain the banking details of a company whether provided voluntarily by the company during registration or in a return or obtained by SARS via its access to banking records. While the income tax return does have a column requesting for banking information, this is not a legal compulsion. In addition to this, the Tax Administration Act also does not make it mandatory for companies to always have a bank account. It is likely that companies would have a bank account to carry on economic activities in South Africa. Nonetheless, there are a significant

number of inactive companies as discussed above. There could be situations that in the absence of ongoing engagement with an AML-obliged person, beneficial ownership information is not available in line with the standard. In addition, as noted in paragraph 91 above, in the absence of a specified frequency of updating beneficial ownership information, even where an AML-obliged person is engaged, there could be situations that the information is not up to date unless such person's risk compliance programme requires such updating on at least some regular interval. Therefore, **South Africa is recommended to ensure that up-to-date beneficial ownership information on all companies in line with the standard is available at all times.**

Enforcement and oversight provisions

94. Section 45(1) of the FIC Act provides for the supervision of accountable institutions in respect to the obligations to obtain, verify and hold identity and ownership information of customers that are legal persons. Schedule 2 of the FIC Act lists the relevant supervisory bodies. South African authorities have indicated that in practice supervisory bodies have enforced the risk-based approach for both supervision and planning from 2019. A transitional period was given to allow accountable institutions to reassess all clients to transform from the rules based (full scope inspections) to the risk-based approach. The rules-based approach took six to eight weeks and involved inspections carried out on all supervised institutions on the practical implementation of the provisions of the law including CDD, record keeping, reporting, governance and training, amongst others. In the risk-based approach, inspections involve between two to five inspectors from one to two weeks covering various practical implementation of the provisions of the law identified as high risk. Further, accountable institutions are also required to have internal risk-assessment on their customers and carry out due diligence on them accordingly.

95. The Financial Sector Regulation (FSR) Act spells out two authorities: the Prudential Authority in the South African Reserve Bank and the Financial Sector Conduct Authority (FSCA) that monitor compliance by financial institutions with the FIC Act.

96. The Prudential Authority is responsible for the prudential supervision of banks (commercial, mutual and co-operative) and insurers to ensure they are complying with their obligations to identify and verify beneficial ownership information. The Prudential Authority applies a risk-based approach to supervision and conducts formal money laundering and terrorist financing (ML/TF) risk assessments of the banking and life insurance sectors every two years. The Prudential Authority 's AML/CFT risk framework requires it to update banks and life insurers ML/FT risk profiles continuously

to keep track of significant developments that occur in-between on-site inspection cycles. The risk score should reflect the current risk profile of a bank or life insurer and at a minimum, be updated annually.

97. The Prudential Authority enforces section 21 of the FIC Act, the Money Laundering and Terrorist Financing Control Regulations (Chapter 1) and the FIC Guidance Note 7 (95-05) which require the identification of beneficial ownership information in respect of banks and long-term insurers. In 2021, the Prudential Authority has focused on enhancing its risk-based approach as well as the AML/CFT inspections as provided for under section 45B of the FIC Act. In practice, the Prudential Authority determines the risk status of the supervised entities (banks, financial institutions) through a risk assessment involving various sources of data. The data sources include:

- specific returns covering various parameters, which the entities complete and the information is analysed
- screening of entities that are part of the banking sector
- data obtained during inspections
- monitor the negative news around the banks supervised
- continuous monitoring of entities through offsite supervision.

98. The South African authorities indicated that the offsite supervision team is recently established and the recruitment process was still going on at the time of the onsite visit (May 2022). Going forward, an automated risk-based tool is to be used to ascertain the risk rating.

99. During the period under review, 18 inspections of banks and insurers have been conducted. Throughout the COVID-19 pandemic, supervision continued through interactions in virtual meetings. The authorities informed that a supervisory manual is in place to guide on the approach to supervision including how to deal with different types of entities depending on the level of risk (high, medium and low). Two kinds of inspections routine or non-routine inspections are undertaken and a report with remedial actions is generated. The remedial action will usually take about three months for easy actions while more complex actions may take longer. The general deficiencies noted in the files verified during inspections undertaken included instances where the entity was able to identify the client, but the verification of documents was missing, legal entities were identified but directors might be missing, persons authorised to deal on behalf of the entity were identified but mandate documents providing the relevant powers were not updated. In some cases, the physical address of entities was not verified nor the source of wealth. It was also highlighted that difficulties have been encountered during the verification of identity information especially when the natural persons are outside South Africa. Such corroboration requires more effort

and resources which may create challenges in verification of beneficial ownership information.

100. An independent committee, the Prudential Authority Regulatory Action Committee advises the CEO of the Prudential Authority on administrative sanctions. The Prudential Authority has previously imposed administrative sanctions on accountable institutions for failure to obtain client information including beneficial parties linked to corporate clients.

101. The beneficial information requirement has been clarified in the recent amendment of the FIC Act (2017). Previously, the enforceable requirement was limited to shareholder information. During the current review period, the Prudential Authority imposed administrative sanctions on 12 accountable institutions (banks and life insurers) totalling close to R73 million (EUR 4 million). The sanctions related to CDD breaches in terms of the FIC Act.

102. The FSCA is responsible for conducting supervision of authorised users of securities exchanges, managers of collective investment schemes (CIS) and financial service providers (FSPs). In the past, the FSCA conducted general inspections of FSPs and CIS managers covering AML/CFT among many other aspects and recently since 2017, the FSCA started conducting stand-alone AML/CFT inspections. The FSCA undertook 378 inspections during the period under review and established that there were no material findings related to record keeping. In addition, the FSCA issued four sanctions specifically for contraventions related to identifying, verifying the identity and conducting enhanced CDD against accountable institutions. All four of these sanctions were financial penalties.

103. The FIC is authorised to supervise and enforce compliance of the FIC Act or any directive made in terms of the Act, when a category of accountable institutions, reporting institutions or other persons who have obligations under the Act are not regulated or supervised by a supervisory body (section 4(g) of FIC Act).

104. An accountable institution that fails to obtain and verify the relevant information about a legal person that is its customer, or to maintain that information in its records is non-compliant with the FIC Act and liable to an administrative sanction which can be one or more of the following:

- a caution not to repeat the conduct
- a reprimand
- a directive to take remedial action or to make specific arrangements
- the restriction or suspension of certain specified business activities and

- a financial penalty not exceeding ZAR 10 million (EUR 543 478) in respect of natural persons and ZAR 50 million (EUR 2.7 million) of every instance of non-compliance in respect of legal persons.

(FIC Act section 46A read with section 45C(3)).

105. Interactions with the South African authorities illustrate that monitoring and enforcement of the AML obligations has been examined to an extent only by the Prudential Authority and FSCA, however their scope of supervised entities is limited. The FIC has only just started putting in place some supervisory mechanism for the other AML obliged persons. Sufficient supervision will be key in ensuring the accuracy of the information held by AML-obliged persons and, in the absence of adequate monitoring, the accuracy of information for beneficial ownership is a concern. **South Africa should put in place a comprehensive and effective supervision and enforcement programme to ensure the availability of adequate, accurate and up-to-date beneficial ownership information for all legal entities and legal arrangements.**

Nominees

106. Nominee shareholders are provided for under the Companies Act. Section 56(5) of the Act requires companies to obtain beneficial interest information[17] and maintain a register of the identity of each person with a beneficial interest in the securities held by that person. Section 56(5), which regulates the disclosure of nominee shareholding, includes all companies regulated by the Companies Act. Additionally, section 56(3) and (4) provides that if a security of a public company is registered in the name of a person who is not the holder of beneficial interest, the nominee must disclose to the company, the identity of the person on whose behalf that security is held, the number and class of securities held and the extent of such beneficial interest. This requirement is in line with the standard that requires that when a legal owner acts on behalf of any other person as a nominee or under a similar arrangement, the identity of that other person be available.

17. Section 1 of the Act defines beneficial interest, when used in relation to a company's securities, to mean the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person to (a) receive or participate in any distribution in respect of the company's securities; (b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or (c) dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities, but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Scheme Act 2002.

107. In addition, the FIC Act requires service providers to verify the identity of their clients and determine whether a client is acting on behalf of another person, and also verify the identity of that other person (section 21). This includes financial institutions and lawyers as the service providers covered under Schedule 1 of the FIC Act who are obliged to know who they are acting for and keep this information as required under sections 22 and 23 of the FIC Act during the role as nominee shareholders. South African authorities are not able to confirm how frequently nominees are used.

108. The above provisions under the Companies Act and the FIC Act are sufficient to maintain full information on the persons on whose behalf interest in the company is held.

Availability of legal and beneficial ownership information in EOIR practice

109. South Africa received 87 requests for ownership information during the review period. Of these, 47 requests concerned legal ownership information while 40 requests concerned beneficial ownership information. South Africa has been able to exchange legal and beneficial ownership information when requested by the treaty partners in all cases. Peers have reported satisfaction with the information received.

A.1.2. Bearer shares

110. Bearer shares are not allowed in South Africa, and Regulation 15 of the Exchange Control Regulations issued under section 9 of the Currency and Exchanges Act prohibits the issue, acquisition or disposal of, payment of dividends relating to, or other dealings in bearer securities.

111. Before the current Companies Act took effect on 1 May 2011, it was possible to issue share warrants to bearer and the 2013 Report made an in-text recommendation for South Africa to take measures to ensure that appropriate mechanisms are in place to identify the owners of any remaining ones.

112. South Africa addressed the issue of share warrants to bearer through publishing a Public Notice under section 26 of the TA Act in the Government Gazette on 14 June 2013. The notice required all companies that had issued share warrants to bearer in terms of section 36 of the Companies Act, 1926, or section 101 of the Companies Act, 1973, to submit a return[18] in respect thereof on or before 31 July 2013.

18. Details required in the return included; Company (TIN, company registration number; registered name and trading name); directors' details; company physical address

113. South Africa has informed that, to date, no return on any remaining share warrants to bearer have been submitted and the South African authorities concluded that such instruments no longer exist in South Africa. The South African authorities have also informed that they believe there are no bearer share warrants in practice. At the onsite, the South African authorities reaffirmed the position that if any bearer shares were to exist, these would be very low in number.

114. While CIPC does not make any systematic checks to establish if any share warrants to bearer exists, SARS has indicated that during tax audits, it had never come across a share warrant to bearer while examining the ownership structure of the corporate entities. Similarly, representatives from two banks informed that they do checks but had never come across a share warrant to bearer and further indicated that in a case where they are unable to identify the beneficial owners, they would not be able to proceed with the customer relationship or transaction.

115. The 2013 report indicated that as at 2011, the public companies that could have been able to issue share warrants to bearers were very few. However, except for issuing the Public Notice in 2013, there have not been any other proactive follow-up measures taken by South Africa to establish that there are no bearer share warrants in existence in South Africa. The issue is that there was no specific legislation abolishing existing bearer shares. The change in the legal position in respect of bearer share warrants has arisen from the move to a new Companies Law and there are no specific provisions in the new law that deal with existing bearer share warrants that might have been issued under the earlier law. Thus, although in the current review period, the risk posed by residual share warrants to bearer in South Africa remains minimal and no partner raised any issue in this regard, South Africa should monitor the situation with respect to share warrants to bearer to ensure that owners of any remaining share warrants to bearer may be identified (see Annex 1).

A.1.3. Partnerships

116. The 2013 Report concluded that while South Africa's legal and regulatory framework was in place to ensure the availability of identity information for partnerships, it was comprehensively available only after 2011-12. South African authorities indicate that partnerships are not very common. Partnerships register their businesses in the local and provincial government

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and postal address; tax practitioner details (if applicable); share warrants to bearer details (date when share warrants were issued; number of share warrants still in issue; issue consideration per share warrant; last dividend pay date; amount of dividends per share warrant) and declaration that information is true and correct.

where they conduct their businesses. As a result, the number of partnerships is not readily available given the local and provincial governments do not keep aggregate information by legal entity or arrangement but by type of business licence.

117. The 2013 report noted that where one of the partners was a trust, information on the name(s) of partner(s) was only available after an automatic, system-generated query by the tax authorities. In light of this, South Africa was recommended to monitor the availability of ownership information on partnerships, in particular where one or more of the partners is a trust.

Types of partnerships

118. South Africa has no specific law governing partnerships. In South Africa, a partnership is not a separate legal person and is based on an agreement among the individual partners who comprise the partnership. The essentials of a partnership, as accepted by South African courts and under common law, include: each of the partners, who bring or bind themselves to bring something into the partnership (money, labour or skill); the business must be carried on to make a profit for the joint benefit of the partners; and the contract between the parties must be a lawful contract. Hence, as long as a partnership satisfies these elements, it is permitted to carry on business in South Africa.

119. There are broadly two types of partnerships in South Africa – general partnerships also called ordinary partnerships, and limited partnerships also called extraordinary partnerships.

120. In a general/ordinary partnership, all partners have the ability to actively manage or control the business. Every partner has authority to make decisions about how to run the business and the authority to make legally binding decisions. In addition, they do not have any limit on their personal responsibility for the debts of the business. Limited/extraordinary partnerships have at least one partner responsible for running the day-to-day management of the business and having the authority to make legally binding business decisions. Limited partnerships are often preferred, with an agreement made giving some partners limited liability in that they bear limited responsibility for the debts of the partnership.

121. Limited partnerships can be of two sorts under South Africa's statutory law and common law (Roman-Dutch law): the "anonymous" (silent) partnership and the "partnership *en commandite*". An anonymous (silent) partnership is created where parties agree to share the profits of a business where the business is carried on by one or more partners in their names, along with other partners whose names are not disclosed to the outside world (anonymous partners). Anonymous partners still share the risk of the

undertaking with their co-partners and are liable to them for their *pro rata* share of partnership losses. Under the partnership *en commandite*, business is carried on in the name of one or some of the partners, along with the undisclosed partner who is called a partner *en commandite*. The latter contribute a fixed sum of money on condition that they receive a certain share of the profits, if any. In the event of loss, they are liable to their co-partners to the extent of the fixed amount of their agreed capital contribution only.

122. Where a partnership is set up in another jurisdiction, it is recognised in South Africa as a "foreign partnership" as long as it is not liable for or subject to tax in that country. This implies that the foreign partnership is treated as an ordinary partnership for South African tax purposes and that South African partners are liable to tax in South Africa on their proportionate share of the foreign partnership's income. If a foreign partnership is liable to tax in the foreign jurisdiction (because it is considered a company), it is not recognised as a taxable entity in South Africa. The definition of a "foreign partnership" in section 1 of the ITA expressly excludes a company. If South African residents are partners in a foreign LLP, the partnership income flows through to them and they are liable to tax on that income in South Africa as its beneficiaries.

Identity information

123. The availability of identity information on partnerships in South Africa is somewhat diffused and is available through a combination of sources. Partnerships including foreign partnerships register their businesses in the local and provincial government where they conduct their businesses. The South African authorities indicate that if the business is conducted through a partnership, the information to be furnished for obtaining a business licence often includes full details of each of the partners in a partnership, guided by the provincial licensing rules under section 2(1) of the Businesses Act, 1991.

124. Identity information on partners of partnerships is also available through the requirements under the tax acts including the Income Tax Act, the VAT Act and the Employees' tax schedule to the Income Tax Act. For income tax purposes, the income of a partnership is taxed in the hands of the partners (whether a natural person, company or trust) at the time it accrues to the partnership as provided for under section 24 H(5) of the ITA. A partnership is not required to submit an income tax return, but each partner must submit a return as provided for under section 66 of the ITA and section 25 of the TA Act. In the tax return, partners are required to declare their income from the partnership of which they are partners. Further, a partnership must register as a separate taxpayer with SARS and submit VAT returns if it is a VAT vendor. Similarly, a partnership must also register with SARS if it is an employer liable for employees' tax. The return requirements

for VAT and employees' tax oblige a partnership to the record keeping requirements under section 29 of the TA Act, including keeping ownership information such as the partnership name and the partners. South African authorities inform that disclosure of partners and the partnerships' information in the partners' returns at tax registration and submission of annual tax returns ensures that SARS will have a full record of partners based on such registration and return information.

125. The registration of the partners of partnerships under the ITA, requires each partner to among others, provide particulars of partners in Form IT77 including: nature of business; financial year end; trading name; country of trade; contact details, telephone, fax, email and web addresses; physical and postal address details; details of representative taxpayer; particulars of partners; bank account details, including declaration of South African bank account; in case of a non-resident vendor, the South African account of a designated third party; Reason if no local or third party bank account; Bank account holder details; Financial particulars, including value of taxable supplies; Tax practitioner details. As discussed in paragraph 124, it is from this information submitted at registration and filing tax returns, that the names of partnerships are recorded in SARS registers. This information enables SARS to monitor the ownership information of partnerships which are registered for VAT or as an employer.

126. All partnership records relevant to income tax, employees' tax and VAT provided during registration and in returns by the partners or the partnership, including all supporting documents for the returns in the records of the partner or partnership, should be kept by them for at least five years from submitting a tax return as provided for under section 29 of the TA Act.

127. When partnerships cease to exist, the partners are required to continue to hold the responsibility for the 5-year period for which the records must be kept after submission of the last return. This is catered for under section 29 of the TA Act, failure to comply with which may lead to sanctions as indicated under paragraph 175 (same sanctions as those that apply for failure to maintain accounting records apply).

128. It is evident that the identity information on partners of a partnership is somewhat dispersed and relies on multiple sources and obligations under different laws. South African authorities are confident that identity information on partnerships would always be available through this combination of legal requirements. During the on-site, South African authorities further explained that in line with SARS's risk-based selection process, specific drives into risky sectors are taken annually. Partnerships have been analysed from a risk perspective in the past as part of their annual compliance programme. The tax risks related to partnerships were assessed to be low. The South African authorities also mention that partnerships were not a

preferred way of doing business in South Africa due to their unlimited liability nature. In any case, the South African authorities indicate that it would always be possible to identify the partners of a partnership by considering the various sources of information available arising from tax obligations under the various tax laws.

Beneficial ownership

129. The FIC Act provides the only basis for the availability of beneficial ownership information on partnerships. The definition of beneficial owner in the FIC Act applies only in respect of legal persons like companies. The term "legal persons" explicitly excludes partnerships from its ambit. However, section 21B(3) of the FIC Act provides for specific measures of identification of natural persons in the context of partnerships formed under a partnership agreement between natural persons.

130. Section 21B(3) of the FIC Act specifically provides that in respect of partnerships, for CDD purposes, if a natural person, in entering into a single transaction or establishing a business relationship is acting on behalf of a partnership between natural persons, an accountable institution must verify its identity and in accordance with its Risk Management and Compliance Programme must:

a. establish the identifying name of the partnership, if applicable
b. establish the identity of every partner, including every member of a partnership *en commandite*, an anonymous partnership or any similar partnership
c. establish the identity of the person who exercises executive control over the partnership
d. establish the identity of each natural person who purports to be authorised to enter into a single transaction or establish a business relationship with the accountable institution on behalf of the partnership
e. take reasonable steps to verify the particulars obtained in paragraph (a) and
f. take reasonable steps to verify the identities of the natural persons referred to in paragraphs (b) to (d) so that the accountable institution is satisfied that it knows the identities of the natural persons concerned.

131. These steps for carrying out CDD on partnerships under the FIC Act apply to partnerships between natural persons. The FIC Act does not explicitly provide for similar identification measures in respect of where partners may not be natural persons. In addition to the provisions of the FIC Act, the

FIC has also issued the binding FIC Guidance Note 7 that must be complied with by all AML-obliged persons. Chapter 2 of the FIC Guidance Note 7 (paragraph 107) explains that the concept of beneficial owner in the context of a partnership encompasses all partners in the partnership. The Guidance requires that every partner in a partnership must be identified. This certainly helps in identifying the partners of a partnership. However, in situations where partners of a partnership are legal entities or other legal arrangements, the application of the guidance would lead to correct identification of partners of the partnership, but it is not established whether the natural persons behind such partners would be identified as beneficial owners. South African authorities have emphasised that where a legal person is a partner of a partnership, beneficial owners would be identified by looking through such a legal person. However, this is not evident from the existing legal framework. Hence, **South Africa is recommended to ensure that beneficial ownership information for all partnerships is available even where partners are legal entities or legal arrangements**.

132. As noted earlier, the provisions of the FIC Act are the only source of beneficial ownership information in South Africa. Hence, the above provisions would apply only where a partnership engages with an AML-obliged person. Bank account information is usually submitted at registration. This includes a declaration on the South African bank account of the partnership or a third party, with details on the account holder, and if none is available, the reason thereof. Although South Africa has submitted that most partnerships have a bank account, it is not a legal requirement to always engage with an AML obliged person. Hence, there could be situations where beneficial ownership information may not be available. **South Africa is recommended to ensure that beneficial ownership information on all partnerships is always available**.

Oversight and enforcement

133. The enforcement provisions of partnerships for beneficial ownership information are similar to those discussed under companies and are referred to in A.1.1. The only authority with oversight over the availability of identity information on partnerships is SARS. However, as discussed under element A.1.1, tax return filing rates and corresponding audits are low. A risk assessment on partnerships was undertaken in 2012 and no further enforcement or oversight activities have been reported. As such, **the recommendation under A.1.1 to develop supervisory programmes and apply effective sanctions in cases of non-compliance to ensure the availability of adequate, accurate and up-to-date identity and beneficial ownership information in line with the standard also applies to partnerships.**

Availability of partnership information in EOIR practice

134. There have been no requests during the period under review, concerning partnerships in South Africa and no peers indicated anything adverse in this regard. South African authorities expressed confidence that should there be a request on identity information or beneficial ownership information on partnerships, they would be able to answer such requests.

A.1.4. Trusts

135. The 2013 Report concluded that South Africa's legal and regulatory framework was in place to ensure the availability of identity information for trusts, and this remains the case.

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

136. Section 4 of the Trust Property Control Act (TPC Act) requires that South African trust instruments (trust deed)[19] be registered with the Master of the High Court (Registrar of Trusts under the TPC Act) also called the Master. Upon registration, the Trust Deed is lodged with the Master, which contains the details of the founder/settlor, the beneficiaries and the initial trustees. Section 5 requires that trustees provide their notification address to the Master and also inform the Master, should it change at any stage. In terms of section 7, the Master appoints all trustees. Any amendments to trustees have to be reported to the Master for amendment of the Letter of Authority by the Master before it is valid. Section 20 prescribes the removal process of trustees by the court or the Master. Section 10 of the TPC Act prescribes that whenever a trustee receives any money on behalf of the trust, the trustee must deposit such money in a separate trust account. South African authorities informed that all trust instruments (trust deeds) and amendments to trust instruments must be registered with the Master in accordance with section 4(1) and 4(2) of the TPC Act. However, a trust must also be registered with SARS and is required to submit annual tax returns to SARS.[20]

137. Section 8 of the TPC Act provides that trustees of foreign trusts who have to administer trust property in South Africa are subject to that Act. Section 8 further provides that when a person appointed as a trustee has to administer or dispose of trust property in South Africa is based outside South

19. Note: The TPC does not view a trust as a "person" thus reference is made in section 4 to registration of a trust instrument (trust deed).
20. https://www.sars.gov.za/lsec-tadm-pn-2020-01-notice-741-gg-43495-notice-to-submit-returns-2020-3-july-2020/.

Africa, the provisions of the TPC Act will apply to such trustee in respect of such trust property. Accordingly, a trust that is formed outside of South Africa, or that is formed by persons who are not South African residents, is nonetheless regulated by the TPC Act if the trust property is located in South Africa. South African authorities inform that it is not possible to provide the number of trusts registered since the inception of the Master of the High Court, however since 2008 an average of 15 700 trusts are registered per year, with a steady decline over these years (from 19 900 in 2008 to 11 500 in 2019). In addition, a record of total number of trustees is not kept. South African authorities inform that the Master is an office of record for trusts and therefore cannot destroy the trust documents lodged with the Master. In case the trust be terminated, the documents will still be kept by the Master.

138. A trust formed or effectively managed in South Africa is considered as a tax resident under section 1 of the ITA and must be registered with SARS. Registration is provided for under section 22 of the TA Act, section 67 of the ITA and section 23 of the VAT Act, which require information on particulars of members, trustees, beneficiaries, partners and directors. In addition, a trust is required to submit a return for income tax purposes under section 25 of the TA Act, section 28 of the VAT Act and section 66 of the IT Act whether it earns any taxable income or not. A copy of the trust deed containing the name of the founder must also be submitted with the return. The annual tax return requires information on any changes in the trust deed, the beneficiaries and the trustees. Under tax law, if a foreign trust is effectively managed by a trustee(s) in South Africa, such trusts will have to be registered as taxpayers in South Africa. They will effectively be regarded as resident trusts for as long as they are managed in South Africa. Furthermore, the individual tax return of a trustee, founder or trust beneficiary, also requires tax information regarding their foreign investments and structures, such as offshore trusts and partnerships.

139. In respect of beneficial ownership information on trusts, the CDD requirements under the FIC Act provide for the availability of such information. The definition of beneficial ownership as provided for in the FIC Act applies only to legal persons like companies and does not apply to trusts. However, in respect of CDD requirements, section 21B(4) of the FIC Act requires that if a natural person, in entering into a single transaction or establishing a business relationship with an accountable institution, is acting in pursuance of the provisions of a trust agreement between natural persons, the accountable institution must verify its identity and in accordance with its Risk Management and Compliance Programme:

a. establish the identifying name and number of the trust, if applicable

b. establish the address of the Master of the High Court where the trust is registered, if applicable

c. establish the identity of the founder[21]

d. establish the identity of each trustee and each natural person who purports to be authorised to enter into a single transaction or establish a business relationship with the accountable institution on behalf of the trust

e. establish the identity of each beneficiary referred to by name in the trust deed or other founding instrument in terms of which the trust is created; or if beneficiaries are not referred to by name in the trust deed or other founding instrument in terms of which the trust is created, the particulars of how the beneficiaries of the trust are determined

f. take reasonable steps to verify the particulars obtained in paragraphs (a), (b) and (e) and

g. take reasonable steps to verify the identities of the natural persons referred to in paragraphs (c), (d) and (e) so that the accountable institution is satisfied that it knows the identities of the natural persons concerned.

140. These steps for carrying out CDD in respect of trusts apply only to situations where the trust agreements are between natural persons. The FIC Act does not consider situations where the trust agreement may be among other legal entities or arrangements. In such situations, it is not ascertained if the process of identification of beneficial ownership of trust arrangements would also ensure identification of beneficial owners in line with the standard. Section 21B(4) does not refer to such situations. Chapter 2 of the FIC Guidance Note 7 does note that the concept of beneficial owner in the context of a trust encompasses all natural persons who may benefit from a trust arrangement or may control decisions in relation to the management of trust property or are otherwise associated with the trust. The FIC Guidance Note 7 refers to section 21B(4) of the FIC Act and mentions the same identification steps as noted above. A combined reading of the relevant provisions of the FIC Act and the FIC Guidance Note 7 does not give certainty that the beneficial ownership in respect of trusts formed under trust agreements between legal entities or arrangements would also be suitably recorded just as for trusts set up under trust agreements between natural persons. South African authorities have emphasised that, in practice, the beneficial owners would be identified by looking through the participating legal entity or arrangement. However, there is lack of clarity on whether the existing legal provisions cover situations where a trust agreement is

21. Under South African trust law a protector is the same as a founder or settlor, which terms are used in the TPC Act and FIC Act. The parties to the trust agreement are the founder/settlor, the trustee(s) and the beneficiary(ies).

between non-natural persons (or other legal entities or arrangements). Hence, South Africa is recommended **to ensure that beneficial ownership information for all trusts is available even where the trusts are set up under a trust agreement among legal entities or legal arrangements**. Further, neither the TPC Act, FIC Act nor the FIC Guidance Note 7 ensures that the definition of beneficial ownership for trusts covers any natural person(s) exercising ultimate effective control over the trust (not being settlor/founder/protector/trustee/beneficiary). This is not in line with Terms of Reference A.1.4. Therefore, **South Africa is recommended to ensure that the beneficial ownership definition of trusts (domestic or foreign) should include any natural person(s) exercising ultimate effective control over the trust.**

141. South Africa has submitted that trusts would almost always engage an AML-obliged person on an ongoing basis. In the case of a trust, section 10 of the Trust Property Control Act requires a trustee to deposit any money received in his/her capacity as a trustee in a bank account. Section 11(1)(b) of the TPC Act requires a trustee to register immovable trust property in such a manner that it is clear from the registration that it is trust property – this can only be done through an attorney who is an AML obliged person and generally involves an estate agent who is an AML obliged person. In order to do this, the trustee would have to make use of the services of a conveyancer, who would be an accountable institution and who would have to comply with the FIC Act requirements vis-à-vis the trust. The only situation where an AML-obliged person in South Africa may not be engaged could be where a South African resident is a trustee of a foreign trust and the trust property is not held in South Africa. Hence, South Africa is recommended **to ensure that beneficial ownership information is available for all such trusts where a South African resident is a trustee of a foreign trust and the trust property is not held in South Africa.**

Implementation in practice, oversight and enforcement

142. Sections 19 and 20 of the TPC Act provides for sanctions should a trustee fail to perform the duties as set out in the Act and Trust Deed. In this case, the Master or any other interested party may apply to Court for an order directing the trustee to comply with such request or to perform such duty or an order to have him/her removed as trustee. The court may also order a punitive cost order against the trustee in respect of both applications. Further, the enforcement provisions for trusts for beneficial ownership information are similar to those discussed under companies and are referred to in A.1.1.

143. Through a memorandum of understanding, the Master is able to provide information to SARS on the name of the trust, the trust number, the

name of the trustees but this does not include beneficial ownership information as beneficial ownership information is not currently maintained by the Master. However, there are proposals to amend the TPC Act to ensure beneficial ownership information is available.

144. While the role of the Master in regard to trusts is regulatory, supervisory and administrative in nature, this role is currently focused on receiving information submitted to the Master and no supervision or oversight has been undertaken in practice. As a result, during the review period, there have been no audits or dissuasive sanctions for trusts hence the availability of beneficial ownership information for trusts remains a concern. As such, **the recommendation under A.1.1 to develop supervisory programmes and apply effective sanctions in cases of non-compliance to ensure the availability of adequate, accurate and up-to-date identity and beneficial ownership information in line with the standard also applies to trusts.**

Availability of trust information in EOIR practice

145. During the review period, South Africa received one request pertaining to domestic trusts. South Africa was able to provide the information requested and no issues were raised by peers in obtaining such information in practice.

A.1.5. Foundations

146. The South African legal and regulatory framework does not provide for the establishment of foundations (see 2013 Report, para 100).

Other relevant entities and arrangements – Co-operative societies

147. The Co-operatives Act, 2005 (CoA) provides the legal framework to facilitate the establishment of co-operative societies in South Africa and governs all aspects of their existence and winding up. Section 6 of the CoA requires that co-operative societies register with the Registrar of Co-operatives. All co-operative societies are issued a certificate of registration. Co-operative societies acquire legal personality upon registration. Co-operative societies must maintain a registered office in South Africa and must notify the CIPC (which is the official registrar for co-operative societies) of this office and any related changes in line with section 20 of the CoA. Section 6(2)(b) of the CoA requires that a list of the founding members be submitted to the CIPC upon registration. As at April 2021 there were 172 672 Co-operatives registered in South Africa.

148. Three types of co-operative societies may be formed in South Africa under the CoA – primary, secondary and tertiary. According to section 1 of the CoA, Primary co-operative society means a co-operative whose object is to provide employment or services to its members and to facilitate community development, and is formed by a minimum of (a) five natural persons; (b) two juristic persons (defined to mean a legal person – such as a company – and a trust established within or outside South Africa) or (c) a combination of any five persons, whether natural or juristic. Secondary co-operative societies comprise two or more primary co-operative societies engaged in similar activities. Tertiary co-operative societies comprise two or more secondary societies collaborating for promoting interests of their members to government bodies, the private sector or other stakeholders.

149. Section 21 requires that a co-operative society keep records at its office, which include the following:

- the constitution of a co-operative and its rules, if any, including any amendments
- a list of its members
- a register of its directors setting out the name, address and identity number of each director, including former directors, the date on which such directors became or ceased to be directors
- adequate accounting records, including records reflecting the transactions between each member and the co-operative for the purpose of calculating the patronage proportion.

150. Section 21(2) provides that a co-operative must retain its accounting records for a period of five years after the end of the financial year to which they relate or such longer period as may be prescribed by the Minister by notice in the Gazette. An audit of the affairs of a co-operative, including the updating thereof, must be conducted annually in respect of each financial year (section 47(1) of the Act).

151. Any co-operative society or a responsible officer (e.g. a director) failing to keep a list of its members is liable to a fine or to imprisonment for a period not exceeding 24 months, or both (Section 92(3) CoA).

152. For tax purposes, co-operative societies are treated the same as companies, meaning that they are subject to tax on their worldwide income and therefore must register with the tax authorities (section 66(1) ITA read with section 25 TA Act). South Africa has indicated that the tax authorities are informed on a daily basis by the CIPC about new registrations and upon registration of a new co-operative society, a tax identification number is immediately issued. Sections 14 and 15 of the Companies Act obliges the co-operative society to include a Memorandum of incorporation setting

out its incorporators (which includes members of a co-operative society), which must be filed with CIPC and this is then included in the information on new registrations reported daily to SARS. The rules described above regarding the tax law obligations for companies (see A.1.1) apply equally to co-operative societies including retention of records during the life of the co-operative, and after its termination.

153. The FIC Act provides the basis for the availability of beneficial ownership information on co-operatives. In terms of section 8(1) of the CoA, a registered co-operative is incorporated as a legal person from the date of registration. As discussed in A.1.1, the definition of beneficial owners of a legal person is a natural person who, independently or together with another person, directly or indirectly owns the legal person or exercises effective control over the legal person, which includes co-operatives. For legal persons, section 21B(2) of the FIC Act provides for a three-step cascade approach as described in paragraphs 84 and 85. Thus, for the identification of beneficial owner of co-operatives, the AML-obliged persons must first identify the natural person exercising control through ownership interest, or through other means. If no such natural person is identified, then a senior managerial natural person must be identified. In the context of co-operatives, the threshold of 25% of shareholding to determine controlling ownership interest as suggested in the context of companies in the FIC Guidance Note 7, does not apply. South African authorities have informed that the FIC Guidance Note 7 uses the 25% threshold as an example in the context of companies. In the case of other legal persons like co-operatives, South African authorities inform that “controlling ownership interest” would involve the identification of all natural persons having direct or indirect ownership. The definition of beneficial ownership in respect of co-operatives is in line with the standard.

154. Like in the case of other legal entities and arrangements, the availability of beneficial ownership information on co-operatives would depend upon their on-going engagement with an AML obliged person, as the FIC Act is the only source of beneficial ownership information in South Africa, paragraphs 40 and 41. **Thus, the recommendation made in this regard applies in respect of co-operatives as well.** As indicated in paragraph 152, co-operatives are treated in the same way as companies for tax purposes. Thus, the oversight and enforcement measures to ensure the availability of identity information as discussed under A.1.1 relate to co-operatives too. As such, **the recommendation under A.1.1 to develop supervisory programmes and apply effective sanctions in cases of non-compliance to ensure the availability of adequate, accurate and up-to-date identity and beneficial ownership information in line with the standard also applies to co-operatives.**

A.2. Accounting records

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

155. The 2013 Report concluded that the legal and regulatory framework on the availability of accounting records and underlying documentation was in place in respect of all relevant legal entities and arrangements and South Africa was rated compliant. As noted in the 2013 Report, the provisions of the tax law primarily ensure availability of accounting records with underlying documentation by all relevant entities and arrangements, in addition to respective laws for specific entities and arrangements that also provide for such requirements. Supervision of accounting record keeping obligations is mainly the responsibility of the CIPC and the Tax Authority – SARS. The legal provisions with respect to oversight and enforcement measures are satisfactory but can be improved. While accounting records in line with the standard would continue to be somewhat available in general, there is a concern that accounting records with underlying documentation of all companies that redomicile out of South Africa to a foreign jurisdiction without losing their legal personality, may not always be available after they have been deregistered in the absence of specific legal provisions in this regard. Accordingly, South Africa is recommended to ensure the availability of accounting records in respect of such companies in line with the standard. In addition, limited filing of annual returns with the CIPC and the tax returns with SARS as well as the significant number of inactive companies whose accounting records may not be available, suggest that supervision and enforcement is an area of improvement.

156. During the review period, South Africa received 147 requests for accounting information. No issues were reported by South Africa or its peers in obtaining such information in practice.

157. The conclusions are as follows:

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

Deficiencies/Underlying factor	Recommendations
South Africa allows companies incorporated in South Africa to redomicile to another jurisdiction without losing their legal personality. Such companies are struck-off from the Companies Register and technically cease to exist in South Africa. In respect of such companies, only accounting information submitted with the Registrar by way of annual returns would be available. However, financial statements are required to be filed only by public companies and certain other companies meeting criteria pertaining to turnover, workforce and nature of activities. Further, it is unclear if underlying documentation would be available in respect of such companies. Thus, it is not ascertained if accounting information in line with the standard would be available for all companies that redomicile out of South Africa for a period of five years after doing so.	South Africa should ensure that accounting information in line with the standard is available to South Africa for a period of five years for all relevant companies, including companies that redomicile out of South Africa.

Practical Implementation of the Standard: Largely Compliant

Deficiencies identified/Underlying factor	Recommendations
There is scope for improvement in supervision for availability of reliable accounting records for all relevant legal entities and arrangements in South Africa. Only about 45% of active companies were filing their accounting records to the Companies Register in the review period. In addition, accounting and tax supervision should be strengthened, especially considering that the annual tax return filing over the years is at about 38%. Further, the significant number of inactive companies raises concerns that accounting records information would be available in all cases.	South Africa is recommended to enhance the supervision in respect of compliance with the legal and regulatory requirements for maintaining accounting information by all relevant entities and arrangements.

A.2.1. General requirements

158. In South Africa, the requirement to keep accounting records and their underlying documentation in line with the Standard for companies is ensured by a combination of obligations set in the company law and tax law requirements. In respect of other relevant entities and arrangements, the tax law requirements are the primary source of obligations in respect of

accounting records although in respect of trusts and co-operative societies, specific laws do provide for accounting record keeping requirements. Below is the analysis of the various legal regimes.

Company Law

159. The Companies Act under section 28 places an obligation on all companies to keep accurate and complete accounting records at the registered office of the company. In addition, section 30(1) of the Companies Act requires every company to prepare annual financial statements within six months after the end of its financial year. The accounting records are important in the preparation of the company's financial statements and hence must be comprehensive, correct and kept in the manner and form so prescribed. Public companies, state-owned companies and other profit companies with the Public Interest Score[22] above 350 (Company Regulation 26(2)) are required to undertake an audit on their financial statements. In addition, Company Regulation 28 lists instances where a company will be required to undertake an audit. These in addition to public companies and state owned companies, include any company that falls within any of the following categories in any particular financial year: (a) any profit or non-profit company if, in the ordinary course of its primary activities, it holds assets in a fiduciary capacity for persons who are not related to the company, and the aggregate value of such assets held at any time during the financial year exceeds ZAR 5 million (EUR 308 642); (b) any non-profit company, if it was incorporated; (i) directly or indirectly by the state; or (ii) primarily to perform a delegated public, statutory or regulatory function in terms of any legislation; or (c) any other company whose public interest score in that financial year is 350 or more; or (ii) is at least 100, if its annual financial statements for that year were internally compiled. An auditor of a company is an external person. Section 90(2) of the CIPC prescribes an auditor's criteria, including: he/she must not be an employee or consultant of the company, not be a director or prescribed officer and also not to be a person related to an accountant, bookkeeper or a person who performs secretarial work for the company.

160. The required accounting records include purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements. The accounting record keeping requirement relates to both domestic and foreign/external companies owned by residents and those owned by non-residents.

22. Public Interest Score is described under Regulation 26(2) of the Companies Act. It is a measure of how interested general public is in a company by way of shareholding or impact of the activities of the company. Every company must calculate its "public interest score" at the end of each financial year.

Tax Law

161. The TA Act places an obligation on all relevant entities and arrangements that have registered for tax purposes to file tax returns under section 25 of the Act. Hence, whether the relevant entity or arrangement is liable or not to tax, it is covered by the requirements of the TA Act to adequately maintain accounting records. Specifically, section 28(1) of the TA Act, requires that where financial statements support a return filed, the preparer may be required to submit a certificate or statement disclosing the details of the audit from which the books of account were written up. It also requires disclosure of the true nature of the transactions, receipts, accruals, payments, or debits.

162. All relevant accounting records should be kept for at least five years from filing a tax return as provided for under section 29(3) of the TA Act. This period does not apply if no return was submitted, i.e. accounting records for tax compliance purposes may not lawfully be destroyed until after five years from the date a return, if any, is eventually filed.

Companies that ceased to exist and retention period

163. In respect of public companies and those that are required by Company Regulation to get their accounts audited, accounting records in the form of annual financial statements and Financial Accountability Supplements are filed to CIPC annually as provided by section 33 of the Companies Act. The financial statements must adhere with the international financial reporting standards and include accounting records. They present the state of affairs of the entity and show companies assets, liabilities, equity, income (section 29 of the Companies Act) and expenses and any other prescribed information like the directors' report and directors remuneration (sections 30(3) and 30(4) of the Act). Such records will remain at the registry for an indefinite period. The South African authorities have informed that deregistration does not affect information held at the CIPC. Further, in all cases companies are obliged to keep these records for a period of seven years after they were issued in line with section 24(3)(c)(ii) and (iii) of the Companies Act while section 83(2) places the responsibility of keeping the records on the directors. The same applies to accounting records for liquidated, dissolved or stricken off companies. Hence the responsibility of keeping the records and underlying documentation is on the directors and the liability of former directors, shareholders or of any person in respect of any act or duty prior to deregistration is not affected (section 83(2) and (3) of the Companies Act). In addition, pursuant to section 25 of the Act, company records must be kept and be accessible at or from the company's registered office or another location, or other locations, within South Africa. Further, as noted in paragraph 64, the Public Officer registered with SARS would

be expected to ensure the availability of accounting records of the company where it has ceased to exist.

164. Section 82(5) requires a company seeking redomiciliation out of South Africa to apply to the CIPC for the necessary permissions and ensure that the company has satisfied the prescribed requirements for doing so. As mentioned in para 78 in A.1, all information on companies that redomicile out of South Africa, which was submitted to the CIPC, would be available. Since annual returns with financial statements have to be filed with the CIPC by all public companies and those companies that are required to get their accounts audited, accounting information to an extent would be available for such companies even after they redomicile out of South Africa. The standard requires the jurisdiction to maintain the last available records just before "ceasing to exist" to be maintained for a further five year period. Once the company has relocated to another jurisdiction, the latest records for all subsequent periods are expected to be available in the country of relocation and not in South Africa. However, it is unclear if the past underlying documentation for such companies would be available, given there is no explicit legal provision requiring maintenance of accounting records in South Africa. During the onsite visit, the South African authorities confirmed that in the instance that a company has redomiciled out of South Africa, in practice there would not be anyone in South Africa holding the past documentation. Further, not all companies are expected to file their financial statements with CIPC. This means that all accounting records with underlying documentation of all redomiciled companies may not be available for a period of five years after they redomicile out of South Africa. **South Africa should ensure that accounting information in line with the standard is available to South Africa for a period of five years for all relevant companies, including companies that redomicile out of South Africa.**

Partnerships and trusts

165. As noted under section A.1, in South Africa, partnerships are not regarded as legal entities. Tax law obligations apply to the partners in their individual capacity and partnerships are neither required to file returns or to pay taxes. Each partner is required to file a return separately as well as maintain and retain records, books of account or documents of the partnership as required under section 29 of the TA Act. Where a partnership ceases to exist, the requirements of the TA Act continue to apply to the partners and they are responsible for maintaining the accounting records of the partnership for a period of five years under section 29(3) of the TA Act.

166. In addition to the accounting record keeping requirements of the TA Act, FIC Act also provides for some requirements that support the overall availability of accounting records. The FIC Act requires accountable

institutions to keep a record of every transaction with a client, which is reasonably necessary to enable the transaction to be readily reconstructed, for at least five years from the date from which the transaction was concluded (sections 22A and 23). This would be an additional source of some accounting information where the partnerships are engaged with an AML-obliged person.

167. In respect of trusts, besides the provisions of the TA Act where trusts have taxable income or hold assets in South Africa, the 2013 Report noted that South Africa's legal framework requires all trustees to keep true accounts of the trust, and to provide these to the beneficiaries and this situation remains unchanged. If the partner or trust wishes to carry forward a loss, the return must indicate that such loss qualifies as a loss under section 20 of the ITA and may be regarded as an "assessed loss" (for which an assessment is issued). The accounting records in support of returns must be kept for the prescribed period of five years which commences on the date of the last return – this does not apply if no return was submitted (i.e. such records may not lawfully be destroyed after five years). Where a trust ceases to exist, the requirements of the TA Act continue to apply and the trustees are responsible for maintaining the required accounting records for a period of five years under section 29(3) of the TA Act. Under section 16 of the TPC Act the trustee of a trust, having South African trust property is accountable to the Master of the High Court for the administration and disposal of trust property. As such, the Master may require a trustee at the written request of the Master to satisfactorily account to the Master's requirements, deliver any book, record, account or document relating to the administration or disposal of the trust property. This requires the trustee to keep all relevant accounting records, including underlying documentation, regarding the trust.

168. Failure of a trustee to comply with these requirements may result under section 19 of the TPC Act in a court order compelling the trustee to comply or order under section 20 of the TPC Act for the removal of the trustee from office. All trustees are responsible for keeping accounts and can be held to account under section 20 of the TPC Act if this is not done.

169. In addition, all trustees resident in South Africa and acting by way of business are subject to the obligations imposed by the AML/CFT legislation. This means that the trustee must keep records in respect of every transaction it is involved in (section 22(1) FICA).

170. Section 21(2) CoA provides that a co-operative must retain its accounting records for a period of five years after the end of the financial year to which they relate, in the case of a co-operative whose main object involves its members conducting transactions with it; and for a period of three years after the end of the financial year to which they relate for all other transactions. In addition to adequate accounting records, records

reflecting the transactions between each member and the co-operative for calculating the patronage proportion must be kept. The taxation of co-operatives is largely similar to that of companies, with a five-year retention period of the documents including retention of records during the life of the co-operative, and after its termination.

171. Under section 47(1), an audit of the affairs of a co-operative must be conducted annually in respect of each financial year. Any director or employee of a co-operative who fails to disclose information or provide access to the records of the co-operative to the inspector is guilty of an offence and on conviction liable to a fine not exceeding one million rand.

A.2.2. Underlying documentation

172. Section 28 of the Companies Act and Company Regulation 25 spell out the requirements in respect of a company's accounting records and do not differentiate between the different types of companies. Accounting records include purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements (section 1 "accounting records"). These requirements apply in addition to, and not in substitution for any applicable requirements in terms of any other law. Applicable rules as per the Company Regulations 25 (2) to (7) include:

- The company's register of non-current assets must show, for each asset or, in the case of a group of relatively minor assets, for each such group of assets, the date and cost of acquisition, the date and amount of any revaluation of it and, if it was revalued after the Act took effect on 1 May 2011, the basis of and reason for it, its date of disposal and the consideration received for it and, if it was disposed of after the Act took effect, the name of the person to whom it was transferred.
- The company must maintain a register of loans and a register of guarantees by the company to any shareholder, director, prescribed officer or employee of the company or to a person related to any of them. This register must show, in respect of each loan or guarantee, its amount, interest rate and repayment terms; material details of any breach, default or re-negotiation of a loan; and the circumstances in which the company will have to honour the guarantee.
- The company must maintain, as part of its record of revenue and expenditures, daily records of all money received and paid out showing the nature of the transactions and, in the case of non-cash transactions, the names of the parties to them. Similar information must be maintained regarding goods or services purchased or received and sold or rendered on credit. The company must also

maintain statements of every account maintained in a financial institution as well as supporting documentation.

- A company trading in goods must maintain a record of its trading stock.

173. The requirements under the TPC Act, the Cooperatives Act and the TA Act, as discussed in the 2013 Report (see paras 124 to 128), and under A.2.1 above further supplement the compliance with the standard to ensure the availability of all relevant underlying documents. Specifically, section 16 of the TPC Act, requires the trustee at the written request of the Master, to deliver any book, record, account or document relating to the administration or disposal of the trust property, obligating the trustee to keep all relevant accounting records, including underlying documentation, regarding the trust. Section 28 of the TA Act allows SARS to require the preparer of a return to submit a certificate or statement disclosing the extent of the audit from which the books of account were written up, and whether, as far as may be ascertained, the true nature of the transactions, receipts, accruals, payments, or debits have been disclosed. Section 21(1)(g) of the CoA requires a co-operative to keep at its registered office within South Africa, adequate accounting records. The accounting records must reflect the transactions between each member and the co-operative for the purpose of calculating the patronage proportion. Section 21(2) requires every co-operative to retain its accounting records and financial statements for a period of five years after the end of the financial year to which they relate or such longer period as may be prescribed by the Minister of Trade and Industry.

174. The retention period of such records is also consistent with the standard under section 24(3)(c)(iii) of the Companies Act with all records retained for the current financial year and for the previous seven completed financial years, otherwise a period of at least five years applies.

Oversight and enforcement of requirements to maintain accounting records

175. Section 29 of the TA Act requires companies to retain records, books of account, or documents that enable them to observe the requirements of a tax Act and ensure records are retained for at least five years from filing a return. Failure of which may lead to:

- administrative penalties of up to ZAR 16 000 (EUR 988) per month (which escalates by the same amount for every month that the non-compliance is not remedied) (section 210))
- understatement penalties of up to 200% of the resulting shortfall in tax liability in the case of non-submission of a return or submission of an incomplete or inaccurate return (section 222)

- criminal prosecution which upon conviction, is subject to a fine or imprisonment for a period not exceeding two years (section 234).

176. The Companies Act requires that financial statements prepared by a company must not be false or misleading in any material respect or incomplete in any material particular (section 29(2)). It is an offence to be party to the preparation, approval, dissemination or publication of any financial statements or summaries thereof knowing that they fail in a material way to comply with the requirements or that they are materially false and misleading (sections 28(4) and 214(1)(a) of the Companies Act) and attracts a penalty. Specifically, under section 216(a) of the Companies Act, the penalty for falsifying accounting records is a fine not exceeding ZAR 1 000 000 (EUR 54 348) or imprisonment for a period not exceeding 10 years, or both. Failure to keep accounting records incurs a fine under section 216(b) of the Companies Act determined by the Magistrate or Judge, or imprisonment for a period not exceeding 12 months, or both. Similarly, the CIPC may issue a Compliance notice in respect of a failure to keep accounting records under section 24(3)(c)(iii) of the Companies Act, which requires accounting records to be retained for the current financial year and for the previous seven completed financial years of the company.

177. In terms of actual supervision, SARS oversight is the primary source of supervision and enforcement as CIPC carries out very limited supervisory oversight in respect of accounting obligations. The authorities indicated that in practice, SARS has a risk-based system for the monitoring of tax returns. Filed tax returns are checked for inconsistencies and irregularities, which trigger further follow-up verifications typically involving requesting further information from the taxpayer such as transaction and accounting records. In addition, on a quarterly basis, SARS reports “on-time filing compliance” to the Minister of Finance. The average annual tax return filing over the years as indicated in the table below is at about 38%.

Financial year	Total number of companies with returns required	Total filing (%)	Outstanding returns (%)
2019	2 250 039	47.2%	52.8%
2020	2 540 476	38.8%	61.2%
2021	2 681 424	29.3%	70.7%

178. SARS implements a risk-based audit selection process and undertakes various types of tax audits, including compliance audits (verification), limited scope audits and full scope audits. During these audits, accounting information is among the aspects checked. Annual audits are conducted for about 1.4% of the taxpayers registered. SARS has an established tax audit programme and experienced tax officials.

179. All companies are required under the Companies Act to file annual returns with the Registrar under section 33. At filing of the return, a copy of the annual financial statements must also be included. As at March 2022, out of 1 900 552 active companies required to file annual returns, 827 790 companies (i.e. 45%) complied with their filing requirements. The South African authorities have explained that this is because a large number of registered companies are inactive and the CIPC has not been able to deregister them, and they continue to remain in the Companies Register and the tax database (see paragraph 79). The filing is detailed in the table below.

	Total annual returns filed	Total annual returns due	Compliance rate (%)
March 2019	669 170	1 522 491	44%
March 2020	680 083	1 522 491	45%
March 2021	765 481	1 664 788	46%
March 2022	827 790	1 900 552	44%
Total (Average)			**44.75%**

180. The table above indicates that the compliance rate with annual return filing obligations has been around 45% for active companies reflected in the CIPC database. The annual income tax return filing rate with SARS is at an average of 38%. Both rates are fairly low and suggest a high level of non-compliance with legal requirements. SARS has indicated that during the review period, penalties for non-filing were issued in respect of about 14% of the non-filers on average across the three years. About 2% of the non-filers complied and submitted annual tax returns. Nevertheless, there is a concern if reliable accounting information would be available in respect of all relevant entities and arrangements. Although SARS has an established tax audit programme with experienced tax officials, there is need to increase enforcement to ensure compliance with tax return filing for all eligible taxpayers as tax law obligations are a key source of ensuring the availability of accounting information. **South Africa is recommended to enhance the supervision in respect of compliance with the legal and regulatory requirements for maintaining accounting information by all relevant entities and arrangements.**

Availability of accounting information in EOIR practice

181. South Africa received 147 requests for accounting information during the review period and South Africa was able to provide accounting information in all cases. No issues were raised by peers in obtaining such information in practice.

A.3. Banking information

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

182. The 2013 Report concluded that banks' record keeping requirements and their implementation in practice in South Africa were adequate and banking information in line with the standard would be available.

183. Since the 2013 Report, the standard was strengthened in 2016 with an additional requirement of ensuring the availability of beneficial ownership information on all account holders. South Africa amended its FIC Act governing the AML obligations of banks with effect from 2 October 2017, to require the banks to obtain and maintain beneficial ownership information on all account holders. In respect of partnerships and trusts, as discussed in A.1, the CDD procedures prescribed to identify beneficial owners do not seem to apply in situations where non-natural persons are partners of partnership agreements or trust agreements. This could lead to situations where all beneficial owners are not suitably identified. Further, there is no specified frequency for updating beneficial ownership information on existing customers under the legal and regulatory framework, which could lead to situations where available beneficial ownership information may not be up to date. South Africa is recommended to take suitable actions to address these gaps in its legal framework.

184. During the review period, South Africa received 78 requests related to banking information and no issues were raised by peers in obtaining such information in practice.

185. The table of recommendations is as follows:

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

Deficiencies/Underlying factor	Recommendations
The anti-money laundering legislation provides for special guidance on identification of beneficial ownership information on partnerships and trusts. However, the guidance applies only to those partnerships that have natural persons as partners and trusts formed on the basis of trust agreements among natural persons. This could prevent adequate identification of beneficial owners where partners of a partnership or persons in a trust agreement are other legal persons or legal arrangements.	South Africa should ensure that the legal and regulatory framework for the identification of beneficial owners of partnerships and trusts is suitably applicable to situations where legal entities and legal arrangements are partners of a partnership; or are the settlor, trustees or beneficiaries of a trust.

Deficiencies/Underlying factor	Recommendations
There is no specified frequency for updating beneficial ownership information; hence, there could be situations where the available beneficial ownership information is not up to date.	South Africa should ensure that up-to-date beneficial ownership information on all bank accounts in line with the standard is available at all times.

Practical Implementation of the Standard: Largely Compliant

No issues have been identified in the implementation of the existing legal framework on the availability of banking information in South Africa. However, once the recommendations on the legal framework are addressed, South Africa should ensure that they are applied and enforced in practice.

A.3.1. Record-keeping requirements

Availability of banking information

186. The 2013 Report concluded that in South Africa, banks' record keeping requirements and their implementation in practice were in line with the standard. There has been no change in the relevant rules or practices concerning record keeping since then.

187. Banks are subject to the accounting requirements, as explained under section A.2. In addition, under the FIC Act, all banks are subject to new AML obligations with effect from 2 October 2017. The obligations require the banks to institute and verify the identity of their clients when establishing a business relationship or when concluding a single transaction, and to keep records thereof (sections 21 and 22 FIC Act). Hence, identity documents to fulfil CDD requirements in respect of the customer are obtained, verified and maintained. CDD for already existing bank accounts is provided for under section 21(2) of the FIC Act. It prohibits an accountable institution that had established a business relationship with a client before the 2017 amendment Act (Act 1 of 2017) took effect, to conclude a transaction in the course of that business relationship, unless the accountable institution has taken the prescribed new CDD steps. These include tracing all accounts at that accountable institution that are involved in transactions concluded in the course of that business relationship. Further CDD provisions then apply to a business relationship as contemplated in section 21.

188. The recordkeeping obligations under the FIC Act extend also to transactional recordkeeping. As per sections 22 and 22A the following records must be maintained:

- any document or copy of a document obtained by the banks in order to verify a person's identity in terms of section 21 of the FIC Act

- the nature of the business relationship or transaction
- the source of funds expected to be used in concluding transactions in the course of the business relationship
- a record of every transaction, whether the transaction is a single transaction or concluded in the course of a business relationship, that are reasonably necessary to enable that transaction to be readily reconstructed. This would include the identifying particulars of all accounts and the account files at the bank that are related to the transaction, the amount involved and the parties to that transaction.

189. The bank must maintain the records for a period of at least five years after termination of the business relationship or the single transaction (section 23 FIC Act), failure of which may lead to administrative sanctions (section 45C of FIC Act). The South African authorities informed that when the bank or its South African branch closes, the bank will engage and inform the Prudential Authority within the South African Reserve Bank about the location of the records for five years. Alternatively, the records could be held via a storage facility in South Africa and depending on the bank, the South African Reserve Bank or another bank taking on the old customers may also assist in keeping the records.

190. In addition to the requirements under the AML law, banks are subject to section 75(6), read with section 7, of the Banks Act, which requires them to furnish the Prudential Authority with information the Authority may require to determine compliance with the minimum capital and reserve funds in respect of banking group requirements. South Africa has indicated that implicitly, this section compels banks to ensure that they maintain their records because a person who fails to provide information that the Prudential Authority may require in terms of section 7 of the Banks Act, is guilty of a criminal offence determined by a court of law. Regulation 50 of the Banks Act Regulations of 2012 contains rules, which require a bank to implement, among other things, robust structures, policies, processes and procedures adequate to ensure compliance with all applicable laws; identify customers; maintain internal records of transactions; and provide a clear audit trail.

Beneficial ownership information on account holders

191. The standard was strengthened in 2016 to specifically require that beneficial ownership information be available in respect of all account holders who have accounts with banks in a jurisdiction.

192. As discussed under section A.1, the FIC Act requires that beneficial ownership information is obtained and maintained by all accountable institutions in respect of all their customers. Banks are therefore required

to ensure that beneficial ownership information on all their customers is obtained and verified by following prescribed CDD measures. The FIC Act requires South African banks to keep records pertaining to the accounts that they manage, including identity, legal and beneficial ownership, as well as related financial and transactional information on all their customers.

Definition of beneficial ownership

193. The definition of beneficial owner as provided for under the FIC Act has been discussed under section A.1 (paragraphs 39, 131, 139). As noted earlier, the definition of beneficial owner in respect of legal persons is in line with the standard. In the case of partnerships and trusts, the anti-money laundering legislation provides for special guidance on identification of their beneficial owners. However, the guidance applies only to those partnerships that have natural persons as partners and trusts formed on the basis of trust agreements. This could prevent adequate identification of beneficial owners where partners of a partnership or persons in a trust agreement are other legal persons or legal arrangements. **South Africa should ensure that the legal and regulatory framework for the identification of beneficial owners of partnerships and trusts is suitably applicable to situations where legal entities and legal arrangements are partners of a partnership; or are the settlor, trustees or beneficiaries of a trust.**

CDD requirements

194. Section 21(1) of the FIC Act calls for identification of clients and other persons and requires banks to:

- establish and verify the identity of the client and
- in case the client is acting on behalf of another person (i.e. a nominee), they establish and verify the identity of that other person and the client's authority exercised on behalf of that other person and
- Where another person is acting on behalf of the client (i.e. a representative), they establish and verify the identity of that other person and the other person's authority to act on behalf of the client.

195. In respect to understanding and obtaining information on business relationships, section 21A requires that when a bank engages with a prospective client to establish a business relationship, the bank must, in addition to the steps required under section 21 and in accordance with its Risk Management and Compliance Programme (RMCP),[23] obtain information to

23. Banks must develop documents, maintain and implement a programme for anti-money laundering and counter-terrorist financing risk management and compliance

reasonably enable the accountable institution to determine whether future transactions that will be performed in the course of the business relationship concerned are consistent with the bank's knowledge of that prospective client, including information describing:

- the nature of the business relationship concerned
- the intended purpose of the business relationship concerned and
- the source of the funds, which that prospective client expects to use in concluding transactions in the course of the business relationship concerned.

196. These due diligence measures are expected to be carried out on an ongoing basis and range from collecting and keeping basic identity information about clients, with more in depth information required.

197. The FIC Act places the CDD obligations directly on banks and requires them to set out in their Risk Management and Compliance Programmes to show how they meet their CDD obligations (FIC Act sections 21 and 42(2)(d)). Therefore, a bank remains responsible for compliance with its CDD obligations in terms of the FIC Act, regardless of its internal arrangements relating to how those obligations are met.

198. The FIC Guidance Note 7 permits banks to carry out their own risk assessments and permits the application of simplified CDD in low-risk cases while calls for enhanced CDD in high-risk cases (refer to paragraph 87). In all cases, beneficial owners must be identified.

199. Banks and other accountable institutions are permitted to rely on information gathered by third parties when they conduct their CDD, provided that the processes in this regard are duly documented in their RMCPs and approved by their board of directors. Banks are accountable for all AML/CFT compliance obligations associated with their clients. Hence, even if they utilise companies to assist them, e.g. with delivery of credit cards, the ultimate obligation and accountability lies with the bank. In the event that a bank is inspected and the CDD compliance measures and controls are found to be inadequate, the bank will remain liable for this non-compliance and will not be able to transfer this non-compliance to the third party. South Africa has informed that the sanctions have been applied for insufficient update of CDD (see paragraph 101).

200. While banks are expected to keep the CDD on their customers up to date, they are expected to do so based on their own internal risk compliance programmes. During onsite interactions with bank officials from major banks of South Africa, it was ascertained that there was a fair understanding

(section 42 of FIC Act).

and application of the AML framework in respect to beneficial ownership information. In practice, banks undertake CDD, and do not proceed with the customer relationship where they are unable to identify the beneficial owners. It was also noted that usually, banks' internal Risk Management and Compliance Programmes would specify that CDD be updated at least once in five years for low-risk customers, once in three years for medium risk customers and once annually for high-risk customers. While updating CDD on high-risk customers is almost always done at least once annually, for other types of customers it could vary across banks. However, there is no specified frequency for updating beneficial ownership information under the legal and regulatory framework in order to ensure that such information is at least updated periodically in all cases. **South Africa should ensure that up-to-date beneficial ownership information on all bank accounts in line with the standard is available at all times.**

Oversight and enforcement

201. Section 45 of the FIC Act establishes that every supervisory body is responsible for supervising and enforcing compliance with the FIC Act or any order, determination or directive made in terms of the FIC Act by all accountable institutions regulated or supervised by it. Therefore, the South African Reserve Bank, FSCA and the Johannesburg Stock Exchange (JSE) are mandated to undertake supervision and enforcement for any non-compliance.

202. Sections 46A and 45C(3) of the FIC Act provide for failure to furnish information to the Prudential Authority as required under the Banks Act is an offence, which attracts a fine or imprisonment of between 5 to 10 years, or both (section 91). Further, an accountable institution that fails to comply with its CDD obligations and record keeping obligations relating to banking information is non-compliant with the FIC Act and liable to an administrative sanction under sections 45, 46 and 47. The Prudential Authority may also impose administrative penalties on co-operative banks for failures under the Co-operatives Banks Act (section 49).

203. Since April 2022, the Prudential Authority's inspection unit consists of 27 staff members dedicated solely to AML/CFT onsite and offsite supervision. Onsite inspections are conducted in accordance with risk based approach principles and includes the review of customer relationships for compliance with CDD requirements. Scrutiny of sampled customer relationships include whether beneficial owners have been duly identified and verified where required. The instances where shortcomings were identified related to banks' policies and procedures, a lack of beneficial ownership information held by an accountable institution e.g. inadequate or no beneficial ownership information on file or inappropriate processes followed by the accountable institution to identify a beneficial owner. Since 2012, in excess

of 70 onsite inspections ranging between 2 to 8 weeks per single inspection have been undertaken while these totalled to 18 inspections during the review period (See paragraph 99). The Prudential Authority has imposed various financial penalties to the value of ZAR 307.49 million (EUR 19 million) between 2014 and 2021 for non-compliance with the FIC Act. Financial penalties were imposed to 24 banks and 4 life insurers. In the review period, these related to 12 accountable institutions (banks and life insurers) totalling close to R73 million (EUR 4 million) (See paragraph 101). The frequency of on-site inspections seems adequate.

204. In regard to tax records, the failure to retain requisite records for requisite periods is a criminal offence under section 234 of the TA Act, subject to a fine or imprisonment of up to two years.

Availability of banking information in EOIR practice

205. Availability of banking information in South Africa was also confirmed in EOI practice. During the review period, South Africa received 78 requests related to banking information. While banking information was provided in all cases, in a few cases, delays were encountered by South Africa's EOI partners. The South African authorities clarified that these requests typically related to old banking records over long periods of time which required to be gathered manually, especially around the time South Africa went into a national lockdown due to the COVID-19 pandemic. Despite the delays, South Africa has been able to exchange the banking information requested by the treaty partners.

Part B: Access to information

206. 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).

207. The 2013 Report concluded that the Competent Authority in South Africa has broad access powers to obtain all types of relevant information including ownership, accounting and banking information from any person in order to comply with obligations under South Africa's EOI instruments. These access powers can be used regardless of domestic tax interest and also in cases where information is requested for criminal tax purposes.

208. In case of failure on the part of the information holder to provide the requested information, the Competent Authority has adequate powers to compel the production of information. Finally, secrecy provisions contained in South Africa's law are compatible with effective exchange of information.

209. The legal framework in respect of the access powers of the Competent Authority continues as before.

210. The South Africa competent authority indicates that in the current review period, South Africa received 154 requests for information (ownership, accounting and banking), and access powers were successfully exercised by the Competent Authority in responding to the requests.

211. The conclusions are as follows:

Legal and Regulatory Framework: in place

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

Practical Implementation of the Standard: Compliant

No issues in the implementation of access powers have been identified that would affect EOIR in practice.

B.1.1. Ownership, identity and banking information

Accessing information generally

212. The Competent Authority is part of SARS and relies on the broad access powers of SARS to obtain all types of relevant information including ownership, accounting and banking information from any person within South Africa pursuant to a valid EOI request. The 2013 Report concluded that appropriate access powers are in place for EOI purposes. There has been no change in the relevant rules since then.

213. SARS' access powers for exchange of information purposes derive from the TA Act. SARS' statutory powers apply irrespective from whom information is to be obtained or the nature of the information sought.

214. The most commonly used information-gathering power for EOI purposes is the power to request relevant material under section 46 of the TA Act. Section 46 of the TA Act gives the Commissioner or any officer of SARS, for the purposes of the administration of the TA Act in relation to any taxpayer, power to require a taxpayer or any other person to furnish such information, documents or things as the Commissioner or such officer may require. This power relates to all types of information, including ownership, identity, accounting and banking information and applies to all entities and arrangements in South Africa.

215. Furthermore, SARS has access under section 46 of the TA Act to information held by any public authority despite any confidentiality or secrecy provisions under the laws administered by such authorities. In addition to the TA Act provision, legislation was effected to permit access by SARS to information subject to statutory confidentiality under other laws, including the FIC's records (section 40 FIC Act); POCA records[24] (section 73

24. Records shared with SARS by FIC in the context of the implementation of POC Act. Such records would relate to investigations undertaken as well as information and records maintained by FIC in relation to the implementation of POCA.

POCA); and South African Reserve Bank (and Prudential Authority) records. CIPC, FSCA and Master of the High Courts' records are not subject to statutory confidentiality in relation with SARS.

216. The TA Act provides some other mechanisms for information gathering as and when information concerning a taxpayer is required. These include the ability to –

- conduct unannounced inspections at business premises to verify that a person has complied with formal obligations such as registering for tax and maintaining records (section 45)
- select a person for inspections, verifications, or audits on a random or risk-assessment basis (section 40)
- conduct field audits at the premises of the taxpayer or any other premises where relevant material of the taxpayer is kept. During such field audits, any person at such premises is required to answer questions and provide the relevant material as may be required by SARS (section 48)
- subpoena a taxpayer, its employees, or office holders (e.g. director) to attend an interview at SARS and submit information to clarify issues of concern with a view to rendering further investigation or audit unnecessary or to expedite a current verification or audit (section 47)
- apply for a judicial order for a formal inquiry to be conducted in relation to the administration of a tax Act (sections 50 to 58); such an order gives the SARS official the power to conduct an inquiry for a person who has failed to comply.

217. South Africa has confirmed that in practice it encounters no difficulties in the application of its powers under Sections 40, 45 to 48, and 50 to 58 of the TA Act for EOI purposes. In addition to applying its access powers, South Africa has direct access to a number of databases, including its own tax database as well as the integrated business register which is comprehensive as it has 10 data sources allowing for a 360 degree view and analysis of any EOI request required. For most of the information pertaining to legal ownership South Africa relied mainly on the use of third-party databases it has access to and information already available in its own tax databases for answering EOI requests during the period under review. For obtaining other types of information, including beneficial ownership information, accounting information and banking information, the Competent Authority accessed such information by issuing notices under section 46 of the TA Act to the information holders.

Accessing beneficial ownership information

218. SARS' access powers are used for all types of information including beneficial ownership information. South Africa has informed that under section 40 of the FIC Act, SARS is able to obtain beneficial ownership information held by the FIC, and service providers that are AML-obliged persons by the FIC Act to keep and maintain beneficial ownership information. In practice, as noted, such information was usually obtained by issuing notice under section 46 of the TA Act to accountable institutions (AML obliged persons under AML law), usually banks. South Africa received 40 requests for beneficial ownership information during the review period. South Africa did not encounter any difficulties in responding to these requests

Accessing banking information

219. SARS authorities informed that they hold some banking information (see paragraph 93 as well as banking details of all active companies in their annual tax returns filed under section 25 of the TA Act). For the rest, SARS may utilise its information gathering powers to obtain banking information directly from banks, for example by requesting the information under section 26 and section 46 of the TA Act.

220. Further, if required, SARS may also access bank information held by the FIC, the South African Reserve Bank Supervision Department (the predecessor of the Prudential Authority), Financial Services Board (FSB the predecessor of the FSCA), the FSCA and service providers that are obliged by law to keep and maintain banking information of taxpayers. In practice, South Africa received 78 requests for banking information during the review period and save for the large volumes of historical banking records covering many years for some of the requests that required time to obtain, South Africa did not encounter any issues in obtaining the banking information.

B.1.2. Accounting records

221. The main sources of accounting information are SARS' own records, specifically from tax returns and tax audit information provided by taxpayers or third parties, the legal entities or legal arrangements themselves, or the third parties in possession of the accounting information of taxpayers such as auditors or accountants. In addition, SARS can also access information held by the service providers that are obliged by law to keep and maintain accounting information. Accounting information from the requested entity is accepted in both hardcopy and electronic format (section 3 of the TA Act).

222. The South African authorities have informed that they perform checks on the accuracy of information received from the information holder to ensure it pertains to the taxpayer in question and fully addresses the request expectations before it is packaged, stamped and forwarded to the requesting jurisdiction. During the review period, South Africa received 147 requests for accounting information and there were no issues in obtaining accounting information for partners.

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

223. The legal basis for the use of domestic access powers in cases where there is no domestic tax interest is section 3 of the TA Act. This also gives the force of law to South Africa's EOI agreements (as agreements "with respect to the avoidance of double taxation, the prevention of fiscal evasion or other matters relating to the taxation of income").

224. South Africa has informed that a majority of incoming EOI requests seek information in which South Africa has no domestic tax interest. There has been no case where the domestic tax interest prevented accessing and providing the requested information. This was also confirmed by peers.

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

225. South Africa has in place effective enforcement provisions to compel the production of information (see 2013 Report paras 166-169). The failure to provide information or answer questions can be sanctioned administratively and criminally. An administrative non-compliance penalty under Chapter 15 of the TA Act, applies to the extent of additional taxes assessed. The penalty escalates by the same amount for every month that the default continues. It is a criminal offence under section 234 of the TA Act to fail to comply with a SARS request for information or document, retain requisite records, disclose material facts, and comply with instructions issued by SARS. Failure to attend or remain at an inquiry at SARS or a formal inquiry after being duly subpoenaed may result in arrest and, in the case of a formal inquiry, contempt of court.

226. In addition, SARS has the power under section 40 of the TA Act to enter premises to audit and seize documents, and the power to question a person under section 47. Further, South Africa is able to conduct a search and seizure under a warrant even in premises that are not identified in a warrant (sections 59 to 66); and conduct a search and seizure without a warrant in limited circumstances (section 63). South Africa's competent authority did not need to apply any sanctions during the review period in order to obtain information for an EOI case as this was provided when requested.

B.1.5. Secrecy provisions

227. The 2013 Report concluded that secrecy provisions contained in South Africa's law, namely bank secrecy and professional secrecy, are in line with the standard. There has been no change in these rules since then.

Bank secrecy

228. Bank secrecy is not an impediment to exercise access powers in South Africa, as discussed above in B.1.1. Although bank client confidentiality in South Africa is expected in general, it is overridden where the law provides for lifting such secrecy in specific circumstances. For exchange of information purposes, the South African authorities have informed that it will not be an impediment. The South African authorities as well as the peers indicate that during the period under review, bank secrecy has not caused any problem in practice.

Professional secrecy

229. South Africa recognises the common law principle of legal professional privilege as a just cause to refuse to comply with a request to produce information to the tax authorities. As concluded in the 2013 Report, these secrecy provisions are all compatible with effective exchange of information. Legal professional privilege is recognised under South Africa's legal system because it is adversarial in nature, and there is consequently a need to protect the free and frank communications between a legal advisor and client. Notwithstanding, the mere fact that a legal advisor is in possession of confidential information does not create the common law privilege. The requirements for being able to claim legal professional privilege are that:

- the communications that are sought to be protected must have been made to a legal advisor acting in a professional capacity
- the information must have been supplied in confidence, and for the purpose of pending litigation or for obtaining professional advice and
- the client must claim the privilege, i.e. a court will not invoke it.

230. The definition of accountable institutions in the FIC Act covers attorneys. South Africa confirms that information pertaining to legal and beneficial ownership information provided to professions and accounting information would not fall under the above category of requirements.

231. South African authorities have indicated that where SARS is of the view that the claim of legal professional privilege is a valid assertion thereof, it would not take further steps as prescribed under section 42A of the TA Act to obtain the information, including going to court. However, where SARS is of the view that the claim of legal professional privilege is not a valid assertion

thereof, the case may end up being litigated. South African authorities further indicated a case in the High Court in 2014 where legal professional privilege was not successfully invoked against an information request under the TA Act.[25] In this case, the appellant declined to provide invoices to SARS but the court ordered that they be provided, except that some information that indicated the nature of the legal consultations could be redacted. The South African authorities also confirm that information like ownership and accounting information is not protected by attorney-client privilege.

232. Limitation on professional privilege was further highlighted in discussions with representatives from the Legal Practice Council. They indicated that where SARS required information, the attorney may seek consent from the client. Should the client object to providing the information to SARS, SARS would have the option to revert to the court process to obtain the information. SARS clarified that due to the operation of section 42A, the client would need to establish why the sought information is covered by legal professional privilege and is not a given.

233. In practice, South Africa has not experienced any difficulties in responding to EOI requests due to the application of legal professional privilege.

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.

234. The 2013 Report found that there were no issues regarding prior notification requirements or appeal rights and the element was determined to be in place and rated Compliant. This position continues to remain the same.

235. The conclusions are as follows:

Legal and Regulatory Framework: in place

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

Practical Implementation of the Standard: Compliant

The application of the rights and safeguards in South Africa is compatible with effective exchange of information.

25. *A Company and Others v Commissioner for South African Revenue Service* 2014 (4) SA 549 (WCC).

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

236. Rights and safeguards contained in South Africa's law remain compatible with effective exchange of information and their application in practice does not unduly prevent or delay exchange of information. The law does not require notification of the taxpayer subject of the request either prior to exchanging the information or at a later stage.

237. Further, the South African authorities do not have to inform the person being requested to produce information that the request is made for exchange of information purposes. Where possible, information will be obtained without requesting a person to produce such information. In cases where information is requested from a person in South Africa, the authorities will not inform that person of the purpose of the request other than a general indication that it is relevant material required for the administration of a tax Act. South African authorities informed that in this case, the person receives a written information request from SARS, setting out the required information and the empowering section. However, in case the person who is the subject of the request believes that he/she is not required to provide such information, that it is not specific enough or that it is not a valid request, the person may object, and request SARS to withdraw or amend the decision to request or provide the information under section 9 of the TA Act. Section 9 of the TA Act is an informal review procedure for a person who disagrees with a decision or a notice issued by SARS (such as an information request). In case SARS refuses to withdraw or amend its request, judicial review is possible. South African authorities further informed that given the wide ambit of SARS' information gathering powers, these "objections" seldom prevail. The authorities further inform that the internal review under section 9 of TA Act does not automatically have a suspensive effect on the EOI request. In a review/other application to the High Court, it will only be suspended if an interdict is granted pending the outcome of the case. In a High Court application, SARS will have to provide a "record of its decision", which could include more information but not information subject to treaty confidentiality.

238. As a conclusion, the rights and safeguards (e.g. notification, appeal rights) that apply to persons in South Africa are compatible with the requirement to ensure effective exchange of information. The South African authorities clarified that under the review period, there were no cases where EOI requests for information were challenged or appealed.

Part C: Exchange of information

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

C.1. Exchange of information mechanisms

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

240. The 2013 Report concluded that South Africa's network of EOI relationships was in line with the standard and provided for effective exchange of information by ensuring that all requests which meet the standard of foreseeable relevance can be responded to, irrespective of the tax residency of the taxpayer, in both civil and criminal tax matters. The report only pointed out limitations with some EOI agreements and advised that South Africa update its Double Tax Conventions (DTCs) with Austria, Botswana, Luxembourg and Switzerland to remove restrictions and incorporate wording in line with Articles 26(4) and 26(5) of the OECD Model Tax Convention.

241. South Africa signed the Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) on 3 November 2011 and it entered into force in South Africa after the publication of the 2013 Report, on 1 March 2014. The entry into force of the Multilateral Convention allows for full exchange with Austria, Botswana, Luxembourg and Switzerland. Further, a Protocol amending the DTC with Botswana has been signed and is in force since 19 August 2015.

242. . The 2013 Round 1 report indicated that South Africa had a network of signed information exchange mechanisms that covered more than 90 jurisdictions of which 76 were through DTCs and 9 through TIEAs. As of July 2022, the network of EOI relationships had increased to 162. New

EOI relationships derive from the increasing participation in the Multilateral Convention and from new bilateral instruments. South Africa signed 15 TIEAs and 11 DTCs as well as 6 Protocols to old DTCs. In addition, South Africa is a signatory to two regional EOI Agreements: the African Tax Administration Forum Agreement on Mutual Assistance in Tax Matters (AMATM[26]) signed on 17 January 2014 and in force since 23 September 2017, and the Multilateral Southern African Development Community Agreement on Assistance in Tax Matters (SADC Agreement[27]) signed on 18 August 2012but not yet in force. The EOI Agreements are all in line with the standard and have been ratified in South Africa.

243. In practice, the interpretation of the concept of foreseeable relevance, including in the case of group requests is in line with the standard. This has been demonstrated as South Africa was able to provide requested information for the group request received during the review period.

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the EOI mechanisms South Africa.

Practical Implementation of the Standard: Compliant

No issues have been identified that would affect EOIR in practice.

Other forms of exchange of information

244. Apart from EOIR, South Africa engages in Spontaneous Exchange of Information, Assistance in recovery, Industry wide exchange of Information and Automatic Exchange of Information. The first automatic exchanges of financial account information under the Multilateral Convention took place in September 2017. South Africa also has AEOI with the United States under the South Africa/United States FATCA Inter Governmental Agreement since

26. The AMATM allows for effective exchange of information and assistance among the Tax Authorities of the Member States, which are Parties to the Agreement; and to increase co-operation among tax authorities to combat tax avoidance and evasion. The agreement shall enter into force thirty calendar days after five of the member states have submitted their instruments of ratification to the Executive secretary of ATAF.
27. The SADC Agreement covers member states including Angola, Botswana, Comoros, Democratic Republic of the Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe. The agreement shall enter into force thirty calendar days after two thirds of the Member States have submitted their instrument of ratification to the Executive Secretary of SADC. Member states that have submitted their instrument of ratification are; Botswana, Eswatini, Lesotho, Mauritius and South Africa.

2016. South Africa also exchanges Country-by-Country Reports in line with BEPS Action 13 and spontaneously exchanges information on rulings in accordance with the Action 5 BEPS report.

C.1.1. Standard of foreseeable relevance

245. The 2013 Report found that South Africa's network of DTCs follows the OECD Model Tax Convention and the position remains the same. In those cases where the text of the treaty use "as necessary" as an alternative term to foreseeable relevance, South Africa and its partners interpret the terms as fully equivalent to "foreseeably relevant". Similarly, South Africa's TIEAs follow the 2002 Model Agreement on Exchange of Information on Tax Matters.

246. The 2013 review concluded that the text of the DTCs with Austria and Switzerland[28] were restrictive and did not meet the international standard and required to be amended.

247. South Africa now has full exchange with Austria and Switzerland through the Multilateral Convention on Mutual Administrative Assistance on Tax Matters, which is in force in all these jurisdictions.

248. The new EOI arrangements that South Africa has signed since the 2013 Report include the term "foreseeably relevant" in their EOI Article. The DTCs with Chile, Democratic Republic of Congo, Kenya and Chinese Taipei have EOI Articles that provide for the exchange of information that is "necessary" for carrying out the provisions of the Convention or similar wording. South Africa's authorities interpret these alternative formulations as equivalent to the term "foreseeably relevant". As a result, no prohibitions restrict EOI that is foreseeably relevant to the administration and enforcement of the domestic tax laws in South Africa.

249. In respect of practical application, South Africa applies the standard of foreseeable relevance in line with the standard. Competent authority officials demonstrated a good understanding of foreseeable relevance in respect of EOIR. While no specific template is provided to the requesting jurisdiction for the formulation of a specific request, South Africa expects jurisdictions

28. The DTC with Austria also contains the language quoted above, but this language is supplemented by a provision requiring the requesting jurisdiction to provide certain additional information when making a request. The additional information listed is based on Article 5(5) of the OECD Model TIEA, but it requires the requesting jurisdiction to provide the name and address of any person believed to be in possession of the requested information. The DTC with Switzerland provides only for the exchange of information as is necessary for carrying out the provisions of the DTC and of the provisions of domestic law concerning tax fraud.

to provide sufficient information to demonstrate the foreseeable relevance of the request and seeks for clarification where necessary. During the period under review, South Africa sought clarification on 3 of the 154 requests. In one case, clarification was sought because the subject in South Africa was not provided in the original request and for two of the requests, the partners had not provided the unique identifier for the information holder in South Africa. South Africa's EOI Standard Operating Procedures (SOP) describes the process to be followed in order to determine whether the EOIR meets the required foreseeable relevance criteria.

250. Over the review period, South Africa declined one EOI request because it did not meet the standard of foreseeable relevance. The request lacked the period under investigation, the tax type as well as relevant background information, but had an indication of some vehicle chassis numbers. South African authorities inform that given that the request did not have any tax questions and involved customs matters, they held a discussion with the partner jurisdiction and advised that a request for information under the Customs Agreement would best apply for that particular request. The peers did not raise any issues concerning South Africa's application of the foreseeable relevance criterion.

Group requests

251. None of South Africa's EOI instruments impedes making or receiving group requests. During the review period, South Africa received one group request. At receipt of the group request, the EOI unit officials followed the procedure applicable to incoming requests for information as detailed in the EOI SOP (see element C.5 for details). This procedure is aligned to the OECD Commentary to Model Article 26. The request was responded to within 41 days.

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

252. All of South Africa's EOI relationships allow for EOI with respect to all persons. In practice, no issues restricting the jurisdictional scope of exchange of information in respect of persons on whom the information is requested or of the holder of the information have been indicated by authorities in South Africa or by the peers.

C.1.3. Obligation to exchange all types of information

253. The 2013 Report did not identify any issues with South Africa's network of agreements in terms of ensuring that all types of information could be exchanged. The Report, however, noted that some of South Africa's treaty partners such as Botswana, Luxembourg and Switzerland may have

some restrictions. Consequently, it was recommended that South Africa renegotiate the old DTC's to incorporate the wording in line with Article 26(5) of the OECD Model Tax Convention.

254. Accordingly, a Protocol amending the DTC with Botswana was signed and entered into force on 19 August 2015. While negotiations with regard to the Protocol with Switzerland were completed, the Protocol is yet to be signed. This Protocol includes an updated EOI Article amongst other policy changes. Negotiations regarding Austria Protocol and Luxembourg Protocol were entered into, but not finalised due to other policy considerations. In addition, Austria, Luxembourg and Switzerland have since signed the Multilateral Convention; hence, the absence of the updated EOI articles in the respective DTCs will not affect the exchange of information in line with the standard.

255. South Africa's ability to provide all types of information in line with the standard was also confirmed in practice. Over the review period, South Africa did not decline a request because the information was held by a bank, other financial institution, nominees or persons acting in an agency or fiduciary capacity or because the information related to an ownership interest. Peers did not raise any concerns in this regard in the inputs provided.

C.1.4. Absence of domestic tax interest

256. All of South Africa's EOI instruments allow for the exchange of information regardless of domestic tax interest. In practice, a domestic tax interest is not a prerequisite for South Africa to respond to a request for information. South African authorities indicated that close to 20% of the requests received concerned persons who were not South Africa's taxpayer and these requests were duly responded to. Hence, no difficulties or issues were raised by either South Africa or the peers during the current review period.

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

257. South Africa's EOI agreements provide for exchange in both civil and criminal matters (with no dual criminality restriction) and the EOI requests South Africa has responded to have related to both civil and criminal tax matters. A similar EOI procedure is applied regardless of whether the information is requested for civil or criminal tax purposes.

C.1.7. Provide information in specific form requested

258. There are no restrictions in South Africa's EOI instruments that would prevent South Africa from providing information in a specific form, as long as this is consistent with South Africa's domestic law and its administrative practices. During the review period, there were no requests that sought

information in any specific form although South African authorities confirm that if the treaty partners were to request information in a specific form, they would ordinarily be able to provide the same if such form is not against their domestic law and administrative practices.

C.1.8. Signed agreements should be in force

259. The 2013 Report noted that South Africa had eight bilateral information exchange agreements not in force. For five of them, South Africa had completed all internal procedures and finalised ratification for the agreements (with Democratic Republic of the Congo, Gabon, Germany (new DTC), Kenya and Sudan). The other three agreements (with Dominica, Gibraltar and Liberia) were undergoing the ratification process. Similarly, the Multilateral Convention signed by South Africa on 3 November 2011 was undergoing the ratification process. South Africa has since ratified the Multilateral Convention (on 21 November 2013) which came into force on 1 March 2014 and covers the relationships with Dominica Liberia and Gibraltar. In addition, South Africa's agreements with Dominica and Gibraltar came into force on 17 September 2015 and 21 July 2013 respectively. Further, the TIEA with Liberia came into effect on 7 July 2013.

260. South Africa is also a signatory to, and ratified, the Multilateral African Tax Administration Forum Agreement on Mutual Assistance in Tax Matters (AMATM) which has seven jurisdictions that have ratified the agreement, one (Gambia) of which is not covered by other EOI instruments. The AMATM came into force on 23 September 2017. In addition, South Africa signed the Multilateral Southern African Development Community Agreement on Assistance in Tax Matters (SADC Agreement) on 18 August 2012 and deposited its instrument of ratification on 21 November 2014. This agreement provides for exchange of information with 14 jurisdictions, and comes into force 30 days after two thirds of the member states submit their ratification instruments. Four members, Botswana, Eswatini, Lesotho, Mauritius have also submitted their ratification agreements. All these members are covered by other EOI instruments signed and ratified by South Africa. An analysis of the treaty network of South Africa is presented below.

261. Section 108(1) of the ITA and section 231 of the Constitution ensure that South Africa's agreements are given effect legitimately. South Africa has concluded the ratification process in a timely manner and in general it does not take longer than one year to bring an agreement into force.

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	**162**
In force	151
In line with the standard	151
Not in line with the standard	0
Signed but not in force	11[29]
In line with the standard	11
Not in line with the standard	0

Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms	**8**
In force	7 (Algeria, Belarus, Egypt, Ethiopia, Iran, Sierra Leone, Chinese Taipei)
In line with the standard	7
Not in line with the standard	0
Signed but not in force	1
In line with the standard	1 (Sudan)
Not in line with the standard	0

C.1.9. Be given effect through domestic law

262. South Africa has in place domestic legislation necessary to comply with the terms of its EOI instruments (including the Multilateral Convention, AMATM and SADC Agreement). South Africa' EOI agreements become part of domestic law after their ratification in South Africa (see paragraph 216 to 218 of the 2013 Report).

263. Effective implementation of EOI agreements in domestic law has been confirmed in practice as there was no case encountered where South Africa was not able to obtain and provide the requested information due to unclear or limited effect of an EOI agreement in South Africa's law. In addition, no peer has raised any concerns in this regard.

29. **Bilateral:** Gabon, Sudan; **SADC Agreement:** Angola and Madagascar; **MAAC:** Benin, Burkina Faso, Jordan, Gabon, Honduras, Madagascar, Mauritania, Papua New Guinea, Philippines and Togo.

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

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

264. The 2013 Report found that element C.2 was in place and rated as Compliant. South Africa was recommended to continue to develop its EOI network with all relevant partners.

265. Since the 2013 Report, South Africa ratified the Multilateral Convention on 21 November 2013 which applies from 1 March 2014. In addition, 15 TIEAs (Argentina, Barbados, Belize, Cook Islands, Costa Rica, Dominica, Gibraltar, Grenada, Liberia, Liechtenstein, Monaco, Saint Kitts and Nevis, Samoa, Turks and Caicos Island and Uruguay); 11 DTCs (Cameroon, Chile, Democratic Republic of the Congo, Hong Kong (China), Kenya, Lesotho (revised), Mauritius (revised), Qatar, Singapore (revised), United Arab Emirates and Zimbabwe (revised)); and 8 Protocols to DTCs (Botswana, Brazil, Cyprus,[30] India, Malta, Norway, Oman, and Türkiye) were concluded and/or entered into force. Further, South Africa has also signed the SADC Agreement on 18 August 2012 and deposited its instrument of ratification on 21 November 2014, but the Agreement is not yet in force. Finally, South Africa enjoys EOI networks through the Multilateral Convention and the AMATM.

266. South Africa therefore has a wide treaty network covering all relevant partners in consonance with the requirements of the standard. No Global Forum members indicated, in the preparation of this report, that South Africa refused to negotiate or sign an EOI instrument with it. As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such a relationship South Africa should continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

30. 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.

267. The conclusions are as follows:

Legal and Regulatory Framework: in place

The network of information exchange mechanisms of South Africa covers all relevant partners.

Practical Implementation of the Standard: Compliant

The network of information exchange mechanisms of South Africa covers all relevant partners.

C.3. Confidentiality

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

268. The 2013 Report concluded that the applicable treaty provisions and statutory rules that apply to officials with access to treaty information and the practice in South Africa regarding confidentiality were in accordance with the standard.

269. All the new EOI mechanisms entered into by South Africa subsequent to the 2013 Report are also in line with the international standard on confidentiality and the practice in respect to confidentiality in the current review period continues.

270. The conclusions are as follows:

Legal and Regulatory Framework: in place

No deficiencies have been identified in the EOI mechanisms and legislation of South Africa concerning confidentiality.

Practical Implementation of the Standard: Compliant

No material deficiencies have been identified and the confidentiality of information exchange is effective.

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

271. There are adequate provisions in South Africa's exchange of information mechanisms to ensure confidentiality of the information received. Furthermore, all of South Africa's EOI arrangements require that any information received be treated as secret, and that disclosure of information

received by the South African authorities under an EOI arrangement is restricted to the circumstances covered by the arrangement.

272. The 2013 Report (see paras 230-232) emphasised confidentiality expectations of staff and this practice continues. Specifically, chapter 6 of South Africa's TA Act provides for statutory confidentiality of exchanged information, which may only be disclosed to the extent permitted by the TA Act and the relevant treaty.

273. South Africa's internal policies and Standard Operating Procedures clearly guide officers to ensure confidentiality in handling EOI matters. All SARS officials and persons contracted by SARS must also take an oath or make a solemn declaration of secrecy before commencement of duties and adhere to a SARS Code of Conduct intended to protect against unlawful disclosure of confidential information. The confidentiality provisions protecting tax information contained in South Africa's domestic laws are therefore adequate and are supported by sanctions applicable in the case of breach of these obligations.

274. Employees within the Exchange of Information unit are vetted at top secret grade clearance level and investigations undertaken which may include a lie detector test. The vetting and screening requirements are also applicable to third party service providers and contractors. The definition of "SARS official" in the TA Act includes external persons engaged or contracted by SARS who are regarded as "SARS officials" for purposes of the administration of a tax Act and therefore bound by the same confidentiality obligations as SARS employees.

275. SARS offers induction training for all new employees as part of the on-boarding and disseminates booklets addressing all security-related topics. Annual online training courses on various information security topics such as cyber-security, phishing, identity theft, Wi-Fi vulnerability are presented. The information security awareness effort including civil and criminal sanctions for contravening secrecy also applies to non-SARS employees including persons contracted by SARS.

276. South Africa has informed that for gathering information from information holders, the notices that are sent out carry minimal information, in line with the standard. These notices include reference to the South Africa domestic law pursuant to which the information is requested (i.e. section 46 of the Tax Administration Act) and a description of the requested information. The notices do not refer to whether the information is requested pursuant to an EOI request and do not contain reference to an EOI agreement under which the information is requested, as the same powers and procedure are used as in domestic cases.

277. South African authorities informed that the confidentiality provisions of the TA Act cannot be overridden by any other law, hence, information supplied

in confidence by or on behalf of another jurisdiction or an international organisation to SARS constitutes SARS confidential information (Section 68(1)(h) TA Act). South Africa has an Act providing citizens with right to access information – the Promotion of Access to Information Act, 2000. However, South African authorities inform that there are several bases on which access to tax information can be opposed, such as statutory confidentiality and premature disclosure which may prejudice the outcome of an examination or verification (the latter includes information requests under the TA Act). There is also a mandatory protection of “taxpayer information” against third party requests. South African authorities have informed that in any case, section 233 of the Constitution provides that international law prevails over domestic law, which means that the confidentiality provisions of international EOI agreements would override any domestic law. This would ensure that the use of all information obtained under EOI mechanisms would be used and disclosed only in accordance with the EOI articles in the relevant treaties.

278. Disclosure contrary to the TA Act limitations constitutes criminal offences under Chapter 17 of the TA Act, and upon conviction, the offender may be sentenced to two year’s imprisonment or a fine. A SARS official who contravenes the secrecy provisions faces both internal disciplinary proceedings as well as criminal sanctions. There are specific sections in the TA Act that provide for confidentiality of all tax information, including an oath or solemn declaration on confidentiality under section 67(2) of the TA Act, non-disclosure to a non SARS official under section 67(3) of the TA Act, and persons who contravene the provisions of confidentiality sections 68 and 69 of the TA Act. Any person who is found guilty of an offence, is subject to a fine or to imprisonment for a period not exceeding two years.

279. 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 authority 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 provides for this possibility. South Africa has informed that all information received under its EOI mechanisms would be used only for tax purposes. For using such information for non-tax purposes, South Africa would seek the approval of its treaty partners. In the period under review South Africa reported that there were no requests wherein the requesting partner sought South Africa’s consent to utilise the information for non-tax purposes and similarly South Africa did not request its partners to use information received for non-tax purposes.

280. The TA Act allows for disclosure of tax information to non-tax government bodies, in particular financial regulatory bodies for enforcing Acts like the Prevention of Organised Crime Act, 2001 (POCA) (which criminalises

money laundering) and the Financial Intelligence Centre Act, 2001 (which has a tax secrecy override provision). Law enforcement agencies generally require a court order unless disclosure is compelled by other legislation, such as under section 71 of the TA Act. Under section 231 of the Constitution, an international agreement, such as a DTC, becomes law in South Africa if enacted under domestic legislation. DTCs and other international tax agreements are generally enacted under section 108 of the ITA, and become part thereof. Section 4(3) of the TA Act takes care in the event of conflict between the TA Act and another tax Act, such as the ITA, in that the latter prevails. Accordingly, to the extent that the TA Act may allow for wider disclosure of "taxpayer information" then the relevant DTC/international tax agreement incorporated under the ITA, will prevail. This is also in line with section 233 of the Constitution which provides that: "When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law". If exchanged information is required to be used in court proceedings, the Requested Competent Authority will be informed and permission will be requested to use such information in court proceedings according to the treaty requirements. If such permission is not granted, SARS will oppose the application as was demonstrated in a 2020 Tax Court case.[31] To date, the South African authorities report that no unauthorised disclosure of exchanged information has been detected.

C.3.2. Confidentiality of other information

281. The confidentiality provisions in South Africa's EOI agreements and domestic law do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all requests for information, background documents to such requests, and any other documents reflecting such information, including communications between the requesting and requested jurisdictions and communications relating to the request that occur within the tax authorities of either jurisdiction.

282. In South Africa, the competent authority maintains confidentiality with respect to all communications with other competent authorities. An information request by another jurisdiction and the content thereof, including communications, will constitute "SARS confidential information" under section 68 of the TA Act as it is information supplied in confidence by or on behalf of another jurisdiction or an international organisation to SARS.

31. https://www.sars.gov.za/drj-tc-2020-08-sarstc-14302-adm-2020-johannesburg-31-august-2020/?swpmtx=ea84903e0f41db9e1c23f46a96b61dc2&swpmtxnonce=59f83fcf84.

"SARS confidential information" is protected in that a person who is a current or former SARS official:

- may not disclose SARS confidential information to a person who is not a SARS official
- may not disclose SARS confidential information to a SARS official who is not authorised to have access to the information and
- must take the precautions that may be required by the Commissioner to prevent a person referred to above from obtaining access to the information.

Confidentiality in practice

283. The information requests (outgoing and incoming taxpayer information) are stamped, with a treaty stamp, which gives guidance on the provisions, use and disclosure of the information. During the onsite the South Africa competent authority presented a demonstration of the EOI Case Management System (EOICMS), which includes the register and electronic folder of all exchanged information. The EOICMS, is stored on an access controlled, secure server separate from the systems used for domestic data. Security clearance measures assessing security competence on handling of classified information are conducted through interviews and checks. Exchanged information is treated as classified information. As indicated under paragraph 274 the South African authorities inform that vetting and screening requirements are also applicable to third party service providers and contractors. All SARS employees and contractors use access cards to access buildings/zones and restricted areas, which are protected by restricted card reader and or biometric readers. This includes CCTV and alarm monitoring devices. Third Party providers only have access to confidential information to the extent required by their duties (Chapter 6 TA Act). Contravention of the secrecy provisions constitute a criminal offence (Section 236 TA Act). In practice, all written or oral communication that the competent authority in South Africa receives from other competent authorities is treated as confidential. South Africa's peers have not raised any issues regarding confidentiality during the period of 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.

284. The 2013 Report concluded that South Africa's legal framework and practices concerning rights and safeguards of taxpayers and third

parties are in line with the standard. There has been no change in this area reported since then.

285. All of South Africa's EOI relations allow for an exception to the obligation to provide the requested information similar to the exemption in Article 26(3) of the OECD Model Tax Convention. As discussed in section B.1.5, the scope of protection of information covered by this exception in South Africa's domestic law is consistent with the international standard. South Africa's exchange of information mechanisms are fully in line with Article 26 of the model convention and Article 7 of the model TIEA and its international tax agreements become part of domestic law in terms of section 108 of the ITA. These exchange of information mechanisms ensure that no information is exchanged that is to be protected as a trade, industrial or commercial secret, or which is subject to attorney client privilege or which would be contrary to public policy.

286. In practice, South Africa has not experienced any practical difficulties in responding to EOI requests because of professional privilege or any other professional secret. In any case, as indicated under paragraph 231, in circumstances where SARS establishes that the claim of legal professional privilege is not a valid assertion thereof, the case may end up being litigated. An example is a domestic tax audit case in the High Court in 2014 where legal professional privilege was not successfully invoked against a request for information from attorneys sought by the Commissioner of SARS under section 46 of the TA Act. The appellant declined to provide invoices to SARS but the court ordered that, other than some information that indicated the nature of the legal consultations which could be redacted, the invoices should be provided to SARS. Further to this, when information such as ownership and accounting is sought from a legal professional, such information holder cannot take shelter under attorney-client privilege.

287. The conclusions remain as follows:

Legal and Regulatory Framework: in place

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

Practical Implementation of the Standard: Compliant

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

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.

288. The 2013 Report concluded that South Africa has appropriate organisational processes and resources in place to ensure quality of requests and timeliness of responses within 90 days of receipt or by providing an update on the status of the request. As such no recommendations were given and South Africa was rated Compliant with the standard. Seven requests were reported as pending at the time of the 2013 Report. The South African authorities indicated that all pending requests have been fully addressed including an isolated court case that South Africa was to closely monitor.

289. South Africa has a functioning team of EOI officials who receive regular training and are subject to a number of quality controls. The feedback from partners on their working relationship with South Africa is positive. Nevertheless, while peers were satisfied with the ease with which they could communicate with South Africa's competent authority, some of the peers noted that status updates were provided in a few cases after 90 days. As indicated in the table at paragraph 292, during the review period, South Africa was able to respond to about 40% of the incoming requests within 90 days, 50% within 180 days and 82% within a year in the three year period. South African authorities have explained that during this period, in general, the requests received were complex and involved multiple taxpayers. Requests responded to within 90 days usually related to information that was readily available such as address or contact details, copies of income tax returns and information held by third parties. South African authorities informed that somewhat older information in possession of a third party, took longer and was provided within 180 days or later (See also paragraph 298). South Africa has indicated that status updates were provided in all cases although in a few cases such updates were provided after 90 days. **South Africa is recommended to monitor the timeliness of responding to requests and to systematically provide status updates to its treaty partners in all cases where a full response is not able to be provided within 90 days.**

290. 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: Largely Compliant

Deficiencies identified/Underlying factor	Recommendations
During the review period South Africa was able to respond to about 40% of the incoming requests within 90 days while the remaining requests were mostly answered within one year or beyond one year in each of the three years of the review period suggesting room for improvement in timeliness of responding to requests. While status updates were provided in all cases that could not be fully answered within 90 days, in about 22% of the cases such updates were provided after 90 days.	South Africa is recommended to monitor the timeliness of responding to requests and to systematically provide status updates to its treaty partners in all cases where a full response is not able to be provided within 90 days.

C.5.1. Timeliness of responses to requests for information

291. From 1 October 2018 to 30 September 2021, South Africa received 154 requests for information. The information sought in these requests often captured different types of information and sometimes different persons and related to (i) ownership information (87 cases), (ii) accounting information (147 cases), (iii) banking information (78 cases) and other type of information (333 cases). The information requested is further broken down to (i) companies (77 cases), (ii) individuals (124 cases), and (iii) trusts (1 case). The majority of the requests were received from the Netherlands, Belgium, France, United Kingdom, India and Lesotho representing each less than 15% of the total of requests received.

292. The following table relates to the requests received during the period under review and gives an overview of response times of South Africa in providing a final response to these requests, together with a summary of other relevant factors impacting the effectiveness of South Africa's practice during the period reviewed.

Statistics on response time and other relevant factors

		1 October 2018 to 30 September 2019		1 October 2019 to 30 September 2020		1 October 2020 to 30 September 2021		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	[A+B+C+D+E]	47	100	54	100	53	100	154	100
Full response: ≤ 90 days		16	34	23	41	23	43	62	40
≤ 180 days (cumulative)		19	40	27	50	31	58	77	49
≤ 1 year (cumulative)	[A]	39	83	46	85	41	77	126	82
> 1 year	[B]	8	17	8	15	4	8	20	13
Declined for valid reasons		0	0	1	2	0	0	1	< 1
Outstanding cases after 90 days		31	100	31	100	30	100	92	100
Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided > 90 days)		26	84	23	74	23	77	72	78
Requests withdrawn by requesting jurisdiction	[C]	0	0	0	0	1	2	1	< 1
Failure to obtain and provide information requested	[D]	0	0	0	0	0	0	0	0
Requests still pending at date of review	[E]	0	0	0	0	7	13	7	4

Notes: During the review period, South Africa counted each request with multiple taxpayers as one request, i.e. if a partner jurisdiction is requesting information about four persons in one request, South Africa counts that as one request. If South Africa received a further request for information that relates to a previous request, with the original request still active, South Africa appended the additional request to the original and continued to count it as the same request. Going forward South Africa intends to count requests by the number of taxpayers.

The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued.

293. In the current review period, the requests that were not concluded within 90 days are not due to any specific type of information or type of taxpayer concerned. Usually the requests relate to voluminous historical information that is not readily available such as invoices or bank statements dating back to 2009. This has resulted in partial responses from South Africa provided to the sending jurisdiction as the information became available. South African authorities indicated that as at the end of the current review (1 October 2018 to 30 September 2021), the competent authority had provided partial responses for the seven cases still pending as additional information from third parties is awaited.

294. During the review period South Africa declined one EOI request received. South Africa's competent authority explained that the reason for the decline is that it did not meet the relevant checks required under the standard. In particular the legal basis for the request was not defined; it

was not addressed to the competent authority; the tax type as well as the period under investigation were not provided. In addition to this, no unique identifier was provided for the information holder in South Africa. South Africa closed the specific case and advised the Treaty Partner accordingly as the request related to a customs investigation and had no tax questions (see paragraph 250). The peers did not raise any issues with South Africa in respect to declining of requests or any withdrawn cases.

295. South Africa does not have an EOI manual but has EOI Standard Operating Procedures (EOI SOPs) and key performance indicators (KPIs) for the EOI team with scorecards used for performance measurements. The KPIs recommend procedures and timelines for the treatment of the incoming requests, as follows:

- If the information is in the hands of the tax authorities, the information must be provided within 30 days following the date of receipt of the EOI request.
- If the information is in the hands of another government authority or third party, the information must be provided within 90 days following the date of receipt of the EOI request.
- If the information is in the possession or control of the information holder in South Africa/connected person, the information must be provided within 90 days following the date of receipt of the EOI request.

Status updates and communication with partners

296. The provision of status updates within 90 days is documented in South Africa's EOI SOPs as well as the KPIs.

297. The peer inputs received suggest that the Competent Authority is accessible and easy to contact. While peers were satisfied with the responses to the requests made to South Africa, some noted that status updates were provided in a few cases after the 90 days. South African authorities explained that while status updates, partial response or progress reports were provided in all 154 requests received, in a few cases (22%) this was between 91 days and 108 days from receipt of the request. None the less, in practice, there were no difficulties experienced in obtaining information. In the period under review 78% of the requests were provided with an update within 90 days while 22% of the requests were provided with an update, but not within 90 days.

298. South African authorities indicated that the reasons for the delayed responses include cases received as South Africa went into a national disaster lockdown because of the COVID 19 pandemic hence some incoming

requests were missed while transmission of some responses was also delayed. In such cases, the transmission platform had to be agreed with the requesting jurisdiction or the requesting jurisdiction delayed in requesting the password to decrypt the response provided. In other instances, delays were occasioned when information required to address the request was not readily available especially where voluminous information covering more than five years was in possession of a third party. In some instances the status update was a day or two late because of a public holiday in South Africa or some information became available and therefore the status report included a partial response which required a formal letter and competent authority to sign-off. Despite the challenges mainly caused by COVID-19 related delays the general experience with EOI and interaction with partners has been positive during the review period and was confirmed by the peers. Nevertheless, there is some room for improvement in respect of timeliness of answering requests and timely provision of status updates. **Hence**, **South Africa is recommended to monitor that status updates to its EOI treaty partners are systematically provided in a timely manner in all cases where the response time is longer than 90 days in line with the standard.**

299. South Africa sought clarification in three requests during the peer review period. The reasons related to requesting unique identifiers for the concerned information holders within South Africa to providing clarity on how the information requested is foreseeably relevant to the investigation concerned. Peers have not reported any concerns in respect of the clarifications sought by South Africa.

C.5.2. Organisational processes and resources

300. The 2013 report concluded that South Africa's processes and resources are in place to ensure effective exchange of information. The EOI work currently remains organised and resourced to ensure information provided to treaty partners is effectively exchanged as was established at the time of the 2013 report. The Commissioner for South Africa Revenue Service (SARS) is the competent authority of South Africa. He has delegated the Competent Authority role in a written notification to all Treaty Partners. The details of the delegated competent authorities are published on the secure site of Global Forum competent authorities and all significant EOI partners are notified on a regular basis when changes occur.

301. South Africa's Exchange of Information role resides under the greater structure of Enterprise Data Management and includes Automatic Exchange of Information. The team is responsible for exchange of information with domestic law enforcement agencies and regulatory bodies as well as exchange of information with treaty partners.

302. South Africa's Exchange of Information unit has its own budget where sufficient funds are available to deal with the normal operational expenses incurred in the execution of exchange of information process. The unit has 10 officials including 1 senior manager on EOI, 1 manager on EOI, 1 specialist on AEOI, 5 operational specialists on EOIR and 2 co-ordinators. During the review period, one operational specialist resigned hence only nine officials handled the EOI unit activities. The weighted average time spent on the EOI activities includes 55% on EOIR activities, 20% on AEOI activities while 25% spent on Training, SOPs updates, EOICMS updates and peer review responses. At the time of the onsite visit, the vacant position had been advertised and it has since been filled.

303. South Africa's competent authority is well qualified to handle EOI and has been involved in the preparation and handling of responses to EOIR requests since 2009 when the EOI unit was put in place. The EOI operational staff are also experienced and have undergone internal and OECD/Global Forum delivered EOI and beneficial ownership trainings. In all, over 120 officials from all over SARS attended these trainings in the review period. Further, following the Global Forum Train the Trainer Programme held in 2021, the operational specialist on EOI has since delivered a formal 4 day virtual training to 12 audit specialists.

304. In practice, the EOI unit staff carries out most functions of gathering the requested information by looking for the information available in databases to which the EOI unit has access. They also gather accounting information from the information holder (usually the taxpayer), interviewing the taxpayer when needed, as well as collecting banking information using the access powers. Accordingly, there is a fair amount of work that is carried out by the EOI unit staff. Given that they have some other additional responsibilities and there is always an element of staff rotation (old staff leave and new staff join in), the timeliness of responding to requests could have been better. **South Africa is recommended to monitor the timeliness of responding to requests.**

Incoming requests

Competent authority's handling of the request

305. When a request for information is received by the Competent Authority/manager EOI, it is passed directly to the EOI Unit on the day it is received. The request is registered, acknowledged and stamped with the date of receipt and a clearly visible confidentiality notice. The EOI co-ordinator determines if the EOIR is new or follow up to an existing EOIR.

306. For a new EOIR, the EOI co-ordinator creates a corresponding electronic file, inserts a hyperlink in the exchange of information case management system (EOICMS) with the details of the case. The EOI co-ordinator then adjusts the status of the information to "Received". If the EOI is not new, the EOICMS is updated under existing case reference number with the date of receipt; unit notes; and case is classified accordingly.

307. The EOI co-ordinator then scans the letter and all relevant documents, which are stored in a corresponding electronic file and an acknowledgement letter is sent through courier; or secure email transmission and the EOICMS is updated as such.

308. Every request is examined on receipt to determine the validity and completeness of the request, in the light of the relevant treaty requirements, and whether the request is clear, specific and relevant. If the EOI is invalid in that no legal basis exists a reject letter with reasons notifying the requesting authority is sent and the EOICMS is updated as such. The audit trail allows any member of the EOI Unit to determine the progress of the Request for Information.

309. If the information provided is insufficient to process the case, then, depending on the circumstances, the competent authority/manager EOI will ask the requesting authority, by letter, to provide more details to allow the request to be processed or return the request explaining the deficiency. Monthly reviews of progress for the EOI requests take place between the competent authority/manager EOI and the operational specialists on EOIR and additional action is taken as and when required. South Africa provides an acknowledgement of receipt for every request that is received. The performance measure in place dictates that this acknowledgement of receipt must be provided within 5 days of receipt and partial responses are provided as the information becomes available however, if 90 days have passed and no other outstanding information becomes available, a progress report will be sent to the jurisdiction explaining the information that is still outstanding and the reason for the delay.

310. During the review period, South African authorities declined one EOI request received as it did not meet the relevant checks required under the standard and the case was closed after the relevant treaty partner was duly informed.

Verification of the information gathered

311. Upon validation of the request, the information needed to respond to the request is gathered, stamped with EOI confidentiality stamp and a response is drafted. In practice, South Africa has a three-tier checking system documented in the EOI SOPs to verify that information received

from third parties will fulfil the request in its entirety. First, the EOI co-ordinator who receives the information from the third party such as a financial institution or the Financial Intelligence Centre will check that the information received corresponds with the information requested. Secondly, the Operational Specialist: EOI will perform the same check to the drafted response to ensure the cover letter and any attached requested information which should also be stamped with the EOI confidentiality stamp, are complete enough to address the request. The final check will be by the competent authority/manager when signing the response. The final signed information exchange response copy is then scanned and saved in the case electronic folder and sent to the requesting authority. The EOICMS is thereafter updated, and the information request closed. Every time an action is taken on the request, the EOICMS is updated accordingly.

Group requests

312. South Africa's EOI SOPs do not make a specific reference to Group Requests or prescribe any specific procedure to deal with them. South Africa has informed that their internal procedure for incoming group requests would be similar to that for individual requests. South Africa received one group request during the period under review. The group request arose after South Africa spontaneously sent information to a treaty partner who in turn made a group request. South Africa responded to the group request within 41 days and did not encounter any disproportionate difficulty in responding to the request.

Outgoing requests

313. The review process in Round 2 covers also requirements to ensure the quality of requests made by the assessed jurisdiction.

314. Outgoing requests are handled by the same staff within Enterprise Data Management responsible for handling incoming requests. In practice, requests for information can be triggered by an internal requestor such as a tax auditor dealing with the assessment or audit of taxpayers through the EOI generic email address. The internal requestor in co-operation with the Operational Specialist Exchange of Information, has to provide the necessary information for sending a request. The Operational Specialist EOI checks whether all necessary information has been provided and whether the conditions for sending a request are met following the procedures specified in the EOI SOPs.

315. If the request does not meet the international standard the Operational Specialist EOI will contact the internal requestor and explain the shortcomings. This is usually done by telephone and sometimes followed-up

with a physical or virtual meeting. When the international standard including the foreseeable relevant requirements have been satisfied, the Operational Specialist EOI drafts the outgoing request and treaty stamp any attachments to the request. The final letter is quality assured and signed by the competent authority/manager EOI. The Operational Specialist EOI is responsible for encrypting and sending the outgoing request. The EOICMS is then updated, and the internal requestor kept informed about the progress of the request.

316. Requests are generally sent through either encrypted email or registered postal mail depending on the preference of the EOI partners. South Africa's preferred means of transmission during the review period has always been via encrypted email. While some EOI partners accepted correspondence via registered postal mail prior to the COVID-19 pandemic, transmission by encrypted email is now acceptable following the work from home policy as a result of the lock down in partner jurisdictions. All responses received from the treaty partner are decrypted, registered, treaty stamped and stored on the electronic case folder. The EOICMS is updated and the decrypted, treaty stamped response sent to the internal requestor within five business days.

317. During the review period, South Africa sent 41 EOI requests to treaty partners and the partners sought clarification on 6 of these. Four of the clarifications were concerning the requested jurisdictions domestic legislation that required taxpayer notification while two related to the understanding of the legal instrument. South Africa's EOI partners who provided inputs in the framework of this review were generally satisfied with the quality of requests that they received.

318. South Africa's competent authority provides feedback as part of the EOI actions taken. Currently there is no documented practice in place to request or provide feedback with partners. However, from 20 April 2021, feedback process with internal EOI stakeholders has been incorporated into South Africa's EOI SOPs and a feedback process for the partners is being developed.

319. The process of receiving requests and sending requests as indicated above is exhaustively described in the EOI SOPs.

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

320. There are no factors or issues identified in the legal and regulatory framework of South Africa that could unreasonably, disproportionately or unduly restrict effective EOI.

Annex 1: List of in-text recommendations

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

- **Element A.1.2**: South Africa should monitor the situation with respect to share warrants to bearer to ensure that owners of any remaining share warrants to bearer may be identified (Para 115).
- **Element C.2**: South Africa should continue to conclude EOI agreements with any new relevant partner who would so require (Para. 266).

Annex 2: List of South Africa's EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Algeria	DTC	28 April 1998	12 June 2000
2	Argentina	TIEA	2 August 2013	28 November 2014
3	Australia	DTC	01 July 1999	21 December 1999
		Protocol	31 March 2008	12 November 2008
4	Austria	DTC	4 March 1996	6 February 1997
		Protocol	22 August 2011	1 March 2012
5	Bahamas	TIEA	14 September 2011	25 May 2012
6	Barbados	TIEA	17 September 2013	19 January 2015
7	Belarus	DTC	18 September 2002	29 December 2003
8	Belgium	DTC	1 February 1995	9 October 1998
9	Belize	TIEA	6 May 2014	23 May 2015
10	Bermuda	TIEA	6 September 2011	8 February 2012
11	Botswana	DTC	7 August 2003	20 April 2004
		Protocol	21 May 2013	19 August 2015
12	Brazil	DTC	8 November 2003	24 July 2006
		Protocol	31 July 2015	10 February 2018
13	Bulgaria	DTC	29 April 2004	27 October 2004
14	Cameroon	DTC	19 February 2015	13 July 2017
15	Canada	DTC	27 November 1995	30 April 1997
16	Cayman Islands	TIEA	10 May 2011	23 February 2012
17	Chile	DTC	11 July 2012	11 August 2016
18	China (People's Republic of)	DTC	25 April 2000	7 January 2001

	EOI partner	Type of agreement	Signature	Entry into force
19	Cook Islands	TIEA	25 October 2013	8 January 2015
20	Costa Rica	TIEA	27 October 2012	8 February 2017
21	Croatia	DTC	18 November 1996	7 November 1997
22	CyprusProtocol	DTC	26 November 1997	8 December 1998
		DTC	1 April 2015	18 September 2015
23	Czech Republic	DTC	11 November 1996	3 December 1997
24	Democratic Republic of the Congo	DTC	29 April 2005	18 July 2012
25	Denmark	DTC	21 June 1995	21 December 1995
26	Dominica	TIEA	7 February 2012	17 September 2015
27	Egypt	DTC	26 August 1997	16 December 1998
28	Eswatini	DTC	23 January 2004	8 February 2005
29	Ethiopia	DTC	17 March 2004	4 January 2006
30	Finland	DTC	26 May 1995	12 December 1995
31	France	DTC	8 November 1993	1 November 1995
32	Gabon	DTC	22 March 2005	Ratified in South Africa
33	Germany	DTC	25 January 1973	28 February 1975
		DTC renegotiated	9 September 2008	Ratified in South Africa
34	Ghana	DTC	2 November 2004	23 April 2007
35	Gibraltar	TIEA	2 February 2012	21 July 2013
36	Greece	DTC	19 November 1998	14 February 2003
37	Grenada	TIEA	10 December 2014	10 March 2017
		DTC UK	5 November 1954	5 October 1960
38	Guernsey	TIEA	21 February 2011	26 February 2012
39	Hong Kong (China)	DTC	30 September 2014 and 16 October 2014	20 October 2015
40	Hungary	DTC	4 March 1994	5 May 1996
41	India	DTC	4 December 1996	28 November 1997
		Protocol	26 July 2013	26 November 2014
42	Indonesia	DTC	15 July 1997	23 November 1998
43	Iran	DTC	3 November 1997	23 November 1998
44	Ireland	DTC	7 October 1997	5 December 1997
		Protocol	17 March 2010	10 February 2012

	EOI partner	Type of agreement	Signature	Entry into force
45	Israel	DTC	10 February 1978	27 May 1980
46	Italy	DTC	16 November 1995	2 March 1999
47	Japan	DTC	7 March 1997	5 November 1997
48	Jersey	TIEA	12 July 2011	29 February 2012
49	Kenya	DTC	26 November 2010	19 June 2015
50	Korea	DTC	7 July 1995	7 January 1996
51	Kuwait	DTC	17 February 2004	25 April 2006
52	Lesotho (Revised)	DTC	18 September 2014	27 May 2016
	(Terminated)	DTC	24 October 1995	9 January 1997
53	Liberia	TIEA	7 February 2012	7 July 2013
54	Liechtenstein	TIEA	29 November 2013	23 May 2015
55	Luxembourg	DTC	23 November 1998	8 September 2000
56	Malawi	DTC	3 May 1971	2 September 1971
57	Malaysia	DTC	26 July 2005	17 March 2006
		Protocol	4 April 2011	6 March 2012
58	Malta	DTC	16 May 1997	12 November 1997
		Protocol	24 August 2012	17 December 2013
59	Mauritius (Revised)	DTC	17 May 2013	28 May 2015
	(Terminated)	DTC	5 July 1996	20 June 1997
60	Mexico	DTC	19 February 2009	22 July 2010
61	Monaco	TIEA	23 September 2013	6 December 2014
62	Mozambique	DTC	18 September 2007	19 February 2009
63	Namibia	DTC	18 May 1998	11 April 1999
64	Netherlands	DTC	10 October 2005	28 December 2008
		Protocol	8 July 2008	28 December 2008
65	New Zealand	DTC	6 February 2002	23 July 2004
66	Nigeria	DTC	29 April 2000	5 July 2008
67	Norway	DTC	12 February 1996	12 September 1996
		Protocol	16 July 2012	20 November 2015
68	Oman	DTC	9 October 2002	29 December 2003
		Protocol	15 November 2011	5 November 2013
69	Pakistan	DTC	26 January 1998	9 March 1999
70	Poland	DTC	10 November 1993	5 December 1995
71	Portugal	DTC	13 November 2006	22 October 2008

	EOI partner	Type of agreement	Signature	Entry into force
72	Qatar	DTC	6 March 2015	2 December 2015
73	Romania	DTC	12 November 1993	21 October 1995
74	Russia	DTC	27 November 1995	26 June 2000
75	Rwanda	DTC	5 December 2002	3 August 2010
76	Samoa	TIEA	26 July 2012	28 May 2017
77	San Marino	TIEA	10 March 2011	28 January 2012
78	Saudi Arabia	DTC	13 March 2007	1 May 2008
79	Seychelles	DTC	26 August 1998	29 July 2002
		Protocol	4 April 2011	15 May 2012
80	Sierra Leone	DTC UK	5 November 1954	5 October 1960
81	Singapore (Revised)	DTC	23 November 2015 and 30 November 2015	16 December 2016
	(Terminated)	DTC	23 December 1996	5 December 1997
82	Slovak Republic	DTC	28 May 1998	30 June 1999
83	Spain	DTC	23 June 2006	28 December 2007
84	St. Kitts and Nevis	TIEA	7 April 2015	18 February 2017
85	Sudan	DTC	7 November 2007	Ratified in South Africa
86	Sweden	DTC	24 May 1995	25 December 1995
		Protocol	7 July 2010	18 March 2012
87	Switzerland	DTC	8 May 2007	27 January 2009
88	Chinese Taipei	DTC	14 February 1994	12 September 1996
89	Tanzania	DTC	22 September 2005	15 June 2007
90	Thailand	DTC	12 February 1996	27 August 1996
91	Tunisia	DTC	2 February 1999	10 December 1999
92	Türkiye	DTC	3 March 2005	6 December 2006
		Protocol	25 December 2013	15 July 2017
93	Turks and Caicos Islands	TIEA	27 May 2015	21 September 2018
94	Uganda	DTC	27 May 1997	9 April 2001
95	Ukraine	DTC	28 August 2003	29 December 2004
96	United Arab Emirates	DTC	23 November 2015	23 November 2016
97	United Kingdom	DTC	4 July 2002	17 December 2002
		Protocol	8 November 2010	13 October 2011

	EOI partner	Type of agreement	Signature	Entry into force
98	United States	DTC	17 February 1997	28 December 1997
99	Uruguay	TIEA	7 August 2015	6 October 2017
100	Zambia	DTC	22 May 1956	31 August 1956
101	Zimbabwe (Revised)	DTC	4 August 2015	1 December 2016
	(Terminated)	DTC	10 June 1965	3 September 1965

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).[32] 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 international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The Multilateral Convention was opened for signature on 1 June 2011.

The Multilateral Convention was signed by South Africa on 3 November 2011 and entered into force on 1 March 2014 in South Africa. South Africa 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,

32. 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.

Curaçao (extension by the Netherlands), Cyprus, 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.

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 1 August 2022), Papua New Guinea, Philippines, Rwanda, Togo and the United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

Multilateral African Tax Administration Forum Agreement on Mutual Assistance in Tax Matters (AMATM)

The Multilateral African Tax Administration Forum Agreement on Mutual Assistance in Tax Matters (AMATM) enters into force 30 calendar days after five of the Member States have submitted their instrument of ratification to the ATAF Executive Secretary. Member states that have submitted their instrument of ratification are: South Africa, Gambia, Lesotho, Liberia, Mozambique, Nigeria and Uganda and it came into force on 23 September 2017. Botswana, Eswatini, Ghana and Malawi have signed the AMATM but are yet to ratify it. South Africa became a signatory to AMATM on 17 January 2014.

Southern African Development Community's Agreement on Assistance in Tax Matters (SADC Agreement)

The Southern African Development Community's Agreement on Assistance in Tax Matters was signed on 18 August 2012 by Angola, Botswana, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia, and Zimbabwe. It provides for a framework exchange of information automatically, spontaneously or upon request between the relevant competent authorities. This agreement is not in force yet.

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 amended in December 2020 and 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 29 July 2022, South Africa's EOIR practice in respect of EOI requests made and received during the three year period from 1 October 2018 to 30 September 2021, South Africa's responses to the EOIR questionnaire, inputs from partner jurisdictions, as well as information provided by South Africa's authorities during the on-site visit that took place from 9 to 13 May 2022 in Pretoria.

List of laws, regulations and other materials received

- Banks Act, 1990
- Bearer Shares LAPD Government Gazette 2013
- Close Corporations Act, 1984
- Collective Investment Schemes Control Act 2002
- Companies Act, 1973
- Companies Act, 2008
- Companies Amendment Bill 2008
- Constitution of the Republic of South Africa, 1996
- Co-operatives Act, 2005
- Co-operative Banks Act, 2007
- FIC Guidance Note 07
- Financial Advisory and Intermediary Services Act 2002
- Financial Intelligence Centre Act, 2001

- Financial Markets Act 2012
- Financial Services Board Act 1990
- Financial Sector Regulation Act 2017
- Income Tax Act, 1962
- Insurance Act 2017
- Long Term Insurance Act 1998
- Mutual Banks Act, 1993
- Non-profit Organisation Act 1997
- Prevention of Organised Crime Act 1998
- Short Term Insurance Act 1998
- SOPs: Human Capital and Development – Recruitment and Selection 2018
- SOPs: Manage Exchange of Information 2019
- SOPs: Physical Security – Personnel Access and Movement Control 2013
- South African Reserve Bank Act, 1989
- South African Revenue Service Act, 1997
- Tax Administration Act 2011
- Trust Property Control Act, 1988
- Value-Added Tax Act, 1991

Authorities interviewed during on-site visit

- South African Revenue Services
- Companies and Intellectual Property Commission
- Financial Intelligence Centre
- Financial Services Conduct Authority
- Master of High Court
- South African Reserve Bank/Prudential Authority
- Representatives from Banking Association of South Africa
- Representatives from Independent Regulatory Board for Auditors
- Representatives from Legal Practice Council

Current and previous reviews

South Africa underwent a combined review (Phase 1 and Phase 2) of its legal and regulatory framework and the implementation of the framework in practice in 2013. The 2013 Review was conducted according to the terms of reference approved by the Global Forum in February 2010 and the Methodology used in the first round of reviews.

Due to the COVID-19 pandemic, the onsite visit that was scheduled to take place in March 2020 could not take place. Hence, South Africa's Round 2 EOIR peer review was phased, starting with a desk-based Phase 1 on the compliance of the legal and regulatory framework that culminated in June 2021 with the adoption of the report assessing the legal and regulatory framework of South Africa against the 2016 Terms of Reference (Phase 1 report). The onsite visit to South Africa has since taken place in May 2022 and the present review complements the first report with an assessment of the practical implementation of the standard, including in respect of exchange of information requests received and sent during the review period from 1 October 2018 to 30 September 2021, as well as any changes made to the legal framework since the Phase 1 review. Information on each of South Africa's reviews is listed in the table below.

Summary of reviews

<table>
<tr><th>Review</th><th>Assessment team</th><th>Period under review</th><th>Legal framework as of</th><th>Date of adoption by Global Forum</th></tr>
<tr><td>Round 1 combined Phase 1 and Phase 2</td><td>Mr Juan Pablo Barzola, Argentinean Tax Administration; Ms Helen Ritchie, HM Revenue and Customs of the United Kingdom; and Mr Mikkel Thunnissen from the Global Forum Secretariat</td><td>1 January 2007-31 December 2010</td><td>June 2012</td><td>November 2013</td></tr>
<tr><td>Round 2 Phase 1</td><td rowspan="2">Ms Esther Koisin, Malaysia; Mr Pierfrancesco Sanzi, Italy; Ms Irene Bashabe and Mr Puneet Gulati, Global Forum Secretariat</td><td>Not applicable</td><td>5 March 2021</td><td>June 2021</td></tr>
<tr><td>Round 2 Phase 2</td><td>1 October 2018-30 September 2021</td><td>29 July 2022</td><td>7 November 2022</td></tr>
</table>

Annex 4: South Africa's response to the review report[33]

South Africa would like to express its appreciation to the assessment team, Secretariat, Peer Review Group and exchange of information partners for their respective contributions to South Africa's 2022 Exchange of Information on Request Peer Review report ("the Report").

South Africa has a longstanding commitment to exchange of information through its extensive tax treaty network and is committed to maintaining an effective exchange of information network with all interested and appropriate partners in accordance with the international standard.

South Africa acknowledges the recommendations put forward in the Report. Steps have already commenced to address the recommendations received. To this end, the South African National Treasury worked closely with officials from the Departments of Justice and Constitutional Development, Trade, Industry and Competition, and Social Development, as well as the Financial Intelligence Centre, Companies and Intellectual Property Commission and South African Revenue Service, through an Interdepartmental and agency Committee, in preparing one omnibus Bill that includes amendments across the following Acts:

- Trust Property Control Act, 1988
- Nonprofit Organisations Act, 1997
- Financial Intelligence Centre Act, 2001
- Companies Act, 2008
- Financial Sector Regulation Act, 2017.

The Bill addresses key beneficial ownership issues raised in the Report, as well as other issues identified in South Africa's Financial Action Task Force Mutual Evaluation of 2021. The Bill is currently before Parliament and it is anticipated that the amendments will take effect by early 2023.

South Africa would like to express its gratitude for the ongoing work of the Global Forum in assisting jurisdictions to implement the international standard effectively.

33. 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 SOUTH AFRICA 2022 (Second Round, Combined Review)

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 Combined Peer Review on the Exchange of Information on Request for South Africa.

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