

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information  
on Request

# TURKS AND CAICOS ISLANDS

2019 (Second Round)





# **Global Forum on Transparency and Exchange of Information for Tax Purposes: Turks and Caicos Islands 2019 (Second Round)**

PEER REVIEW REPORT ON THE EXCHANGE  
OF INFORMATION ON REQUEST

March 2019  
(reflecting the legal and regulatory framework  
as at December 2018)

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**Please cite this publication as:**

OECD (2019), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Turks and Caicos Islands 2019 (Second Round) : Peer Review Report on the Exchange of Information on Request*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris.  
<https://doi.org/10.1787/5a837e0a-en>

ISBN 978-92-64-31872-4 (print)  
ISBN 978-92-64-45503-0 (pdf)

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

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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 150 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).

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

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

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

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

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

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

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

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

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

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



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

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

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

## **More information**

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



## Abbreviations and acronyms

<b>AML</b>	Anti-Money Laundering
<b>AML/CFT</b>	Anti-Money Laundering/Countering the Financing of Terrorism
<b>AMLPTFC</b>	Anti-Money Laundering and Prevention of Terrorism Financing Code
<b>AMLPTFR</b>	Anti-Money Laundering and Prevention of Terrorism Financing Regulations
<b>CDD</b>	Customer Due Diligence
<b>CIP</b>	Customer Identification Programme
<b>CMLO</b>	Company Management Licensing Ordinance
<b>DNFBP</b>	Designated Non-Financial Business Profession
<b>DTC</b>	Double Tax Convention
<b>EOI</b>	Exchange of information
<b>EOIR</b>	Exchange of information on request
<b>FATF</b>	Financial Action Task Force
<b>FSAP</b>	Financial Sector Assessment Programme
<b>FSC</b>	Financial Services Commission
<b>Global Forum</b>	Global Forum on Transparency and Exchange of Information for Tax Purposes
<b>LLC</b>	Limited liability company
<b>LLP</b>	Limited Liability Partnership
<b>LP</b>	Limited partnership
<b>LPO</b>	Limited Partnership Ordinance

<b>Multilateral Convention</b>	The Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended
<b>NPO</b>	Non-Profit Organisation
<b>POCO</b>	Proceeds of Crime Ordinance
<b>PORC</b>	Producer Owned Reinsurance Company
<b>PRG</b>	Peer Review Group of the Global Forum
<b>SAR</b>	Suspicious Activity Report
<b>TCC</b>	Trust Company Code
<b>TC(L&amp;S)O</b>	Trust Companies (Licensing & Supervision) Ordinance 2016
<b>TIEA</b>	Tax Information Exchange Agreement
<b>TIN</b>	Taxpayer Identification Number
<b>2016 Assessment Criteria Note</b>	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015.
<b>2016 Methodology</b>	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
<b>2016 Terms of Reference (ToR)</b>	Terms of Reference related to Exchange of Information on Request (EOIR), as approved by the Global Forum on 29-30 October 2015.

## Executive summary

1. This report analyses the implementation of the international standard of transparency and exchange of information on request in the Turks and Caicos Islands on the second round of reviews conducted by the Global Forum against the 2016 Terms of Reference. It assesses both the legal and regulatory framework as at 19 December 2018 and the practical implementation of this framework, in particular the EOIR standard, by the Turks and Caicos Islands in respect of EOI requests processed received and sent during the review period from 1 January 2015 to 31 December 2017. This report concludes that the Turks and Caicos Islands continues to be overall **Largely Compliant** with the international standard. In 2013 the Global Forum evaluated the Turks and Caicos Islands for its implementation of the standard against the 2010 Terms of Reference, and also rated the Turks and Caicos Islands overall Largely Compliant with the standard.

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

Element	First Round Report (2013)	Second Round Report (2019)
A.1 Availability of ownership and identity information	C	LC
A.2 Availability of accounting information	LC	LC
A.3 Availability of banking information	C	LC
B.1 Access to information	C	C
B.2 Rights and Safeguards	C	C
C.1 EOIR Mechanisms	C	C
C.2 Network of EOIR Mechanisms	C	C
C.3 Confidentiality	C	C
C.4 Rights and Safeguards	C	C
C.5 Quality and timeliness of responses	LC	C
<b>OVERALL RATING</b>	<b>LC</b>	<b>LC</b>

C = Compliant; LC = Largely Compliant; PC = Partially Compliant; NC = Non-Compliant

## Progress made since previous review

2. Over the last five years, the Turks and Caicos Islands has worked to strengthen and improve the effectiveness of its legal and regulatory framework on the implementation of the international standard on the exchange of information upon request.
3. The Turks and Caicos Islands has enacted new laws, such as a new accounting record keeping requirements for trusts and companies; and committed to increase the number of staff in its EOI Unit (set to rise from 3 to 5 persons following the passage of the 2019-20 budget). All other elements reviewed as part of the 2013 report were rated Compliant with the EOIR standard. The Turks and Caicos Islands nonetheless improved other aspects of its framework for transparency and exchange of information for tax purposes: for example enacting the new Companies Ordinance and a new register of Beneficial Ownership. The EOI network was also considerably expanded with the entry into force of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

## Key recommendation(s)

4. While progress has been made since the last report, certain areas remain where further work should be completed. The three key issues raised by this report relate to the three elements of the 2016 Terms of Reference's requirements on transparency and the availability of information: legal and beneficial ownership, accounting, and banking information.
5. The revised 2016 Terms of Reference, in effect for this report, contain additional requirements on the availability of beneficial ownership information, than those in place at the time of the 2013 Report. While its legal framework establishing the availability of beneficial ownership information is generally in place, the Turks and Caicos Islands does not require the availability of information on beneficial ownership for limited partnerships in all cases, as required by the revised 2016 Terms of Reference. The Turks and Caicos Islands should therefore take further measures to ensure that beneficial owners of all limited partnerships are identified in line with the standard.
6. While today the legal and regulatory framework is generally in place, the supervisory framework of the Turks and Caicos Islands is not sufficiently comprehensive to ensure that ownership, accounting and banking information is adequately maintained for all relevant entities and arrangements.
7. More specifically, licensed Company Managers play a key role in ensuring the availability of information for companies operating in the Turks and Caicos Islands. However, authorities in the Turks and Caicos Islands

continue to identify deficiencies in Company Managers’ abilities to maintain proper beneficial ownership information on their client companies. These deficiencies indicate that an important component of the Turks and Caicos Islands’ beneficial ownership framework cannot be confirmed at this time. The Turks and Caicos Islands should therefore ensure that licensed corporate service providers comply with relevant record-keeping requirements and are subject to effective oversight.

8. In terms of availability of accounting information under element A.2, since the last report, the Turks and Caicos Islands has implemented accounting record keeping requirements for licensed trust companies, and now all relevant entities and arrangements have adequate obligations to keep accounting books and records. However, the Turks and Caicos Islands does not have a system in place for monitoring the accuracy of accounting information in all cases. Although the Turks and Caicos Islands’ financial supervisor, the Financial Services Commission (FSC), verifies the accuracy of accounting records of legal entities it supervises, it has yet to undertake targeted accounting examinations of entities, and all other legal entities in the Turks and Caicos Islands which are not under the FSC’s supervision are not subject to accounting oversight and verification requirements. As such, it cannot be confirmed that reliable accounting records are kept for all legal entities and arrangements in the Turks and Caicos Islands. The Turks and Caicos Islands should implement an effective oversight and enforcement system to ensure the availability of accurate and reliable accounting information in all cases.

9. Similarly, the revised 2016 Terms of Reference require that banking information should be available for account-holders. As such, banks should be subject to appropriate supervision. As described further in this report, the relevant authorities in the Turks and Caicos Islands continue to identify deficiencies related to the banking sector’s compliance with the AML/CFT framework. The Turks and Caicos Islands has recently finalised a new risk-based supervision strategy for its banking sector. Given the limited number of examinations under this new supervisory approach, more time is required to confirm the effectiveness in practice of banking supervision in the Turks and Caicos Islands.

## Overall rating

10. The Turks and Caicos Islands has addressed the recommendations in the 2013 Report on the organisation and timeliness of exchanges of information, leading to an upgrade of element C.5 from Largely Compliant to Compliant. The Competent Authority in the Turks and Caicos Islands fully responded to all six EOI requests it received during the review period under 90 days, an increase from the four requests received in the last review period,

and did not send any EOI requests during the review period. Furthermore, the Competent Authority updated its EOI Manual, and all responses were made in accordance with these revisions. Peers are generally very satisfied with the quality of the Turks and Caicos Islands' responses to EOI requests, and consider it a reliable partner for the exchange of tax-related information.

11. The Turks and Caicos Islands has achieved a rating of Compliant for seven elements (B.1, B.2, C.1, C.2, C.3, C.4, and C.5). However, as mentioned above, the 2016 Terms of Reference broadened the standard's requirements, adding requirements on access to beneficial ownership information. As described above, the legal framework and the implementation of that framework in practice contain deficiencies regarding the availability of beneficial ownership information requirements in element A.1, which the Turks and Caicos Islands must address. In addition, except for those entities that are subject to FSC licensing or regulation, the supervisory system is not in place to ensure that accounting information is accurate, in accordance with element A.2 of the revised 2016 Terms of Reference. Furthermore, the Turks and Caicos Islands recently implemented a finalised programme of risk-based supervision for its banking sector, and more time is needed to ensure that this programme of supervision can be appropriately applied across the Turks and Caicos Islands' banking sector to ensure that the requirements of element A.3 are effectively implemented. These deficiencies related to the supervision of relevant entities for purposes of the EOIR standard have an impact on the ratings of elements A.1, A.2, and A.3, which are rated Largely Compliant.

12. In view of the above, the overall assigned rating for the Turks and Caicos Islands is rated overall Largely Compliant.

13. This report was approved at the PRG meeting in February 2019 and was adopted by the Global Forum on 15 March. A follow-up report on the Turks and Caicos Islands' steps taken to address the recommendation in this report should be sent to the PRG no later than 30 June 2020 and thereafter, in accordance with the procedure set out under the 2016 Methodology.



### Summary of determinations, ratings and recommendations

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities ( <i>ToR A.1</i> )		
<b>The legal and regulatory framework is in place</b>	There is no requirement under the AML/CFT laws to verify the identity of a limited partner of a partnership that: (i) is not a regulated business; (ii) has not filed for a business licence; or (iii) has not engaged a licensed service provider. Therefore, the beneficial ownership information available may not necessarily identify all beneficial owners of a limited partnership in line with the standard.	The Turks and Caicos Islands should ensure that information on all beneficial owners of a partnership is available in line with the standard in all cases.
<b>Largely Compliant</b>	The Financial Services Commission has recently strengthened its supervision programme of CSPs, lawyers and accountants, which is still subject to improvements. The Financial Services Commission is yet to apply sanctions in case of breaches with AML obligations.	The Turks and Caicos Islands is recommended to monitor the application of its supervision programme of CSPs, lawyers and accountants, and should apply effective sanctions in cases of serious breaches with AML obligations.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements ( <i>ToR A.2</i> )		
<b>The legal and regulatory framework is in place.</b>		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
<b>Largely Compliant</b>	Although accounting requirements cover all relevant legal entities and arrangements in the Turks and Caicos Islands, including those entities that are subject to FSC licensing or regulation (such as registered agents, which are subject to a FSC-sponsored programme to raise awareness of compliance requirements), the existing system of monitoring to ensure the accuracy and availability of accounting records is not yet fully in place and, as such, does not currently cover all relevant legal entities and arrangements. In addition, this lack of oversight also applies to accounting records of companies that have ceased to exist.	The Turks and Caicos Islands is recommended to implement an effective system of oversight and enforcement to support the legal requirements which ensure the availability of accounting information for legal entities and arrangements in all cases.
Banking information and beneficial ownership information should be available for all account-holders ( <i>ToR A.3</i> )		
<b>The legal and regulatory framework is in place</b>		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
<b>Largely Compliant</b>	Although the Financial Services Commission has monitored its banks during the peer review period, it has only recently formalised a new risk-based supervision approach to banks. More time is required to confirm the effective application of this supervisory approach. In addition, in situations where deficiencies in complying with AML obligations are detected by the Financial Services Commission, there is no imposition of sanctions. Therefore, more time is needed to ensure that this system is effective in addressing deficiencies in complying with AML/CFT obligations.	The Turks and Caicos Islands is recommended to monitor the application of its risk-based supervision to banks, to ensure that they comply with their record-keeping requirements (including beneficial ownership on bank accounts) in all cases and should consider applying sanctions in case of unaddressed breaches with AML obligations.
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) ( <i>ToR B.1</i> )		
<b>The legal and regulatory framework is in place.</b>		
<b>Compliant</b>		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information ( <i>ToR B.2</i> )		
<b>The legal and regulatory framework is in place.</b>		
<b>Compliant</b>		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Exchange of information mechanisms should provide for effective exchange of information ( <i>ToR C.1</i> )		
<b>The legal and regulatory framework is in place.</b>		
<b>Compliant</b>		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners ( <i>ToR C.2</i> )		
<b>The legal and regulatory framework is in place.</b>		
<b>Compliant</b>		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received ( <i>ToR C.3</i> )		
<b>The legal and regulatory framework is in place.</b>		
<b>Compliant</b>		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties ( <i>ToR C.4</i> )		
<b>The legal and regulatory framework is in place.</b>		
<b>Compliant</b>		
The jurisdiction should request and provide information under its network of agreements in an effective manner ( <i>ToR C.5</i> )		
<b>Legal and regulatory framework:</b>	<b>This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.</b>	
<b>Compliant</b>		

## Overview of the Turks and Caicos Islands

14. This overview provides some basic information about the Turks and Caicos Islands that serves as a context for understanding the analysis in the main body of the report. This is not intended to be a comprehensive overview of the Turks and Caicos Islands’ legal, tax, commercial or regulatory systems.

### Legal system

15. The Turks and Caicos Islands is a self-governed British overseas territory comprising two island groups in the Caribbean, with a population (based on the 2017 estimate) of just under 40 000. The currency of exchange is the United States dollar (USD). There is no central bank.

16. The executive authority of the Turks and Caicos Islands is vested in the Queen of England, represented on the Turks and Caicos Islands by the Governor. The Turks and Caicos Islands’ Constitution establishes a parliamentary system of government, including a Cabinet and House of Assembly, which is tasked with making laws.

17. The Turks and Caicos Islands’ legal system is based on English common law and locally enacted legislation. All laws made are to conform to the Turks and Caicos Islands’ written constitution. The legal system comprises of statute law, which is made up largely of locally enacted legislation. Once laws are enacted by the Turks and Caicos Islands’ House of Assembly and assented to by the Governor, they then make up the statute laws which are applicable to the Turks and Caicos Islands.<sup>1</sup> There are two types of legislation – primary legislation and subsidiary legislation, which is made under the authority of primary legislation. Subsidiary legislation includes Rules, Regulations and Orders.

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1. The Governor in certain circumstances has reserved power to make legislation as provided in section 72 of the Constitution after consultation with the Premier, if it appears to the Governor that the Cabinet is unwilling to support the introduction into the House of Assembly of a bill for the purpose or that the House is unlikely to pass a bill introduced into it for the purpose.

18. In addition to locally adopted statute law, the laws applied by the United Kingdom through an Act of Parliament (which is limited) and Orders in Council also make up the Turks and Caicos Islands' legal system. Finally, while Treaties and international conventions are extended to the Turks and Caicos Islands by the UK Government, the UK has issued "Letters of Entrustment" to the Turks and Caicos Islands which permit it to enter into legal arrangements (such as tax arrangements and agreements). The Turks and Caicos Islands, like the UK, adheres to the principle of dualism whereby international law does not automatically form part of domestic law, but rather, it must be incorporated into domestic law in order for it to be enforceable in the Turks and Caicos Islands. The Tax Information (Exchange and Mutual Administrative Assistance) Ordinance is the enabling mechanism which gives effect to the incorporation of international tax conventions extended by the UK to the Turks and Caicos Islands, and agreements and arrangements entered into by the Turks and Caicos Islands with other jurisdictions for purposes of exchange of information and co-operation in tax matters.

## **Tax system**

19. The Turks and Caicos Islands does not operate an income or corporate income tax regime. As such, there currently exists no central taxation or revenue authority within the Turks and Caicos Islands. Instead, various government authorities administer taxes on certain service sectors (i.e. hotels and tourism) and import duties on goods.

20. The Revenue Department, housed within the Ministry of Finance, administers, inter alia, the Hotel and Tourism Tax, the Domestic Financial Services Tax, and the Insurance Premium Sales Tax. The Customs Department administers customs duties on goods imported and exported from the Turks and Caicos Islands. The Lands Registry and the Collector of Stamp Duty are tasked with the administration of Stamp Duty.

21. Under the Tax Information (Exchange and Mutual Administrative Assistance) Ordinance, the Permanent Secretary of Finance is capable of either serving as, or designating, the Competent Authority. The Permanent Secretary of Finance has designated the Director of the Turks and Caicos Islands' Exchange of Information Unit as the Competent Authority of the Turks and Caicos Islands.

## **Financial services sector**

22. The Turks and Caicos Islands' financial services sector is supervised by the Financial Services Commission (FSC), and is comprised of the following entities: asset managers (comprising 11 mutual funds, six investment

dealers, and nine trust companies), commercial banks, company managers, companies and partnerships, international and domestic insurance companies, trusts, and money transmitters,.

23. Below is a table providing further information on the number of financial institutions active in the Turks and Caicos Islands, along with the value of their total assets (where available).

Type of institution	Number of financial institutions as of March		Total assets (in USD)
	2017		
Commercial banks	7		USD 1 897 billion
International and domestic insurance companies	Domestic insurers – 18 Captives <sup>a</sup> – 69 Producer owned reinsurance companies <sup>a</sup> – 7 334		USD 8 693 million
Asset managers	26		USD 1 836 billion <sup>b</sup>
DNFBPs	125		Not available
Company managers	36		Not available
Money transmitters	3		Not available

Notes: a. Information not available for international insurers.

b. For asset managers, this figure represents assets under management, not total assets.

24. While the assets of the Turks and Caicos Islands banking sector are relatively large compared to the size of the GDP (230 % of GDP in 2015), six of the seven currently licensed banks active in the Turks and Caicos Islands are branches or subsidiaries of foreign banks, subject to co-ordinated supervision with the home jurisdiction.<sup>2</sup> The insurance sector is much smaller by assets than the banking sector, but has a large number of niche US Producer-Owned Re-insurance Companies (PORCs).<sup>3</sup> Overall, financial market activities in the Turks and Caicos Islands are limited.

25. The FSC serves as the prudential regulator and supervisor of the financial services sector in the Turks and Caicos Islands. The FSC also supervises compliance of designated non-financial businesses and professionals (DNFBPs) and non-profit organisations (NPOs) with anti-money laundering and combating the financing of terrorism (AML/CFT) laws under the Proceeds of Crime Ordinance (POCO). The FSC maintains information on entities it supervises, including the Companies, Business Names, Trade Marks, Patents and Limited Partnerships Registries. The FSC has access to

2. One bank licensed in the Turks and Caicos Islands is affiliated with a foreign bank, but is not a branch or subsidiary of a foreign bank.
3. International Monetary Fund (2015), “Financial System Profile”, in *Financial Sector Assessment Program: Turks and Caicos Islands*, International Monetary Fund, Washington, DC.

relevant beneficial ownership information obtained as part of the required registry filings and supervision.

26. The FSC also supervises the licensing of persons to conduct corporate or trust business under the Company Management Licensing Ordinance.

27. The AML/CFT related customer due diligence (CDD) requirements established under the POCO allow the Competent Authority to access relevant beneficial ownership information (e.g. through licensed Company Managers). In addition, the FSC also maintains a Beneficial Ownership Register on all companies incorporated under the Companies Ordinance 2017. The FSC will maintain this information in its registry, which can be used in administrative compliance and law enforcement efforts for the moment. The Turks and Caicos Islands' Competent Authority is currently not authorised to request information from the Beneficial Ownership Register. Nevertheless, as described further in this report, the Competent Authority is able to access relevant beneficial ownership information for purposes of the 2016 Terms of Reference through other channels (e.g. licensed Company Managers).

## **FATF assessment**

28. The Financial Action Task Force (FATF) and its FATF-style regional bodies (FSRBs) evaluate jurisdictions for compliance with AML/CFT standards. Its evaluations 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 and terrorist financing issues. The relevant FSRB for the Turks and Caicos Islands is the Caribbean Financial Action Task Force (CFATF).

29. The Third Round Mutual Evaluation Report (MER) of the Turks and Caicos Islands' compliance with the AML/CFT standard was conducted by CFATF and adopted in 2008. At the time of the adoption of the MER, the Turks and Caicos Islands had 24 Core and Key Recommendations rated partly compliant (PC) and 15 Core and Key Recommendations were rated as non-compliant (NC). For example FATF Recommendations on customer due diligence, politically exposed persons, and correspondent banking were rated NC, while FATF Recommendations related to record keeping, internal controls, and regulation were rated PC. The Turks and Caicos Islands was placed in expedited follow-up reporting on a yearly basis. Subsequent follow up reports were carried out in 2016, when the Turks and Caicos Islands exited the CFATF follow up process after demonstrating that it had successfully addressed significant deficiencies identified in its Mutual Evaluation Report.

30. The Turks and Caicos Islands is currently undergoing its 4th Round CFATF Mutual Evaluation. The CFATF onsite visit took place in September



2018. The Turks and Caicos Islands has commenced dialogue with the Assessment team in relation to the Draft Mutual Evaluation Report which, once finalised, will be submitted for approval at the CFATF Plenary in May 2019.

## Recent developments

31. In the Turks and Caicos Islands, a number of new pieces of legislation came into force recently.

32. The Companies Ordinance 2017 came into force on 1 December 2017. It updates corporate governance requirements for corporations established in the Turks and Caicos Islands. All companies active in the Turks and Caicos Islands were initially required to comply with the new Companies Ordinance 2017 by 31 October 2018. The Companies Ordinance 2017 required all companies to file, via a licensed resident agent, relevant beneficial ownership information with the FSC's Beneficial Ownership Register, also by 31 October 2018. However, in order to provide the relevant industry participants more time, the FSC has extended the deadline for compliance with these requirements until 31 December 2018. The Register is a non-public central registry intended to assist law enforcement and administrative investigations. The Companies Ordinance Cap 16.08 was definitively repealed on 31 December 2018. Following this repeal, the recently enacted Companies Ordinance 2017 has become the sole legislation for corporations in the Turks and Caicos Islands.

33. The Trusts Ordinance 2016 came into force on 23 September 2016. It provides updated provisions for, inter alia, the creation and validity of trusts, the appointment and duties of trustees, and breach of trusts.

34. The Trusts Companies Ordinance 2016 came into force on 15 September 2016. This Ordinance updated the law as it relates to trustees and trust service providers. The Ordinance provides for the licensing and supervision of trust companies and the supervision of private trust companies.

35. An Insolvency Ordinance was passed by the Turks and Caicos Islands' House of Assembly in December 2017. The Ordinance was not brought into operation in 2018 as regulations and rules continued to be drafted and finalised. In the interim, legal entities were able to access the relevant provisions of the Companies Ordinance Cap 16.08 in respect to winding up and liquidating companies. With the repeal of the Companies Ordinance Cap 16.08, the Insolvency Ordinance was made operational on 1 January 2019 to provide limited powers for insolvency. The powers will be expanded by the passage of the Regulations and the Rules by the end of February 2019.

36. The scope of the Turks and Caicos Islands' Tax Information (Exchange and Mutual Administrative Assistance) Ordinance was amended in 2014 to include all forms of exchange of information. The Ordinance was further amended in 2016 and 2017 when the Turks and Caicos Islands committed to implement the Common Reporting Standards (CRS) for automatically sharing financial account information with other CRS participating jurisdictions. Although an early adopter of the CRS, the Turks and Caicos Islands was not able to exchange 2016 CRS financial accounts information due to the hurricanes of 2017, and was granted a waiver as such. The Turks and Caicos Islands exchanged CRS financial accounts data for 2016 and 2017 in mid-October 2018 with approximately 57 jurisdictions that were Interested Appropriate Partners.

37. In 2015, the Turks and Caicos Islands signed an intergovernmental agreement with the United States to implement the exchange of financial account information under the United States' Foreign Account Tax Compliance Act (FATCA). The Turks and Caicos Islands exchanged FATCA related data with the United States on two separate occasions. In 2016, the Turks and Caicos Islands exchanged 2015 data, and in 2018 the Turks and Caicos Islands exchanged data for the years 2016 and 2017. Exchanges were not possible in 2017 due to the impact of hurricanes on the Turks and Caicos Islands.

## Part A: Availability of 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.

38. The 2013 Report concluded that the rules requiring availability of legal ownership information in respect of all relevant entities and arrangements in the Turks and Caicos Islands were in place and in line with the standard. Since then, the Companies Ordinance 2017 was enacted to ensure that the Turks and Caicos Islands' corporate and financial sector remains in line with international standards. The Companies Ordinance updated the definitions of corporate entities, as well as other aspects of corporate governance. It also introduced a requirement that all registered companies in the Turks and Caicos Islands provide information to the Beneficial Ownership Register.

39. The 2013 Report concluded that, in relation to the implementation of the laws in the Turks and Caicos Islands, practice was generally in line with the standard. However, the 2013 Report concluded that the financial regulator, the Financial Services Commission (FSC), did not impose sanctions for AML/CFT violations if such violations were corrected within a granted time-frame, even where the underlying violations were significant. Accordingly, it was recommended that the FSC consider applying sanctions in these cases.

40. In response to this recommendation, the FSC explained its AML/CFT supervisory process with regards to applying sanctions during the onsite visit. The FSC noted that when significant breaches of AML/CFT obligations are discovered, even if the gaps are addressed by the persons concerned, the FSC will consider applying sanctions. However, before applying sanctions, the FSC would consider a number of factors in determining whether a less severe, or no sanction would be appropriate. To date, the FSC said it has not needed to apply sanctions on entities due to violations of AML/CFT obligations.

41. Upon determining that there may be a breach of a legal requirement, the FSC issues a “Notice of Intention to take Disciplinary Action” to the licensee or regulated entity, which can then respond within 28 days. Before determining the exact penalty, the FSC considers any written representation it may receive in response to a Notice. If an offence is (i) a first time offence, (ii) is considered to not be serious or deliberate, or (iii) the licensee takes immediate steps to rectify the actions, the FSC may withdraw the proposed penalties. During the peer review period, the FSC identified violations of AML/CFT obligations in various onsite examinations, but given that these were first-time violations and that the persons and entities in question ultimately complied with the requirements before the deadline imposed by the FSC, it was decided to work with the entity to bring it into compliance rather than impose a significant penalty.

42. While it is understood that the imposition of a monetary sanction is not in all cases necessary in order to ensure compliance by the financial sector, the FSC continues to note that AML/CFT deficiencies are routinely discovered in its onsite examinations. Both in the banking and registered agent sectors, the FSC has noted that AML/CFT compliance, including the maintenance of beneficial ownership records, remains a concern. While the FSC has applied fines during the review period, these have generally been low financial amounts. In this context, it is recommended that the FSC apply effective, proportionate and dissuasive sanctions to future instances of misconduct.

43. The revised 2016 Terms of Reference requires that beneficial ownership information on relevant entities and arrangements should be available. In the Turks and Caicos Islands, the requirements ensuring the availability of beneficial ownership information are contained in the legislation under which entities or arrangements are incorporated, established or registered, as well as under AML/CFT laws. While beneficial ownership information is available for most entities in the Turks and Caicos Islands, legal gaps have been identified with regards to the availability of beneficial ownership information of limited partnerships. As such, this does not ensure, in practice, that the appropriate beneficial ownership information on all entities will be available to authorities in the Turks and Caicos Islands.

44. Limited partnerships not requiring a business licence are not under an obligation to verify the identity of the natural persons who are limited partners. While in practice limited partnerships and general partnerships often engage corporate service providers that are subject to AML/CFT obligations, there is not a legal requirement for these entities to employ such service providers. Therefore, because other beneficial ownership obligations are not in place for these entities, it is not guaranteed that all limited and general partnerships will be covered by AML/CFT obligations that

ensure beneficial ownership information is available. As such, the Turks and Caicos Islands should ensure that information on all beneficial owners of a partnership is available as required under the standard.

45. Licensed service providers play an important role in establishing legal entities and arrangements and providing legal and corporate services. These providers are licensed by the FSC and are an important source of beneficial ownership information. It was noted in the 2013 Report that certain categories of professional trustees were exempted from licensing, AML/CFT requirements and, therefore, beneficial ownership information requirements. Accordingly, it was recommended that the Turks and Caicos Islands ensure effective oversight of these entities.

46. The Turks and Caicos Islands recently increased its supervision of trust and corporate service providers, accountants and lawyers. The Turks and Caicos Islands has also begun outreach efforts to licensed service providers, to clarify their obligations. The reporting obligations for licensed service providers were recently established, and efforts at ensuring full supervision are ongoing. During the onsite, Turks and Caicos Islands authorities noted they continue to see that licensed service providers have not met AML/CFT obligations relating to the verification of accounts and maintaining updated customer due diligence information. As such, it is recommended that the Turks and Caicos Islands continue to ensure that licensed service providers comply with AML/CFT and beneficial ownership requirements.

47. Supervision of the AML/CFT framework with respect to financial businesses and banks generally ensures the availability of legal and beneficial ownership information in practice. The responsible authorities take supervisory measures including risk based off-site and on-site inspections. However, as discussed further in section A.3, the implementation of the risk based supervision framework with respect to banks in the Turks and Caicos Islands has only recently been put in place. Turks and Caicos Islands authorities noted that for the period 2015 to 2017, examinations identified that banks were not consistent in maintaining periodic reviews of accounts classified as high risk, and that there was an absence of a comprehensive AML/CFT risk assessment process among banks. Therefore, insufficient time has elapsed to ensure that this supervisory approach is effective in remedying the AML/CFT deficiencies identified for the period 2015 to 2017, as well as those previously identified in the Turks and Caicos Islands' 2013 Report. The Turks and Caicos Islands should ensure that the FSC maintains effective supervision over the financial sector.

48. During the review period, while the Turks and Caicos Islands did not receive requests for legal or beneficial ownership of legal entities or arrangements, it did receive, and fully responded to, three requests related

to the ownership of bank accounts and bank-related credit cards held by individuals.<sup>4</sup>

49. The new table of recommendations, determination and rating is as follows:

<b>Legal and Regulatory Framework</b>		
<b>Deficiencies identified in the implementation of the legal and regulatory framework</b>	<b>Underlying Factor</b>	<b>Recommendation</b>
	There is no requirement under the AML/CFT laws to verify the identity of a limited partner of a partnership that: (i) is not a regulated business; (ii) has not filed for a business licence; or (iii) has not engaged a licensed service provider. Therefore, the beneficial ownership information available may not necessarily identify all beneficial owners of a limited partnership in line with the standard.	The Turks and Caicos Islands should ensure that information on all beneficial owners of a partnership is available in line with the standard in all cases.
<b>Determination: In place</b>		
<b>Practical implementation of the standard</b>		
	<b>Underlying Factor</b>	<b>Recommendation</b>
	The FSC has recently strengthened its supervision programme of CSPs, lawyers and accountants, which is still subject to improvements. The FSC is yet to apply sanctions in case of breaches with AML obligations.	The Turks and Caicos Islands is recommended to monitor the application of its supervision programme of CSPs, lawyers and accountants and should apply sanctions in cases of serious breaches with AML obligations.
<b>Rating: Largely Compliant</b>		

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

50. The 2013 Report concluded that legal ownership information in respect of companies in the Turks and Caicos Islands was required to be available in line with the standard. The Turks and Caicos Islands recently updated its Companies Ordinance to reform rules governing companies operating domestically.

4. Please note that some requests entailed more than one information category and some requests entailed more than one individual or entity type.

51. Two Companies Ordinances are currently in effect in the Turks and Caicos Islands. The Companies Ordinance Cap 16.08 is being phased out and will be definitively repealed on 31 December 2018. Following this repeal, the recently enacted Companies Ordinance 2017 will become the sole legislation for corporations. Until 31 December 2018, both Ordinances will remain in effect.

52. The Companies Ordinance 2017 governs all companies operating in the Turks and Caicos Islands. Companies previously registered under the Companies Ordinance Cap 16.08 have the option of voluntarily transferring their registration to the Companies Ordinance 2017. Companies that do not voluntarily transfer will be automatically reassigned to the new Companies Ordinance 2017 by 1 January 2019. Accordingly, the Turks and Caicos Islands authorities confirmed that by 2019, all companies in the Turks and Caicos Islands will operate under the Companies Ordinance 2017. As such, this section will primarily focus on the Companies Ordinance 2017 given that it is soon to be the only relevant Companies Ordinance for the Turks and Caicos Islands.

### *Companies in the Turks and Caicos Islands*

53. Under the Companies Ordinance Cap 16.08, companies are permitted to be incorporated either as an ordinary company or under the classification of exempt companies, which includes limited life companies and foreign exempt companies. An ordinary company is a company which is not restricted to carry on business whether inside or outside of the Islands. An exempt company is a company whose activities are conducted substantially outside the Turks and Caicos Islands and, while it is permitted to hold a bank account and own or lease office space in the Turks and Caicos Islands, it is otherwise prohibited from conducting business activities in the jurisdiction.

54. Under the Companies Ordinance 2017, two new types of companies were established: domestic companies and international companies. Companies that were previously defined as “exempt”, “foreign exempt” and “limited life” under the Companies Ordinance Cap 16.08 will all be defined as “international companies” under the new Companies Ordinance 2017.

55. Under the Companies Ordinance Cap 16.08, ordinary companies are required to file and maintain accurate information with the Registrar in respect to directors, corporate secretary, registered address, shareholders and shareholding. However, exempt companies (which includes both limited life companies and foreign companies) are not required to file information regarding their directors or shareholders. Exempt companies are also under no obligation to maintain any other ownership information with registered company managers. Exempt companies are, however, required to engage a

licensed Company Manager in the Turks and Caicos Islands who is obligated to maintain the beneficial ownership information of the exempt companies that are its clients.

56. Under the new Companies Ordinance 2017, both domestic companies and international companies are required to file information on their directors and members with the Companies Registry, as well as maintain beneficial ownership information with a registered company manager.

**Summary of legal requirements to maintain legal and beneficial ownership information in respect of companies incorporated in the Turks and Caicos Islands**

Type	Number registered in TCI (March 2018)	Company law	Tax law	AML/CFT laws
Domestic/Ordinary company	5 670	Legal – all Beneficial – all	Legal – none Beneficial – none	Legal – all Beneficial – all
International/Exempt company	10 653	Legal – all Beneficial – some	Legal – none Beneficial – none	Legal – all Beneficial – all
Foreign companies with relevant nexus	143	Legal – all Beneficial – some	Legal – none Beneficial – none	Legal – all Beneficial – all

**Legal ownership information with the Companies Registry in the Turks and Caicos Islands**

57. Every company type incorporated under the Companies Ordinance 2017 must be registered under the Companies Registry, which is part of the FSC. A company identified as an international company must also be registered with the Companies Registry in order to carry on business in the Turks and Caicos Islands.

58. In order to register, a company must first engage a licensed service provider, responsible for incorporating and providing administration services to the company. The Turks and Caicos Islands provides for two types of licensed service providers. A licensed Company Agent may provide incorporation or registration of companies under the Companies Ordinance 2017, and the provision of registered agent services for companies incorporated in jurisdictions other than the Turks and Caicos Islands. A licensed Company Manager may provide all the services of a Company Agent, in addition to acting as a nominee director and nominee shareholder.

59. As of March 2018, there were 36 licensed company service providers (both Company Managers and Company Agents) and 9 Trust Company Service Providers in the Turks and Caicos Islands. After incorporation, companies are required to file a notice of its directors and members with the Registrar.



60. Only registered agents (licensed service providers) can submit information to the Companies Registry under the Companies Ordinance 2017. Currently, submissions are done by paper, but the Companies Registry and FSC are in the process of making online submissions possible. Licensed service providers are required to obtain and carry out customer due diligence on the owners and controllers of the company. These requirements are then reviewed by the Companies Registry, upon submission by the licensed service provider. The Companies Registry checks the identity of the initial owner presented in the registration form, as provided by the licensed service provider. The Companies Registry also checks that all information required to be filed upon incorporation is received before issuing a unique number to the company. The information received at the time of registration is copied into the Companies Registry's database and the company is issued a certificate of incorporation. The files maintained on the company by the Registrar are available to the public upon the payment of a fee. According to the Companies Ordinance 2017, any information filed with the Companies Registry must be kept by the company for seven years under the AML/CFT legislation. The FSC may also specify a longer holding period.

61. Companies incorporated under the Companies Ordinance 2017 are no longer required to file annual returns with the Companies Registry. However, within 14 days of a change in the composition of directors or shareholders, such companies are required to file an update with the Companies Registry. The Registrar retains this information.

62. Foreign companies with activities in the Turks and Caicos Islands are required to register with the Companies Registry. Without such registration, any company purporting to act in the Turks and Caicos Islands would not be recognised under relevant laws, and the legal entity's actions would not have legal effect. Under the Companies Ordinance 2017, the registration of an International Company in the Turks and Caicos Islands can only be carried out by a licensed service provider, who must be registered within the Turks and Caicos Islands. In addition, if the foreign company will carry on activities requiring a licence from the FSC, it must first obtain such a licence before the Registrar will register the foreign company.

63. The Companies Registry reviews the registration details of a foreign company in the Turks and Caicos Islands. The Companies Registry checks the identity of the initial owner presented in the registration form, and other details as provided by the registered agent. The Companies Registry checks that all information required to be filed upon incorporation is received before issuing a unique identification number to the company. The information received at the time of registration is then copied into the Companies Registry's database and the company is issued a certificate of incorporation.

64. A foreign company is required to file a notice with the Companies Registry within one month of changes in information related to its registered status (s.270, Company Ordinance). Specifically, the foreign company is required to file an update based on changes of (i) its corporate name; (ii) its jurisdiction of incorporation; (iii) the instrument constituting or defining its constitution; (iv) its directors, or in the information filed in respect of a director; (v) its registered agent; or (vi) such other particulars as may be prescribed by the Registrar. The Companies Ordinance does not specifically require a foreign company to provide an update on information regarding a change in shareholders. However, beneficial and legal ownership information of the foreign company would be retained by its licensed registered agent, which is required to ensure that beneficial ownership information is up to date, which would mean in most cases that it also keeps information on the legal owners and chain of ownership.

65. In the case of a change in a foreign company's registered agent, the foreign company must also provide a copy of the endorsed agreement it has in place with its new licensed registered agent to prove that it continues to engage a licensed corporate service provider in the Turks and Caicos Islands subject to the Companies Management Licensing Ordinance. The Registrar will register the change in the Companies Registry, after checking to ensure the information provided by the foreign company complies with the requirements of section 270 and any other relevant requirements.

66. In 2018, 143 foreign companies were registered in the Turks and Caicos Islands under the Company Ordinance 2017. An application by a foreign company for registration is required to include evidence of its incorporation, a certified copy of the instrument constituting its incorporation, a list of its directors at the date of the application, and a notice specifying the name of the person appointed as the registered agent of the foreign company in the Turks and Caicos Islands (Company Ordinance 2017, Part XVI, s. 268). Furthermore, as discussed further in the section on beneficial ownership information, information regarding the legal ownership of a foreign company is required to be held by the registered agent in the Turks and Caicos Islands.

### Legal ownership information with companies registered in the Turks and Caicos Islands

67. Under the Companies Ordinance 2017, all companies are required to file relevant information with the Companies Registry, including name, directors, shareholders and shareholding, registered address and registered agent.

68. As noted above, the directors, shareholders and members have the right to inspect the register of shareholders/members and may request copies of the

section which pertains to them from the management board, or its representative (s. 136, Companies Ordinance 2017). While directors can refuse permission to review company records, if the directors exercise this right, the member may apply to the court for an order to permit inspection, and the court may decide whether to allow the member to review the records (s. 136(5), Companies Ordinance 2017). As such, this access provides a limited means of external supervision on the accuracy of the contents of the Companies Registry, in addition to that provided by the FSC’s supervision of the CSP sector.

### Companies that cease to exist

69. There are a number of ways for a company to cease to exist in the Turks and Caicos Islands. A company can be voluntarily dissolved or liquidated by its owners, it can be wound up by judicial action, or it can be struck off the register and dissolved. In all cases, a company’s records must be kept, by a director or the liquidator, for at least five years after the company’s dissolution, under Regulation 18 of the Anti-Money Laundering and Prevention of Terrorism Financial Regulations (AMLPTF Regulations) and AMLPTF Code. Furthermore, authorities confirmed during the onsite that any registration and beneficial ownership information provided by companies to the Registrar must be kept on file for at least five years.

### Enforcement of registration requirements with the Registrar

70. As noted previously, under the Companies Ordinance 2017, all companies are required to file relevant information with the Registrar and to file any changes of information including change of shareholders within 14 days of the change. The accuracy of the information provided may also be checked by the FSC during an on-site inspection of the licensed service provider.

71. Under the Companies Ordinance CAP 16.08, the Registrar imposes fines on companies for late filing of annual returns. The Companies Ordinance 2017 no longer requires the filing of annual returns, so these sanctions will no longer apply, but it does require that companies pay an annual registration fee of USD 350 for International Companies and USD 300 for Domestic Companies. (Companies Regulations, Schedule 3). Penalties are provided in case of non-filing, and the Companies Ordinance 2017 also provides for other sanctions in the case of failure to file the 14-day update reports.

72. The Companies Ordinance 2017, section 256, provides that the Registrar may strike a company off the Registry if:

- The company does not have a registered agent.
- The company fails to file any return, notice or document required to be filed under the Companies Ordinance 2017 or the Regulations.

- The company has ceased to carry on business.
- The company is carrying on business without the requisite licence.
- The company fails to comply with obligations to provide beneficial ownership information to the FSC.

73. The FSC carries out an onsite review of licensed service providers to verify their filings with the Companies Registry are accurate. Therefore, the Registrar may become aware of non-compliance of companies via FSC-led examinations, or self-assessments of compliance submitted by the entities, which (as mentioned above) are required to provide updates on any change affecting their legal status within 14 days. If the Registrar has reason to believe that a company is no longer carrying on business or is not in operation, the Registrar will send a letter to the company (or registered agent) inquiring whether the company is carrying on business or is in operation, in addition to publishing a notice of intent to remove the company in the Official Gazette. For regulated companies, the regulatory department is copied on the notice to the company. At such point, the company will cease to exist as a legally recognised entity in the Turks and Caicos Islands, until the Registrar restores it.

74. The Turks and Caicos Islands authorities indicated that, over the last three years, a total of 1 958 notices were sent to companies (1 284 in 2015-16, 383 in 2016-17, and 291 in 2017-18). If the company fails to answer, the Registrar will send a notice to the company after one month of the date of the first notice, and the company will be struck from the register. In 2015-16, 572 companies were removed from the Registrar, in 2016-17, 1 492 were removed from the Registrar, and in 2017-18, 401 companies were removed from the Registrar. Authorities in the Turks and Caicos Islands confirmed that notices to remove a company may be issued at the end of a calendar year, while the actual removal from the Registry would only take place in the subsequent year. This would account for the discrepancy in certain of the above figures where more companies were removed in a certain calendar year than notices were filed.

75. A company, creditor or any interested party may apply under the Companies Ordinance 2017 to the Registrar or Court for reinstatement within 10 years from the date the company was struck. All outstanding fees and penalties must be paid before a company is reinstated. The Registrar will review all records of the company and the company will be required to reconcile any discrepancies between the Registrar's files on the company and the information the company has provided in filing for restoration. In addition, under Section 260 of the Companies Ordinance 2017, the Registrar is only allowed to restore a company to the Register if it is satisfied that the company has a licensed registered agent in place. As the licensed registered agent is required to ensure that relevant information is correctly filed with the Registry, this

requirement seems to ensure that any restored company would also provide relevant information on outstanding filings. In practice, once the application is made in a timely manner, the application is accepted and processed. For regulated companies, approval is sought from the regulatory department prior to reinstatement. To date, five companies have been successfully reinstated on the Turks and Caicos Islands Registry under the Companies Ordinance 2017.

### Ownership information for tax purposes in the Turks and Caicos Islands

76. As stated previously, the Turks and Caicos Islands does not maintain a tax regime on personal or corporate income. Nevertheless, all businesses that want to carry out any business in the Turks and Caicos Islands are required, under the Business Licensing Ordinance, to apply and obtain a business licence from the Revenue Department within the Ministry of Finance to enable them to operate in the Islands (section 3). The term “business” is defined as any form of trade, commerce, manufacture, craftsmanship, profession, vocation or other activity carried on for the purpose of gain, but does not include an office or employment. Applicants required to complete a licence application will submit it, along with all relevant ownership information, to the Revenue Department, where it is then vetted.

77. As part of the application for a licence, companies are required to list shareholders and directors, as well as any interests such persons may have in other businesses (Schedule 1 of the Business Licensing Ordinance). As such, this requirement provides a means for registering the legal ownership of relevant companies active in the Turks and Caicos Islands.

78. If all requirements are met, the Revenue Department will then send the licence onto the Permanent Secretary, Finance, who has the authority to grant or refuse a licence. Licences are valid for one year, and all businesses are required to reapply annually for a new business licence. The Permanent Secretary, Finance however reserves the right to suspend and revoke licences.

79. This requirement on companies active in the Turks and Caicos Islands to list all relevant shareholders extends the scope of company legal ownership information held by the FSC. Although there is no requirement that the natural persons who are owners of such businesses be registered, the disclosure of related business interests nevertheless provides an enhanced overview of legal ownership in the Turks and Caicos Islands. However, as this requirement does not guarantee that the natural persons who are shareholders of corporations will be identified, it cannot be relied upon to provide beneficial ownership of legal entities under the 2016 Terms of Reference. Instead, as discussed below, relevant information on the beneficial ownership of legal entities would be available in the Turks and Caicos Islands via the Companies Ordinance 2017 and AML framework.

80. During the revenue period 2017-18, 1 050 licences were granted. This is compared to the total number of companies registered for the same period which equals 16 589.

*Beneficial ownership and identity information available under AML/CFT and Company Laws in the Turks and Caicos Islands*

81. The Turks and Caicos Islands AML/CFT framework provides for customer identification and due diligence requirements relevant to the beneficial ownership information requirements of the 2016 Terms of Reference. In addition, the Companies Ordinance 2017 requires all companies to file, via a licensed resident agent (i.e. a Company Manager) subject to AML/CFT rules, relevant beneficial ownership information with the FSC's Beneficial Ownership Registry, by 14 February 2019. The Beneficial Ownership Registry is a non-public central registry intended to assist law enforcement and administrative investigations. A failure to file such information is grounds for the company being struck from the Companies Registry.

**Beneficial ownership under the AML framework**

82. The Turks and Caicos Islands' AML/CFT framework is established by the Proceeds of Crime Ordinance (POCO), which has been in place since 2007. The Anti-Money Laundering and Prevention of Terrorism Financial Regulations (AMLPTFR) and the Anti-Money Laundering and Prevention of Terrorism Financing Code (AMLPTFC) (established in 2011 and 2012, respectively) are subsidiary pieces of legislation, which provide additional requirements and guidance for the AML/CFT legal framework in the Turks and Caicos Islands. The AMLPTFR provides the legal basis for financial sector regulation and supervision, and sets out the basic AML/CFT obligations on firms and powers of the DNFBP Supervisor, including enforcement actions. The AMLPTFC outlines in detail the obligations of financial businesses and provides guidance to achieve compliance with these obligations.

83. The FSC is the relevant supervisory authority for financial businesses, NPOs, and all DNFBPs except casinos under the various AML/CFT laws and regulations.

84. "Financial businesses" (which is a defined term in the AMLPTFR, and applies to all relevant AML/CFT regulations and codes) are defined as persons, acting in the course of business carried on in, or from within the Turks and Caicos Islands engaging in: (a) any kind of regulated business (as defined below);<sup>5</sup> (b) any money service businesses as defined in the Money

5. Paragraph 2 of Schedule 2 limits for insurance companies. Insurance companies are financial businesses only where they carry on (a) long-term business, or

Transmitters Ordinance; (c) providing corporate services to businesses; (d) financial lending, leasing or investment businesses; (e) trading in one’s own account or the account of customers in money market instruments, foreign exchange, interest rate and index instruments, financial futures and options, commodities futures, or shares and other securities; (f) providing accountancy or audit services, or who acts as a real estate agent; (g) an independent legal professional; (h) a high-value dealer; or (i) operating a casino.

85. A “regulated business” (being a subset of a “financial business”) includes a business that pursues any type of activity that requires a “regulatory licence”. Schedule 1 of the POCO defines “regulatory licence” as a licence issued under: (a) the Banking Ordinance; (b) the Trust Companies (Licensing and Supervision) Ordinance; (c) the Company Management (Licensing) Ordinance; (d) the Mutual Funds Ordinance; (e) the Investment Dealers (Licensing) Ordinance; (f) the Insurance Ordinance; and (g) the Money Transmitters Ordinance. Therefore, through the scope of the definitions of both “regulated business” and “financial business”, the Turks and Caicos Islands’ AML/CFT framework is applicable to a broad range of companies and regulated entities.

86. Financial businesses<sup>6</sup> must apply identification procedures before the establishment of a business relationship, before carrying out a one-off transaction or where there are doubts about the veracity or adequacy of the documents or data previously obtained, as well as on-going identification procedures during a business relationship (s.11, AMLPTFR). These identification procedures include procedures for identifying and verifying the customer and third parties on behalf of whom the customer is acting and establishing the true identity of that person, including that person’s name and legal status. A financial business is also required to obtain information on the purpose and intended nature of the business relationship or one-off transaction. Further, a regulated business is expected to know enough about a customer’s business to recognise whether a transaction or a series of transactions are unusual.

87. When applying the CDD procedures, in cases where the customer or the third party is not an individual, the procedures include understanding the ownership and control structure of that customer or third party and identifying each individual who is that customer or third party’s beneficial owner or

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(b) any form of life insurance business or investment related insurance business that may be classified as general insurance business. In addition, paragraph 3 notes that a person carrying on business as an insurance intermediary is a financial business only where the person acts with respect to any type of business referred to in paragraph 2.

6. As noted above, the term “financial businesses” also includes regulated businesses.



controller (Reg. 5(2), AMLPTFR). To verify identity, a regulated business must obtain evidence that: (i) is reasonably capable of verifying the identity of the customer, third party or beneficial owner; (ii) satisfies the regulated business through the use of documents, data or other information that the evidence of identification is conclusive; and (iii) is supported by independent documentation that is derived from a reliable source (Regs. 5(1)(f) and 5(3), AMLPTFR).

88. Pursuant to the AMLPTFC, a financial business must take steps to verify a company's ultimate beneficial owner(s) – namely those who ultimately own or control the company (Reg. 3, AMLPTFR, Reg. 16, AMLPTFC). According to regulation 3 of the AMLPTFR “beneficial owner” of a legal person, partnership or arrangement means:

- a. an individual who is an ultimate beneficial owner of the legal person, partnership or arrangement, whether or not the individual is the only beneficial owner
- b. an individual who exercises ultimate control over the management of the legal person, partnership or arrangement, whether alone or jointly with any other person or persons.

89. The AMLPTFC specifies that a financial business must obtain information on all individuals who are the ultimate holders of 10 % or more of shares of a legal entity (Reg.16(2)(j), AMLPTFC). As explained further below, this threshold for determining the beneficial owner of a legal entity differs from the beneficial ownership threshold under the Companies Ordinance 2017, which defines a beneficial owner as the person holding at least 25 % of the shares of a relevant legal entity. Although currently there is no published guidance on interpreting the beneficial ownership requirements among both the AML/CFT requirements and the Companies Ordinance 2017, authorities in the Turks and Caicos Islands stated that they intend to publish guidance outlining the relevant definitions in the near future. The Turks and Caicos Islands should ensure that guidance is published to clarify the requirements of companies subject to differing beneficial ownership reporting thresholds. Turks and Caicos Islands authorities have confirmed that, pending publication of the regulations, they will interpret the requirement that financial businesses must obtain ownership information at the 10 % threshold. The Turks and Caicos Islands intends to publish such guidelines by the end of March 2019.

90. The Companies Ordinance 2017 requires that all company types must at all times engage a licensed service provider, holding a licence under the CMLO (i.e. a Company Manager), who will be responsible for incorporating and providing administration services to the company (s.44, Companies Ordinance 2017). CMLO obligated persons are defined as “regulated businesses” (and, therefore, as financial businesses) under the POCO. Furthermore,



under obligations imposed by the CMLO, licensed service providers are required to carry out, and maintain, due diligence to determine the beneficial owners of the companies they manage in accordance with the Beneficial Ownership Regulations 2017 (schedule 2, CMLO). This requirement provides an additional scope to apply AML/CFT due diligence requirements to companies subject to the Companies Ordinance 2017 to determine its beneficial owners.

91. The definition of “beneficial owner” and its interpretation as it applies under the AML/CFT laws is, generally, in line with the 2016 Terms of Reference.

92. The AMLPTFC specifies the type of information required for identification and the documentation required for verification, including the following information and documents in order to establish the identity of individuals: the individual’s full legal name, any former names and any other names used by the individual and the principal residential address of the individual or the individual’s date of birth (s. 15, AMLPTFC). Where an individual presents a higher level of risk, the financial business should obtain at least two of the following:

- the individual’s place of birth
- the individual’s nationality
- change of address.

93. The AMLPTFC also specifies the type of information required for identification and the documentation required for verification of legal entities, including the name of the legal entity, the official identifying number and the date and country of its incorporation, registration or formation. For higher risk legal entities, a financial business should also verify the address of the registered office, or head office, of the legal entity; and the address of the principal place of business of the legal entity, if different from its registered office or head office. In addition, a financial business should verify other components as it sees appropriate.

94. A financial business that contravenes the requirements set out in the AMLPTFR (including further procedures under the AMLPTFC) is considered to have committed an offence, and is liable on summary conviction to a fine of USD 50 000 (Reg. 17, AMLPTFR).

95. Regulation 12 of the AMLPTFR outlines the actions that financial businesses should take when they are unable to apply the identification and verification procedures, including the refusal to establish the business relationship or carry out a one-off transaction. Where the relationship has been established, but verification cannot be completed, the relationship or transaction should be suspended.

96. Regulation 15 of the AMLPTFR sets out the instances where simplified CDD is permitted. There is no requirement for the identification of the identity of a beneficial owner of a customer in establishing a business relationship or carrying out an occasional transaction where the financial business has reasonable grounds for believing that the customer is: (i) a regulated person; (ii) a foreign regulated person<sup>7</sup>; (iii) a public authority in the Turks and Caicos Islands; (iv) a body corporate, the securities of which are listed on a recognised exchange; or (v) in the case of a life insurance business, where the product is a life insurance contract where the annual premium is no more than USD 500 or where a single premium of no more than USD 2 000 is paid. These simplified CDD rules are in line with the standard.

97. A financial business may enter into business with a third party (e.g. business introducer), if the financial business is satisfied that the third party has appropriate CDD processes in place. Further, the financial business remains ultimately responsible for: (i) ensuring that the third party appropriately applies CDD measures; and (ii) any failure by the third party for applying the necessary CDD measures (Reg.14, AMLPTFR).

98. The conditions for relying on a third party to apply the CDD measures are that the relying business obtains adequate assurances in writing from the third party that the third party has applied the identification measures compliant with the AMLPTFR and that the third party keeps such information on file. Also, the relying business must obtain, in writing, from the third party sufficient assurances that the third party will, without delay, provide information recorded for the purpose of the identification and verification of identity of the customer or the beneficial owner to the relying financial business or to the FSC, at the financial business's or the FSC's respective request.

99. The relying financial business is also required to immediately obtain from the third party the necessary information concerning the third party's CDD processes including specific details on: (i) identification procedures of customers; (ii) verification procedures where a customer is acting for a third party or in the case of a legal person, verifying the legal status or arrangement of that legal person; and (iii) verifying whether any person is properly authorised to act on behalf of a customer. The AMLPTFC also requires the regulated business to immediately obtain and keep the CDD documentation identifying the beneficial owner to assess the risk associated with that

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7. “Foreign regulated person” is identified as a person that is incorporated, or has its principal place of business in, a jurisdiction outside of the Turks and Caicos Islands; that carries on a business that would require a regulatory licence if carried out in the Turks and Caicos Islands; and, is subject to AML/CFT legal requirements (as well as effective supervision for compliance with those requirements) in its home jurisdiction that are consistent with FATF Recommendations.

customer (Reg. 27(1)(e), AMLPTFC). Private sector representatives during the onsite noted that they often used intra-group introducers, and that the relevant AML/CFT requirements are well known and complied with. This element is in line with the standard where the information requirements ensure that AML-regulated businesses always have access to necessary information.

100. A financial business is required to keep updated beneficial ownership information. The financial business must conduct on-going CDD during a business relationship and scrutinise transactions throughout the course of that relationship to ensure that the transactions being conducted are consistent with the regulated business' knowledge of the customer and its business and risk profiles (Reg. 11(3)-(4), AMLPTFR). The Turks and Caicos Islands' AML Guidance Note requires that in order to comply with this provision, a financial business is expected to review and update its CDD information on at least an annual basis for high risk customers and at least every five years for customer relationships presenting a normal or low risk. In addition, financial businesses are required to ensure that documents, data or information under identification procedures are kept up to date and relevant by conducting reviews of existing records, including cases where inconsistencies are discovered (Reg. 5(5), AMLPTFR).

101. The identification records relating to each transaction carried out in the course of any business relationship or occasional transaction must be kept by the regulated business for at least five years commencing with the date on which the business relationship ends or the date that the one-off transaction was completed (Reg. 19, AMLPTFR). The FSC may notify a regulated business to keep ownership information for a longer period of time.

102. In conclusion, the identification standards related to financial businesses generally provide for identifying the natural person who is the ultimate beneficial owner of any entity in question. The information requirements related to customer identification ensure that the information reported will be accurate. Financial businesses are also required to maintain relevant information on beneficial ownership, also in cases where the financial business relies on a third party. The scope of persons or entities covered as financial businesses by AML/CFT laws in the Turks and Caicos Islands is therefore broad. In conclusion, the AML/CFT laws require identification of beneficial owners of companies in line with the standard.

### Beneficial ownership under the Companies Ordinance 2017

103. The Companies Ordinance 2017 established a Beneficial Ownership Registry, to which relevant licensed service providers will submit ownership information for all companies for administrative and law enforcement purposes. Given that this is part of the new Companies Ordinance and is still

being implemented, it is expected that the Beneficial Ownership Registry will be fully populated by 14 February 2019.

104. At the end of the transition period, any company that has not voluntarily registered will be automatically registered. A company that is currently managed by a licensed service provider will be deemed to be registered with that service provider as its registered agent; however, the licensed service provider must provide consent within four weeks of automatic registration. A company that is not currently managed by a licensed service provider is required within four weeks of automatic registration to appoint a licensed service provider who is required to provide evidence of its consent to the appointment. In addition, companies are required within four weeks of automatic registration to file details of its active members and active directors. Within six weeks of automatic registration all companies are required to file details of beneficial owners with the FSC.

105. In the event a company who is automatically registered fails to file its directors, registered agent, members and beneficial ownership information within the period as required, the company would become liable to be struck from the register. The Registrar will notify the Company of its non-compliance and the Registrar's intention to strike the company. The Notice shall give the company a minimum of 30 days to respond and if the company complies with all the requirements, the Registrar will register the company. If there is non-compliance after the period of the Notice, the Registrar will strike the company from the Register, under the process outlined previously (s.256 of the Companies Ordinance 2017). Removal from the Register of Companies results in the company no longer having legally recognised status in the Turks and Caicos Islands.

106. Part IX of the Companies Ordinance of 2017 requires licensed service providers of all companies to file information with the FSC on all of its registered beneficial owners. Under the Companies Ordinance 2017, all companies are required to file relevant beneficial ownership information with the Registrar and to notify the Registrar of any changes of beneficial ownership information within 14 days of the change (s.157, Companies Ordinance 2017). Penalties for failure to comply with these requirements can be imposed on both companies and those individuals identified as beneficial owners of companies. Section 150 provides a duty for companies to notify registrable beneficial owners of their obligation to provide relevant information. Contravention of this obligation can lead, on summary conviction, to a fine of USD 50 000. Section 151 provides a duty to persons identified by the company as beneficial owners to supply information. Contravention can lead on, summary conviction, to a fine of USD 20 000. Penalties of USD 50 000 can also be imposed, upon summary conviction, on a company that fails to

maintain beneficial ownership information up to date (s.153, Companies Ordinance 2017).

107. Information required under Part IX of the Companies Ordinance 2017 includes those owners who hold 25% or more of the shareholding, or de facto control of the company, or who can exert influence on those persons in a controlling position. Under the Companies Ordinance 2017, all companies are required to file relevant beneficial ownership information with the Registrar and to notify the Registrar of any changes of beneficial ownership information within 14 days of the change. However, under the definition of beneficial owner in the Companies Ordinance 2017, a beneficial owner can be identified as, *inter alia*, a natural person, a corporation, or a foreign registered company. Accordingly, under section 268 of the Companies Ordinance 2017, foreign companies carrying out business in the Turks and Caicos Islands can simply register their foreign company names and are therefore not required to register natural persons who are the ultimate owners with the Company Registry. Therefore, information on the natural person who is the ultimate beneficial owner of a foreign company would not be available to the Company Registry.

108. However, the beneficial ownership information would be captured under companies' relationships with licensed service providers. Domestic companies incorporated under the Companies Ordinance 2017 must maintain a relationship with a licensed service provider under the CMLO. The licensed Company Manager will be responsible for incorporating and providing administrative services to the company (s.44, Companies Ordinance 2017). Furthermore, licensed service providers are AML obligated persons, who must carry out due diligence on their customers in order to determine the beneficial owner (schedule 2, CMLO). Licensed service providers are required to maintain and make available all records concerning the beneficial ownership of a company under their watch to authorities. This ensures that for domestic companies, the Turks and Caicos Islands' legal framework puts in place a process to ensure beneficial owners of domestic companies are identified, verified, and made available to local authorities.

109. The 2016 Terms of Reference require that jurisdictions should be responsible for ensuring that legal ownership information is available for foreign companies with a sufficient nexus. However, this does not mean that all foreign companies registered in a jurisdiction necessarily fall within the scope of the requirements of the 2016 Terms of Reference. As stated previously, the Turks and Caicos Islands does not levy either income or corporate taxes. Therefore, the 2016 Terms of Reference provides that for the Turks and Caicos Islands, the relevant foreign companies for which beneficial ownership information must be maintained would be those which (i) maintain their headquarters in the Turks and Caicos Islands and (ii) are subject to AML/CFT obligated persons.

110. As mentioned previously, the definition of beneficial owner under the Companies Ordinance 2017, means that information on the natural person who is the ultimate beneficial owner of a foreign company would not be available to the Company or Beneficial Ownership Registries.

111. However, under Section 271 of Companies Ordinance 2017, every foreign company active in the Turks and Caicos Islands is required to maintain a domestic registered agent, licensed under the CMLO. As discussed previously in this report, CMLO licensees are AML/CFT obligated persons, required to perform all CDD procedures as outlined in the Turks and Caicos Islands' AML/CFT framework. In addition, the CMLO Code of Conduct (schedule 2 of the CMLO) requires every licensee to carry out due diligence that includes its best endeavours to identify all beneficial owners of its client companies. The CMLO further requires that Company Managers (i.e. those acting as registered agents for foreign companies) maintain information on the natural person who is a beneficial owner of a foreign company in the Turks and Caicos Islands (see Section 3 of Schedule 2 of CMLO). Therefore, the Turks and Caicos Islands legal framework requires that the relevant beneficial ownership information for foreign companies with a sufficient nexus to the Turks and Caicos Islands is appropriately collected and maintained.

112. As mentioned previously, third-party introducers from foreign jurisdictions are required to apply the same level of AML/CFT procedures as those in the Turks and Caicos Islands. During the onsite visit, both authorities from the Turks and Caicos Islands, as well as members of the private sector confirmed that in practice, underlying beneficial ownership information on the natural persons of foreign companies was typically held by registered corporate agents in the foreign company's home jurisdiction, while the name of the individuals would be held in the Turks and Caicos Islands. Practitioners (i.e. licensed corporate service providers) agreed that they seek assurance from the foreign registered company agent that appropriate underlying information on beneficial ownership was in its possession, in accordance with AML/CFT requirements for third party introducers. This includes the foreign registered agent agreeing to provide the relevant underlying beneficial ownership information to the Turks and Caicos Islands authorities, if requested.

113. Therefore, for both domestic and foreign companies active in the Turks and Caicos Islands, the regulatory framework provides sufficient assurances that information on the natural person who is the beneficial owner of a company registered in the Turks and Caicos Islands would be available.

### Nominees in the Turks and Caicos Islands

114. In the Turks and Caicos Islands, any person who provides the service of acting as nominee shareholders and/or directors to third parties by way

of business must be a licensed service provider (Regulation 2, AMLPTFR). Under Schedule 1 and Schedule 2 of the AMLPTFR, licensed service providers are subject to AML/CFT laws. Accordingly, licensed service providers acting as nominees are therefore required to identify customers, shareholders, directors, beneficial owners and other relevant persons, such as agents, according to relevant AML/CFT laws in effect in the Turks and Caicos Islands. Licensed service providers acting as nominees are under the supervision of the FSC.

115. In the Turks and Caicos Islands, the act of providing nominee shareholders, directors, chief executives or managers for companies or partnerships is deemed to be carrying on of fiduciary services and subject to the AML/CFT laws. Such persons are required to be licensed under the Company Management Licence, which allows the holder to offer all services of a Company Agent, in addition to acting as a nominee director and nominee shareholder. The Company Manager is obligated to maintain separate accounts to ensure segregation of the assets of its clients separately from its own accounts, and to maintain professional indemnity insurance for its business operations.

116. However, providing nominee services for family members or friends on a non-professional basis is not considered an activity that would trigger the requirements under the CMLO or AML laws. Therefore, there is a gap in the Turks and Caicos Islands' legal framework with respect to nominees which act in a non-professional capacity for others. An obligation should therefore be established for all nominees, whether or not rendering professional services, to maintain relevant ownership information where they act as the legal owners on behalf of another person.

117. As a licensed service provider acting under the CMLO, Company Managers are obligated to the same supervision from the FSC as for Company Agents.

118. The Turks and Caicos Islands did not receive any requests for information involving nominee arrangements during the review period.

### Implementation of obligations to keep beneficial ownership information in practice in the Turks and Caicos Islands

119. The sections below examine the supervisory and enforcement measures undertaken by the Turks and Caicos Islands authorities to ensure that companies are compliant with the obligations to keep beneficial ownership information.

120. The FSC is the main regulator and supervisory authority for banks, financial services and regulated businesses in the Turks and Caicos Islands. The FSC issues licences and supervises all licensed service providers and



business entities operating under a licence operating from or within the Turks and Caicos Islands. Such entities are also therefore subject to AML/CFT rules, and the FSC has a dual mandate to ensure entities comply with requirements under their licensing obligations, as well as obligations arising from their status as AML/CFT regulated businesses. In addition to the supervision measures undertaken, the FSC takes an active approach in educating and raising awareness for the entities that it supervises, hosting regulatory awareness seminars for the regulated businesses.

121. The FSC is currently staffed with 72 people.

122. As noted previously, all company types incorporated in the Turks and Caicos Islands are required to be represented by a licensed registered agents. Service providers who conduct corporate or trust business are licensed and regulated by the FSC, and must comply with the AML/CFT laws to provide appropriate due diligence.

123. When processing an application for a licence, the FSC will carry out a background check to determine whether the person is fit and proper to conduct such business. In addition, the FSC will review the applicant's qualifications, police records, certified copies of picture identification and reference letters. The applicant's experience, integrity, character and professional conduct are also assessed. Once a licence is issued, the licensee will be under the supervision and guidance of the FSC.

124. The FSC conducts off-site inspections of registered agents, which include examinations of audited financial statements, company incorporation statistics, and other information, of all licensed service providers on an annual basis. Based on the off-site inspections, the FSC does a risk assessment to determine which registered agents should be subjected to an on-site inspection.

125. On-site inspections are conducted to determine compliance with record keeping requirements under the AML/CFT, company, trust and foundation laws. The FSC uses an on-site inspection manual and checklists when conducting an on-site inspection to ensure a thorough inspection. On-site visits are generally scheduled in advance. Normally, a pre-examination questionnaire is sent to the regulated business at least two weeks prior to the intended visit to obtain information about the organisational structure, administration and operation of the regulated business, etc. During 2015-17, 18 onsite examinations of licensed CSPs were conducted.

126. In the case of non-compliance, the FSC can take supervisory action against a licensed company or a licensed company manager. Where there are identified failings, the FSC may communicate the non-compliance to the company, or issue notices and financial penalties. Furthermore, the FSC can take an enforcement action against a company, subject to a 28-day notice period. Such enforcement actions include fines of up to USD 50 000 for each



instance of non-compliance, issuing a cease and desist order, or revoking or suspending a company’s or company manager’s licence to operate.

127. During the onsite visit, authorities in the Turks and Caicos Islands noted that the main issues identified in onsite examinations were related to failure of licensed service providers to establish and maintain adequate customer due diligence records. Although five Notices of Intention to take Disciplinary Action were imposed, Turks and Caicos Islands authorities noted that they have not yet encountered instances of non-compliance that warranted enforcement actions. Furthermore, authorities stated that once they are provided with a Notice, generally companies will comply without having to be made subject to fines.

128. The Companies Ordinance 2017 contains sufficient enforcement provisions, through the enforcement authority available to the FSC, to ensure ownership is kept as required by the law. As noted above, applicable sanctions span from monetary fines and administrative measures, such as prohibiting future corporate activity and terminating the legal entity in question.

129. In addition, companies can be struck from the record for failure to pay fees, or failure to provide correct beneficial ownership or director’s information. While the Registrar does not itself investigate compliance with the Registrar’s requirements, it does check to ensure that a filing is made in compliance with the relevant requirements. Furthermore, if the FSC were made aware of instances of non-compliance that arise via, for example, a FSC examination, it would take action to apply appropriate sanctions.

130. The table below sets out the total of AML/CFT on-site inspections carried out by both FSC branches during the last four years.

Sector	Number of on-site inspections				Total
	2015	2016	2017	2018	
Bank (includes commercial bank, development bank, credit union, international bank and finance company)	2	0	0	2	4
Insurance company	4	4	4	8	20
Licensed trustees	0	1	2	0	3
Money services business	3	2	0	0	5
Licensed service provider	9	0	9	0	18

131. As shown in the table, over the last four years, the FSC conducted 18 on-site inspections of licensed service providers. The remaining on-site inspections included investigations of commercial banks, insurance companies, and money services businesses.

132. The 2013 Report included a recommendation regarding the practical implementation of AML/CFT obligations. It concluded that the regulatory authorities did not impose sufficient sanctions on non-complying entities, even where a breach was significant. It was therefore recommended that when significant breaches of AML/CFT obligations are discovered, the FSC should consider applying sanctions, even where the gaps are otherwise addressed by the person concerned.

133. Since the 2013 Report, the FSC has increased its monitoring activities, including an increase in the number of on-site visits conducted on licensed service providers from nine (as reported in the 2013 Report) to 18 visits during the 2015-17 period, to ensure compliance with AML/CFT standards.

134. The results of these findings included weaknesses around the effectiveness of processes, procedures and controls that ensure acceptable standards of customer due diligence; the failure of Company Managers to maintain client account and beneficial ownership information in accordance with relevant legal requirements; the need for a more deliberate approach to monitoring of client company activities; and the need for better training of persons involved in the delivery of services by CSPs. As noted above, five Notices of Intention to take Disciplinary Action were imposed during this time. Given the key role played by Company Managers and CSPs of ensuring that CDD procedures are carried out and that beneficial ownership information is maintained in the Turks and Caicos Islands, the fact that these deficiencies continue to be found is problematic for the functioning of the AML/CFT framework in the Turks and Caicos Islands.

135. The FSC has recently increased its outreach to the licensed service provider sector. Multiple Supervisory Questionnaires have been circulated to licensed service providers to determine their level of compliance with relevant requirements. “The Supervisory Questionnaire is considered as the licensee’s application for renewal of the annual licence. It focuses on the licensee’s ownership and operational structure; the licensee’s corporate governance and management oversight; the types of business activities the licensee typically engages, including services offered which could pose supervisory risks. In addition, the Questionnaire also focuses on financial resources and accounting accuracy employed by the licensee, and the internal controls for risk management in place. The licensee is required to certify that the information is accurate, that it complies with all relevant legal obligations, and that no other relevant changes occurred in the past year. The Supervisory Questionnaire is currently being implemented for other licensees, and is expected to be finalised by June 2019 for the DNFBP and NPO sectors.

136. The selection of a licensed service provider for examination is then based on information gathered on the licensee over a period of time or information that may come to the attention of the FSC that requires an urgent

examination. Triggers for an on-site examination can be as a result of the licensee's failure to maintain the approved structure by changes/or attempts at changes without prior approval, ineffective remote oversight, conducting business activities in a manner which diminishes the protection of the public and increases reputational risk to the jurisdiction. Changes to the licensee's fitness and probity can as a single occurrence or together with other factors trigger an examination. Examinations are also structured to follow up on remediation requirements from previous onsite examinations.

137. In addition, while to date the FSC has not completed any onsite visits of accountants or lawyers, it commenced a thematic review of the legal sector in 2018. The thematic review is intended to focus on assessing the effectiveness of controls designed to identify, detect and prevent the misuse of the accountant and lawyer sector by customers who present a higher risk of money laundering or terrorist financing risks, as well as the effectiveness of training on these points throughout the sector. The FSC intends to publish a report on this sector in 2018.

138. Despite this increase in supervisory outreach, the overall low frequency of these on-site visits is not sufficient to ensure compliance with legal obligations as required under the standard. As noted previously, onsite examinations conducted by the FSC continue to find that Company Managers and CSPs do not comply with AML/CFT requirements related to CDD procedures and maintaining beneficial ownership information of client companies. Company Managers and CSPs play an essential role in the Turks and Caicos Islands AML/CFT framework and, given the deficiencies that continue to be found during the FSC's examinations, there is a need to ensure that the FSC's supervision reinforces compliance with relevant legal provisions. It is acknowledged that the FSC seeks to ensure industry compliance with relevant standards without imposing unnecessary financial penalties. However, given the continued deficiencies identified it should be noted that financial penalties, in combination with increased examinations and outreach to the industry, also have the potential to incentivise compliance among industry participants. The FSC should therefore ensure that its supervisory measures increase the compliance of Company Managers and CSPs so that the required ownership information is available with respect to those entities subject to the AML/CFT laws, as required by the standard. Therefore, the recommendation from the 2013 report has been revised to recommend the FSC ensure that the licensed service provider sector is appropriately supervised, and that appropriate penalties are applied.

*Availability of ownership information and exchange of information in practice*

139. During the review period, the Turks and Caicos Islands did not receive EOI requests relating to legal or beneficial ownership of legal entities or arrangements. However, it did receive three requests related to the ownership of bank accounts and bank-related credit cards held by individuals. The Turks and Caicos Islands fully responded to all three of these requests within 90 days.

**ToR A.1.2. Bearer shares**

140. The Phase 1 report noted that bearer shares were permitted in the Turks and Caicos Islands under the Companies Ordinance Cap 16.08. Under this ordinance, shares were allowed to be held through licensed professional service providers, such as company managers, agents, accountants and attorneys. Companies were required to only maintain in the Register the number of shares issued, the date of issuance and their reference number. The certificates of issued bearer shares were not required to be kept in the Turks and Caicos Islands.

141. Beginning in 2011, the FSC in preparation for eventual abolishment of bearer shares, required its licensees to provide evidence that its Memorandum and Articles of Association expressly prohibited the issuance of Bearer Shares.

142. Bearer shares were abolished in the Turks and Caicos Islands on 1 January 2014, by the Abolishment of Bearer Shares Ordinance (Ordinance 17 of 2013). As a result, the holders of any existing bearer shares were given a period of six months from 1 January 2014 to be recalled, cancelled or substituted with registered shares by the company which held them. Any bearer shares not substituted with registered shares at the end of the six-month period following the enactment of the Ordinance became null and voided. In February 2015, the FSC required all CSPs provide verification of the status of any bearer shares it held. It was determined that all bearer shares were converted or cancelled. As such, the Turks and Caicos Islands authorities confirmed that there are no more bearer shares outstanding that are recognised under law.

143. Bearer shares are not permitted under the Companies Ordinance 2017. As such, any company issuing bearer shares will be considered to be in contravention of the Companies Ordinance 2017 and, as such, can be liable for a fine up to USD 50 000, despite the fact that such shares would also be null and void as a matter of law.

144. During the period under review, the Turks and Caicos Islands did not receive any requests for information about bearer shares.

### *ToR A.1.3. Partnerships*

145. The 2013 Report concluded that the legal framework in the Turks and Caicos Islands regarding the availability of identity and legal ownership information in respect of partnerships complied with the 2010 Terms of Reference. Since the 2013 Report, the Global Forum adopted a revised Terms of Reference in 2016, which require the identification of the beneficial owners in addition to the partners.

146. Jurisdictions should ensure that information is available identifying the partners in, and the beneficial owners of, any partnership that (i) has income, deductions or tax credits in the jurisdiction, (ii) carries on business in the jurisdiction, or (iii) is a limited partnership formed under the laws of that jurisdiction.

147. There are three types of partnerships which may be formed in the Turks and Caicos Islands: (i) general partnerships; (ii) limited partnerships and (iii) exempt limited partnerships.

148. Over the review period, the Turks and Caicos Islands received no requests related to partnerships. No issues were identified by peers.

#### *General partnerships in the Turks and Caicos Islands*

149. General partnerships are governed by the Partnership Ordinance. Under this Ordinance, a partnership is defined as a relationship which exists between persons carrying on a business in common with a view to profit (Section 3(1)). Business arrangements that are registered as companies under the Companies Ordinance cannot be considered as partnerships (Section 3(2) (a)). As such, general partnerships can only exist in the Turks and Caicos Islands as unregistered legal arrangements, and general partners who are natural persons are not required to be registered in the Turks and Caicos Islands Companies Registry. However, data from the Business Licensing Unit indicates that there are 969 partnerships currently licensed to do business in the Turks and Caicos Islands. As of March 2018, there were 14 limited partnerships registered in the Turks and Caicos Islands and 56 exempt limited partnerships.

#### *(a) Identity of the partners of general partnerships in the Turks and Caicos Islands*

150. There is no register of general partners in the Turks and Caicos Islands, but general partnerships carrying on business with the public using a name other than the true name of all general partners are required to register their trade name with the FSC under the Business Names Ordinance and provide the names of individuals or corporations on whose behalf the business

is being carried on (s.3, Business Names Ordinance). The partnership is required to update the FSC within 14 days of any change in the information in the particulars of the partnership (s. 8, Business Names Ordinance). As the Turks and Caicos Islands does not levy personal or corporate income tax, there is no requirement for a partnership to be registered for tax purposes.

151. The Partnerships Ordinance contains only very general requirements for partners in a general partnership to know and identify the other partners. Section 24(g) provides that no person may be introduced as a partner without the consent of all existing partners. However, this obligation is not accompanied by any obligations to record this information or support such knowledge with documentation.

152. The Partnerships Ordinance does not specifically state that it applies to foreign partnerships, but authorities in the Turks and Caicos Islands have stated that the provisions of the Partnerships Ordinance apply equally to all partnerships, including foreign partnerships, as long as the partnership carries out business in the Turks and Caicos Islands.

#### (b) Beneficial ownership information for general partnerships in the Turks and Caicos Islands

153. General partners are not subject to any regulations requiring them to hold, verify, or report information on their beneficial owners. Beneficial ownership information for general partnerships will be available (i) through the Business Licensing Ordinance where the general partner is a natural person acting on his/her own behalf, or (ii) through disclosure and registration requirements of the Companies Registry where the partner is a corporate entity.

154. All persons “carrying on business” in or from the Turks and Caicos Islands are required to hold a licence issued by the Business Licensing Unit of the Permanent Secretary, Finance (s.5, Business Licensing Ordinance). As general partnerships are defined as a “relationship, which exists between persons carrying on a business in common with a view to profit”, Turks and Caicos Islands authorities have attested that all general partnerships with activities in the Islands would be required to obtain a business licence (s.3(1), Partnerships Ordinance). As part of the application for the licence, each general partner would need to identify all “persons” with an ownership stake in the business (s.5(2), Business Licensing Ordinance). The business licence must be renewed annually, and any updates to changes to any particulars of the partnership must be provided to the Business Licensing Unit within 30 days of such change. Criminal and civil penalties apply in the case of an applicant filing false information. Currently, 969 partnerships are registered as maintaining business licences with the Business Licensing Unit.

155. Although the term “person” is not defined in the Partnerships Ordinance or the Business Licensing Ordinance, under the Ordinance of General Application (the Interpretation Ordinance of the Turks and Caicos Islands), the term “person” is defined as including “any corporation, either aggregate or sole, and any club, society, association, or other body, of one or more persons”. Where the owners of a general partnership are legal persons or arrangements, these could be identified for purposes of the Business Licensing Ordinance simply by providing the name of a legal entity, or a legal arrangement, without a requirement to disclose the beneficial owners of legal entities who may be general partners.

156. However, as described previously, all companies registered pursuant to the Companies Ordinance 2017 are required to engage an AML-obligated licensed service provider, who is required to maintain updated beneficial ownership information on the company. The registration requirements of the Companies Ordinance 2017, require companies to maintain the AML-obligated service provider at all times in order to continue to be registered in the Companies Registry. As part of the application for a business licence, a general partnership must provide a confirmation that all corporate partners are registered with the FSC and Companies Registry, pursuant to the Companies Ordinance 2017, which would thereby ensure that the company maintains an AML-obligated service provider required to maintain updated beneficial ownership information on the owners of the company. For natural persons, this application would include providing a declaration by the partner stating that it is acting as either a silent partner or an investor in a business. The application also provides a requirement for natural persons involved in the business to provide confirmation on whether they maintain a work permit authorising employment in the Turks and Caicos Islands. Passive investors in a general partnership who do not hold a work permit in the Turks and Caicos Islands are required to provide a certification that they are not engaging in activities constituting employment in the Turks and Caicos Islands. The Business Licensing Unit would then verify that this information is accurate by confirming with the Companies Registry. Authorities in the Turks and Caicos Islands have attested that any general partnership with a corporate partner who is not registered under the Companies Ordinance 2017 would be refused a business licence. Therefore, beneficial ownership information is available on all corporate general partners operating in the Islands via the requirements under the Companies Ordinance 2017 to engage an AML-obligated licensed service provider.

157. As mentioned previously, the Partnerships Ordinance does not require general partners to obtain or hold accurate and up to date beneficial ownership information on other partners. In addition, no provisions exist in the Partnerships Ordinance to require a general partnership to engage an AML-obligated service provider. Therefore, unless the general partnership



engages in activities requiring a regulatory licence from the FSC, it would not be covered under the Turks and Caicos Islands' AML/CFT framework. However, natural persons who are general partners acting on their own behalf would be identified pursuant to the Business Licensing Ordinance application and corporate partners would be identified via the registration requirements of the Companies Ordinance 2017 that require the company to maintain an AML-obligated service provider at all times, as described above. Although it is not clear whether there are verification measures in place to ensure that beneficial ownership information is available for all general partners who may be in a non-professional and non-remunerated nominee relationship, as such nominees are not subject to AML/CFT requirements, this is not considered to constitute a gap in the legal framework concerning general partnerships.

158. The Business Licensing Unit reports that there are currently 969 partnerships registered as maintaining a business licence in the Turks and Caicos Islands.

#### *Limited Partnerships and Exempt Limited Partnerships in the Turks and Caicos Islands*

159. Limited partnerships are defined as partnerships with one or more general partner with unlimited liability and one or more partner with limited liability, and may be formed for any lawful purpose (s.4(1), Limited Partnerships Ordinance). Exempt Limited Partnerships are defined as limited partnerships for which the partnership's business is primarily conducted outside the Turks and Caicos Islands (s. 16, Limited Partnerships Ordinance). All limited partnerships (LPs) are required to: (i) maintain a registered office in the Turks and Caicos Islands; (ii) file a declaration with the Registrar containing the identity information (including name and address) of each general partner (natural or legal person); and (iii) state the term for which the limited partnership is entered into or an acknowledgment that it has an unlimited duration (s.7, LPs Ordinance). All LPs are required to register with the Registrar of companies, which is a public registry searchable upon application and the payment of fees.

160. However, there is no obligation to file beneficial ownership information of limited partners with the Registrar (ss. 7(1) and 8(1), LP Ordinance). The required beneficial ownership information can be filed by a general partner, and the LP is not required to engage a licensed service provider if the partnership is not otherwise subject to AML/CFT obligations (s.7, LPs Ordinance). If any of the general partners is a corporate general partner, the statement of its registration should be accompanied by a certificate of that corporation's registration under Part XI of the Companies Ordinance (s.7, LP Ordinance). Information filed with the Registrar must be kept updated.



A general partner is required to file an amendment of the declaration with the Registrar within 15 days after it is passed or made (s. 8, LPs Ordinance).

161. The general partners of a LP are required to keep, at its office for service, a register showing the particulars (including name and address) of each limited partner, in alphabetical order (s. 9, LPs Ordinance). The information on the register must be current and amended within 21 days of a change. However, this information cannot be ensured to provide beneficial ownership information on all partners, as it does not require natural persons to be identified or the underlying documentation to be verified. This information must be maintained and kept available for other partners to inspect. Every general partner who fails to comply with their obligations regarding the register commits an offence and is liable to a fine of USD 500 plus USD 50 per day the offence continues. However, the LPs Ordinance does not expressly set out whether such information must be maintained throughout the duration of the LP, nor how long after the extinguishment of the partnership, such information must be maintained. The Turks and Caicos Islands authorities noted that, although not explicit, the provision should be interpreted as requiring the information to be kept for the lifetime of the LP. The Turks and Caicos Islands should provide necessary guidance to ensure relevant professionals understand and apply these provisions according to the legislative intent (i.e. that records be kept for the lifetime of the LP). Similarly, the Turks and Caicos Islands should ensure that such information is maintained for at least five years following the dissolution of the LP.

162. A LP that is a regulated business, or a LP that engages a licensed service provider, is required to comply with the AML/CFT laws. As discussed in section A.1.1, the AMLPTFR sets out the definition of “beneficial owner”, which is in line with the standard. In the case of a LP, the general partner(s) should be treated as the verification subjects and limited partners do not need to be verified (s. 7, Limited Partnerships Ordinance).

163. Exempt Limited Partnerships are LPs where the partnership’s business is primarily conducted outside the Turks and Caicos Islands. An Exempt LP is registered under the same procedure as for LP, as set out in section 7 of the LPs Ordinance. However, an Exempt LP is required to file a statement containing a declaration that the firm shall not undertake business with any person that is resident in the Turks and Caicos Islands. Exempt LPs are restricted to undertaking business with other exempted or foreign companies registered under the relevant Companies Ordinance of the Turks and Caicos Islands, with other Exempt LPs, or with other entities registered outside the Turks and Caicos Islands. An Exempt LP is also required to provide an annual declaration signed by or on behalf of the general partners, certifying that the partnership has not changed partners in the past year.

164. As for general partnerships, LPs operating a business would be required to file information to the Companies Registry under the Business Names Ordinance. However, as explained in the discussion on general partnerships, this registration requirement appears to allow partners to be identified simply as corporations or legal arrangements, without a requirement to disclose the beneficial owners of corporations who may be limited partners.

165. As for general partnerships, a LP would be required to file for a business licence under the Business Licensing Ordinance if it is carrying on a business in the Turks and Caicos Islands. However, as opposed to partnerships which are defined as an arrangement to carry on business, limited partnerships can be formed “for any lawful purposes” (s.4(1), Limited Partnerships Ordinance). Therefore, it is not clear that the limited partnership would in all cases be required to obtain a business licence, as their activities may not always include “carrying on business”. As described under the section on General Partnerships, the application requirements associated with the Business Licensing Ordinance provide a mechanism of ensuring that beneficial ownership information would be available on all corporate partners, as only companies registered under the Companies Ordinance 2017 would be provided a business licence. While in many cases LPs would carry out activities requiring registration under the Business Licensing Ordinance, it nevertheless appears that a gap exists with regards to the requirement under the 2016 Terms of Reference for beneficial ownership information to be available for all limited partnerships in the Turks and Caicos Islands.

166. As such, there is a gap in the legal framework regarding the identification of the beneficial owners of LPs that are not subject to AML/CFT obligations. Such LPs may be identified to the Registrar simply by listing the general partners and there is no obligation to identify the limited partners with the Registrar. There is also no express requirement for LPs not carrying on business (according to the definition under the Business Licensing Ordinance) to obtain and maintain a business licence under the Business Licensing Ordinance, which provides a means of ensuring beneficial ownership information is available for corporate partners. Instead, the general partner is required under the LP Ordinance to maintain the information on natural owners who are limited partners. However, in this case there is no assurance that limited partners who are members of a LP not subject to AML/CFT requirements would be verified. Furthermore, there is no requirement set out in the LPs Ordinance as to how long information on the Registrar, or information in possession of the general partner, must be maintained. As such, it is unclear at what point the Registrar (or general partner in the case of information held on a limited partner) may remove such information. It is acknowledged that the materiality of this gap is currently limited given there are only 14 domestic LPs and 56 Exempt LPs; however, it is nevertheless

recommended that the Turks and Caicos Islands ensure that information on all beneficial owners of a LP is accurate and available.

*Implementation of obligations to keep identity, legal and beneficial ownership information in practice in the Turks and Caicos Islands*

167. Implementation of the relevant obligations in practice is ensured in the same manner as for companies, described in section A.1.1.

168. Given there is no tax system in the Turks and Caicos Islands, partnerships are not subject to tax inspection.

169. As stated above, the Business Licensing Unit provides an essential mechanism for ensuring that information on corporate partners for general and limited partnerships is available in practice. The primary mechanism by which this is achieved is by the Business Licensing Unit verifying the identification of members of partnerships applying for a business licence. Particularly in the context of corporate partners, this is critical where the application forms of the Business Licensing Unit would require that corporate partners show they are appropriately registered, and therefore subject to requirements to engage and maintain an AML-obligated service provider.

170. However, the assessment team was not provided with any information related to the oversight of the above Unit. Therefore its effectiveness in practice cannot be determined.

171. Where a partnership is a regulated business or has engaged a licensed service provider, the FSC would monitor the partnership or the service provider's compliance with AML/CFT laws (including verification that legal and beneficial ownership information is being kept as required). The obligation of a general partner to maintain a register of limited partners is also monitored by the FSC if the LP is a regulated business or engages a service provider.

172. All LPs must file an annual return with the Registrar (s.16(2), Limited Partnerships Ordinance). If the annual return reflects any changes in the general partners of the LP, the Registrar checks that the changes were reflected in the form required to be filed when the change occurred and that the documentation required was sent to the Registrar on time. In a similar way as for companies, the accuracy of the information provided to the Registrar is checked by the FSC if the LP has engaged a service provider.

173. To conclude, while the availability of beneficial ownership information for partnerships can be ensured via the Business Licensing Ordinance, there are concerns regarding the practical availability of ownership information for limited partnerships where these are not required to obtain and maintain a business licence in all cases. There is effectively minimal oversight of the availability of beneficial ownership information where the

partnership is itself not a regulated business or has not engaged a service provider. Although the assessment team has determined that, given there are currently only 14 domestic limited partnerships in the Turks and Caicos Islands, the gap is of limited materiality, it is therefore recommended that the Turks and Caicos Islands takes further measures to ensure that ownership information in respect of partnerships is practically available as required under the standard.

174. None of the six EOI requests received by the Turks and Caicos Islands in 2015-17 related to a partnership.

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

175. The Turks and Caicos Islands' legislation with regard to trusts was recently enhanced when the Trusts Ordinance 2016 came into effect. The Trusts Ordinance strengthened a number of jurisprudential and commercial developments in trusts law, and codified these into the Turks and Caicos Islands' legal framework. As such, all trusts active in the Turks and Caicos Islands are now governed by the Trusts Ordinance 2016.

176. In addition, the Trust Companies (Licensing and Supervision) Ordinance of 2016 (TC(L&S)O) governs the licensing and supervision of trust companies, including identity information requirements on trustees and beneficiaries. The Trusts Companies Regulations 2016 provided a six months transition period for trust companies beginning in September 2016. During this period, the FSC issued new licences to all pre-existing trust companies, pursuant to the Trusts Companies Ordinance 2016, ensuring that all trustees are subject to licencing requirements. The result of these legislative reforms that have taken place since the 2013 Report is that (except for trusts established for administering the estate of a deceased family member) all trusts in the Turks and Caicos Islands are required to have a licensed trustee, or to be represented by a licensed trustee.

177. Trusts can be either professional trusts or private trusts. Professional trusts must be created and managed by remunerated licensed trustee service providers. Private trusts can be run by private trust companies (i.e. non-remunerated trustees) but, since 2016, must also have at least one licensed trustee as a representative. Foreign trusts are also permitted to operate in the Turks and Caicos Islands.

178. Only licensed trustees, via a licensed trust company, can administer trusts for remuneration (s. 4 TC(L&S)O). The Turks and Caicos Islands provides for two types of licensed trust companies: unrestricted trust companies (which authorise the licensee to carry on trust business in and from within the Turks and Caicos Islands), and restricted trust companies (which authorises the licensee to act as a trustee as long as the names of the current

settlers of the trusts which are clients are provided to the FSC). Section 8 of the TC(L&S)O lists the considerations the FSC will make to licence a trust service provider.

179. While a private trust company is not required to obtain a licence under the Trust Ordinance 2016 if its business consists solely of unremunerated trust business or related unremunerated trust business, the private trust is required to be represented by a licensed trust company in the Turks and Caicos Islands (s. 50(1), Trust Companies Ordinance). The FSC retains registration information on professional trustees. As of December 2017, there are nine licensed trustees administering 306 trusts in the Turks and Caicos Islands.

### *Identity information requirements*

180. The 2013 Report determined that the identity information required to be available for trusts in the Turks and Caicos Islands (i.e. identification of the settlor, trustee and all beneficiaries) was in line with the standard. At that time, the Turks and Caicos Islands trust law was based on the principles of English Common Law, and supplemented by the previous Turks and Caicos Islands Trusts Ordinance.

181. As regulated businesses, trust companies and persons who form remunerated private trusts are subject to AML/CFT obligations, including customer due diligence and record keeping requirements (AMLPTFR, Schedule 1), and must therefore identify their customers. Both the AMLPTFR and AMLPTFC apply to trust companies, as they are licensed and supervised by the FSC.

182. Section 19(1) of the AMLPTFC sets out the definition of the information a licensed professional trustee is required to obtain in order to identify a trust it is serving. This information is comprised of: (i) the name of the trust; (ii) the date of the establishment of the trust; (iii) any official identifying number; (iv) identification information on each trustee of the trust; (v) the mailing address of the trustees; (vi) identification information on each settlor of the trust; and (vii) identification information on each protector or enforcer of the trust. Where the trustee determines that there is a higher level of risk, the trust is required to obtain identification information on each beneficiary of the trust.

183. As noted above, since the 2013 Report, the Turks and Caicos Islands has adopted both a new Trusts Ordinance and Trust Companies (Licensing and Supervision) Ordinance in 2016, which update trust law provisions applicable to trusts, settlors, trustees, beneficiaries, and trust company service providers thereof. In particular, under section 50(1) of the Trust Ordinance 2016, a private trust company must now be represented at all times by a licensed trust company. As the licensed trust company is an AML obligated person, it is required to perform CDD on its customers, including the private

trust and maintain on file all relevant identity information regarding the private trust that is its client (Schedules 1 and 2, AMLPTFR). In addition, the non-professional trustee remains bound by English common law requirements as explained in the 2013 Report.

184. These Ordinances, along with the Turks and Caicos Islands' AML/CFT-framework, provide oversight into information requirements for trusts in the Turks and Caicos Islands.

### *Beneficial ownership information*

185. In addition to the customer identification requirements detailed above, which licensed trust companies must perform on trusts which are their clients, a licensed trust company is required under Regulation 19(4) of the AMLPTFC, to obtain identification information on settlors, trustees, and each beneficiary with a vested right in the trust, including each person who is an object of a power. Where the beneficiary is an individual, this would include the person's full name, address and date of birth (s. 14, AMLPTFC). If the settlor or beneficiary is a legal entity, the licensed trust company must in all cases obtain identification information on individuals who are the ultimate holders of 10 % or more of the legal entity (s. 16, AMLPTFC). Where a licensed trust company determines that the risk of the transaction warrants, it shall identify additional information, as it considers appropriate.

186. Regulation 19 of the AMLPTFR requires that records related to customer due diligence be kept for at least five years. In addition, under paragraph 21(4) of the Trust Companies Code, professional trustees must not keep records outside the Turks and Caicos Islands if access to those records will be impeded by confidentiality or data protection restrictions of the jurisdiction where the records are kept.

187. Furthermore, a licence from the FSC is required in order to carry out a professional trust business in the Turks and Caicos Islands (TC(L&S)O, s. 4), or to form a private trust company that is remunerated (TC(L&S)O, s. 51). Professional trustees are required to file ownership information as part of the application to obtain a licence, and the FSC ultimately evaluates an application to licence a trust service provider under the criteria set forth in section 8 of the TC(L&S)O. Trust service company licensees must inform the FSC of any change in ownership information as soon as reasonably practicable (TC(L&S)O, s. 22). Furthermore, material changes in a trust company's operations require the prior approval of the FSC.

188. Unremunerated private trust companies (which could, for instance, act as unremunerated trustees to private family trusts or to self-settled trusts) are exempt from requirements to obtain licences under the TC(L&S)O (s. 48). However, a private trust company must be represented by a licensed trust

company in the Turks and Caicos Islands. The licensed trust company would be required to carry out all customer due diligence on the private trust company and underlying trust, as specified previously. As such, the FSC would have access to the beneficial ownership of trusts with an unremunerated private trustee, as it could require the licensed professional trustee to provide it with relevant beneficial ownership information.

### *Supervision*

189. The FSC maintains a supervisory programme to carry out inspections of trust company licensees. This programme includes receipt, review and analysis of prudential, AML/CFT, and officers' information received from a licensee. As a licensed entity subject to the supervision of the FSC, the FSC can inspect documents, assets, premises, and businesses of companies licensed under the TC(L&S)O.

190. Under the Financial Services Commission Ordinance, the FSC may take supervisory and enforcement actions to ensure that a trust company service provider establishes and maintains adequate systems and controls for ensuring any directives issued by the FSC that apply to a licence (FSCO, s. 33). Supervisory actions can include communicating the identifying and providing the licensee the opportunity to correct breaches, issuing Notices of Intention to take Disciplinary Action, issuing financial penalties, or issuing cease and desist orders. Enforcement actions can include revoking or suspending a licence's licence, appointing an examiner to conduct an investigation, applying for a protection order, petition the court for the winding up of the licensee, or impose a financial penalty on the licensee. Before taking any enforcement actions against a licensee, the FSC is required to issue a Notice of Intention to take Disciplinary Action against the licensee in question, and allow for a 28 day waiting period. Following the 28 day period, the FSC may either continue or end the disciplinary action.

191. During the review period, the FSC carried out reviews of three out of the nine licensed trust companies. Following these examinations, the FSC issued a directive on one trust company for failure to fulfil its AML/CFT obligations and fined the same trust company USD 60 000 for breach of its fiduciary responsibilities. The examinations of the other two trust companies found instances of (i) late filings of audited financials, (ii) failure to take reasonable steps to preserve and enhance the value of trust property, and (iii) failure to maintain at its registered office, a register of directors and officers of its client companies. In addition, further deficiencies included no or weak business risk assessment and outdated customer due diligence information in relation to the trust company's AML obligations, inadequate corporate governance policies procedural manuals to reflect the size, nature and complexity of operations, infrequent information and account updates on clients,



failure to develop and properly assess client risks, and a lack of AML training for directors. The FSC issued recommended actions to these two trust companies to remedy the deficiencies and continues to work with the two licensees to ensure they meet the requirements of these recommendations.

192. None of the six EOI requests received by the Turks and Caicos Islands in 2015-17 related to a trust.

### ***ToR A.1.5. Foundations and other entities***

193. The Turks and Caicos Islands does not provide for foundations.

194. Other registration and reporting requirements exist for non-profit organisations and DNFBPs in the Turks and Caicos Islands. Non-profit organisations are subject to the AML/CFT framework of the Turks and Caicos Islands, and are therefore required to register with the FSC, which is the supervisor for these entities. The FSC is also the supervisor for DNFBPs, which are also required to register with the FSC. As of 31 March, 2018 the FSC was responsible for supervising 155 NPOs and 111 DNFBPs.

## **A.2. Accounting records**

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

195. The 2013 Report concluded that the legal and regulatory framework of the Turks and Caicos Islands on the availability of accounting records was in place but that it needed improvement as one gap existed regarding the legal and regulatory framework, where there was no consistent requirement for trusts to keep reliable accounting records for at least five years.

196. Regarding its implementation in practice, the Turks and Caicos Islands was rated as largely compliant with the international standard in the 2013 Report, and was recommended to put in place arrangements to ensure that accounting records are kept by companies and partnerships exempted from regulatory oversight. Since the 2013 report, the Turks and Caicos Islands has amended its legislation to expand the coverage of the legal entities and arrangements subject to accounting requirements.

197. Accounting obligations in the Turks and Caicos Islands fall under the Companies, Partnerships, LPs, Trusts, and AML/CFT Ordinances. The accounting obligations contained in these laws require that accounting records kept by all relevant entities and arrangements correctly explain all transactions, enable the financial position to be determined with reasonable accuracy at any time, and allow financial statements to be prepared. Partnerships, LPs, and all trusts are required to keep records for at least



five years from the date on which they were made under the Partnerships Ordinance, Limited Partnerships Ordinance and Trusts Ordinance 2016, respectively, and companies under the Companies Ordinance 2017 are required to keep and maintain records for seven years. Sanctions apply in the case of breach of these obligations. Adequate retention requirements apply also in cases where an entity or arrangement ceases to exist.

198. The FSC is engaged in supervisory monitoring of accounting record requirements of the entities obligated to maintain such records under the relevant licensing and regulatory requirements, including under AML/CFT requirements. However, the FSC would not have such authority where a given legal entity is not subject to its supervisory powers. Where applicable, the FSC's monitoring is based on supervisory on-site examinations, regulatory meetings and other periodic reporting. Furthermore, the FSC provides for thematic reviews of accountants, but has not made such an examination to date.

199. The FSC maintains the ability to take disciplinary action. Depending on the specific Ordinance it is operating under, the FSC may take disciplinary action including issuing of "Notice of Intention to take Disciplinary Action", penalties, directives and revocation or suspension of licences. As a matter of practice, the FSC noted during the onsite visit that it did not need to take enforcement actions for non-compliance with requirements to retain accounting records over the last three years because other supervisory techniques, such as issuing a Notice of Intent to take Disciplinary Action, were used to ensure compliance.

200. The Turks and Caicos Islands authorities have been involved with providing additional guidance to the relevant corporate entities and sectors to assist them in determining compliance with relevant accounting requirements. In addition, the requirements for most legal entities to maintain accounting records have been in place throughout the last three years. Therefore, sufficient time has passed and the Turks and Caicos Islands has demonstrated consistent commitment such that the previous recommendation can now be removed.

201. However, because the Turks and Caicos Islands does not maintain an income-based taxation system, no requirements to keep accounting records exist for tax purposes. Accounting records are only required as prescribed under other specific regulatory Ordinances, as well as AML/CFT obligations. Furthermore, these obligations only require regulated entities to maintain such records. Even in the case of the AML/CFT obligations, the entities are required to hold accounting information in relation to transactions with customers, which would not necessarily allow for reconstructing financial statements of an entity. As such, there are no general means of monitoring or verifying the accuracy of the accounting records that legal entities and

arrangements hold, to ensure that the records are accurate and complete with respect to the entity's financial position. Accordingly, a new recommendation will be added and the Turks and Caicos Islands is recommended to implement an effective system of oversight and enforcement to ensure the accuracy and availability of accounting information in all cases.

202. During the review period, the Turks and Caicos Islands received one request for accounting information that was part of a request for banking information. The Turks and Caicos Islands was successful in providing the necessary accounting information requested.

203. The new table of determination and rating is as follows:

<b>Legal and Regulatory Framework</b>		
	<b>Underlying Factor</b>	<b>Recommendation</b>
<b>Deficiencies identified in the legal and regulatory framework</b>		
<b>Determination: The element is in place</b>		
<b>Practical implementation of the standard</b>		
	<b>Underlying Factor</b>	<b>Recommendation</b>
<b>Deficiencies identified in the implementation of EOIR in practice</b>	Although accounting requirements cover all relevant legal entities and arrangements in the Turks and Caicos Islands, including those entities that are subject to FSC licensing or regulation (such as registered agents, which are subject to a FSC-sponsored programme to raise awareness of compliance requirements), the existing system of monitoring to ensure the accuracy and availability of accounting records is not yet fully in place and, as such, does not currently cover all relevant legal entities and arrangements. In addition, this lack of oversight also applies to accounting records of companies that have ceased to exist.	The Turks and Caicos Islands is recommended to implement an effective system of oversight and enforcement to support the legal requirements which ensure the accuracy and availability of accounting information for legal entities and arrangements in all cases.
<b>Rating: Largely Compliant</b>		

### ***ToR A.2.1. General requirements and ToR A.2.2 Underlying documentation***

204. The 2013 Report concluded that the Turks and Caicos Islands' legal and regulatory framework was largely in line with the standard's requirements regarding the availability of accounting information. The Companies Ordinance 2017, the Trusts Ordinance, the Partnerships Ordinance and the AML/CFT framework (all implemented or amended since the 2013 Report) all provide for accounting information requirements in the Turks and Caicos Islands. As mentioned above, there are no tax related requirements for legal entities or arrangements in the Turks and Caicos Islands to maintain accounting information.

205. Section 135 of the Companies Ordinance 2017 requires all companies to keep, either inside or outside the Turks and Caicos Islands, financial records for seven years from the date they are prepared. This is an enhanced obligation compared to the Companies Ordinance 16.08, under which companies were required to hold account documentation for only five years. This requirement does not distinguish among company types, and is instead applied to the full range of companies under the Ordinance. Accordingly, this requirement also applies to foreign companies, defined as International Companies, active in the Turks and Caicos Islands. If the accounting information is held outside the Turks and Caicos Islands, it must be able to be made available to a registered agent requesting the information.

206. Section 8(2)(f) of the Company Management (Licensing) Ordinance (CMLO) requires each licence holder to keep books of accounts which gives a true and fair view of the licensee's affairs. At a minimum, these accounting records must include information on income and expenditure, purchases and sales, and assets and liabilities supported by invoices and contracts. The CMLO empowers the FSC, whenever it considers it desirable to do so, to order a licensee to submit these accounts, and gives the FSC further discretion to request a licensee to have its accounts audited. If the books of accounts are not kept in a manner necessary to give a true and fair view of the state of the licensee's affairs, the books will not be considered as having been properly kept.

207. Section 23(5) of the Trusts Ordinance 2016 requires a trustee to keep accurate records and underlying documentation of each trust it serves. This requirement would include accounting records for trusts with professional trustees, as well as private trusts with non-professional trustees, as the latter are also required to have a licensed trust company representative. The licensed trust company would then be required under section 23(5) to ensure accounting records are maintained by the private trusts it represents.<sup>8</sup>

8. Section 23(5), which was added to the Turks and Caicos Islands' legal framework during the review period, requires that "[a] trustee shall keep, or cause to be

Section 23(6)(b) requires that records be retained for a minimum of five years from the date on which they are prepared. Similarly, the Trusts Companies Code requires licensees to keep adequate and orderly records for at least five years. These provisions implement the recommendation in the 2013 Report.

208. The Partnerships Ordinance provides that a partnership must keep proper books and accounts for five years from the date they are prepared. The same requirement applies for Limited Partnerships.

209. The AML/CFT regime further requires that accounting standards are adhered to. Regulation 18(1) of the AMLPTF Regulations provides that financial businesses should keep a record containing details relating to each transaction carried out by the financial business; all account files; and all business correspondence relating to a business relationship or occasional transaction. While these records need not necessarily be kept in the Turks and Caicos Islands, they must be kept in a format that allows them to be made readily available when requested by authorities or law enforcement in the Turks and Caicos Islands. Regulation 19 requires that all records must be kept for 5 years. These requirements apply to the companies, partnerships, limited partnerships, trusts, and other legal entities and arrangements that are subject to the AMLPTF Regulations.

#### *Implementation of accounting requirements in practice*

210. The 2013 Report concluded that the implementation of accounting requirements in practice was largely in compliance with the standard. As described below, the supervision by the FSC is adequate to ensure the availability of accounting information for the entities it oversees. However, there are no requirements nor legal means to verify that the accounting information maintained is accurate in the context of legal entities and arrangements not subject to the FSC's oversight, such as general partnerships, certain limited partnerships, and private trusts. The Turks and Caicos Islands is therefore recommended to address this gap.

211. The supervision pursuant to the FSC's authority is carried out through the provision of annual reporting requirements, as well as onsite examinations. Companies subject to the Companies Ordinance (including foreign companies with a nexus to the Turks and Caicos Islands) and licensed corporate service providers (including trustees) are required to submit an annual questionnaire to the FSC, detailing how they maintain their records

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kept, accurate accounts and records, including underlying documentation, of his trusteeship.” At the time of the 2013 Report, trustees were governed solely by English Common Law, with respect to requirements on maintaining accounting records of trusts.

and meet overall record keeping requirements for purposes of both the AML/CFT framework, as well as particular obligations they may face under the Companies, Trusts, Partnerships or Service Providers Ordinances, as applicable.

212. Upon review of the elements presented in the annual questionnaire, the FSC sets priorities for an onsite examination. Companies are required to keep their own books and records and, as such, any company that is not subject to the FSC's supervision can be reviewed. Corporate service providers typically maintain access to the books and records of companies for which they are responsible, but do not keep the information themselves. As such, the FSC reviews that corporate service providers have appropriate relationships (either formal or informal) in place with the companies they operate, to review the books and records. Corporate service providers are required to maintain updated lists of the companies they administer, allowing the FSC to crosscheck which companies have been regularly reviewed by corporate service providers for accounting information. Corporate service providers are required to maintain risk assessments of client profiles to apply appropriate due diligence and record reviews.

213. In selecting which corporate service providers to carry out an onsite, the FSC applies a risk-based supervision framework to determine appropriate allocation of examination resources. This risk assessment is based on the specific corporate service provider's previous examination record, as well as the composition of its client base. The due diligence and maintenance of accounting records are verified at this time. A mechanism for communicating deficiencies to both the corporate service providers and companies is in place. Furthermore, the FSC provides generalised feedback to the industry on a regular basis to point out issues seen. A company failing to maintain proper books and records is subject to a fine, up to USD 50 000 (s. 135, Companies Ordinance 2017) and, as mentioned above, the FSC is permitted to take disciplinary actions, such as penalties, directives and revocation or suspension of licences. For the period 2015-17, the FSC conducted 16 on-site examinations of corporate service providers, and three enforcement actions were applied on corporate service providers during this period.

214. While the FSC review will verify the existence of record keeping in practice for purposes of assessing compliance with specific Ordinances (e.g. Companies Ordinance or Trust Companies Ordinance), it will not review account information for general tax purposes. In addition, there are no mechanisms in place for the FSC to test the accuracy of the accounting information maintained by entities not covered by specific requirements in ordinances (i.e. private trusts with non-remunerated trustees).

215. While companies are expressly required to keep underlying documents such as invoices and contracts since 2011, and are subject to a summary

conviction to a fine up to USD 50 000 in case of failure to keep proper accounts or underlying documents, there is no authority supervising the implementation of these obligations. Authorities in the Turks and Caicos Islands confirmed that sanctions at, or near, USD 50 000 have never been applied in practice.

216. As such, it is recommended that the Turks and Caicos Islands take measures to ensure that appropriate measures are in place to provide for accurate accounting information in all cases for legal entities and arrangements.

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

217. The Turks and Caicos Islands received six requests for information during the review period. One of these requests included information regarding accounting information on individuals, which the Turks and Caicos Islands was able to provide successfully to the requesting jurisdiction. Peer input confirmed there were no issues reported regarding the provision of accounting information.

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

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

218. The 2013 Report concluded that the legal requirements for record-keeping obligations of banks were in line with the standard. There have been no relevant changes in the provisions since the 2013 Report.

219. Supervision of banks' CDD obligations is carried out in a similar manner as in respect of other regulated businesses. In the Turks and Caicos Islands, the FSC is the supervisor of banks. The FSC carries out off-site and on-site inspection programmes for banks and can apply enforcement measures in cases where deficiencies are identified. The FSC has recently implemented a risk-based supervision of its banks.

220. The 2013 Report found that there were issues with the legal implementation in practice, where sanctions were not applied in the cases of AML/CFT violations that were otherwise corrected. Accordingly, the Turks and Caicos Islands was recommended to apply sanctions in cases of AML/CFT violations. According to Turks and Caicos Islands officials and the FSC, the FSC considers applying sanctions when significant breaches of AML/CFT obligations are discovered. There are however, a number of factors, according to the FSC, that the FSC may consider that could lead to no sanctions being applied in the case of a breach. In the review period, the FSC identified multiple violations of AML/CFT obligations as part of onsite examinations, however, due to the nature of the violation (and in certain cases, that it was the first violation) the FSC decided not to pursue a penalty.

221. Availability of banking information in the Turks and Caicos Islands was confirmed in EOI practice. During the review period, the Turks and Caicos Islands received three requests for banking information and was able to fully respond to each of these requests.

222. The new table of determination and rating is as follows:

<b>Legal and Regulatory Framework</b>		
<b>Deficiencies identified in the implementation of the legal and regulatory framework</b>	<b>Underlying Factor</b>	<b>Recommendation</b>
<b>Determination: The element is in place.</b>		
<b>Practical implementation of the standard</b>		
<b>Deficiencies identified in the implementation of EOIR in practice</b>	<b>Underlying Factor</b>	<b>Recommendation</b>
	Although the FSC has monitored its banks during the peer review period, it has only recently formalised a new risk-based supervision approach to banks. More time is required to confirm the effective application of this supervisory approach.	The Turks and Caicos Islands is recommended to monitor the application of its risk-based supervision to banks, to ensure that they comply with their record-keeping requirements (including beneficial ownership on bank accounts) in all cases and should apply sanctions in case of unaddressed breach with AML/CFT obligations.
<b>Rating: Largely Compliant</b>		

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

223. The 2013 Report concluded that banks' compliance with record keeping requirements and their implementation in practice in the Turks and Caicos Islands was in line with the standard.

224. All commercial banking activities under the Banking Ordinance are listed as financial business activities under the POCO, and therefore subject to the Turks and Caicos Islands' AML/CFT laws. There are currently seven institutions licensed to conduct commercial banking under the Banking Act (with one institution soon to be removed as it is undergoing a voluntary liquidation). The number of banking licensees is considered stable.



225. The main record keeping requirements for banks are found in the AMLPTFR regulations 18 and 19. Under these regulations, all financial businesses, including banks, are required to keep information allowing the recreation of transactions for at least the preceding five years. The FSC may also require banking institutions to hold this information for longer periods.

### *Beneficial ownership information on account holders*

226. The obligation to identify beneficial owners of the account holder is contained in the AML/CFT laws. As described in section A.1.1, banks (i.e. regulated businesses) are required to apply CDD procedures: (i) when establishing a business relationship or carrying out a one-off transaction; (ii) ongoing during a business relationship; and (iii) when there is a suspicion of money laundering or doubts exist about the veracity or adequacy of previously obtained customer identification documents, data or information (Reg. 11 AMLPTFR).

227. In terms of timing of verification, the AMLPTFR and AMLPTFC provide that a bank may complete the verification as soon as reasonably practicable after the establishment of the business relationship if this is necessary not to interrupt the normal conduct of business (Reg. 11(6), AMLPTFR). Regulation 12 of the AMLPTFR outlines the actions that regulated businesses should take when they are unable to apply the identification (which includes verification) procedures, including the refusal to establish the business relationship or carry out the one-off transaction. Where the relationship has been established, but verification cannot be completed, the relationship or transaction should be suspended (Reg. 12(1), AMLPTFR). Representatives of the banking sector confirmed during the onsite that while they may establish a business relationship before completing the verification, they would not pursue any transactions with clients until the verification is complete.

228. Banks, upon establishing a business relationship, are required to identify the beneficial owner of the customer; take reasonable measures to verify the identity of the beneficial owner using reliable evidence that is reasonably capable of verifying the identity of the customer, third party or beneficial owner; and obtain additional information on the customer's business and risk profile (Reg. 11(2), AMLPTFR). Regulation 15 of the AMLPTFR contains simplified CDD rules. As determined in section A.1.1, these rules are in line with the standard.

229. As described in section A.1.1, a bank may enter into business with a third party (e.g. business introducer) and rely on CDD measures applied by the third party, subject to certain conditions; however, the bank remains ultimately responsible (Reg. 14, AMLPTFR).



230. Banks are required to keep the identification of the beneficial owner updated (Reg. 18, AMLPTFR), and are subject to relevant supervision and examination by the FSC. CDD documentation including records of the actions taken in order to identify the beneficial owner and other supporting documents have to be retained by the bank for a period of at least five years after the business relation has ended (Reg. 19(a), AMLPTFR). In the case of breach of the AML/CFT obligations, sanctions apply (Reg. 18(8), AMLPTFR).

*Implementation of obligations to keep beneficial ownership information in practice*

231. The FSC is responsible for conducting prudential supervision of commercial banks and financial institutions licensed to conduct banking business under the Banking Ordinance. It also monitors banks' compliance with AML/CFT obligations. The FSC has a total of six staff in the Bank Supervision Department.

232. The FSC recently adopted a risk-based approach to supervision, involving a combination of on-site and off-site supervision. Off-site supervision relates primarily to prudential risks and involves the submission of risk-focused information such as monthly and quarterly returns, industry and economic analysis, and past interactions and exam findings. AML/CFT risk management is assessed separately from prudential risks. On-site inspections are conducted to focus on areas determined to be high-risk during the off-site risk rating process. While external auditors are generally relied on for accounting issues, onsite examinations focus on risks associated with the significant activities engaged in. Onsite examinations may also be focused on thematic issues, such as AML/CFT compliance, when warranted based on risk reports, banking activities and past compliance issues.

233. Following the on-site examination the FSC prepares an examination report which highlights and discusses deficiencies and breaches detected during the on-site inspection. The report is presented to the bank before issuing the report.

234. From 2015 to 2018, the FSC carried out four onsite examinations of banks. The primary findings from an AML/CFT perspective during this period noted an absence of consistent periodic reviews of accounts classified as high risk and an absence of a comprehensive AML/CFT risk assessment process. During this period, the FSC imposed four enforcement actions on banks for non-compliance with AML/CFT obligations. While certain AML/CFT compliance deficiencies were detected, Turks and Caicos Islands authorities noted during the onsite that the FSC preferred to resolve these issues via notifying the banks of the non-compliance and then following up to ensure that the deficiencies were corrected, as opposed to imposing

monetary fines on the banks in question. The FSC noted that it would impose penalties if they were needed, but that during the review period, such penalties were not necessary. The FSC noted that where enforcement actions or a Notice of Intention to take Disciplinary Action and Penalty Notice was filed, banks complied within the given timeframe. The combined improvements in the AML/CFT framework, along with the commitment of Turks and Caicos Islands authorities to implement sanctions as necessary, mean that the previous recommendations from the 2013 report made on this element concerning the Turks and Caicos Islands' implementation of sanctions is revised.

235. However, the FSC is still in the process of implementing the risk based supervision framework and, as such, some of the associated steps have not been implemented, and certain aspects of the risk-based supervision framework may ultimately change. As noted previously, the FSC examinations carried out during the review period identified that banks were not consistent in maintaining periodic reviews of accounts classified as high risk, and that there was an absence of a comprehensive AML/CFT risk assessment process among banks. As such, the effectiveness of the new supervisory framework in remedying the AML/CFT record keeping and identification deficiencies identified during the review period, as well as those issues identified in the 2013 Report, cannot be assured at this time. The Turks and Caicos Islands is therefore recommended to monitor the effectiveness of its supervisory approach, to ensure banks comply with AML/CFT record keeping and identification requirements, and to apply sanctions where necessary.

236. During the review period, the Turks and Caicos Islands received three requests for banking information, including requests for beneficial ownership information. The Turks and Caicos Islands was able to fully respond to all of these requests.

## Part B: Access to information

237. 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).

238. As concluded in the 2013 Report, the Turks and Caicos Islands’ Competent Authority has broad access powers to obtain all types of relevant information including ownership, accounting and banking information in order to comply with obligations under the Turks and Caicos Islands’ EOI agreements. The Competent Authority’s broad access powers can be used for EOI purposes, regardless of domestic tax interest. Access powers are available in cases where information is requested for either civil or criminal tax purposes. In the case of failure to provide the requested information, the Competent Authority has adequate powers to compel the production of information.

239. The 2013 Report concluded that the banking and professional secrecy provisions were in line with the standard. No relevant changes have been made to the legal framework since that time.

240. The Competent Authority’s access powers are effectively used in practice. There were no challenges to the Competent Authority’s informational access powers during the review period. All requested entities, both governmental and private sector, complied with notices to produce documents, as requested by the Competent Authority.

241. No issue in respect of the scope of the tax administration’s access powers arose during the period under review. Peers were satisfied by the timeliness of provision of the requested information as well as the scope of the Competent Authority’s access powers. In light of the above, the legal and regulatory framework remains in place and its implementation in practice remains compliant with the international standard.

242. The table of determination and rating remains as follows:

<b>Legal and Regulatory Framework</b>
<b>Determination: In place</b>
<b>Practical implementation of the standard</b>
<b>Rating: Compliant</b>

***ToR B.1.1. Ownership, identity and bank information and  
ToR B.1.2 Accounting records***

243. EOI under the Turks and Caicos Islands’ treaty network is the responsibility of the Turks and Caicos Islands’ Competent Authority. The Director of the Exchange of Information Unit has been designated by the Permanent Secretary of Finance as the delegated Competent Authority for the Turks and Caicos Islands. This is currently an independent unit within the Ministry of Finance dedicated to exchange of information for tax purposes.

244. The Turks and Caicos Islands’ Competent Authority has broad access powers to obtain all types of relevant information including ownership, accounting and banking information in order to comply with obligations under the Turks and Caicos Islands’ EOI agreements.

245. The 2013 Report concluded that appropriate access powers were in place. These powers have not changed since then.

*Access powers*

246. The Turks and Caicos Islands Competent Authority is granted access powers. The Tax Information (Exchange and Mutual Administrative Assistance) Ordinance (hereinafter the “Tax Information Ordinance”) provides for the exchange of tax information for both exchanges on request (section 5), automatic exchanges (section 6), or spontaneous exchanges (section 7). Section 5 of the Tax Information Ordinance authorises the Competent Authority to request information from any person (either natural person or legal entity) within the Turks and Caicos Islands, in order to respond to an EOI request.

- The Competent Authority may, by notice, request information directly from any person, legal entity, or regulator thereof, which possesses or controls relevant information.
- To access information held by legal entities in the financial sector, the Competent Authority may make a request through the FSC. Section 23 of the Financial Services Commission Ordinance (FSCO) empowers the FSC, in order to ensure compliance with a request from the Competent Authority, to request, by notice in writing, any information as may be specified in the notice. The Competent Authority has signed a Memorandum of Understanding with the FSC to further facilitate this co-operation. This provision applies to access beneficial ownership information.

247. If the information is not provided within 28 days, the Competent Authority sends a second request letter with a short deadline, informing the information holder of the obligation to keep and provide the records, and outlining the penalties for not providing the information. If the record-keeper fails to produce the information, the Competent Authority notifies the regulatory authorities, namely the FSC, for assistance and, if necessary, will apply penalties or commence legal proceedings against the information holder.

248. The Tax Information Ordinance provides that the Competent Authority may also request a search warrant where information is not provided, or to ensure compliance with a notice (see B.1.4 below).

249. The same access powers and general procedures will apply to group requests as in respect of other types of requests (see further section C.5.2).

250. As confirmed by the peer input received, there was no case during the review period where the Turks and Caicos Islands failed to obtain the requested information because of a lack of access powers and the notices issued by the Competent Authority have not been challenged in court.

### *Access to ownership and accounting information in practice*

251. Although the Turks and Caicos Islands has no experience in making requests for information for domestic tax purposes that could be used for EOI practice, it has implemented procedures that are followed in processing an incoming request. The Competent Authority's EOI manual details procedures to be taken in processing an information request.

252. The Competent Authority has procedures in place to request assistance from the FSC in enforcing an information request. If the information request relates to one of its licensees or regulated entities, the FSC can issue a "Notice to Produce" to the licensee to obtain the information.

253. In practice, the Competent Authority does not keep any ownership or accounting information on any relevant entity, and will therefore use its information gathering powers to answer all EOI requests. It will typically send a letter to the persons or entities believed to possess the information requested by an EOI partner. Often, this would be a licensed service provider if ownership or accounting information is sought from a legal entity. This letter will refer to the legal basis (e.g. the Tax Information Ordinance) under which the information is requested and will detail the information required. The letter stresses the importance of confidentiality and, provided that the notification requirements are waived, additional language is added to clarify that the person requested to provide the information is prohibited from notifying any other person.

254. Under the Ordinance, the information holder has 28 days from the date the letter is issued to provide the requested information and the Competent Authority has not had to resort to reminders, regulatory authorities or sanctions in practice.

255. During the review period, the Turks and Caicos Islands received three requests for ownership information, three for bank information and one for accounting information (the accounting issue was part of a banking issue for a total of 6 requests), to each of which it responded in full and in a timely manner (see C.5 timeliness of responses).

256. In 2013, due to the Turks and Caicos Islands' limited EOI experience and its (at that time) recently implemented legislation, the 2013 Report introduced an in-text recommendation under which the Competent Authority's powers to collect information should be monitored on an ongoing basis. Since then, access powers have been used and no issue arose in practice such that the recommendation is removed.

#### *Access to banking information in practice*

257. In practice, as when ownership and accounting information is requested, the Competent Authority will typically send a letter to the persons or entities believed to possess the information requested by an EOI partner. Often, this is sent to a bank, if banking information is sought. In cases where it is expected a bank may not comply with a request, the Competent Authority will co-ordinate this request with the FSC. The same 28-day deadline applies. The Turks and Caicos Islands received three requests for banking information, in each case collected the information from banks, and fully responded to the request.

258. One request concerned beneficial ownership information related to several credit cards issued by a bank in the Turks and Caicos Islands. The Competent Authority made a request to the relevant bank for information

on each of the credit cards. The bank provided the requested information on all of the requested cards except one card, which the bank said had not been issued. The Competent Authority communicated this information to the requesting jurisdiction, which has stated that it is satisfied with the response.

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

259. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes.

260. The Turks and Caicos Islands does not maintain a direct tax system, the main revenues being a tax on hotels and restaurants, custom duties and registration fees for businesses. As such, the Competent Authority is authorised to exercise its powers solely for the purpose of complying with an EOI request. Therefore, in all instances the Turks and Caicos Islands collects information absent to a domestic tax interest.

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

261. The 2013 Report concluded that the Turks and Caicos Islands’ Competent Authority had adequate enforcement powers to compel the production of information. There has been no change to the relevant legal provisions since then.

262. The Tax Information Ordinance sets out the relevant enforcement provisions to compel the production of information to the Competent Authority for EOI purposes. As discussed in section B.1.2, the Competent Authority may, by notice in writing, require any person to provide information.

263. If a party fails to comply, the Competent Authority can forward the request to the Attorney General’s Chambers (AG Chambers). The AG Chambers would then prepare a search warrant based on the information received from the Competent Authority. The warrant request would be filed with the Magistrate’s Court and the search warrant would be executed by the Turks and Caicos Islands Royal Police Force.

264. Penalties for non-compliance with a request include a fine of up to USD 10 000, or imprisonment for up to two years. In addition, the FSC can take disciplinary actions against its licensees, which fail to adhere to a “Notice to Produce”.

265. During the review period, all information requests made by the Competent Authority were answered appropriately. Therefore, the Turks

and Caicos Islands did not apply any penalties related to non-compliance. In the case of non-compliance, the Competent Authority confirmed that it would use its compulsory powers to ensure that the requested information is obtained and provided.

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

266. The 2013 Report concluded that the secrecy provisions protecting banking information and professional privilege contained in the Turks and Caicos Islands' laws were in line with the standard. Similarly, such secrecy provisions do not provide a basis for the Turks and Caicos Islands' Competent Authority to decline to exchange information. The Turks and Caicos Islands authorities informed the assessment team that no relevant changes to the secrecy provisions have been made since the 2013 Report.

267. As described in the 2013 Report, the Confidential Relationships Ordinance (CRO) is the general law governing the disclosure of confidential information acquired by "professional persons" in the course of their business. Under the CRO, it is an offence for holders of confidential information to disclose or threaten to disclose such information to unauthorised persons. The CRO does, however, provide government authorities access to confidential information when conducting investigations or when another ordinance expressly permits disclosure, e.g. the Tax Information Ordinance gives the competent authority broad powers to obtain all types of information for EOI purposes, the only exceptions being information subject to legal privilege and information, the provision of which would be contrary to public policy (see also C.4).

### ***Banking secrecy Provisions***

268. Although banking relationships in the Turks and Caicos Islands are subject to confidentiality provisions, these are not absolute and do not prevent effective EOI in practice. Section 34(1) of the Banking Ordinance provides an exception from confidentiality provisions, where information is required under the provisions of any law in force in the Turks and Caicos Islands. Consequently, where information is sought in connection with a request for information under an EOI agreement, and pursuant to the access powers described above, these exceptions will override the secrecy provisions in the Banking Ordinance.

269. During the peer review period, the Competent Authority could access banking information in three cases and the banks co-operated promptly.



### *Legal professional privilege*

270. The Tax Information Ordinance gives the competent authority broad powers to obtain information, the only exceptions being information subject to legal privilege and information, the provision of which would be contrary to public policy. Because the scope of information subject to legal privilege is not defined under the Tax Information Ordinance, it is necessary to refer to the Proceeds of Crime Ordinance. Section 127 of the Ordinance remains unchanged from the 2013 Report and, as such, remains consistent with the international standard.

271. In practice, even though many corporate service providers are also attorneys, legal privilege has not been used to refuse an EOI-related information request in the Turks and Caicos Islands. If legal privilege were invoked to refuse co-operating in an EOI-related request, Turks and Caicos Islands authorities indicated that the case would proceed to the court of first instance in the Turks and Caicos Islands (the Supreme Court), as the Attorney General can pursue cases on behalf of the Competent Authority in its capacity as *amicus curiae*. The Turks and Caicos Islands' common law legal system means that a judge would likely first look to Turks and Caicos Islands legislation, followed by jurisprudence in other similar common law jurisdictions, in order to make a legal determination on whether legal privilege could be invoked.

## **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.

272. The 2013 Report concluded that the application of rights and safeguards in the Turks and Caicos Islands does not unduly prevent or delay the effective exchange of information. The report noted that there is no provision requiring the tax authorities to notify a taxpayer who is the subject of a request for information. Since 2013, there has been no changes in the legal framework regarding rights and safeguard. There is also nothing to report in practice. Accordingly, element B.2 is in place and rated Compliant.

273. The table of determination and rating remains as follows:

<b>Legal and Regulatory Framework</b>
<b>Determination: In place</b>
<b>Practical implementation of the standard</b>
<b>Rating: Compliant</b>

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

274. There is no requirement in the Turks and Caicos Islands' domestic legislation that a taxpayer or individual under investigation or examination must be given prior or post-exchange notification of a request.

275. The Competent Authority may, at its discretion, notify the Attorney General of any request under section 8 of the Tax Information Ordinance. Furthermore, the Competent Authority *must* notify the Attorney General when the Competent Authority believes that the information requested concerns issues of public policy. As described above, in such cases the Attorney General can take part in judicial or administrative proceedings in the Turks and Caicos Islands that arise from the request.

276. No situations have arisen in which the procedure for the Competent Authority to inform the Attorney General needed to be invoked. As such, this procedure has not been tested in practice.

277. The Turks and Caicos Islands does not provide administrative appeal rights for persons who are the subject of a request for information but general appeal rights against acts of the administration apply. A legal challenge to the action could potentially be brought in the Magistrates Court, which is the lowest court in the domestic system. Proceedings could be appealed to the Supreme Court, which is the court of first instance and an appellate body to the lower courts. Finally, an appeal can be registered with the Court of Appeal, which is the highest appellate body within the Turks and Caicos Islands. There has been neither any legal challenge, nor any court appeal against any action taken by the Competent Authority to answer an EOI request to date.

## Part C: Exchanging information

278. Sections C.1 to C.5 evaluate the effectiveness of the Turks and Caicos Islands’ EOI in practice by reviewing its network of EOI mechanisms – whether these EOI mechanisms cover all its relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether it respects the rights and safeguards of taxpayers and third parties and whether the Turks and Caicos Islands could provide the information requested in an effective manner.

### C.1. Exchange of information mechanisms

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

279. The 2013 Report concluded that the Turks and Caicos Islands network of EOI mechanisms were “in place” and rated Compliant with the international standard. In 2013, the Turks and Caicos Islands had TIEAs and the Multilateral Convention, covering in total 58 jurisdictions. The Turks and Caicos Islands is not permitted by the UK Government to conclude Double Taxation Conventions. Although the 2013 Report identified certain limitations with some of the EOI agreements entered into by the Turks and Caicos Islands, these were not considered major issues and this element was determined to be “in place”.

280. Since the 2013 Report, the Turks and Caicos Islands concluded three new TIEAs and amended the Tax Information Ordinance in 2014 to include all forms of information exchange, as well as to enable the incorporation of the Convention on Mutual Administrative Assistance in Tax Matters, which was extended for the Turks and Caicos Islands on behalf of the United Kingdom on 20 August 2013, and entered into force in the Turks and Caicos Islands on 1 December 2013. The Turks and Caicos Islands has now an EOI network to the standard covering 119 jurisdictions.

281. In practice, the Turks and Caicos Islands applies its TIEAs and the Multilateral Convention in line with the standard. No issues in respect of the interpretation of foreseeable relevance were identified in the current period under review. All peers providing input were satisfied with Turks and Caicos

Islands' interpretation of the foreseeable relevance standard and the application of the EOI clause in the agreement more generally. The fact that the Turks and Caicos Islands provides information to the widest possible extent was also confirmed by peers.

282. The table of determination and rating remains as follows:

<b>Legal and Regulatory Framework</b>
<b>Determination: The element is in place</b>
<b>Practical implementation of the standard</b>
<b>Rating: Compliant</b>

### *Other forms of exchange*

283. In addition to exchanges on request, the Turks and Caicos Islands has undertaken to apply the Common Reporting Standard in matters of automatic exchange of financial account information, and to provide spontaneous exchanges of information. The Turks and Caicos Islands' first exchange under the Common Reporting Standard took place in October 2018. The Turks and Caicos Islands has entered into an inter-governmental agreement with the United Kingdom to facilitate the automatic exchange of information under the Common Reporting Standard, as well as a separate inter-governmental agreement with the United States to facilitate exchanges under FATCA.

### ***ToR C.1.1. Foreseeably relevant standard***

284. Exchange of information mechanisms should allow for EOIR where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. The 2013 Report determined that the Turks and Caicos Islands EOI agreements met the standard of foreseeably relevant.

### *Foreseeable relevance standard in the EOI agreements of the Turks and Caicos Islands*

285. The 2013 Report noted that certain provisions in the Turks and Caicos Islands' TIEAs with Germany (Paragraph 2(d)) and the Netherlands (Paragraph 1(d)) contained potential restrictions on which personal data could be considered as foreseeably relevant. The Turks and Caicos Islands advised that no existing ban would be applicable in these circumstances. To date, the Turks and Caicos Islands has not received a request, nor sent any requests, for information under these agreements. In addition, given that the Turks and Caicos Islands and both the Netherlands and Germany are participating in the Multilateral Convention; they are in a position to exchange information under this instrument in accordance with the standard.

286. Since the 2013 report, the Turks and Caicos Islands expanded its EOI network by entering into three new TIEAs in 2014 with Guernsey, in 2015 with South Africa and in 2016 with the Isle of Man. All of these instruments are in line with the foreseeable relevance standard.

287. The Turks and Caicos Islands continues to interpret and apply its EOI agreements consistently with the standard of foreseeable relevance, as defined in Article 26 of the OECD Model Convention and the commentary thereto. The Turks and Caicos Islands' Competent Authority reported that all incoming EOI requests are processed according to the guidelines provided in its EOI Manual. The EOI Manual was recently updated to cover multi-lateral conventions, group requests and to provide an interpretation of the foreseeable relevance definition.

288. The Turks and Caicos Islands' Competent Authority confirmed that it has never declined an EOI request on the basis of foreseeable relevance. In practice, if a request were considered unclear or incomplete, the Turks and Caicos Islands' Competent Authority would seek clarification or additional information from the requesting jurisdiction before declining to respond. The Competent Authority did not seek clarifications on the foreseeable relevance of the requests received during the peer review period.

### *Group requests*

289. Turks and Caicos Islands confirmed that it interprets its EOI agreements and its domestic law such that it can reply to a group request to the extent that it meets the standard of foreseeable relevance as described in the 2012 update to the Commentary on Article 26 of the OECD Model Tax Convention and under the Multilateral Convention. The EOI Manual was recently updated to cover the instance where the Competent Authority would receive such a group request, and is in line with the Terms of Reference.

290. During the period under review, the Turks and Caicos Islands did not receive or make any group request. The Turks and Caicos Islands authorities confirmed that the access powers and general procedures would apply in a group request as in respect to other types of requests.

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

291. The 2013 Report found that all of the Turks and Caicos Islands' EOI agreements allow for EOI with respect to all persons, and that no issues had arisen in relation to the interpretation of this definition.

292. The EOI agreements entered into by the Turks and Caicos Islands since the 2013 Report allow for EOI with respect to all persons. Peers have not raised any concerns during the review period.

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

293. The OECD Model Tax Convention Article 26(5) and the Model TIEA Article 5(4), which are authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

294. The 2013 Report concluded that all of the Turks and Caicos Islands' EOI agreements contained provisions similar to Article 5(4) of the OECD Model TIEA or Article 26(5) of the OECD Model Tax Convention. The three EOI agreements that the Turks and Caicos Islands entered into since the 2013 Report also include similar provisions.

295. The Turks and Caicos Islands had successfully exchanged bank information. There was no case where the requested information was not provided because it was held by a bank, another financial institution, a nominee or person acting in an agency or fiduciary capacity or because it related to ownership interests in a person.

296. While one peer initially reported that not all of the beneficial ownership information requested of the Turks and Caicos Islands was exchanged, as described above in section B.1.2, the Turks and Caicos Islands authorities confirmed that this was not due to lack of access to the information, but instead because the account requested did not exist, and was never created by, the Turks and Caicos Islands entity in question. The requesting jurisdiction has stated that it is satisfied with the Turks and Caicos Islands response.

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

297. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party. Such obligation is explicitly contained in the OECD Model Tax Convention Article 26(4) and the Model TIEA Article 5(2).

298. The 2013 Report concluded that the Turks and Caicos Islands TIEA's contained language similar to the Article 5(2) of the OECD Model TIEA. Because the Turks and Caicos Islands does not have an income tax system, its access powers are specifically designed for international exchange of information.

299. The EOI Agreements the Turks and Caicos Islands entered into since the 2013 Report allow information to be obtained and exchanged even if it is not required for domestic tax purposes. In practice, no issues linked to domestic tax interest arose and the Turks and Caicos Islands never had a domestic tax interest in gathering the information required by the partners.

***ToR C.1.5. Absence of dual criminality principles***

300. There are no restrictions limiting EOI in criminal matters or based on dual criminality principles in any of the Turks and Caicos Islands' EOI agreements. In practice, the Turks and Caicos Islands has not received any requests related to a criminal matter, so the issue did not arise during the review period.

***ToR C.1.6. Exchange information relating to both civil and criminal tax matters***

301. All of the Turks and Caicos Islands' EOI agreements provide for EOI in both civil and criminal tax matters. As concluded in the 2013 Report, the Turks and Caicos Islands is able to exchange information in both civil and criminal matters pursuant to its agreements and in line with the standard. All of the Turks and Caicos Islands' TIEAs entered into since the 2013 Report provide for exchange of information in both civil and criminal tax matters.

302. All requests received related to civil tax matters.

***ToR C.1.7. Provide Information in specific form requested***

303. The 2013 Report found that there were no restrictions in the Turks and Caicos Islands' domestic laws that prevent it from providing information in different forms, as long as the form complies with the Turks and Caicos Islands' administrative practices. The Turks and Caicos Islands' TIEAs contain provisions similar to Article 5(3) of the OECD Model TIEA.

304. In practice, peers have not requested information in any specific form.

***ToR C.1.8. Signed agreements should be in force***

305. The 2013 Report concluded that the Turks and Caicos Islands had taken all steps necessary to bring into force all EOI agreements it had signed. Since 2013, the Turks and Caicos Islands signed and ratified three new TIEAs and the Multilateral Convention entered into force (see section C.1.1).

306. The Turks and Caicos Islands EOI network now covers 119 jurisdictions through 19 bilateral agreements and the Multilateral Convention. All TIEAs are currently in force.

307. As described in the 2013 Report, the ratification process is carried out by the Turks and Caicos Islands Government, in co-ordination with the UK's Foreign Commonwealth Office, which reviews TIEAs to confirm compliance with international standards. Domestic ratification of international treaties and instruments in the Turks and Caicos Islands are done through

Orders, which are considered Subsidiary legislation. Following the approval by Cabinet, Orders are approved by the Governor directly and do not need to be laid before the House of Assembly. The Turks and Caicos Islands authorities confirm that this ratification typically takes two months or less.

308. The following table summarises the outcomes of the analysis under element C.1 in respect of the Turks and Caicos Islands' bilateral EOI mechanisms.

#### **Bilateral EOI mechanisms**

A	Total number of DTCs/TIEAs	$A = B + C$	19
B	Number of DTCs/TIEAs signed but not in force	$B = D + E$	0
C	Number of DTCs/TIEAs signed and in force	$C = F + G$	19
D	Number of DTCs/TIEAs signed (but not in force) and to the Standard		0
E	Number of DTCs/TIEAs signed (but not in force) and not to the Standard		0
F	Number of DTCs/TIEAs in force and to the Standard		19
G	Number of DTCs/TIEAs in force and not to the Standard		0

#### ***ToR C.1.9. Be given effect through domestic law***

309. The Turks and Caicos Islands has in place domestic legislation necessary to comply with the terms of its EOI agreements.

310. In the 2013 Report, two peers commented that the Turks and Caicos Islands had not provided information on criminal tax matters. The requests related to a period before the entry into force of the TIEA under which the requests were made. The peers argued that the entry into force provisions in the relevant TIEAs obliged the Turks and Caicos Islands to exchange information with respect to criminal tax matters in all cases. Although the Turks and Caicos Islands' interpretation differed, it committed to handling the requests in question and to applying the interpretation of these partners in the future. Peers did not raise any similar cases during the current review period as no EOI request related to a criminal tax matter was sent.

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

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

311. The 2013 Report suggested the Turks and Caicos Islands continue to expand its EOI network.

312. Since that report, the Turks and Caicos Islands has expanded its EOI network from 58 jurisdictions to 119. The EOI network comprises of



19 TIEAs and the Multilateral Convention. The Turks and Caicos Islands EOI network encompasses a wide range of counterparties.

313. During the preparations for the current review, none of the Global Forum members indicated that the Turks and Caicos Islands had refused to negotiate or sign an EOI agreement. As such, the previous recommendation will be removed, but the Turks and Caicos Islands should continue to conclude EOI agreements with any new relevant partner who would so require.

314. The new table of determination and rating is as follows:

<b>Legal and Regulatory Framework</b>		
<b>Deficiencies identified in the implementation of the legal and regulatory framework</b>	<b>Underlying Factor</b>	<b>Recommendation</b>
<b>Determination: In place</b>		
<b>Practical implementation of the standard</b>		
<b>Rating: Compliant</b>		

### C.3. Confidentiality

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

315. The 2013 Report concluded that all of the Turks and Caicos Islands' EOI agreements have confidentiality provisions in line with the essential aspects of Article 8 of the OECD Model TIEA, and the standard. This is also the case with EOI agreements entered into by the Turks and Caicos Islands since then.

316. There are adequate confidentiality provisions protecting tax information under the Turks and Caicos Islands' domestic laws. Section 12 of the Tax Information Ordinance provides confidentiality provisions that apply to all EOI requests made with the Turks and Caicos Islands.

317. The applicable rules are properly implemented in practice to ensure confidentiality of the received information. The Competent Authority has in place policies and procedures to ensure that confidential information is clearly labelled and stored. The information received is either kept physically in locked cabinets or stored electronically with access restricted to a limited number of authorised officers. Adequate security and operational controls are deployed in an appropriate manner, with the exchanged information adequately protected. Accordingly, no case of breach of confidentiality has been encountered in the EOI context and no such case or concerns have been reported by peers.

318. The table of determination and rating remains as follows:

<b>Legal and Regulatory Framework</b>
<b>Determination: In place</b>
<b>Practical implementation of the standard</b>
<b>Rating: Compliant</b>

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

319. The 2013 Report concluded that all of the Turks and Caicos’ EOI agreements meet the standards for confidentiality including the limitations on disclosure of information received, and use of the information exchanged, which are reflected in Article 8 of the OECD Model TIEA. The same applies to all new TIEAs signed since then and the Multilateral Convention also provides for confidentiality in line with the standard under Article 22.

320. There are adequate confidentiality provisions protecting tax information contained in the Turks and Caicos Islands’ domestic laws, supported by administrative and criminal sanctions applicable in the case of breach of these obligations. There has been no change in these provisions since the 2013 Report.

321. Section 3 of the Confidential Relationships Ordinance requires government officials to maintain the confidentiality of information they obtained in the course of their professional activities. The Public Service Ordinance also creates an additional general duty on all public service officers and employees to keep confidential all official information they have received in confidence. Section 12 of the Tax Information Ordinance states that all matters relating to a request “shall be treated as confidential, and no person who is notified of a request, or is required to take any action, or supply any information in response to or in relation to any matters to which a request relates, shall disclose the fact of the receipt of such request or any other particulars required or information supplied to any other person except in accordance with the Agreement”. In this context, “notified of a request” applies to the circumstance where the Competent Authority requests an individual to provide information for purposes of an information request (i.e. anti-tipping off measure). As such, both government officials handling information requests and the private individuals subject to such requests, are subject to fines or imprisonment for violating the confidentiality laws in the Confidential Relationships Ordinance and the Tax Information Ordinance, respectively. The Turks and Caicos Islands authorities reported that there were no cases of improper disclosure of EOI information during the current review period.

322. The 2016 Terms of Reference clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax

purposes, an exception applies where the authority supplying the information authorises the use of information for other purposes, in accordance with the amendment to Article 26 of the OECD Model Tax Convention introducing this element, which previously appeared in the commentary to this Article. In the period under review, the Turks and Caicos Islands reported that there were no requests where the requesting partner sought the Turks and Caicos Islands' consent to utilise the information for non-tax purposes and similarly the Turks and Caicos Islands did not request its partners to use information received for non-tax purposes. Information received from a treaty partner is only used for the purposes provided for in the respective EOI agreement.

*Practical measures to ensure confidentiality of the information received*

323. As concluded in the 2013 Report, the tax administration has in place appropriate policies and procedures to ensure confidentiality of the information exchanged.

324. Information received under all EOI instruments is classified in accordance with procedures for document management, labelled as protected under the particular treaty and stored in archives.

325. All EOI responses to partners are sent via registered mail.

326. The EOI Unit treats all incoming requests as confidential. An incoming request may arrive either by email or by post. A production notice is then sent to holders of the data requested (either another governmental body, or a private sector entity). Tipping-off individuals subject to the notice is prohibited under the Tax Information Ordinance and, as there is no income tax system in the Turks and Caicos Islands, there is no requirement to notify individuals of an incoming request that may affect their tax situation (see section B.2).

327. The authorities in the Turks and Caicos Islands confirmed that the notice to produce information only contains the limited information necessary to handle the request. In practice, the notice contains a description of the requested information, the legal basis of the notice (i.e. the Tax Information Ordinance), and a notification that the request is confidential. All officers within the Turks and Caicos Islands EOI Unit have signed confidentiality agreements. The Turks and Caicos Islands' Government's current document retention period is five years, after which the documents are destroyed by burning, in a process supervised by government authorities. Article 8 of the Turks and Caicos Islands' Tax Information Ordinance requires that the information related to the request be kept confidential. The information can only be disclosed to persons or authorities (including courts and administrative bodies) which are directly concerned with the request. The information may be disclosed in public court proceedings as part of an appeal process initiated by concerned parties.

328. The EOI Unit offices are located within the Revenue Department. Access to the premises is secured and restricted. All incoming EOI requests are secured in a locked cabinet, and the Unit maintains a clean desk policy. EOI requests are also entered into a database maintained by the EOI Unit, on a separate server for EOI activities. Access is password protected, and limited to the designated data administrator and two officials from the EOI Unit. As for paper documents, the Turks and Caicos Islands' retention policy for data on IT systems is five years. The Turks and Caicos Islands sends all responses by registered post to the requesting jurisdiction.

329. No case of breach of confidentiality in respect of EOI has been encountered by the Turks and Caicos Islands authorities during the peer review period, and peers did not raise concerns regarding this issue.

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

330. Confidentiality rules should apply to all types of information exchanged; including information provided by a requesting jurisdiction, information transmitted in response to a request and any background documents to such request.

331. The confidentiality provisions in the Tax Information Ordinance apply to a request for tax information, and all information received in connection with that request. 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 within the tax authorities of either jurisdiction.

332. Turks and Caicos Islands authorities confirm that in practice they consider all types of information relating to an EOI request confidential (including communications between the Turks and Caicos Islands and the requesting jurisdiction).

## **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.

### ***ToR C.4.1. Exceptions to requirement to provide information***

333. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise.

334. All of the Turks and Caicos Islands’ EOI agreements concluded since the 2013 Report allow for the exceptions from the obligation to provide the requested information akin to the exemption contained in the OECD Model Tax Convention and OECD Model TIEA. The Multilateral Convention contains a provision consistent with the standard, ensuring the confidentiality of information exchanged and limiting the disclosure and use of the information received. This is further reinforced in the Tax Information Ordinance, Section 5(2), which specifies that the competent authority does not have powers to obtain information that is subject to legal privilege (see B.1.5).

335. In practice, the Turks and Caicos Islands did not decline to provide the requested information during the period under review because it was covered by legal professional privilege or any other professional secret or because of concerns of public policy. More broadly, no issues in relation to the rights and safeguards of taxpayers and third parties have been encountered in practice, nor have they been raised by any of the Turks and Caicos Islands’ exchange of information partners.

336. As discussed above, the scope of protection of information covered by the exemption contained in the Turks and Caicos Islands’ domestic law is consistent with the international standard.

337. The table of determination and rating remains as follows:

<b>Legal and Regulatory Framework</b>
<b>Determination: In place</b>
<b>Practical implementation of the standard</b>
<b>Rating: Compliant</b>

## 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.

338. In order for EOI to be effective, jurisdictions should request and provide information under their network of EOI mechanisms in an effective manner. In particular:

- *Responding to requests:* Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or provide an update on the status of the request.
- *Organisational processes and resources:* Jurisdictions should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.

- *Restrictive conditions*: EOI assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

339. The 2013 Report concluded that the Turks and Caicos Islands should monitor the practical implementation of the organisational processes and the process for handling incoming requests to ensure that it could exchange information effectively and in a timely manner. In addition, as it was noted that a number of peers were unable to contact the Turks and Caicos Islands’ Competent Authority, the Turks and Caicos Islands was recommended to continue to ensure a good level of communication with its treaty partners and to ensure that its Competent Authority can be reached in all instances.

340. The Turks and Caicos Islands has taken steps to address this recommendation by ensuring that responses to requests are carried out in appropriate timeframes. During the review period, the Turks and Caicos Islands received six EOI requests (up from four requests during the last review period). The Turks and Caicos Islands responded to all the incoming requests within 90 days. The EOI Unit’s organisation and procedures are coherent, and are in line with the OECD Manual on the Exchange of Information. Peers generally reported that they were pleased with the detail of the responses sent during the review period. Although the Turks and Caicos Islands only received six EOI requests during the peer review period, it has allocated substantial resources and processes to its EOI activities. In light of the prompt timeliness of responses, the positive peer input received and the review of the organisational structures and resources allocated to EOI activities in the Turks and Caicos Islands, the recommendation from the 2013 Report has been removed and element C.5 is rated Compliant.

341. The new table of determination and rating is as follows:

Legal and Regulatory Framework		
<b>Determination: This element involves issues of practice that are dealt with in the implementation of EOIR in practice. Accordingly, no determination has been made.</b>		
Practical implementation of the standard		
	Underlying Factor	Recommendation
<b>Deficiencies identified in the implementation of EOIR in practice</b>		
<b>Rating: Compliant</b>		

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

342. From 1 January 2015 to 31 December 2017, the Turks and Caicos Islands received a total of six requests for information (two of them originated from the same jurisdiction and were related in substance). The information in these requests related to: (i) ownership information (three cases); (ii) banking information (three cases); (iii) accounting information (one case) and (iv) other type of information (five cases). These types of information were in certain cases combined.

343. The following table relates to the requests received during the period under review and gives an overview of response times needed by the Turks and Caicos Islands to provide a final response to these requests together with a summary of other relevant factors impacting the effectiveness of the Turks and Caicos Islands' EOI practice during the review period.

#### Timeliness statistics

		2015		2016		2017		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	(A+B+C+D+E)	2	100	3	100	1	100	6	100
Full response: ≤90 days		2	100	3	100	1	100	6	100
(cumulative) ≤180 days	(A)	0	-	0	-	0	-	0	-
(cumulative) ≤1 year	(B)	0	-	0	-	0	-	0	-
>1 year		0	-	0	-	0	-	0	-
Declined for valid reasons		0	-	0	-	0	-	0	-
Status update provided within 90 days (for responses sent after 90 days)		0	-	0	-	0	-	0	-
Requests withdrawn by requesting jurisdiction	(C)	0	-	0	-	0	-	0	-
Failure to obtain and provide information requested	(D)	0	-	0	-	0	-	0	-
Requests still pending at date of review	(E)	0	-	0	-	0	-	0	-

*Notes:* The Turks and Caicos Islands counts each request with multiple taxpayers as one request, i.e. if a partner jurisdiction is requesting information about 4 persons in one request, the Turks and Caicos Islands count that as 1 request. If the Turks and Caicos Islands received a further request for information that relates to a previous request, with the original request still active, the Turks and Caicos Islands will append the additional request to the original and continue to count it as the same request.

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.

344. The Turks and Caicos Islands responded to 100 % of the incoming EOI requests within 90 days. This is an improvement from the previous period where the Turks and Caicos Islands experienced delays in respect of two of the four requests received. The Turks and Caicos Islands currently has no requests pending.

345. During the period under review, the Turks and Caicos Islands did not decline any EOI requests. Peers confirm that the Turks and Caicos Islands provides an acknowledgement of receipt upon receipt of a request.

#### *Status updates and communication*

346. The 2013 Report recommended that the Turks and Caicos Islands should ensure that good communication is always in place with its peers, and that its competent authority can be reached in all instances. Since the 2013 Report, the Turks and Caicos Islands has updated its EOI Manual to provide for sending a status update within 90 days. In practice, since the Competent Authority has answered all incoming requests in less than 90 days during the review period, the Turks and Caicos Islands did not need to send such a status report.

347. The Turks and Caicos Islands accepts requests in English. If the request is not in English, the requesting competent authority will be asked to translate the request (but this has not happened yet in practice). The Turks and Caicos Islands sends responses in English as agreed with the particular treaty partner.

348. Communication tools used for external communication with other Competent Authorities is done mostly through registered post. E-mails are used for sending acknowledgment letters, requests for clarification or to provide status updates.

349. During the review period, peers did not indicate that there was any issue with contacting the Turks and Caicos Islands competent authority.

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

350. The 2013 Report concluded that the Turks and Caicos Islands' EOI Unit was sufficiently staffed and resourced, considering the few number of EOI requests received, and that EOI Unit staff maintains a high level of knowledge of EOI. There were notable delays with two of the four EOI requests reviewed in the 2013 Report. The Turks and Caicos Islands was encouraged to monitor the handling of incoming requests to ensure that they could exchange information effectively and in a timely manner.

351. The Turks and Caicos Islands received six requests during the review period. The EOI Unit's staff remained consistent over this period (3 persons), which is appropriate given the number of requests. In addition, the staff of the EOI Unit have responsibilities related to the Turks and Caicos Islands' participation in the Automatic Exchange of Information, FATCA reporting, and country-by-country reporting, among other projects. The EOI Unit staff continues to maintain a high level of knowledge of EOI by attending



relevant training sessions hosted by the Global Forum, as well as trainings of related initiatives on AML/CFT issues facilitated by the CFATF. The Turks and Caicos Islands authorities advised that an effort has been underway to increase staff, but that it remains difficult to find qualified candidates to fill vacancies.

352. Given the issues identified in the previous report regarding the timing of the responses, the Turks and Caicos Islands EOI Unit updated its contact list and implemented a standardised checklist process for receiving requests and for responding to the requesting jurisdiction.

### *Incoming requests*

353. The Competent Authority Director uses a manual system of recording EOI requests (i.e. an excel spreadsheet) and a computerised database (based on the EOI database developed by the Global Forum) for easier tracking and monitoring of requests for EOI.

354. The EOI Unit uses an EOI Manual (based on the Global Forum's EOI Working Manual) which sets out the proper procedures for handling requests, providing template forms for requesting information to fulfil a partner's request, and information on confidentiality. The 2013 EOI Manual was updated following the 2018 onsite visit. The Turks and Caicos Islands indicated that it will ensure the manual remains up to date, including in relation to information on group requests and application of the Multilateral Convention.

355. Official internal communication within the tax administration is carried out by telephone, email, in person or by internal courier system.

### *Outgoing requests*

356. The 2016 Terms of Reference also cover requirements to ensure the quality of requests made by the assessed jurisdiction. The Turks and Caicos Islands did not make any EOI requests during the review period; however, the EOI Manual does provide rules for handling outgoing requests and establishes procedures to ensure the quality of EOI requests. Although the Turks and Caicos Islands does not currently send requests for tax information (given that it does not have a direct tax system), authorities noted during the onsite visit that this was to provide clarity in the case such a request ever did become necessary. According to the EOI Manual, the procedures set forth in the relevant TIEA should be used to draft and submit the outgoing request. All outgoing requests would be made through the EOI Unit and would follow standard procedures to ensure consistency, all of which are contained in the EOI Manual. These procedures are in line with the Global Forum's EOI Working Manual. The EOI Manual is available to all tax examiners.

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

357. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. There are no factors or issues identified in the Turks and Caicos Islands that could unreasonably, disproportionately or unduly restrict effective EOI.

## Annex 1: List of in-text recommendations

Issues may have arisen that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. However, in order to ensure that the Global Forum does not lose sight of these “in text” recommendations, they should be listed in an annex to the EOIR report for ease of reference.

- **Element A.1:** The Turks and Caicos Islands should ensure that guidance is published to clarify the requirements of companies subject to differing beneficial ownership reporting thresholds.
- **Element A.1:** Providing nominee services for family members or friends on a non-professional basis is not considered an activity which would trigger the requirements under the CMLO or AML laws. An obligation should therefore be established for all nominees, whether or not rendering professional services, to maintain relevant ownership information where they act as the legal owners on behalf of another person.
- **Element A.1.3:** The Turks and Caicos Islands should provide necessary guidance to ensure relevant professionals understand and apply the requirement that appropriate records are kept for the lifetime of a LP. Similarly, the Turks and Caicos Islands should ensure that such information is maintained for at least five years following the dissolution of the LP.
- **Element C.2:** The Turks and Caicos Islands should continue to conclude EOI agreements with any new relevant partner who would so require.

## Annex 2: List of the Turks and Caicos' EOI mechanisms

### 1. Bilateral international agreements for the exchange of information on request

EOI partner	Type of agreement (DTC, TIEA, other)	Date signed	Date entered into force (ToR C.1.8)
Australia	TIEA	30 March 2010	1 July 2010
Canada	TIEA	22 June 2010	6 October 2011
Denmark	TIEA	7 September 2009	25 January 2011
Faroe Islands	TIEA	16 December 2009	Not in force
Finland	TIEA	16 December 2009	2 April 2011
France	TIEA	24 September 2009	15 July 2011
Germany	TIEA	4 June 2010	25 November 2011
Greenland	TIEA	16 December 2009	26 March 2012
Guernsey	TIEA	24 April 2014	17 August 2015
Iceland	TIEA	16 December 2009	22 April 2012
Ireland	TIEA	22 July 2009	1 December 2013
Isle of Man	TIEA	30 June 2016	8 September 2016
Netherlands	TIEA	22 July 2009	1 May 2011
New Zealand	TIEA	11 December 2009	23 December 2016
Norway	TIEA	16 December 2009	9 April 2011
Portugal	TIEA	20 December 2010	26 January 2017
South Africa	TIEA	27 May 2015	17 November 2016
Sweden	TIEA	16 December 2009	21 May 2011
United Kingdom	TIEA	23 July 2009	25 January 2011

## 2. Convention on Mutual Administrative Assistance in Tax Matters (amended)

The Convention on Mutual Administrative Assistance in Tax Matters (the 1988 Convention) was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the amended Convention).<sup>9</sup> The Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The original 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the 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 amended Convention was opened for signature on 1 June 2011.

The Convention was extended for the Turks and Caicos Islands on behalf of the United Kingdom on 20 August 2013, and entered into force in the Turks and Caicos Islands on 1 December 2013.

As at 29 November 2018, the amended Convention is also in force in respect of the following jurisdictions with which EOI is possible with the Turks and Caicos Islands: Albania, Andorra, Anguilla, Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Brazil, British Virgin Islands (extension by the United Kingdom), Bulgaria, Cameroon, Canada, Cayman Islands, Chile, China (People’s Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curacao (extension by the Netherlands), Cyprus,<sup>10</sup> Czech Republic,

9. 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.
10. Note by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

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

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

In addition, the following are the jurisdictions that have signed the amended Convention, but where it is not yet in force:<sup>11</sup> Antigua and Barbuda (scheduled to enter into force on 1 February 2019), Armenia, Brunei Darussalam, Burkina Faso, Dominican Republic, Ecuador, El Salvador, Gabon, Jamaica (scheduled to enter into force on 1 March 2019), Kenya, Liberia, Morocco, North Macedonia,<sup>12</sup> Paraguay, Philippines, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

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11. Note that while the last date on which the changes to the legal and regulatory framework can be considered was 19 December 2018, changes to the treaty network that occur after that date are reflected in this Annex.
  12. The Republic of North Macedonia, previously known as the Former Yugoslav Republic of Macedonia, has informed the United Nations and the OECD of its new official name. The change is effective as of 14 February 2019.

## **Annex 3: Methodology for the review**

The reviews are based on the 2016 Terms of Reference and conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and the 2016-21 Schedule of Reviews.

The evaluation was based on information available to the assessment team including the EOI arrangements signed, laws and regulations in force or effective as of 19 December 2018, the Turks and Caicos Islands' EOIR practice in respect of EOI requests made and received during the three year period from 1 January 2015 to 31 December 2017, the Turks and Caicos Islands' responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by the Turks and Caicos Islands during the on-site visit that took place from 24 to 26 July 2018 in Providenciales, Turks and Caicos Islands.

### **Laws, regulations and other material received**

#### *Commercial laws*

The Companies Ordinance 2017 (and Amendments)

The Companies Regulations 2018

Emergency Powers (Companies Ordinance 2017) (Suspension) Regulations 2017

Beneficial Ownership Regulations 2017

The Companies Ordinance 16.08 (and Amendments)

The Business Licensing Ordinance 17.02 (and Amendments)

The Company Management (Licensing) Ordinance 16.10 (and Amendments)

The Trusts Ordinance 2016

The Trust Companies (Licensing and Supervision) Ordinance 2016

The Trust Companies Regulations 2016  
The Trust Companies Code 2016  
Protected Cell Companies Ordinance 16.09  
Limited Partnerships Ordinance 16.15  
Partnership Ordinance 16.16  
Turks and Caicos Islands Abolishment of Bearer Shares Ordinance 2013  
Business Names Registration Ordinance 17.01  
Confidential Relationships Ordinance 16.14  
Patents Ordinance 17.03  
Trade Marks Ordinance 17.04  
Passenger Tax Ordinance 19.07  
Insurance Premium Sales Tax Ordinance 19.17

***Taxation laws***

tax Information (Exchange and Mutual Administrative Assistance)  
Ordinance 3.18  
Tax Information (Multilateral Competent Authority Agreement on Automatic  
Exchange of Financial Account Information and the Common Reporting  
Standard) Order 2016  
International Tax Compliance Regulations 2016.  
Domestic Financial Services Sales Tax Ordinance 19.16  
Telecommunication Taxation Ordinance 14.03 (and Amendments)

***Banking and financial laws***

banking Ordinance 16.02 (and Amendments)  
Banking Ordinance, Banking (Amendments) Regulations 2017  
Financial Services Commission Ordinance 16.01  
Money Transmitters Ordinance 16.04  
International Financial Institutions Ordinance 16.05  
Investment Dealers Licensing Ordinance 16.13 (and Amendments)  
Mutual Funds Ordinance 16.07 (and Amendments)



***Anti-money laundering laws, etc.***

proceeds of Crime Ordinance 3.15 (and Amendments)

Financial Intelligence Agency Ordinance 3.20 (and Amendments)

***Other laws***

the Constitution of the Turks and Caicos Islands 1.01

The Public Service Ordinance 1.07

Court of Appeal Ordinance 2.01

The Supreme Court Ordinance 2.02

Magistrate’s Court Ordinance 2.03

Customs Ordinance 19.04 (and Amendments and Regulations)

Hotel and Tourism (Taxation) Ordinance 19.09 (and Amendments)

Insurance Ordinance 16.06 (and Domestic Insurance Ordinance of 2016)

Stamp Duty Ordinance 19.05 (and Amendments)

TCI EOI Manual

Administrations and organisations interviewed during the onsite visit

Premier’s Chamber

- The Honourable Premier

Governor’s Chamber

- His Excellency, the Governor

Ministry of Finance – Revenue Commissioner

Ministry of Finance – EOI Unit

Attorney General – Principal Crown Counsel, International; Senior  
Legislative Drafter

The Attorney General’s Chamber

- Attorney General
- Principal Legislative Drafter

Financial Services Commission

Registrar of Companies

## Current and previous reviews

This report is the fourth review of the Turks and Caicos Islands conducted by the Global Forum. The Turks and Caicos Islands previously underwent a review of its legal and regulatory framework (Phase 1) originally in 2011 and a supplementary review (Phase 1) in 2011 and the implementation of that framework in practice (Phase 2) in 2013. The Phase 2 review covered the Turks and Caicos Islands' EOIR practice in the period from 2010 to 2012 and its outcomes were adopted by the Global Forum in November 2013 (reflecting the legal and regulatory framework in place as of May 2013).

The Phase 1 and Phase 2 reviews were conducted according to the terms of reference approved by the Global Forum in February 2010 (2010 ToR) and the Methodology used in the first round of reviews.

Information on each of the Turks and Caicos Islands' reviews are listed in the table below.

Review	Assessment team	Period under review	Legal Framework as of	Date of adoption by Global Forum
<b>Round 1 Phase 1</b>	Mr Avvari Sreenivasa Rao, Indian Ministry of Finance; Mr Philippe Cahanin, French Revenue Administration; Mr Guozhi Foo, Global Forum Secretariat.	Not applicable	May 2011	July 2011
<b>Round 1 Phase 1 Supplementary</b>	Mr Avvari Sreenivasa Rao, Director, Foreign Tax and Tax Research II of the Indian Ministry of Finance; Mr Philippe Cahanin, Deputy Director in the Large Business Audit Branch of the French Revenue Administration; and Mr Guozhi Foo, Global Forum Secretariat	Not applicable	August 2011	October 2011
<b>Round 1 Phase 2 2013 Report</b>	Mr Avvari Sreenivasa Rao, Indian Ministry of Finance; Ms Florence Boisset-Repkat, French Revenue Administration; Mr Rémi Verneau, Global Forum Secretariat.	1 January 2010 to 31 December 2012	August 2013	November 2013
<b>Round 2 2018 Report</b>	Ms Anne Margaret Gormley, Irish Tax and Customs Authority; Ms Jolanda Roelofs, Dutch Tax and Customs Administration; Mr Colby Mangels, Global Forum Secretariat.	1 January 2015 to 31 December 2017	19 December 2018	15 March 2019

## **Annex 4: The Turks and Caicos’ response to the review report<sup>13</sup>**

The Turks & Caicos Islands having successfully completed our Phase 1 review in 2011 and our Phase 2 review in 2013, worked diligently to implement the recommendations made.

On review of this Report, it is with great gratitude that Turks & Caicos has been recognised for the legislative amendments made to implement key recommendations that were contained in the previous Reports. We have undergone an intense legislative review and have complied with the Global Forum’s recommendations in regards to Beneficial Ownership and the Beneficial Ownership Registry, which, we worked diligently to bring into force.

The Turks & Caicos Islands would like to affirm its agreement with the Report and would also like thank the Global Forum Secretariat and the Assessment Team for their hard work and dedication to this process. We will continue to build our administrative capacity to facilitate the growing needs in this area and remain committed to working with the Global Forum in its efforts to improve transparency and exchange of information for tax purposes.

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



## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report on the Exchange of Information  
on Request TURKS AND CAICOS ISLANDS 2019  
(Second Round)**

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 150 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 report contains the 2019 Peer Review Report on the Exchange of Information on Request of Turks and Caicos Islands.

Consult this publication on line at <https://doi.org/10.1787/5a837e0a-en>.

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