GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Combined: Phase 1 + Phase 2, incorporating Phase 2 ratings

MAURITIUS

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Mauritius 2013

COMBINED: PHASE 1 + PHASE 2,
INCORPORATING PHASE 2 RATINGS

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(reflecting the legal and regulatory framework
as at August 2011)

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004. The standards have also been incorporated into the UN *Model Tax Convention.*

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review 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 review reports, please refer to www.oecd.org/tax/transparency and www.eoi-tax.org.

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Mauritius as well as practical implementation of that framework. The international standard, which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain access to that information, and in turn, whether that information can be effectively and timely exchanged with its exchange of information partners. The Combined Phase 1-2 Review report was adopted and published by the Global Forum on Transparency and Exchange of Information for Tax Purposes in January 2011 (the January 2011 Report) and assessed effectiveness in practice in relation to a three year period (2007-09) and the legal framework as at August 2010. It is complemented by a Supplementary report adopted in September 2011 to take into account amendments by Mauritius to its legal and regulatory framework for transparency and exchange of information to address the recommendations made in the January 2011 Report, as well as the practical implementation of that framework as at July 2011.

2. Mauritius is a small and open economy, dynamic, diversified and fully integrated into world markets. Financial services, including providers of services to the offshore sector, are the second pillar of the economy (in GDP). Mauritius has developed a legal and regulatory framework that gives its competent authority broad access to the full range of foreseeably relevant information.

3. In line with the international movement towards more transparency and exchange of information, Mauritius has taken significant steps to enhance its exchange of information legal and regulatory framework. Mauritius is now able to exchange information on non-resident individuals and companies. There are accounting requirements for all Mauritius entities, resident and non-resident.

4. Mauritius has exchange of information mechanisms signed with 38 jurisdictions, of which 35 are in force, including with most of its main

trading partners, and continues negotiating new DTCs and TIEAs. Mauritius has signed its first TIEA with a new partner. While some of its oldest treaties do not meet the standard, most of them are under renegotiation, and Mauritius has signed and ratified protocols to four of its DTCs. None of these instruments have entered into force yet. The Mauritian authorities also took preventive measures and introduced sanctions against alleged misuse of Mauritius's treaty network. It is to be noted that Mauritius has never refused to sign an exchange of information agreement.

5. Mauritius has introduced legislation that addresses the considerable gap identified in the January 2011 Report regarding accounting requirements for GBC2s (non-tax resident Global Business Licence companies) as well as regarding an explicit requirement to keep underlying documentation for partnerships. However, there remains a gap regarding the requirement to keep underlying documentation for trusts with Mauritian trustees if these trusts are not resident in Mauritius for tax purposes.

6. There remains a gap in the Mauritian legislation with regards to ownership and identity information where there are nominee shareholders in companies other than public companies and GBCs (Global Business Licence Companies). A gap regarding ownership and identity information also remains for non-resident foreign trusts with Mauritian trustees who are not management companies.

7. As a result of the steps taken, the legal framework for exchange is now largely in place, but also largely untested in practice, particularly concerning ownership and accounting information in the case of some of its offshore companies, since Mauritius did not exchange this type of information until July 2009 and enhanced again its accounting rules in December 2010 and July 2011.

8. Exchange of bank information is another area which was untested in practice for a long time. The assessment revealed that although bank secrecy does not prevent Mauritius's authorities from accessing and exchanging information held by banks, its power to obtain information directly from the bank or through court order had remained untested. This too has raised concerns with some of Mauritius's main treaty partners. Over the recent months, the Mauritian authorities have made stakeholders aware of the competent authority's powers to obtain bank information. Recently, on two occasions, the authorities obtained bank information directly from banks in order to respond to international requests for information in tax matters. This is an encouraging development and Mauritius's authorities should continue to exercise these powers where necessary. It is noted, however, that there still have been no cases where the Mauritian authorities exercised their compulsory powers to compel information and applied sanctions.

9. Mauritius has updated its "Procedure Manual on Exchange of Information", which now includes clear guidelines regarding exemptions from prior notifications in cases where a notification can unduly delay the exchange of information.

10. It is recognised that Mauritius is putting in place a national strategy for an efficient exchange of information system, and answers most requests within 90 days. The competent authority (Mauritius Revenue Authority) has created a team of professionals to answer exchange of information requests and is enhancing their professional capacities and methods to cope with difficult cases or complex requests. Mauritius's competent authority has also signed memorandums of understanding with the public authorities that maintain relevant information. In particular, smooth communication and cooperation between the competent authority and the Financial Services Commission and the court will be key to address the two main issues of exchange of information on some offshore companies and bank information.

11. The supplementary report was prepared six months after the January 2011 Report was adopted. Even though Mauritius had already taken some actions, this short lapse of time was not sufficient for a complete assessment of all the Phase 2 recommendations.

12. Mauritius has been assigned a rating[1] for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Mauritius's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Mauritius has been assigned the following ratings: Compliant for elements A.3, C.2, C.3 and C.4, and Largely Compliant for elements A.1, A.2, B.1, B.2, C.1 and C.5. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Mauritius is Largely Compliant.

13. Mauritius is encouraged to continue to make improvements to its EOI framework and system for the exchange of information in practice to address any outstanding recommendations, and to provide follow-up reports one year after the present report is adopted by the Global Forum. In addition, considering that recent amendments made to the legal and regulatory framework have not materialised in EOI in practice, their implementation will also be followed up in one year's time.

1. This report reflects the legal and regulatory framework as at the date indicated on page 1 of this publication. Any material changes to the circumstances affecting the ratings may be included in Annex 1 to this report.

Introduction

Information and methodology used for the peer review of Mauritius

14. The Combined Phase 1 and Phase 2 assessment and Supplementary assessment of the legal and regulatory framework of Mauritius and the practical implementation and effectiveness of this framework was based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference, and was prepared using the Global Forum's Methodology for Peer Reviews and Non-Member Reviews. The Combined assessment adopted and published by the Global Forum in January 2011 was based on the laws, regulations, and exchange of information mechanisms in force or effect as at August 2010, other information, explanations and materials supplied by Mauritius during the on-site visit that took place on 15-17 June 2010, and information supplied by partner jurisdictions concerning the three year period 2007-09. During the on-site visit, the assessment team met with officials and representatives of the relevant Mauritian public agencies, including the Mauritius Revenue Authority, the Financial Services Commission, the Registrar of Companies, the Bank of Mauritius, the Financial Intelligence Unit, and the Judiciary (see Annex 4).

15. The supplementary peer review report, which followed the Combined Phase 1 and Phase 2 report of Mauritius was prepared pursuant to paragraph 58 of the Global Forum's Methodology and was adopted by the Global Forum in October 2011. The supplementary report was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at August 2011, and information supplied by Mauritius. The following analysis reflects the integrated Combined and supplementary assessments of the legal and regulatory framework and the practical implementation and effectiveness of this framework of Mauritius as in effect in August 2011.

16. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information;

(B) access to information; and (C) exchanging information. This review assesses Mauritius's legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made regarding Mauritius's legal and regulatory framework that either: *(i)* the element is in place, *(ii)* the element is in place but certain aspects of the legal implementation of the element need improvement, or *(iii)* the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning Mauritius's practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. An overall rating is also assigned to reflect Mauritius's overall level of compliance with the standards.

17. The Combined assessment was conducted by an assessment team composed of three expert assessors and a representative of the Global Forum Secretariat: Ms Eng Choon Meng, Deputy Director, Department of International Taxation, Inland Revenue Board of Malaysia; Mr Raul Pertierra, Revenue Service Representative, Internal Revenue Service of the United States; Mr Richard Thomas, Attorney Advisor, Office of Associate Chief Counsel, Internal Revenue Service of the United States; and Ms Gwenaëlle Le Coustumer from the Global Forum Secretariat.

18. The supplementary assessment was conducted by an assessment team, which consisted of three expert assessors and two representatives of the Global Forum Secretariat: Ms Eng Choon Meng, Deputy Director, Department of International Taxation, Inland Revenue Board of Malaysia; Mr Raul Pertierra, Revenue Service Representative, Internal Revenue Service of the United States; Mr Richard Thomas, Attorney Advisor, Office of Associate Chief Counsel, Internal Revenue Service of the United States; Ms Gwenaëlle Le Coustumer and Mr Beat Gisler from the Global Forum Secretariat.

19. The assessment of the legal and regulatory framework of Mauritius and the practical implementation and effectiveness of this framework was based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference, and was prepared using the Global Forum's Methodology for Peer Reviews and Non-Member Reviews.

20. The ratings assigned in this report were adopted by the Global Forum in November 2013 as part of a comparative exercise designed to ensure the consistency of the results. An expert team of assessors was selected to propose ratings for a representative subset of 50 jurisdictions. Consequently, the assessment teams that carried out the Phase 1 and Phase 2 reviews were not involved in the assignment of ratings. These ratings have been compared with the ratings assigned to other jurisdictions for each of the essential elements to

ensure a consistent and comprehensive approach. The assignment of ratings was also conducted at a different time from those reviews, and the circumstances may have changed in the meantime. Readers should consult Annex 1 for information on changes that have occurred.

21. A summary of determinations and factors underlying recommendations in respect of the 10 essential elements of the Terms of Reference can be found in the annexes on pages 91-95 of this report.

Overview of Mauritius

22. The Republic of Mauritius is located in the Indian Ocean, east of Madagascar. It consists of the island of Mauritius and several smaller islands and its population is close to 1.3 million. English is the official language but French and particularly Creole is more widely spoken. The Mauritian currency is the Mauritian Rupee (MUR, with a floating exchange rate of 1 euro for 40 rupees on 31 August 2010).

23. Mauritius is a small open economy diversified and fully integrated into world markets.[2] The Mauritian Government promotes the diversification of the economy of the islands, as it considers that it can no longer rely on mass production and highly labour-intensive industries. This dynamism permitted a gradual diversification from sugarcane manufacturing to textile export activities in the 1970s, tourism in the early 1980s, and services in the1990s. These activities today represent the four pillars of Mauritius's economy with agriculture, manufacturing (mainly textiles), tourism, and financial services standing for 4%, 19%, 9% and 11% of Mauritius's GDP respectively.

24. Mauritius created its offshore banking sector in 1988 and in an attempt to increase the clientele of offshore banks Mauritius introduced offshore companies in 1992. These entities later became known as Category 1 Global Business Licence companies (GBC1) and were introduced as an attempt to ensure that the well-educated Mauritian work force of lawyers and accountants had employment. Licensees must rely on Mauritian service providers called management companies which in turn employ Mauritians. Mauritius has a large double tax convention (DTC) network; GBC1s are taxable at an effective rate of 3% and can benefit from the DTCs. Subsequently Mauritius created a second category of global business licence (GBC2), dedicated to non-tax resident companies, in order to offer the full palette of offshore activities. Offshore activities represent 3% of GDP, and probably 5% when taking into account indirect benefits. Approximately 75% of GBC1s are investment holding companies, with investments mainly in the information and communication technologies sector (24%) and financial

2. *African Economic Outlook 2009,* OECD.

sector (14%). Although no statistics appear to exist, GBC2s are thought to be used mainly as investment holding and trading companies. In 2010, there were 143 licensed management companies, 9 500 GBC1s and 18 500 GBC2s. These numbers have declined slightly since 2008. Also offshore and onshore banking have now been reconciled into a single pool of 19 banks supervised by the Bank of Mauritius and regulated by the Banking Act 2004.[3]

25. The country's main trading partners are India, France, the United Kingdom, the United States, and South Africa. Mauritius is signatory/member to several bilateral and multilateral trade agreements, including the African, Caribbean, Pacific-European Union (ACP-EU) Partnership Agreement; the Southern Africa Development Community (SADC); the Indian Ocean Commission; and a Comprehensive Economic Cooperation and Partnership Agreement (CECPA) with India.

General information on the legal system

26. The Republic of Mauritius is a parliamentary democracy characterised by strong social, political and institutional stability. The President, elected by the parliament every five years, is the Head of State while the Prime Minister has full executive power. The Parliament is unicameral, multi-party and democratically elected every five years.

27. The single national Mauritian legal system is a hybrid system of civil law (substantive law including Code Civil, Code Pénal, Code de Commerce), common law (procedural law and "Stare decisis principle") and constitutional law.[4] The Judicial Committee of the Privy Council is the appellate body of last resort in the Mauritius legal system.

Mauritius general tax system

28. Mauritius's general tax system underwent a reform aimed to rationalise preferential tax regimes, and primarily reduce taxes as a means of stimulating business, investment, employment and economic growth. This reform resulted in a significant rate reduction. Taxes were harmonised effective July 2006 to a flat rate of 15% (income tax, VAT). There is no tax on wealth in Mauritius. Mauritian residents (companies and individuals) are taxed on their Mauritius-source income and foreign-source income. Foreign-source income derived by individuals is taxable to the extent it is remitted to Mauritius. Resident companies are taxable on their Mauritius-source

3. http://bom.intnet.mu/pdf/supervision/banks/banks.pdf.
4. This specificity has been derived from the previous colonial administrators of Mauritius, i.e. France followed by Great Britain. Mauritius became an independent state and joined the Commonwealth in 1968.

income and all foreign-source income, remitted or not. Profits derived by a branch of a foreign company are taxable as income tax but no tax is charged on profits remitted by a branch to its head office abroad. Dividends paid by a resident company are exempt from income tax in the hands of the shareholders, whether resident in Mauritius or elsewhere. Credit is allowed for foreign tax on the foreign source income of a resident of Mauritius against the Mauritius tax liability. Where a GBC1 does not present written evidence to the Mauritius Revenue Authority showing the amount of foreign tax charged, the amount of foreign tax is presumed to be equal to 80% of the Mauritius tax, reducing to an effective 3% tax rate on income. Non-residents are taxed on Mauritius-source income only. Companies are considered residents, and therefore taxable in Mauritius, if they are incorporated in Mauritius, or they have their central management and control in Mauritius (section 73). GBC2s are not considered to be resident in Mauritius and are not liable to tax. Corporate taxation concepts apply to companies and entities deemed to be companies for tax purposes, i.e. trusts, trustees of unit trust schemes and non-resident *sociétés* (partnerships). A resident *société* is not liable to tax. Instead, every associate of the *société* is liable to tax on his share of income, whether distributed or not. The Mauritius Revenue Authority (MRA) is responsible for the administration of tax policy, and for the assessment and collection of all taxes arising under the revenue laws. It administers and collects taxes due in Mauritius within an integrated organisational structure.

Mauritius and the standards

29. Mauritius has actively participated in the OECD's work on standards for the exchange of information for tax purposes over the last decade. In May 2000, Mauritius made an advance commitment to the international standards for transparency and exchange of information, participating in the original Global Forum on Taxation established later that year. As an active member of the Working Group on Effective Exchange of Information, Mauritius assisted in developing the OECD Model Tax Information Exchange Agreements (TIEA) which was finalised in 2002.[5]

30. The Mauritian competent authority for incoming requests for exchange of information is the Director of the Large Taxpayers Department of the Mauritius Revenue Authority. The competent authority for outgoing requests is the Director-General of the MRA.

5. In addition, Mauritius participated in the Sub-Group on Level Playing Field Issues which used an inclusive approach of OECD member and non-member jurisdictions to develop a framework for commitments to and implementation of high standards for exchange within an acceptable timeline, which led to the development of the annual Tax Co-operation Reports.

31. As of August 2010, Mauritius has bilateral DTCs which have entered into force with 35 jurisdictions (see Annex 2). Mauritius is negotiating new DTCs and has finalised its first TIEAs.

32. Over the three years under review (2007-09) Mauritius has received a number of exchange of information (EOI) requests from nine of its treaty partners, with the majority being from India, followed by France and the United Kingdom.

Overview of the financial sector and relevant professions

33. As noted above, the financial sector started in the 1990s and is now one of the four pillars of Mauritius's economy. The Mauritian authorities rely on their sound regulatory framework, and good quality service providers for the sector to continue growing despite the existence of taxes and the costs associated with the services provided. Mauritius considers that a good reputation will keep them highly competitive. The Mauritian offshore business sector also benefits from a privileged time zone between Europe and Asia. Additionally, Mauritian lawyers and accountants speak the two main languages used in Africa, a growing market for Mauritius's companies; they are also familiar with both common law and civil law systems. Offshore activities represent 3% of GDP and approximately USD 100 billion of funds.

34. The three main constituents of the offshore sectors are GBC1s, GBC2s and management companies. The 143 licensed management companies primarily offer trust and corporate services to local and international clients (see the section on *Information held by companies* below). Among other things, they act as one of the directors of GBC1s, as local agent of GBC2s and as trustee of all Mauritian trusts performing international activities. The top-ten management companies account for 65% of the total turnover and 80% of the client-licensees. Accounting firms cannot act as management companies, to prevent conflicts of interests.

35. Generally, GBC1s are investment and passive holding companies, but also can be partnerships and trusts. Registered in Mauritius, these firms funnel investment into other countries. India is the primary destination for investments made by GBC1s, primarily because of the attractive conditions offered by the Mauritius-India DTC.[6] Currently India still represents half of

6. The Indian press regularly expresses concerns about Indian taxpayers using Mauritian business entities to round-trip profits, thereby avoiding taxes as well as companies using Mauritian entities to benefit from the favourable Mauritius-India DTC. Mauritius' Financial Services Commission has put in place preventive measures and sanctions: if such an offence were established, the licence of the responsible GBC1 or management company would be revoked (see section A.1.6

the activities of these companies, but new markets have emerged in Africa and Asia, and Mauritius's financial sector seeks to become an African hub, thus maximizing its membership in regional organisations. GBC2 companies are mainly used for wealth management (e.g. estate trusts owning several GBC2s) and are not taxed in Mauritius. GBC2s also cannot hold bank accounts in Mauritian rupees. The legal and regulatory framework of the Mauritian offshore sector has progressively evolved over the years, leaning towards greater regulation, in particular to ensure that ownership information as well as accounting records are available in Mauritius, regardless of the activity and type of entity.

of the report on enforcement powers of the FSC). The FSC received no alleged acts officially so far. Official notifications should be sent to the competent authority.

Compliance with the Standards

A. Availability of Information

Overview

36. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority[7] may not be able to obtain and provide it when requested. This section of the report describes and assesses Mauritius's legal and regulatory framework on availability of information. It also assesses the implementation and effectiveness of this framework.

37. Information on the owners of companies is available in Mauritius through a variety of mechanisms. Most notably, all companies to be incorporated under Mauritian law must register with the Registrar of Companies. Initial registration with the Registrar requires the incorporator to provide the identity of the original shareholders/members. Thereafter, the company must file an annual return that, among other things, documents any changes to the legal ownership of the company. Bearer shares are prohibited under Mauritian law but nominee shareholdings are allowed.

7. The term "competent authority" means the person or government authority designated by a jurisdiction as being competent to exchange information pursuant to a double tax convention or tax information exchange agreement.

38. In addition of being registered with the Registrar, offshore business companies are licensed by the Financial Services Commission (FSC) and must provide the FSC with information on their legal and beneficial ownership. The law requires that beneficial ownership information of all GBC1s and GBC2s is maintained by Mauritian management companies.

39. The identity of the legal owners of partnerships is available with the Registrar and the MRA, and beneficial ownership information is available with the FSC when the partnership holds a GBC1 licence.

40. Trusts are not required to be registered in Mauritius. However, information on the identity of trust beneficiaries is provided to the MRA when the trust makes a distribution to beneficiaries. In addition, identity of the settlor, beneficiaries, protector and enforcers is held by the Mauritius trustee, and by the FSC when the trustee holds a GBC1 licence. Foundations do not exist in Mauritius.

41. Element A.1 (availability of ownership information) is found to be "in place, but certain aspects of the legal implementation of the element need improvement" due to the absence of obligations to maintain ownership information where nominee shareholdings existed, except for public companies and global business licence companies (GBCs), and the absence of identity information related to non-resident foreign trusts administered in or with a trustee in Mauritius, where these are not management companies. Mauritius has indicated that the issue of nominee shareholding is being discussed with all the stakeholders and the Mauritian authorities anticipate introducing relevant legislative amendments at the end of 2011. Regarding ownership information on non-resident trusts with Mauritius trustees, Mauritius authorities have referred to tax and common law obligations. However, this was considered not to be sufficient.

42. All entities must maintain adequate accounting records for a minimum of 5 years. GBC2s at a minimum were legally required from July 2010 to prepare annual financial summaries, and these non-tax resident global business licence companies were only required to keep such accounting records as the directors considered necessary or desirable in order to reflect the financial position of the company. Further, trusts and *sociétés de personnes* were not required to keep the underlying documents which relate to their accounts. Mauritius amended its legislation in 2011, to ensure that GBC2s also maintain adequate accounting records for a minimum of 5 years. An explicit requirement for partnerships (*sociétiés de personnes*) to keep underlying documentation was also introduced in 2011. However, this latter gap still exists in respect of trusts with Mauritian trustees if these trusts are not resident in Mauritius for tax purposes. Accordingly, the determination for element A.2 is that "the element is in place, but certain legal aspects of the legal implementation of the element need improvement".

43. Enforcement of the legal provisions on the availability of ownership and accounting information, notably on GBC2s, is still largely untested.

44. Banking information is available for all account holders pursuant to banking law and anti-money laundering law. Element A.3 (bank information) is "in place" and no recommendations are made.

45. In practice, the Mauritian authorities indicate that 96% of the EOI requests received during the three years under review (2007-09) concerned offshore business entities (86% concerned GBC1s, including one trust, and 10% GBC2s) and 4% concerned individuals. No request concerned non-offshore entities.

A.1. Ownership and identity information

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

Companies (ToR 8 A.1.1)

46. Companies in Mauritius are incorporated pursuant to the Companies Act. The Companies Act allows for the incorporation of public and private companies that may be a:

- Company limited by shares – the liability of its shareholders is limited by its constitution to any amount unpaid on the shares respectively held by the shareholder;
- Company limited by guarantee – the liability of its members is limited by its constitution to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;
- Company limited by both shares and guarantee – the liability of its members (a) who are shareholders, is limited to the amount unpaid, if any, on the shares respectively held by them; and (b) who have given a guarantee, is limited, to the respectively amount they have undertaken to contribute, from time to time, and in the event of it being wound up;
- Unlimited company – a company with no limit placed on the liability of its shareholders.

8. Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.

47. Additionally, companies carrying on financial service and offshore activities are required to be licensed. The following types of licenses exist:

- Category 1 Global Business Licence issued under the Financial Services Act. A GBC1 may be a company, a partnership or a trust. It may also be structured as a protected cell company. The 109 existing PCCs provide legal segregation of assets attributable to each cell of the company, whether owned by individuals or body corporate (Protected Cell Companies Act).
- Category 2 Global Business Licence issued under the Financial Services Act. A GBC2 may either be limited by shares or by guarantee or limited by shares and guarantee or simply unlimited. The GBC2 provides greater flexibility and is used for holding and managing private assets.
- Bank must be licensed under the Banking Act 2004.
- Authorised mutual funds are companies set up as collective investment schemes as defined in the Securities Act 2005.
- Insurance company, registered under the Insurance Act.

48. As of June 2010, the Mauritius Registrar counts 44 257 domestic companies (43 558 private companies, 505 public companies, and 194 foreign companies). As of December 2009, the FSC counts 10 250 GBC1s and 18 548 GBC2s. There are 19 banks in Mauritius in 2009.[9] Mauritius explained that one of the popular uses of the GBC2s is to organise them under ultimate GBC1 management. Furthermore, because of its residency status the GBC1 is much more labour intensive vis-a-vis the GBC2, with its filing and administrative requirements.

Information held by the Mauritian authorities

49. The Mauritian tax authorities do not maintain legal and beneficial ownership information on Mauritian companies in their tax files, since the annual return of companies does not require the disclosure of their ownership structure (section 116 of the Income Tax Act). Information is available with two other public authorities.

50. First, the Registrar of Companies (the Registrar) holds information on the legal ownership of all companies incorporated pursuant to the Companies Act. Second, offshore entities (companies, *sociétés* and trusts) must separately obtain a licence to conduct their business, for which there are

9. In the period 2008/09, the FSC licensed 18 managements companies, 1 277 GBC1, and 1 550 GBC2; and authorised 122 Collective Investment Schemes.

separate information collection requirements made to the Financial Services Commission (FSC).

Registrar of Companies

51. The application for incorporation of a company to be sent to the Registrar of Companies must contain information on legal ownership, i.e. "the full name and residential address of every shareholder", as well as the number of shares of every shareholder (section 23(2) of the Companies Act). It must also contain the name and address of the directors and secretary of the company.[10] The Companies Act does not require the disclosure of any beneficial owners to the Registrar. During the on-site visit, representatives of the Registrar indicated that if a nominee registers the company on behalf of another person, the Registrar does not check on whose behalf the nominee acts; the shareholders disclosed on the face of the application are taken to be the registered owners.

52. Every company must file with the Registrar an annual return (signed by the director or secretary) to update the information submitted when registering (section 223), including: the name and address of all the shareholders, persons who ceased to be shareholders of the company, the number of shares held by each shareholder, and the shares transferred.

53. Where the company is a subsidiary of another corporation, the annual return must also contain the name of the corporation regarded by the directors as the ultimate holding company, unless the Registrar determines that such disclosure would be harmful to the business of the company, pursuant to the Tenth schedule to the Companies Act.

54. A public company having more than 500 members is exempted from the annual member list requirement, where a certificate by the secretary is included that the company provides reasonable accommodation and facilities at a place approved by the Registrar for persons to inspect and take a list of its members and particulars of shares transferred. If the company is a party to a listing agreement with a securities exchange, the return must contain the names and addresses of, and the number of shares held by the 10 largest shareholders (of each class of shares if more than one class). The Mauritius authorities indicate that 10% of public companies meet this threshold.

55. The register (www.gov.mu/portal/site/compdivsite) of companies is publicly accessible with the exception of registration details for GBC1

10. The application is signed by all directors and all initial shareholders of companies limited by shares or all members of companies limited by guarantee. A reference in the Companies Act to an address means in relation to an individual, the full address of the place where that person usually lives (section 2).

and GBC2 companies, where under section 14 of the Companies Act only a shareholder, officer, management company or registered agent of that company can consult the register. The Mauritian authorities have not explained the rationale for the accessibility differences between domestic and global business companies.

56. Foreign companies can be continued in Mauritius under Part XXV of the Companies Act. They must provide the Registrar with the documents and information that are required for the registration of domestic companies, including information on their legal ownership. Foreign companies that establish a place of business or carry on business in Mauritius must also register with the Registrar, but no ownership information is required, unless it is included in one of the documents that must be provided and updated (sections 276 and 278 of the Companies Act).[11] The companies must disclose the identity of its directors and authorised agent. There would therefore seem that no legal ownership information or only partial ownership information is available concerning foreign companies not holding a global business licence. Partial information is available if the company opens a bank account in Mauritius or has its accounts audited by a Mauritian auditor, via the anti-money laundering provisions. It should however be noted that Mauritius has indicated that it has received no EOI request over the three years under review (2007-09) concerning any of the 194 registered foreign companies carrying on business in Mauritius. In addition, the Mauritian authorities indicate that most of these foreign entities are branches of multinational companies, such as branches of foreign banks.

Financial Services Commission

57. The Financial Services Commission (FSC) is the regulator in Mauritius for global (offshore) business and the financial services other than banking. The FSC licenses, regulates, monitors and supervises the conduct of business activities in these sectors. It is responsible for the Financial Services Act, the Securities Act and the Insurance Act. The FSC is also charged to study new avenues, work out objectives, policies and priorities for development of the financial services sector.

58. Applications for global business licences (category 1 or 2) are mandatorily channelled through management companies (see below sub-section on service providers) and their compliance with Mauritian laws must be certified by a law practitioner (section 72 of the FSA).

11. The foreign company has to file with the Registrar a duly authenticated copy of its constitution, charter, statute or memorandum and article or other instrument constituting or defining its constitution. "Foreign company" means a body corporate that is incorporated outside Mauritius and that is required to be registered under Part XXII of the Companies Act (section 2 of the Companies Act).

59. A Category 1 Global Business Corporation (GBC1) is a resident corporation which carries on business outside Mauritius. In addition, before granting a licence, the Commission regards whether the conduct of business will be or is being managed and controlled from Mauritius. The FSC has regard to all the relevant circumstances of the application and in particular, the proposed ultimate business purpose, therefore a company can conduct research and development in Mauritius in view of an ultimate investment abroad. A GBC1 qualifies for the benefits of Mauritius's tax treaties. A GBC1 can also be in the form of a *société* (partnerships) or trust or any body of persons governed by the laws of Mauritius (section 71 of the FSA).[12] A GBC1 company can be structured as a PCC. If an applicant for a GBC1 licence wants to carry out a financial activity subject to a separate licence, authorisation, registration or approval, e.g. an insurance licence under the Insurance Act, it must obtain such a licence, etc. before commencing business.

60. Most of the EOI requests received by Mauritius over the last 3 years relate to a GBC1 entity (86%).

61. Disclosure of legal and beneficial ownership of licensees to the FSC is not imposed by the Financial Services Act directly. Section 72 rather provides that "an application for a GBC licence shall be made in such a form and in such manner as may be approved by the FSC".[13] It is a requirement of the application form (www.gov.mu/portal/sites/ncb/fsc/download/forma07pdf) for a GBC1 licence: "Customer Due Diligence ('CDD') documents (as defined under the Code on the Prevention of Money Laundering and Terrorist Financing intended for Management Companies ('Code') on the promoter(s)/shareholder(s) must be submitted in original or as certified true copies". This includes a valid copy of the passports of individuals, and a list of directors and of controlling members of corporate bodies (legal owners). The Mauritian authorities indicate that licensees have under their licensing conditions to notify the FSC of any material change in the business, including on ownership.

12. Whereas a foreign company registered in Mauritius can legally also apply for a GBC1 licence, under the same conditions as domestic companies, the FSC indicates that it is its policy for the past three years to not allow foreign companies to obtain a GBC licence.

13. The Financial Services (Consolidated Licensing and Fees) Rules 2008 further indicates, in Rule 10 that "An application for a Category 1 Global Business Licence or a Category 2 Global Business Licence shall be made on the Form bearing the corresponding code as listed in the first column of Part 2 of the First Schedule".

62. When the GBC1 is structured as a PCC, the Mauritian authorities indicate that the CDD procedure applies to both the protected cell company and to the owners of the shares of each of the cells.[14]

63. The FSC application must also contain assurances from the management company that it maintains CDD documents on the controlling shareholders/members of the corporate body that creates a GBC1 and that these will be made available to the FSC upon request (beneficial owners). The FSC regards as controlling shareholder any person who is entitled to exercise (or control the exercise of) 20% or more of the voting power at general meetings of the company or one which is in a position to control the appointment and/or removal of directors holding a majority of voting rights at board meetings on all or substantially all matters. (See also the anti-money laundering obligations of management companies below.)

64. Category 2 Global Business Corporation Licences (GBC2) can be granted only to a Mauritian private company incorporated under the Companies Act. A GBC2 cannot conduct business with persons resident in Mauritius nor have any dealings in Mauritian currency. A GBC2 is exempt from the provisions of the Income Tax Act and is considered a non-resident for tax purposes. GBC2s therefore do not benefit from Mauritius's DTCs. A GBC2 cannot conduct financial services activities; managing or dealing with a collective investment fund, or perform the activities of a management company.

65. The FSC receives information on the legal ownership of GBC2s when processing the licence application.[15] Since February 2010, it also receives beneficial ownership information together with new applications for a GBC2 licence.

66. Any subsequent change must be notified to the FSC within one month.[16] In addition, the FSC can require a management company to provide any ownership information without delay (see section B.1 on Access to information below). Ownership information is collected by the statutorily required management company who confirms that the know-your-customer and due diligence principles have been satisfied, and keeps the underlying CDD documentation.

14. Pursuant to section 7(2) of the PCC Act "no cell shall be created without the approval of the FSC, subject to such exemption as it may determine".
15. Financial Services (Consolidated Licensing and Fees) Rules 2008, section 12(2). The FSC obtains all the information on GBC2s that the Registrar receives pursuant to the Companies Act.
16. FSC Circular Letter CL03022010 dated 3 February 2010. For existing GBC2s, management companies are required to provide beneficial ownership information as of June 2010.

67. Of all the EOI requests received by Mauritius over the three years under review (2007-09), 10% relate to GBC2s. A treaty partner of Mauritius noted that the volume of requests may have been higher, had treaty partners known about the change of law noted below.

68. Applications for obtaining a licence to perform non-banking financial services must contain details of the identity of the promoters, beneficial owners, controllers and proposed directors of the entity. Any material change in these details must be notified to the FSC (section 16 FSA), and the FSC's prior approval is needed for a change or transfer of shares/beneficial interest in a licensee (section 23). The same applies to the officers of a licensee (section 24 FSA).[17]

69. Even though there is no legal requirement for record keeping, the FSC keeps a record of all information submitted.

Information held by companies and other persons

The company

70. A company incorporated or registered under the Companies Act is required under section 91 of the Act to maintain a share register which must record, amongst other information, the names and the last known address of each person who is or has within the last 7 years been a shareholder; as well as the date of any transfer of shares and the name of the person to or from whom the shares were transferred.

17. A "controller" is defined as a person: (a) who is a member of the governing body of the corporation; (b) who has the power to appoint or remove a member of the governing body; (c) whose consent is needed for the appointment of a person to be a member of the governing body; (d) who, either by himself or through one or more other persons *(i)* is able to control, or exert significant influence over, the business or financial operations of the corporation whether directly or indirectly; *(ii)* holds or controls not less than 20% of the shares of the corporation; *(iii)* has the power to control not less than 20% of the voting power in the corporation; *(iv)* holds rights in relation to the corporation that, if exercised, would result in para *(ii)* and (iii); (e) who is a parent undertaking of that corporation, or a controller of such parent undertaking; (f) who is a beneficial owner or ultimate beneficial owner of the persons specified in paragraphs (a) to (e) and who appears to the FSC to be a controller of that corporation.

An "officer" is a member of the board of directors, a chief executive, a managing director, a chief financial officer or chief financial controller, a manager, a company secretary, a partner, a trustee or a person holding any similar function with a licensee.

71. A public company or subsidiary or holding company of a public company must also maintain a register of substantial shareholders in which the particulars of every share held directly or indirectly by a substantial shareholder is recorded (section 91(2) of the Companies Act). The threshold for determining "substantial shareholder" is 5% of the aggregate voting power exercisable (directly or through a nominee) (section 2). The share register must be kept in Mauritius, at a place notified to the Registrar (section 92).

72. Changes in a company's ownership must be entered into the share register within 28 days of the transfer of share (section 88 of the Companies Act). A secretary or director[18] who fails to take reasonable steps to ensure that the share register is properly kept could be liable to a fine not exceeding MUR 200 000 (EUR 5 000, section 94).

73. Where a foreign public company has shareholders resident in Mauritius, it must keep at its registered office in Mauritius a branch register of Mauritian shareholders (section 285).

Service providers (management companies)

74. The FSC licenses management companies under section 77 of the Financial Services Act. They set up, administer, manage and provide nominee and other services to a corporation (e.g. global business companies) or act as corporate trustee or qualified trustee under the Trusts Act 2001. As the FSC requires that all applications for a global business licence be channelled through a management company, the latter has the responsibility of vetting and carrying out due diligence of its clients.

75. A GBC1 must be administered by a management company and a GBC2 must appoint a management company as registered agent in Mauritius. Management companies therefore act as intermediaries between their clients and the FSC. Services provided by management companies are inter alia:

- company and trust formation and administration;
- Trusteeship services;
- Professional advice on company law, trusts and tax related issues;
- Provision of directors, secretary and nominee shareholders (Section 78(1) of the FSA authorises any management company to perform the functions of a nominee company, and, subject to the approval of the FSC, to form a nominee company and provide nominee services to GBCs.);

18. A GBC1 must have at least two directors resident in Mauritius, pursuant to section 71(4)(b) of the FSA.

- registered Agents for Category 2 Global Business Licensees;
- registered Office for Category 1 and Category 2 Global Business
- Licensees;
- preparation of incorporation and application documents for Global
- Business Licences;
- post-statutory compliance with company and tax laws (filing of changes on Directors, shareholders, etc.);
- preparation of documents for applications for residence and work permits, duty exemption, etc.; and
- maintenance of books and accounting records.

76. The 2005 Code on the Prevention of Money Laundering and Terrorist Financing intended for Management Companies requires them to take effective customer due diligence (CDD) measures when establishing a business relationship with an applicant for business (GBC1 and GBC2). In particular, the management company must identify and verify the identity of the legal and beneficial owners of the applicant, in such a way that it is satisfied that it knows who the beneficial owner is.[19] The Code (and FSC) defines beneficial owners as the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. This definition is extremely broad. When the assessment team questioned the feasibility of such verifications where the ownership chain is overseas, the FSC and management company representatives met during the on-site visit recognised that it proved difficult in some instances. If the information is not provided or the FSC considers that the CDD checks have not been conducted properly, the licence is not granted.

77. Concerning GBC2s, the management company (registered agent) must always have and retain (at its registered office) full documentation on the identity of the beneficial owners, unless reliance has been placed upon

19. A management company is a licensee of the FSC; therefore upon setting a GBC it has an obligation to conduct and to hold on records complete CDD checks on the promoter or owner of the GBC. Management companies must also confirm to the FSC that they hold on records at their office the CDD and anti money laundering checks on the different entities, controlling shareholders and individuals of the GBC, and that these records are available to the FSC upon request. The management companies must similarly confirm that they will exercise enhanced due diligence with respect to transactions with countries that are not listed as equivalent jurisdictions in the FSC's Code.

eligible introducers (as defined in the 2005 Code) for undertaking CDD. When requested, the registered agent must provide the CDD documentation to the FSC without delay.

78. The Guide (www.gov.mu/portal/sites/ncb/fsc/download/GuideGBC2180210.pdf) to completing an application form for a GBC2 licence warns that deliberate concealment of a nominee structure by a management company will be regarded as a serious scenario – and as such may be a matter for disciplinary action (see section A.1.6 below). The management company should seek to probe further where it is known or where it ought to be known that the structure proposed conceals a nominee arrangement.

79. Accordingly, management companies must keep the identity, legal and beneficial ownership information of all their GBC1 and GBC2 clients. Identity records must be maintained for the duration of each relationship and for a period of at least 7 years thereafter (paragraph 7.3 of the 2005 Code).

80. Investment funds in Mauritius fall under the jurisdiction of the FSC, and as such they are subject to information collection rules under the money laundering and terrorist financing laws. In this respect, the FSC has issued Codes on the Prevention of Money Laundering and Terrorist Financing intended for Investment businesses. These Codes impose obligations on licensees, and their management companies, to ensure that they hold adequate information on their clients.

Banks and financial institutions

81. Ownership and identity information is available with banks and other financial institutions pursuant to the Banking Act, the Financial Intelligence and Anti-Money Laundering Act (FIAMLA) and regulations and guidance notes relating to money laundering.

82. Banks and other financial institutions must have available identity information on their clients ("Know your customer" principle, section 55 of the Banking Act and section 17 of the FIAMLA). Anonymous and fictitious accounts are not allowed (Financial Intelligence and Anti-Money Laundering Regulations 2003, Regulation 3(1)). The retention period for identification documents is seven years.[20]

20. Under section 17 of the FIAMLA banks and cash dealers are required to keep records, registers and documents as required under the Act and relevant Regulations. This section is complemented by Regulation 8 of the Financial Intelligence and Anti-Money Laundering Regulations 2003, which provides that relevant persons must keep records of customer identification, for not less than 5 years after the closure of the account or cessation of business relationship with

83. The Bank of Mauritius has issued Guidance Notes on Anti-Money Laundering and Combating the Financing of Terrorism (BoM Guidance). They provide that "If funds that are to be deposited or transferred are being supplied on behalf of a third party, then the identity of the third party should be established and verified" (paragraph 6.26). The Guidance further adds that the banks should cross-check the information provided by the potential customer by accessing available public databases (paragraph 6.27).

84. The BoM Guidance on corporate customers indicates that the financial institution should verify *(i)* the identity of those who ultimately own or have control over the company's business and assets, more particularly their directors, their significant shareholders (i.e. holding more than 20% of the shares of non-listed companies)[21] and their authorised signatories; *(ii)* the legal existence of the company (paragraph 6.60). The BoM Guidance also provides specific guidance for the identification of persons behind trusts, partnerships, etc.

85. Regulation 11 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 provides that any person who contravenes these regulations shall commit an offence and shall on conviction be liable to a fine up to MUR 100 000 (EUR 2 500) and to imprisonment up to 2 years.

Bearer shares (ToR A.1.2)

86. No company or *société* may issue bearer shares or bearer share certificates in Mauritius.

Partnerships (ToR A.1.3)

87. The Mauritian Civil Code and Commercial Code provide for the formation of various types of partnership or "*sociétés de personnes*". A *société de personnes* is a contract between two or several persons pursuant to which they agree to put in common their property or industry for a common venture, with a view to sharing the benefit or profiting from the saving which may result therefrom. The members bind themselves to contribute to losses.[22]

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the customer concerned. The BoM Guidance Notes raise the retention period to 7 years.

21. "Significant shareholders" means shareholders, other than shareholders which are companies listed on a recognised, designated and approved Stock/Investment Exchange, who directly or indirectly hold 20% or more of the capital or of the voting rights of the company.

22. The introduction to Parliament of a Limited Partnership Bill has been announced for the period 2010-15.

88. *Sociétés en nom collectif* (general partnerships) and *Sociétés en commandite simple* (limited partnerships) may be used to structure investments in the global business sector, when they hold a GBC1 licence. However, a *société* does not qualify for a GBC2 licence. A partnership applying or holding a GBC1 licence is subject to the same rules and obligation as a company holding a GBC1 licence (see above A.1.1).

89. *Sociétés en participation* and *sociétés de fait* are not registered, have no legal personality and the partners remain owners of their contribution to the partnership. *Sociétés de fait* are mainly used by small local business persons working together and are not deemed relevant entities for EOI purposes. There is no specific legislation on foreign partnerships.

90. *Sociétés civiles* are non-commercial partnerships and generally every other *société* that is not defined as one presented above.

91. The Mauritian authorities indicate that they have never received any EOI requests concerning a partnership/*société*.

Information held by the Mauritian authorities

Registrar of Companies

92. Partnerships (civil and commercial) are usually registered by notaries and information is sent to the Registrar of Companies; this confers them legal personality (except for *société en participation*). A limited partnership (*Société en commandite simple*) is registered when the Registrar receives some particulars, including (Articles 47 and 48 of the Commercial Code):

- The firm (i.e. partnership) name;
- The full name and address of each of the partners, and the designation of each of the partner authorised to manage, administer and sign on behalf of the partnership;
- The sum contributed or to be contributed by each limited partner.

93. Any change regarding the partners should also be disclosed to the Registrar (article 50). The registration form does not require the disclosure of the beneficial owners of the partnership when a partner is another legal entity. However, when partners are companies incorporated in Mauritius, the names of their shareholders are obtainable from the Registrar of Companies. The Registrar of Companies keeps all records regarding partnerships for an indefinite period.

Mauritius Revenue Authority

94. A *société* is resident in Mauritius if it has its seat (*siège*) in Mauritius and if at least one partner or manager is resident in Mauritius (sections 47, 73 and 116). Resident *sociétés* are not liable to tax under the Income Tax Act, but the partners are taxable on their share of the partnership income. A partnership may apply for a GBC1 licence under section 71 of the FSA and may elect to be taxed in its own name (section 47). All partnerships are required to file a return specifying, among others, all income derived by it, the full name of the associates and the share of income accruing to each of them, whether or not income is derived in a year (section 119(2)). The identity of beneficial owners is not disclosed to the MRA. The MRA has no legal requirement for the retention of records but keeps its records for six years in practice, in particular to be able to revise tax assessments for back years.

95. A non-resident *société* is liable to income tax as if it were a company (i.e. is subject to an annual filing requirement, but that return does not require the disclosure of legal and ultimate ownership).

Information held by the partnership and service providers

96. The Code civil requires that the deeds of partnerships contain the details of the contribution of each partner, the management address, a determination of the type of partnership, etc. In addition, article 48 of the Code de Commerce requires that deeds contain all information regarding the identity of partners. The manager of a partnership is required to keep such information. Beneficial ownership information may be problematic if the partners are foreign partnerships or nominee corporations as that information is not collected by the Registrar when they register in Mauritius.

97. When a partnership, a *Société en nom collectif* (general partnership) or *Société en commandite* simple (limited partnership) holds a GBC1 licence from the FSC, it has to file information including particulars of beneficial owners with the FSC (see section A.1.1 above). The GBC1s' beneficial ownership information is held by the management company and will be made available to the FSC upon request. For *sociétés*, it must contain the details of the principals, administrators or *gérants* of the *société* (FSC anti-money laundering Code).

98. Finally, the BoM Guidance Notes on Anti-Money Laundering require that banks and other financial institutions check the identity of their clients, including the identity of any partner owning or controlling more than 10% of a partnership, and the bank must obtain the *"Acte de société"* (deed) of *sociétés.*

Trusts (ToR A.1.4)

99. It is possible to form a trust in Mauritius, under the Mauritian Trusts Act 2001 (www.gov.mu/portal/sites/ncb/fsc/legisnguides.html).[23] The different types of trusts are protective trusts, purpose trusts and charitable trusts (sections 18, 19 and 20). A trust must be created by an instrument in writing and all trusts must be set up under the Trusts Act. Non-citizens can create a trust in Mauritius and be beneficiaries (section 8(3) and (4)).

100. Foreign trusts (i.e. trust the proper law of which is not the law of Mauritius)[24] are recognised and enforceable in Mauritius. A Mauritius resident can be the trustee, protector or administrator of a foreign trust. Except for trusts administered by management companies, and trusts administered in Mauritius with the majority of the trustees of which are resident in Mauritius, Mauritius does not require maintaining ownership and identity information on foreign trusts.

101. A trust may hold a GBC1 licence, but not a GBC2 licence.

102. Trusts are used primarily to hold investments. Some trusts are also used to manage estate or wealth of clients and can own several GBC2 companies. The FSC indicates that in practice trusts are not used significantly in Mauritius. As of June 2010, 216 tax resident trusts are registered with the MRA (154 in 2008, 202 in 2009) and the FSC counts 28 trusts with a GBC1 licence.

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23. A trust exists where a person (known as a «trustee») holds or has vested in him, or is deemed to hold or have vested in him, property of which he is not the owner in his own right, with a fiduciary obligation to hold, use, deal or dispose of it (a) for the benefit of any person (a "beneficiary"), whether or not yet ascertained or in existence; (b) for any purpose, including a charitable purpose, which is not for the benefit only of the trustee; or (c) a combination of (a) and (b). (section 3) A charitable trust a trust shall be deemed to be charitable where the trust has as its exclusive purpose or object one or more of the following – (a) the relief of poverty; (b) the advancement of education; (c) the advancement of religion; (d) the protection of the environment; (e) the advancement of human rights and fundamental freedoms; (f) any other purpose beneficial to the public in general (section 20(1) of the trusts Act. A charitable trust is therefore not considered a relevant entity for the purpose of the review.

24. Section 61 of the Trust Act 2001: (1) Subject to subsection (2), the proper law of a trust is (a) the law expressed by the terms of the trust or intended by the settlor to be the proper law; (b) where no such law is expressed or intended, the law with which the trust has its closest connection at the time of its creation (e.g. place of administration, situs of the assets, place of residence of the trustee); or (c) the law of Mauritius where the law referred to in (a) or (b) does not provide for trusts or the category of trusts involved.

103. Over the past three years (2007-09), Mauritius received only one EOI request in relation to an offshore trust. The treaty partner indicated that the information, which includes identity details of the trustees, copies of documentation relating to returns submitted and assessment raised, was received within 30 days of the request.

Information kept by administrative authorities

104. Trusts are not required to be registered in Mauritius, except if the constitution of the trust involves transfer of ownership or usufruct of immoveable property (the Registration Duty Act). However, under the Income Tax Act, every trust (except charitable trusts) is taxable as a company and has to file an annual tax return to the MRA (sections 46 and 116). Resident trusts are liable to tax on income derived from Mauritius or elsewhere and non-resident trusts are liable to tax on income derived from Mauritius (section 5).[25]

105. Where a trust has distributed any amount out of income of the trust to its beneficiaries under the terms of the trust deed, the trustee must submit to the MRA a return specifying the full name of the beneficiaries and the amount distributed to each of them (section 119).

106. In addition, when a trust holds a GBC1 licence from the FSC, it will have to file information, including particulars of the beneficial owners, with the FSC (see section A.1.1 above). The GBC1 application form must contain CDD documents on the settlor/contributor and the trustee; CDD documents on the beneficiaries, or confirmation from the management company that it holds on records CDD documents on the beneficiaries,[26] that has been obtained from a recognised source. It must also contain the name of the trust, its date and place of registration, and an indication of assets value held by the trust.

25. A trust is a tax resident if it is administered in Mauritius and a majority of the trustees are residents in Mauritius, or if the settlor of the trust was resident in Mauritius when the trust was created (section 73).

26. For a discretionary trust, a written confirmation from the management company to the effect that it has adequate arrangements in place with the trustee of the trust to make available to the management company, CDD documents on the beneficiaries at the time of distributions and that it is comfortable that these arrangements will enable it to satisfy its obligation under section 4.1 of the Code.

Information kept by the trustees and service providers

107. Trustees and beneficiaries must be stated in the trust instrument and the Trusts Act requires that at least one trustee is, at all times, a qualified trustee (section 28), defined as a management company licensed by the FSC or a person resident in Mauritius authorised by the FSC to provide trusteeship services (section 2). In practice most qualified trustees belong to one of the 26 management companies licensed to provide corporate trustee services in Mauritius.

108. For customer due diligence on trusts, the FSC Code for Management Companies provides that a management company-trustee must verify the identity of the settlors, protectors, enforcers or beneficiaries of a trust with respect to his/her name, permanent residential address, date and place of birth, and nationality. The trustee must keep in Mauritius copies of all documentation used to verify the above-mentioned identities for the duration of the relationship with the trust and for at least seven years thereafter. If a foreign trust is administered by a management company or a management company is one of its trustees, the FSC Code would be applicable.

109. With regard to an individual authorised by the FSC to act as qualified trustee, the person must, under section 29 of the FSA, conduct customer due diligence of its customers in accordance with the FIAMLA, if it falls under the definition of "member of a relevant profession or occupation" under the FIAMLA. The FSC has approved the appointment of individual trustees in 19 cases, essentially for domestic charitable trusts.

110. Mauritius further states that, under common law, a trustee in Mauritius of a trust which is resident in Mauritius or elsewhere has a duty of care and diligence throughout the administration of the trust. Mauritius advised that the courts have interpreted this as a duty of care in the management of the affairs of the trust and that it is the view of the Mauritian authorities that the said duty necessarily will include the duty to keep records. Mauritius also advised that relevant case law has been codified in the Trusts Act (ss. 37 to 40).

Conclusion

111. A gap exists in Mauritius statutory law with regards to ownership information on non-resident trusts with Mauritius trustees where the trustee is not a management company. There is not sufficient documentation that this gap is remedied by common law with clear requirements for trustees to keep identification information.

Foundations (ToR A.1.5)

112. The concept of foundation does not exist in Mauritian law. The introduction to Parliament of a Foundation Bill has been announced for the period 2010-15.

Enforcement provisions to ensure availability of information (ToR A.1.6)

113. Mauritius should have in place effective enforcement provisions to ensure the availability of ownership and identity information, one possibility among others being sufficiently strong compulsory powers to access the information. This subsection of the report assesses whether the provisions requiring the availability of information with the public authorities or within the corporate entities reviewed in section A.1 are enforceable and failures are punishable. Questions linked to access are dealt with in Part B.

Mauritius Revenue Authority

114. Where a person fails to submit a return under sections 112, 116 or 119 of the Income Tax Act, he shall be liable to pay to the Director-General an administrative penalty representing MUR 2 000 (EUR 50) per month, until the return is submitted, with a maximum of MUR 20 000 (EUR 500). Where a company, *société*, trust or trustee submits a return but does not fill in all the parts of the return, it shall be deemed not to have submitted a return and it shall be liable to pay the same fine (section 121). In addition, every person who fails to furnish a return of income commits an offence and is liable, on conviction, to a fine up to MUR 5 000 (EUR 125) and imprisonment up to 6 months (section 148). Any person who wilfully and with intent to evade income tax submits a false return of income is liable to a fine up to MUR 50 000 (EUR 1 250) and imprisonment up to two years (section 147).

115. In practice, some sanctions have already been imposed against persons who have not filed their tax return. In contrast, the MRA has never referred for prosecution a person who had failed to keep accounting records. The MRA rather performs a "best judgement assessment": it estimates the income of the person, and if this person wants to object, the onus of proof is on him. The MRA has also broad investigative and inspection powers (see Part B below).

Registrar of Companies

116. The Registrar receives information from all companies, commercial partnerships and individual entrepreneurs. The Registrar has enforcement powers. First of all, it rejects incomplete applications, or applications and documents that are not in accordance with the Companies Act (section 12),

which amounts to one quarter of all applications, according to the Registrar. In addition, where a person fails to comply with any requirement relating to the filing of a document, the Registrar may require the person to make good the default within 14 days (section 17) and ultimately apply to the court for an order directing the person to comply with the requirement. In such a case, an application would be made by the Registrar through the Attorney General's office to the Judge in Chambers for an order from the Judge (*référé* – summary jurisdiction). The Mauritian authorities indicate that this is a matter that would be dealt with by the Judge in a matter of days.

117. Finally, the Registrar has inspection powers (section 15). For the purpose of ascertaining whether a company or an officer is complying with the Companies Act, the Registrar may, on giving 72 hours written notice to the company, call for the production of or inspect any book required to be kept by the company (including foreign companies). Any person who fails to produce any document commits an offence and, on conviction, is liable to a fine not exceeding MUR 200 000 (EUR 5 000).

118. The Registrar has no enforcement powers on global business companies. The FSC's enforcement powers supersede those of other agencies on global business companies (apart from tax and money laundering procedures), pursuant to the Financial Services Act. In practice, it is the FSC, and not the Registrar, which clears global business companies before they get registered with the Registrar.

119. A representative of the Registrar indicated during the on-site visit that fraudulent registration is almost non-existent. All applications are checked within the day of submission. It was also indicated that no checks are performed to ascertain the identity behind nominee shareholding.

Financial Services Commission

120. The FSC ascertains compliance with and identifies breaches of applicable laws, regulations and licensing conditions. The two departments dealing with global business licensees – licensing and surveillance – have a staff strength of 31 persons that include accountants, lawyers and economists. These professionals receive regular training, which is crucial in light of the high staff turnover in the Mauritian financial sector.

121. On average, depending on the complexity of the applicant's corporate structure, the FSC needs 1-2 days to issue a GBC2 licence and 3-7 days for a GBC1 licence.

122. The FSC has the power to give directions to its licensees, in order to ensure compliance with the laws within its jurisdiction. Powers of the FSC over its licensees provide for the issuance of a private warning or a public

censure, the disqualification from holding a licence for a specific period or the revocation of a licence, and the imposition of an administrative penalty. The FSC can also disqualify an officer of a licensee from a specified office or position in a licensee for a specified period. The FSC can suspend or revoke a licence, in particular, on the ground that this is necessary to protect the good repute of Mauritius as a centre for financial services, to prevent or mitigate damage to the integrity of financial services industry or to protect the public in general. Prior to the revocation, it must give the GBC notice of its intention to revoke the licence and afford it an opportunity to make representations in writing (sections 7, 27, 53 and 74). The FSC on-site inspections apply to management companies and GBC1s.

123. Since 2004, the FSC has dealt with 10-15 surveillance proceedings per year with respect to the global business sector, some of which have led to court cases. Some management companies received warnings and corrected the deficiencies highlighted by FSC proceedings. The FSC also informed the assessment team that in some instances, the management companies prefer to stop their activities before their licence would be revoked.

124. In May 2010, the FSC initiated proceedings (inquiry) into the activities of six companies with a view to revoking their global licences. It also suspended their global business and financial services licences (sections 27, 44, 74 and 75). The FSC revoked the licence of five of them after the on-site visit. Upon suspension, the holder of a financial or global business licence ceases to carry out the activity authorised by the licence.[27]

125. A person who fails to furnish information to the FSC in its compliance monitoring activities is liable to a fine up to MUR 1 million upon conviction (EUR 25 000). The prosecution of any offence can only be instituted by the Director of Public Prosecution (section 91).

126. The FSC has competing functions. It supervises the offshore sector, but at the same time it also acts "as a think-tank and serves as a platform for discussions of the latest concepts and international trends in the field of financial services and global business and formulates suggestions and ideas for the development of the financial services and global business sectors" (section 13). The two types of functions are executed by two distinct bodies of the FSC – the chief executive and the Council.

127. Mauritius has no enforcement experience where provisions on the availability of ownership and accounting information in the global business sector are recent. In particular, the Financial Services Commission of Mauritius, since February 2010, receives beneficial ownership information together with new applications for a GBC2 licence and since June 2010

27. FSC press releases 27 May 2010 and 10 August 2010.

information on pre-existing GBC2s. Mauritius states that all EOI requests concerning entities in the global business sector are being duly attended to and responded in a timely manner. The short lapse of time is not sufficient for a complete assessment of Mauritius' actions in this respect. It is therefore recommended that enforcement of the legal provisions on the availability of ownership and accounting information in the global business sector should be monitored.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
There are no obligations to maintain ownership and identity information in case of nominee shareholding, except for public companies and GBCs.	Mauritius should establish a requirement that information is maintained indicating the person on whose behalf any legal owner holds his interest or shares in any company or body corporate.
No identity information is available on non-resident foreign trusts administered in Mauritius or in respect of which a trustee is resident in Mauritius, where these are not management companies.	An obligation should be established for all trustees and administrators resident in Mauritius to maintain information on the settlor, trustees and beneficiaries of their trusts.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
Mauritius has no enforcement experience where provisions on the availability of information are recent.	Enforcement of the legal provisions on the availability of ownership and accounting information in the global business sector should be monitored.

A.2. Accounting records

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

128. A condition for exchange of information for tax purposes to be effective, is that reliable information, foreseeably relevant to the tax requirements of a requesting jurisdiction is available, or can be made available, in a timely manner. This requires clear rules regarding the maintenance of accounting records. The obligation to maintain reliable accounting records are found in most of the laws governing the various types of entities covered by this report, and in the Income Tax Act.

General requirements (ToR A.2.1)

129. The Income Tax Act and laws governing each of the Mauritian entities regulate the maintenance of accounting records. The Financial Services Act imposes further requirements to its licensees.

130. The Income Tax Act requires every person carrying on business or deriving income other than emoluments to keep a full and true record of all transactions and other acts engaged in by him that are relevant for the purpose of enabling his gross income to be readily ascertained by the MRA (section 153). The Mauritian authorities specify that all entities registered at the MRA are required to submit to the MRA a return of income each year, whether they have tax to pay or not.

131. Domestic and GBC1 companies are required to keep accounting records pursuant to section 193 of the Companies Act. Accounting records must correctly record and explain their transactions; enable the financial position of the company to be determined with reasonable accuracy at any time; and enable the directors to prepare financial statements that comply with the Act. Among other things, the records should contain daily transactional entries, a record of assets and liabilities of the company; and where the company's business involves providing services, a record of services provided and relevant invoices. This requirement does not apply to GBC2s (section 343).

132. Resident companies must keep their accounting records in Mauritius. However, directors of companies can determine that the accounting records be kept abroad (at a place notified to the Registrar), but must ensure that the accounts and returns that disclose with reasonable accuracy the financial position of the company and enable the preparation of financial statements are kept in Mauritius. In case of failure to keep these records as required under section 193 for the current accounting period and for the last 7 years, the company and every director of the company can be liable to a fine up to MUR 100 000

(EUR 2 500, sections 190 and 329). Where the Board of a foreign company fails to comply with section 193, every director of the company commits an offence and can be liable to a fine up to MUR 200 000 (EUR 5 000, section 330). So far, no company has failed to comply with MRA requirement.

133. The Income Tax Act requires every partnership to keep books and records so as to enable the MRA to ascertain the gross income and allowable deductions of the partnership (section 153). In addition, the Commercial Code requires all business persons, including commercial partnerships, to keep a general ledger book. They are further required to maintain an inventory book, a balance sheet, and a profit and loss account for each financial year. These documents must be kept for 10 years (sections 8 to 16).

134. The Trusts Act requires trustees to keep updated and accurate accounts and records of their trusteeship (section 38(3)). Moreover, pursuant to paragraph 7.2 of the FSC Code for Management Companies, a management company must maintain records of all transactions undertaken during the course of a client relationship. In addition, trusts (other than charitable trusts) falling under the Income Tax Act must keep accounts and attach to their annual returns their profit and loss and balance sheets (section 121(2) and (3), and tax return [www.gov.mu/portal/sites/mra/download/ReturnTrust2010full.pdf]).

135. Corporations licensed by the FSC to perform non-banking financial services must keep a full and true written record of every transaction made, including account files and business correspondence (section 29). A GBC2 is not permitted to carry out financial services.

136. GBC1s must file with the FSC every year audited financial statements prepared in accordance with international financial reporting standards.[28] GBC1s may be required to provide a tax residence certificate issued by the MRA in order to benefit from a particular DTC, when assessed in the other jurisdiction. The MRA issues the certificates upon the recommendation of the FSC, which first must, among others, ensure that the applicant complies with prevailing laws and has submitted audited financial statements.

137. Until recently, the only accounting requirement of a GBC2 was to keep such accounting records that its directors considered necessary or desirable in order to reflect the financial position of the company. The GBC2 accounting records that are kept are at a place determined by the directors, and known by the registered agent (14th Schedule to the Companies Act). These accounts are accessible only to shareholders.

28. In considering an application for or a renewal of a GBC1 licence, the FSC has regard to whether the corporation keeps and maintains, at all times, its accounting records at its registered office in Mauritius; and prepares its statutory financial statements and have them audited in Mauritius. (section 71).

138. Since July 2009, effective after August 2010, section 30(2) of the FSA requires GBC2s to file with the FSC every year a financial summary in the form set out in the 9th Schedule to the Companies Act (the same as small private companies must file annually). It includes the turnover of the company, distribution costs, management and administrative expenses, a balance sheet with assets and liabilities, including equity and other long term liabilities. These figures are aggregated and do not fully explain all transactions of the company. The Mauritian authorities were nonetheless confident that for a company to prepare the financial summary, it is important that it keeps proper records of all its financial transactions. Mauritius nonetheless amended the Companies Act, effective 12 July 2011, to impose clear obligations on GBC2s to maintain relevant accounting records. GBC2s are now required to keep "proper books, registers, accounts, records such as receipts, invoices and vouchers and documents such as contracts and agreements in order to give a full and true record of all transactions and other acts engaged in by the company", and to keep the above records for a minimum of seven years (para. 2 Part II Fourteenth Schedule). The review of Mauritius is a combined Phase 1 and Phase 2 review and it is not possible to review the implementation in practice of laws that have just entered into force and their impact on EOI in practice. This aspect should be followed-up, given that GBC2s represent 25% of the Mauritian companies and a new Phase 2 recommendation is introduced.

139. In practice, Mauritius received in 2010 a request for accounting records of a GBC2. The MRA forwarded the request to the FSC and later provided the information to the requesting partner.

Underlying documentation (ToR A.2.2)

140. Mauritius has amended the Income Tax Act, effective 24 December 2010, to impose clear obligations on every person carrying on business or deriving income other than emoluments to keep "proper books, registers, accounts, records such as receipts, invoices and vouchers, other documents such as contracts and agreements, and a full and true record of all transactions and other acts", and to keep the above records for a minimum of five years (s. 153). As the December 2010 amendment to the Income Tax Act applies to every person carrying on business or deriving income other than emoluments, it is applicable to both trusts and *sociétés de personnes*.

141. According to the Mauritian authorities, even before this amendment, all corporate taxpayers, including trusts, were nonetheless required to keep underlying documentation (e.g. invoices, receipts) as evidence of transactions accounted for in their books. They interpreted section 153, which required the keeping of a full and true record of all transactions that are relevant for the purpose of enabling a gross income and allowable deductions to be readily ascertained, as implying the keeping of all underlying documentation. They

further indicated that in practice too, taxpayers have submitted all such documentation when required.

142. A gap still exists in respect of a clear requirement for Mauritian trustees of foreign trusts that are not resident in Mauritius for tax purposes because Mauritian trustees do not represent a majority of trustees and the settlor was not resident in Mauritius at the time the instrument creating the trust was executed (see section 73(d) of the Income Tax Act). Since these trusts are not resident in Mauritius for tax purposes, the new tax obligation does not apply to them.

143. In addition to the tax obligations, pursuant to the Companies Act, as noted above, the records of domestic companies should include, where the company's business involves providing services, a record of services provided and relevant invoices. Where the company's business involves dealing in goods, its accounting records should contain a record of goods bought and sold, except goods sold for cash in the ordinary course of carrying on a retail business, that identifies both the goods and buyers and sellers and relevant invoices; and a record of stock held at the end of its accounting period together with records of any stock takings during that period (section 190).

144. In practice, an EOI partner indicated during the review process, that it has requested but not received some underlying documentation from the Mauritian competent authority in one case, namely information on the clients of a Mauritian company.

145. If the directors of a company chose to keep accounting records outside of Mauritius, the minimum information that must be kept in Mauritius does not include the underlying documentation (section 194(2) of the Companies Act).

5-year retention standard (ToR A.2.3)

146. All applicable laws on accounting records require a retention period of at least 5 years.

147. Under the Income Tax Act, books and records of companies, partnerships and trusts should be kept by the taxpayer for a period of 5 years after the completion of the transactions to which they relate (section 153). Under the Companies Act and the Financial Services Act, all companies are required to keep accounting records for a period of 7 years (section 190 and section 29 respectively).

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Underlying documentation is not explicitly required to be kept for trusts that are not considered resident for tax purposes and do not carry on a business or derive income in Mauritius.	Mauritius should ensure that all relevant entities and arrangements maintain underlying documentation, for at least five years.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
Mauritius has no enforcement experience where provisions on the availability of accounting information are recent.	Enforcement of the legal provisions on the availability of accounting information in the global business sector should be monitored.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements *(ToR A.3.1)*

Banking laws

148. In Mauritius, banks and other financial institutions[29] under the Banking Act must maintain "full and true written record of every transaction they conduct", pursuant to section 33 of the act. These records must include "account files of every customer, business correspondences exchanged with every customer and records showing, for every customer, at least on a daily basis, particulars of its transactions with or for the account of that customer, and the balance owing to or by that customer". Information must be kept in Mauritius for at least seven years. Numbered bank accounts are not allowed in Mauritius.

29. For the purpose of the Banking Act 2004, "financial institution" means any bank, non-bank deposit taking institution or cash dealer licensed by the central bank.

149. Accounts can be kept in any currency in Mauritius and there is no exchange control. GBC1s must maintain bank accounts in Mauritius, a Mauritian rupees account for the purpose of their day to day transactions arising from ordinary operations in Mauritius, and one in foreign currency for their business activities. GBC2s are allowed to have a Mauritian bank account but only in a foreign currency (section 73 FSA).

150. Violation of the above-record keeping obligation is punishable, upon conviction, to a fine up to MUR 50 000 (EUR 1 250) and up to 2 years imprisonment.

151. There is no centralisation or register of Mauritian bank accounts holders. Only a register of borrowers exists, to which the MRA has access pursuant to a Memorandum of Understanding (MoU) between the Bank of Mauritius and the MRA.

Money laundering law[30]

152. The Bank of Mauritius has issued Guidance Notes on Anti-Money Laundering and Combating the Financing of Terrorism that includes guidance on record keeping requested in section 33 of the Banking Act. "Transaction records, in whatever form they are used, e.g. credit/debit slips, cheques etc. need to be maintained for a period of not less than 7 years after the completion of the transactions concerned, in such a manner to enable investigating authorities to compile a satisfactory audit trail for suspected laundered and terrorist money and establish a financial profile of any suspect account and should include the following: *(i)* the volume of funds f lowing through the account; *(ii)* the source of the funds, including full remitter details; *(iii)* the form in which the funds were offered or withdrawn, i.e. cash, cheques, etc.; *(iv)* the identity of the person undertaking the transaction and of the beneficiary; *(v)* counterparty details; *(vi)* the destination of the funds; *(vii)* the form of instruction and authority; *(viii)* the date of the transaction; *(ix)* the type and identifying number of any account involved in the transaction." Breach of the Guidance entails criminal penalties, i.e. a fine up to MUR 100 000 (EUR 2 500) and imprisonment up to two years (section 100 of the Banking Act).

153. In addition, section 17 of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA) sets the principle that banks and cash dealers are required to keep records, registers and documents as required under the Act and relevant Regulations. In application thereof, Regulation 8 of the Financial Intelligence and Anti-Money Laundering Regulations 2003 provides that relevant persons must keep records of transactions carried out for customers, for not less than 5 years. Regulation 11 indicates that any

30. Any crime is a predicate offence for the purpose of the money laundering offence.

person who contravenes these regulations shall commit an offence and shall on conviction be liable to a fine up to MUR 100 000 (EUR 2 500) and to imprisonment up to 2 years.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

B. Access to Information

Overview

154. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Mauritius's legal and regulatory framework gives the authorities access powers that cover all relevant persons and information and whether rights and safeguards are compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice.

155. Mauritius's laws provide the competent authority with broad access powers to information foreseeably relevant for EOI purposes. Mauritius's competent authority has powers to obtain information, whether it is required to be kept under the Income Tax Act or other laws, and whether or not it is required to be kept. It can obtain information from any person who is in possession or control of such information. In particular, Mauritius has access to bank information for EOI purposes. Elements B.1 (access to information) and B.2 (notification requirements and rights and safeguards) are "in place".

156. Some Phase 2 (implementation in practice) concerns have been identified concerning the implementation of these powers over the three years under review (2007-09). The January 2011 Report noted that with respect to Element B.1, it was found that Mauritius had never exercised its compulsory powers in practice, and thus their effectiveness could not be assessed. Similarly, the powers to access information directly from banks as well as the powers to access accounting records which relate to the current accounting year had not been exercised and thus their effectiveness could not be assessed.

157. Recently, the competent authority revamped, formalised and/or clarified its procedures (including on access to bank information) and now seeks information from secondary sources of information, notably the FSC.

As a result, Mauritius's authorities advise that during the year following the January 2011 Report, the competent authority in several EOI cases had been exchanging accounting information in relation to a current accounting year. Further, Mauritius has on two occasions, where the taxpayers refused to provide information, obtained relevant information directly from banks in order to respond to an EOI request. However, given the small number of cases so far, Mauritius should monitor its ability to apply, where necessary, its powers to access bank information in order to assure effective exchange of information and to report back on this issue in follow-up reports it provides as appropriate in accordance with the Methodology. Further, Mauritius has through public information ensured that stakeholders are fully aware of the competent authority's powers to obtain such information and of the procedure and timelines to be adopted in such cases. It is noted, however, that there still have been no cases where the Mauritian authorities exercised their compulsory powers to compel information and applies sanctions.

158. Under Element B.2, some of the rights and safeguards that apply to persons in Mauritius have not yet been tested in practice, and thus it was not possible to determine whether these could unduly prevent or delay exchange of information. In particular, there are no clear guidelines regarding circumstances where prior notification to the person concerned should be prevented, in particular those relating to a court order to obtain information. In its updated "Procedure Manual on Exchange of Information", the MRA has set clear guidelines regarding exemptions from prior notifications in cases where the treaty partner requests that the taxpayer should not be informed of the request or in other cases where a notification is likely to unduly delay the exchange of information with the treaty partner. As this new guidance has not yet been tested in practice, Mauritius should ensure that these new guidelines are applied in practice.

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).

159. The Mauritian authority competent to handle EOI requests is the Director of the Large Taxpayer Department of the Mauritius Revenue Authority, who is supported by the three members of the International Taxation Unit. The same authority gathers information for both domestic and international tax purposes. (See C.5.2 below on resource and organisational process.)

160. Access rights and powers are contained in the Income Tax Act, and are very broad in principle. Recently, a Procedure Manual on Exchange of Information was adopted to guide the tax officials in the most efficient way to obtain information requested by treaty partner jurisdictions.

161. In practice, according to the MRA around 10% of the EOI requests received by Mauritius over the three years under review (2007-09) relate to non-resident persons or entities, in which the law did not authorise exchange of information until July 2009 (see section C.1 below), therefore the assessment of access to information concerning these entities relies on very recent experience.

162. There is so far no administrative ruling or judicial decision in relation to access powers of the MRA concerning the obtaining of information pursuant to an EOI request. The Mauritian authorities therefore referred to case law in relation to domestic tax affairs and foreign case law to give the assessment team an idea of the extent of access powers of the MRA in practice.

Ownership and identity information (ToR B.1.1) and Accounting records (ToR B.1.2)

163. The MRA has power to require "every person" to give orally or in writing, within a determined time, "all such information" as may be demanded of him by the MRA *(i)* to make an assessment or to collect Mauritian tax, or *(ii)* "to comply with any request for the exchange of information" under an international arrangement (section 124(1)). Thus the MRA can require ownership, identity and accounting information from the persons subject to the request themselves and from third parties, including other public authorities.

164. The Procedure Manual reminds that the Income Tax Act obliges any person to furnish information required by the MRA. The Manual underlines that specific provision is made in the Act (section 124(1)(b)) to require any person to give all such information as may be demanded of him by the MRA for the purpose of enabling the MRA to comply with any EOI request with a treaty partner.

165. In principle the competent authority can obtain ownership, identity or accounting information from the person concerned, public authorities, or third parties. In addition the MRA has powers to obtain information, whether or not it is required to be kept pursuant to the Income Tax Act or any other law. Therefore information that must be kept pursuant to anti-money laundering laws can be accessed by the MRA.

166. Since January 2010 a Procedure Manual on Exchange of Information indicates when information must be requested from the person himself, a governmental institution or other third party:

- information should be requested from the taxpayer when it is not available in tax files or when the company subject to the request is not registered at the MRA. The delay to answer the request should be 21 days;
- when a company is not registered at the MRA, the tax officer should also approach the registrar to check whether the company is registered at the Registrar and its status (live, dormant, defunct). The delay provided is 15 days; and
- information on GBC2s (non taxpayer) is sought from the FSC, which has 15 days to provide the information to the MRA.

The taxpayer

167. When the information requested by a treaty partner is not contained in the MRA tax files, the MRA systematically requests the information from the taxpayer. The Mauritian authorities did not have statistics on the average time taken by taxpayers to reply, but the Manual (updated in August 2010) now recommends allowing the taxpayer 3 weeks to answer (with additional 7 days in case a reminder is needed). The competent authority considers that this way of obtaining the requested information is efficient, since difficulties have been encountered in only two cases so far.

168. In one case, the taxpayer did not respond because he had left Mauritius and had not received the request. The Procedure Manual of the MRA provides that in such case of undelivered correspondences, visits should be made at the premises of the persons concerned and findings of the visit should be transmitted, where relevant, to the treaty partner. The MRA applied this procedure and made such a visit, and informed the treaty partner that the individual from whom information was sought had left Mauritius. The competent authority then turned to a secondary source of information, in this case the FSC.

169. In the other case, the taxpayers have provided partial information. In this situation, the Manual envisages that appropriate action should be taken until the requested information is fully submitted. The taxpayers explained that they are not required to provide the remaining information requested, as it is not related to the tax inquiry opened in the partner jurisdiction. At the time of the on-site visit, Mauritius's competent authority was discussing the relevance of the request with the requesting authority. Since then, the requesting jurisdiction answered and the Mauritian authority reiterated its request for

information to the concerned companies. The Mauritius authorities indicate that warning was given to the companies that should they fail to provide the requested bank information, the authorities would have recourse to the legal powers to obtain the information.

170. However, a major treaty partner of Mauritius indicated that many of its requests are only partially answered, because the requests are with taxpayers who do not answer in a timely manner. In this context it is important that the Mauritian competent authority should not rely only on the taxpayer to collect information but should also resort to compulsory measures where necessary and/or secondary sources of information, where applicable (e.g. Registrar, FSC), when the taxpayer does not provide the requested information within the specified time-limit. The Mauritian authorities confirmed that the procedure set in the new Procedure Manual will be strictly followed where necessary (see section C.5 below).

171. In the past it has happened that the Mauritian authorities have indicated that they were unable to access and exchange accounting information in relation to an ongoing year. Since the on-site visit the Mauritian authorities reviewed the basis of the decision and concluded that nothing in the law prevents the MRA to request such information, and partial accounting data should be available within companies and other entities. The competent authority therefore declared that it is prepared to require the production of partial or interim accounting data whenever requested by its EOI partners.

172. In its request for a supplementary report, Mauritius stated that over the recent months, it had exchanged accounting information relating to the current year in more than 20 cases. No peer input was received on this point. This shows that the Mauritius competent authority has implemented in practice the assurance it had given to the Global Forum to obtain and exchange accounting data in relation to a current year.

Registrar

173. The Manual provides that in case the information relates to a company which is not registered at the MRA, the tax officer should check whether the company is registered with the Registrar of Companies. For this purpose, the tax officer sends a request to the Registrar, which has 15 days to answer. A representative of the Registrar however noted that the MRA can consult the register of companies directly. The only reason for asking the Registrar, rather than consulting the register directly, is for obtaining a stamped copy of the document, for purposes of presenting to a court.

174. The Registrar assured that it has always answered the requests of the MRA. In practice the Registrar states that it does not need to know whether the request relates to domestic or international tax purposes.

175. In addition, any person, including foreign tax authorities, can directly consult the register on the internet to find basic information on Mauritian companies and other registered entities:

- its full name;
- its date of incorporation/registration;
- its status (live, defunct) and whether it is in process of dissolution/ winding up;
- its type and nature (e.g. company limited by share, trust, *société*, individual);
- its category (e.g. domestic, GBC1, GBC2); and
- its registered office address (Mauritian management company of GBC1s and GBC2s).

176. A representative of the Registrar explained that the online database is currently under development and that ultimately all information with the exception of ownership information on global business entities will be available with the Registrar and can be directly accessible by any person.

177. Almost all the other information maintained by the Registrar (notably legal ownership information) can be obtained by correspondence with a minimal fee of MUR 50 (EUR 1.25). Ownership information on global business companies (GBC1 and GBC2) is exempt, but can be accessed through an EOI request or through the FSC (see below).

Financial Services Commission

178. The FSC has an obligation to furnish information to the MRA to comply with an EOI request, pursuant to section 124 of the Income Tax Act and has always answered the MRA requests so far. The Financial Services Act lifts the confidentiality duty of the FSC employees to conform to the treaty obligations of Mauritius.

179. The FSC has signed a Memorandum of Understanding (MoU) with the MRA in June 2010 with the view of exchanging information.[31] Paragraph 4.3

31. The Financial Services Act imposes a confidentiality duty on its employees – reinforced as concerns information on GBC1 and GBC2 (section 83(1) to (6)) – but lifts this duty to conform to "the obligations of Mauritius under any international treaty, convention or agreement" (section 83(7)). On a procedural point, the FSC can disclose and exchange information on licensees, pursuant to an agreement or arrangement for the exchange of information (section 87(3)). Agreements are entered into subject to the condition that the FSC is satisfied that

indicates that "each authority agrees not to disclose any confidential information obtained under this MoU to a third party unless it has obtained the prior consent of the Authority which has provided the confidential information. Although this paragraph has not been drafted for this purpose, it could be interpreted as a requirement for prior consent of the FSC. However, paragraph 3.3 also points that the MoU is not legally binding on the Authorities and that it is subject to the laws and regulations of Mauritius and does not supersede or modify any of the legal obligations of the Authorities. Should the competent authority and the FSC disagree on the opportunity to provide information to a treaty partner, the decision would belong to the competent authority. If there is a conflict, the MRA can use its compulsory powers.

180. When an EOI request relates to a GBC2, the MRA seeks the requested information from the FSC rather than the GBC2, because GBC2s are not taxpayers in Mauritius, and the MRA has no information on them, but the FSC has. Involving the FSC has another advantage: in case of non-compliance, the FSC as regulator of the global business sector, can apply use its information gathering powers or sanctions. Where the requested information is not maintained in its files, the Financial Services Act gives the FSC Chief Executive power to require any licensee to furnish such information and produce any such records or documents as may be needed (section 42). A licensee or person, who fails to comply with such a requirement, is liable on conviction to a fine up to MUR 500 000 (EUR 12 500) and imprisonment up to 5 years (section 90).

181. Exchange of information between the two authorities already took place in practice, mainly for domestic tax purposes. In May 2010, the FSC provided information to the MRA to answer an EOI request on a global business company. It did so within 8 weeks of the request (against 4 weeks for domestic tax purposes on average). This does not meet the 15 day deadline set in the MRA Procedural Manual for Exchange of Information.

182. It is expected that the MoU will raise awareness of the importance of exchange of information and that as a result information will be delivered more expeditiously. This is crucial for the sound repute of Mauritius since

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the other party has the capacity to protect the confidentiality of the information imparted, in case such a condition of confidentiality is imposed by the FSC.

The FSC has signed 18 other MoUs, notably with Mauritius' FIU and Bank of Mauritius. Subject to the content of each MoU, the FSC can also exchange information under the umbrella of the Southern African Development Cooperation's Committee for Insurance, Securities and Non-bank financial Authorities, with the regulators on behalf of SADC members. The FSC has also signed MoUs with regulators of India, Guernsey, Isle of Man, Jersey, Labuan, Malta and the South Asian Securities Regulators Forum.

several peers have indicated that Mauritius does not exchange information on GBC2s. After the on-site visit, the Mauritian competent authority prepared a letter to all its 35 treaty partners to inform them, amongst others, of the change in the law and its power to access and exchange information on GBC2s (see Annex 5).

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

183. 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. As noted above, section 124(1) of the Income Tax Act provides that every person shall give all such information as may be demanded "(b) to comply with any request for the exchange of information under an arrangement made pursuant to section 76". Sub-paragraph (b) was added in 2000 to clarify that Mauritius can provide information absent domestic tax interest. In any event, EOI activities are within the scope of the MRA functions (under "the management, operation and enforcement of the Revenue laws", defined in section 3 of the Mauritius Revenue Authority Act) and all powers available to enforce the Income Tax Act are available for EOI purposes.

Compulsory powers (ToR B.1.4)

184. Jurisdictions should have in place effective enforcement provisions to compel the production of information. The Income Tax Act provides for compulsory measures. In addition to the power to gather information (section 124), the Income Tax Act gives the MRA power of inspection whereby an officer of the MRA may enter any premises, inspect any information, book, record or other document (section 126).

185. The Procedure Manual introduced in January 2010 and updated in August of the same year dedicates a section to address non-compliance by a taxpayer or a third party with a request for information. In case of "persistent non-compliance with a request to furnish information", the taxpayer or third party should be informed that:

- he has a legal obligation to comply;
- non-compliance constitutes an offence under the Income Tax Act; and
- legal proceedings may be instituted for persistent non-compliance.

The manual does not refer to section 126 and the power to search premises.

186. Every person who fails to furnish information and particulars commits an offence and is liable, on conviction, to a fine up to MUR 5 000 (EUR 125) and imprisonment up to 6 months, when the failure relates to sections 124 or 126 (section 148). Where the offence is committed wilfully and with intent to evade income tax, the fine is up to MUR 50 000 (EUR 1 250) and imprisonment is up to two years (section 147).

187. In practice compulsory measures and sanctions have never been used, primarily because the persons from whom information is requested usually provide the information, be it ownership, accounting or banking information.

188. However, as already indicated, one of Mauritius's treaty partners has stated that some of its requests are only partially answered, because the taxpayer does not provide the missing information in a timely manner (see also sections C1.1 and C5 below). The Mauritian competent authority is therefore encouraged to implement the new Manual instruction for sending a reminder and warning of sanctions in all cases of failure to comply with an information request. A persistent non response should be considered a refusal to answer, sanctions should be applied and compulsory powers should be exercised where appropriate. This is particularly important when the information is not available with any public authority in Mauritius, for instance most accounting records. The Mauritian competent authority confirmed that it will strictly follow the provisions of the Procedure Manual, which has been reinforced after the on-site visit.

189. It appears that some taxpayers have refused to provide information needed to reply an EOI request, questioning the grounds for the request. In the case mentioned under section B.1.1 above, the Mauritian authorities did not arbitrate between the foreign tax authority and its taxpayer. Instead, the MRA requested for further information and explanations from the requesting jurisdiction, with the intention to obtain arguments that could convince the taxpayer to release the information. The Mauritian authorities should take a more active role where they are satisfied that the information requested is foreseeably relevant, and this determination should be made on receipt of the request.

190. Mauritius indicated during the supplementary review that in two cases the competent authority requested and successfully obtained information directly from the banks involved. The information has been transmitted to the requesting foreign authority. Mauritius has also issued a circular to all stakeholders informing them of the powers of the Mauritius Revenue Authority (MRA) to obtain, amongst other things, bank information, and of the procedure and timelines to be adopted in such cases. A notice has also been posted on the MRA's website.[32]

32. www.gov.mu/portal/sites/mra/download/ObligationExchange.pdf.

191. The Mauritian authorities did not apply sanctions in the two above mentioned cases as they have chosen an educative and awareness raising approach rather than a confrontational approach – dialogue rather than sanctions. It is expected that information provided to stakeholders and access to information from alternative sources in some cases (such as banks) will improve compliance in the future. Mauritius is recommended to monitor the implementation of its access powers in practice, given the short period of time between the supplementary report and the January 2011 Report.

Secrecy provisions (ToR B.1.5) Confidentiality rules – corporate secrecy

192. The Mauritian authorities confirmed that there is no confidentiality or secrecy provisions in Mauritius's laws (including company law, partnership law, trust law, regulatory law or otherwise) that prohibit or restrict the disclosure to tax authorities of accounting, ownership and identity information. The Companies Act and the Code de commerce do not contain any secrecy provision applicable to an MRA request.[33] Although section 33 of the Trusts Act provides that a trustee can disclose information on the state and amount of the trust property and the conduct of the trust administration only to a court, this section applies without prejudice to the obligations of Mauritius under any international treaty, like a DTC or a TIEA.

193. A judge whom the assessment team met with during the on-site visit referred to a recent judgement of the Court of Appeal of Seychelles to which he participated, to demonstrate that professional confidentiality rules do not prevail in Mauritius. In this case, a judge granted access to confidential information on the corporate structure of offshore entities for mutual legal assistance purposes. The appeal court denied access to the information because, amongst others, "if the principle of confidentiality was not observed in the offshore sector, 'we may be sending the wrong signal that could be catastrophic to that industry'". The Supreme Court judgement states on the contrary that "There is no gainsaying the fact that the rock-bed of the financial services sector is confidentiality. The sector thrives on the principle of confidentiality. That principle is not a recent phenomenon in law. Both the common law and the civil law recognise it and give effect to it. For Seychelles, one may trace the original source of that principle in its Civil Code: for example, the attorney-client, the doctor-patient, banker-client etc." It goes on to say that "confidentiality is not synonymous with opaqueness. One needs to be cautious of its boomerang effect". "We are here involved with the complex interaction of principles, the balancing of various interests… Our area of concern goes well beyond the territorial jurisdiction of our

33. As set in section A.1 above, companies must disclose their ownership details when required by the MRA.

judicial system into an international judicial system in the making."[34] In the judgement, confidentiality was lifted.

194. The Mauritian judge who was part of the Seychelles Court of Appeal was confident that similar principles would be applicable in Mauritius. In addition, the decision clearly mentions not only professional confidentiality but also that of attorney-client and banker-client, which are particularly relevant for exchange of information for tax purposes. A representative of the Ministry of Justice further indicated that the same reasoning would apply to a civil case for tax purposes; the standard of proof would be lesser, since the applicant needs to satisfy the judge on a balance of probabilities only, as opposed to higher standard ("beyond reasonable doubt") in a criminal case.

Bank secrecy

195. Mauritius's competent authority has access to bank information: Section 124 of the Income Tax Act covers any information, including bank information. In practice, Mauritius has already exchanged bank information, where the person concerned provided the information to the competent authority.

196. However, when the taxpayer refuses to provide the information, the procedures to obtain it were unclear and untested in treaty-related EOI at the time of the on-site visit. It was uncertain whether a court order was needed to request information directly from a bank. The MRA, the Bank of Mauritius and the State Law Office have since then clarified the access powers of the competent authority.

197. Sections 64 and 97 of the Banking Act provide for confidentiality duties of bank personnel, and sanctions in case of breach of confidentiality duty.[35] However, section 64(15) of the Banking Act states that section 64 on confidentiality "shall be without prejudice to the obligations of Mauritius under any international treaty, convention or agreement…". This provision is

34. Seychelles Court of Appeal, 11 December 2009. The judgement concludes that "restrictions and limitations to all rights under the Constitution are permissible to the extent that they are reasonably justifiable in a democratic society. Now with respect to more specifically the commission of a crime, where there is reasonable suspicion that a crime has been committed or is about to be committed, the right of privacy falls within that permissible restriction or limitation except that the claimant should be afforded an opportunity to show the nature of the right to privacy which he urges needs to be protected.".

35. See also section 26 of the Bank of Mauritius Act. There is no difference of treatment for banks operating in the domestic market or otherwise; the same licence is granted to all banks.

applicable to EOI requests made pursuant to a DTC or TIEA entered into by Mauritius, and for which the competent authority requires access to information on the basis of section 124 of the Income Tax Act.

198. This procedure differs from those used in domestic tax cases, for which a court order is required pursuant to section 64(9), unless the request relates to an offence relating to dangerous drugs or weapons (section 64(16) in conjunction with section 123 of the Income Tax Act).

199. The new MRA Procedure Manual clarifies the procedure in three stages. When bank statements are requested by a treaty partner, the taxpayer should be requested to submit the statements within a period of one month. When the bank account holder fails to submit the bank information (because e.g. he refuses to provide the information or he has not received the request), the procedure, which the MRA must follow to obtain bank information for EOI purposes, is to contact the bank. Finally, in cases of non-compliance by the bank, an application should be made to a judge in chambers for an order for the bank to produce the bank statements.

200. At the time of the January 2011 Report, only the first stage of this three stage procedure had been tested (successfully) in practice. The second stage had not yet been tested, notwithstanding the fact that two requests on bank information were pending at the time of the on-site visit. The Mauritian authorities were encouraged to proceed as quickly as possible to resolve the two outstanding cases by approaching the banks to get information. Access to bank information for EOI in tax matter purposes is crucial and any uncertainty can trigger both misunderstanding with treaty partners, and impunity with persons who refuse to provide information.

201. As noted under B.1.4 above, the Mauritian competent authority can exercise its powers to access information directly from banks. In addition, no peer indicated that they face difficulties to obtaining bank information since the January 2011 Report.

202. Nevertheless, these two cases constitute a small sample over a limited period of time. Mauritius should monitor its ability to apply, where necessary, its powers to access bank information in practice in order to assure effective exchange of information and report back on this issue in follow-up reports it provides in accordance with the Methodology.

203. In addition, now that the procedures for obtaining bank information in case the taxpayer fails to provide the information is ascertained, it might be useful for the MRA and the Bank of Mauritius to make known the procedures to all stakeholders. After the on-site visit, the MRA has prepared a circular letter to all management companies to inform them of its powers to obtain bank information and the timelines in relation to EOI requests and issued it to all stakeholders informing them of the powers of the Mauritius

Revenue Authority (MRA) to obtain, amongst other things, bank information, and of the procedure and timelines to be adopted in such cases. A similar notice was also posted on the MRA website after the visit.[36]

204. It is expected that information provided to stakeholders and access to information from alternative sources in some cases (such as banks) will improve compliance in the future. As noted under B.1.4, Mauritius is still recommended to monitor the implementation of its access powers in practice, given the short period of time between the supplementary report and the January 2011 report.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
Mauritius has the legal framework in place to access information, including compulsory powers, but has never exercised its compulsory powers in practice, and their effectiveness cannot be assessed.	Mauritius should exercise its powers to compel information and sanction failure to provide information whenever appropriate. The implementation of these powers in practice should be monitored by Mauritius.

B.2. Notification requirements and 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.

Not unduly prevent or delay exchange of information (ToR B.2.1)

205. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

36. www.gov.mu/portal/sites/mra/download/ObligationExchange.pdf.

206. The Mauritian Income Tax Act does not require any notification to the taxpayer that he/she is the object of a request for information. On the other hand, nothing prevents the disclosure of that information to a taxpayer either (as part of an assessment made upon the taxpayer; section 154(4)). In practice, when the information is not already at the disposal of the tax authorities, the competent authority systematically sends a request for information to the taxpayer, informing him that the information is sought for EOI purposes. The only case when the competent authority will not do so is when the person concerned with the request in not registered with the MRA, typically a GBC2.[37]

207. The Mauritian authorities indicated that they have never been requested to not inform the person concerned by the request. There have been no clear guidelines to handle requests where information should not be made known to the person concerned.[38] Should such a case arise, the competent authority would probably not inform the taxpayer and try to obtain the information from another public authority or a bank, for instance. However, nothing appears to prevent the bank from informing its client.

208. In its "Procedure Manual on Exchange of Information", updated in February 2011, the MRA states that there is no legal requirement for prior notification of the taxpayer (section 5, first bullet point). The manual further states that such notification should not be given when accessing third party information if the treaty partner requests that the taxpayer should not be informed of the request (section 5, third bullet point) or in other cases where a notification is likely to unduly delay the exchange of information with the treaty partner (section 5, last bullet point).

209. As this new guidance has not yet been tested in practice, Mauritius should ensure that these new guidelines are applied in practice. This will be assessed at a later stage, when relevant cases are available.

210. Where a person refused to provide information to the competent authority and the latter cannot obtain the requested information through other means, the authority can apply to the court for an order of disclosure. The process for indirect access should not be so burdensome and time-consuming as to act as an impediment on access to information. The assessment team met with a Supreme Court judge to assess whether the requirement of a court order would prevent Mauritius from answering EOI request in a timely

37. The FSC has no duty to notify the licensee of the EOI request, and has never done so in practice.

38. The provision in the treaty with India expressly authorises the disclosure of information to the persons in respect to whom the information or document relates, but the Mauritian authorities do not consider this as tantamount to a notification right.

manner. To make an order of disclosure, the judge must be satisfied that *(i)* the applicant is acting in the discharge of his duties, *(ii)* the information is material to any civil or criminal proceedings or *(iii)* the disclosure is otherwise necessary, in all the circumstances.

211. The judge referred to several decisions which clearly state that bank confidentiality is the principle for a sound financial system, but that its private nature should be balanced with the public nature in its exceptions, including the above-mentioned Seychelles case. Timeline and procedure to obtain a court order in a civil tax case is untested.[39] The judge nonetheless indicated that when the Attorney General applies in urgency for an order to disclose bank information in a criminal case, the judge takes the decision within two days.

212. In the event that a court order is necessary to obtain bank or other information, the court would notify the person and hear his arguments in case of objection. Ex-parte hearings must be strictly justified, and in practice are accepted mainly in drug trafficking cases.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
The rights and safeguards that apply to persons in Mauritius appear to be compatible with effective exchange of information. Some of them have not yet been tested in practice to assess whether they could unduly prevent or delay exchange of information.	Mauritius should ensure that its new guidelines regarding prior notification are applied in practice.

39. In practice the MRA has successfully gone twice to court to obtain bank information for domestic tax purposes, but not yet for EOI purposes. In the first domestic case the taxpayer complied with the request before the court took a decision. In the second domestic case the court ordered the bank to disclose the needed information and the bank abided by the order.

C. Exchanging Information

Overview

213. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. A jurisdiction's practical capacity to effectively exchange information relies both on having adequate mechanisms in place as well as an adequate institutional framework. This section of the report assesses Mauritius's network of EOI agreements against the standards and the adequacy of its institutional framework to achieve effective exchange of information in practice.

214. In Mauritius, the legal authority to exchange information derives from a large network of bilateral mechanisms (double tax conventions and tax exchange of information agreements) as well as from domestic law in certain circumstances. Mauritius has exchange of information mechanisms with 38 jurisdictions, including with its main trading partners, and continues negotiating new DTCs and TIEAs (see annex 2). Of these, 29 agreements meet the standard, as well as the DTC recently signed with the United Kingdom but not yet in force. Mauritius is also negotiating a number of protocols or new treaties with its current partners with a view to upgrade the EOI provisions of its existing treaties. Mauritius is encouraged to continue expanding and upgrading its treaty network.

215. Mauritius's DTCs in general meet the standards, but some deficiencies have been identified in the DTCs or in their interpretation and implementation by the competent authority. Mauritius is generally able to exchange information foreseeably relevant to the administration and enforcement of DTCs and tax laws. Until recently, Mauritius did not exchange information on certain entities, in contravention with its treaties. It remedied this situation by amending the domestic law that prevented the exchange of information relating to non-tax residents (in particular GBC2s).

216. Mauritius has the power to exchange bank information and it has already done so when provided by the taxpayer. Exchange of information is not limited by domestic tax interests except with one partner. There is no

distinction drawn in Mauritius's DTCs between civil and criminal matters as far as taxation is concerned and no dual criminality applies. There are no restrictions in the EOI provisions in Mauritius's DTCs that would prevent Mauritius from providing information in a specific form, as long as this is consistent with its own administrative practices. In practice, the partner jurisdiction must clearly specify whether it requires the information in a specific form to obtain it.

217. All EOI articles in Mauritius's DTCs have confidentiality provisions and Mauritius's domestic legislation also contains relevant confidentiality provisions. In practice none of Mauritius's partners indicated that a confidentiality issue has ever arisen.

218. There is no legal restriction on the ability of Mauritius's competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request. In practice Mauritius was able to respond within 90 days in more than 80% of the non-pending cases for the years 2007-09. Information is provided in very short delays when readily available with the competent authority. Delays become considerably longer when the information has been requested from the person concerned and this person does not submit the requested information, especially requests concerning bank information. Mauritius should better communicate with its partners when facing difficulties in collecting the requested information.

219. Various initiatives indicate an increase of proactiveness that should be sustained. On the organisational point of view, an International Taxation Unit has been set up and trained over the three years under review (2007-09), and a procedure manual has been recently adopted. The amendment to the Income Tax Act to allow exchange of information on non-residents should significantly increase the workload of the Unit and Mauritius's performance will be closely monitored in the framework of the follow-up to the present peer review report. Mauritius also took initiatives to increase the awareness of the global business community in Mauritius on the importance and seriousness of exchange of information for tax purposes. The FSC issued a circular letter to management companies in February 2010 and the MRA prepared another circular after the on-site visit.

C.1. Exchange of information mechanisms

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

220. Section 76 of the Income Tax Act provides the Minister of Finance with the power to enter into arrangements with foreign governments for the exchange of information with a view to assisting *(i)* in the determination of credits and exemptions in respect of income tax and foreign tax, *(ii)* in the

prevention of fraud, or *(iii)* in the administration of the laws in relation to income tax and foreign tax.

221. Mauritius has signed 37 DTCs to date, of which 35 entered into force, with Barbados, Belgium, Botswana, China, Croatia, Cyprus,[40][41] France, Germany, India, Italy, Kuwait, Lesotho, Luxembourg, Madagascar, Malaysia, Mozambique, Namibia, Nepal, Oman, Pakistan, Qatar, Rwanda, Senegal, Seychelles, Singapore, South Africa, Sri Lanka, Swaziland, Sweden, Thailand, Tunisia, Uganda, United Arab Emirates, United Kingdom, and Zimbabwe. Further, the DTCs with France, Italy, the Seychelles and the United Kingdom have been updated through protocols that introduce the language of Article 26 of the OECD Model Tax Convention.

222. Finally, Mauritius has signed its first tax information exchange agreement (TIEA), with Australia. The language of this TIEA follows the standard set in the OECD Model TIEA.

223. Mauritius also signed a DTC with Bangladesh in 2009 (and with Russia in 1995) and is actively negotiating a number of new treaties or protocols (see sub-chapter C.2 below) and new agreements (including TIEAs) with a number of jurisdictions in order to establish a clear legal basis for exchange of information to the standard. Mauritius has also finalised its six first Tax Information Exchange Agreements (TIEAs) with Denmark, Faroe Islands, Finland, Greenland, Iceland and Norway.

224. The Mauritian competent authority for incoming EOI requests is the Director of the large Taxpayers Department of the Mauritius Revenue Authority. The competent authority for outgoing EOI requests is the Director General of the MRA.

225. All Mauritius's DTCs provide for exchange of information on request. Since the competent authority has been restructured in 2006, Mauritius received 200 EOI requests from nine treaty partners. It is expected that

40. 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".

41. Note by all the European Union Member States of the OECD and the European Commission:

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.

Mauritius will receive more requests now that exchange of information on GBC2s is possible and the possibility for Mauritius to exchange bank information has been clarified. The DTCs with India, Oman and Pakistan allow for automatic exchange ("on a routine basis") although this is not carried out in practice. Mauritius has not exchanged information spontaneously either, over the three years under review (2007-09).[42]

Foreseeably relevant standard (ToR C.1.1)

226. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow "fishing expeditions", that is to say speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in paragraph 1 of Article 26 of the OECD Model Tax Convention set out below:

> The competent authorities of the contracting states shall exchange such information as is forseeably relevant to the carrying out of the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

227. The commentary to Article 26 of the OECD Model Tax Convention, paragraph 5, refers to the standard of "foreseeable relevance" and states that the Contracting States may agree to an alternative formulation of this standard that is consistent with the scope of the Article, for instance by replacing "foreseeably relevant" with "necessary" or "relevant".

228. All Mauritius's treaties provide for the exchange of information that is "necessary" for carrying out the provisions of the Convention or of the domestic tax laws of the Contracting States, except the 2006 protocol to Mauritius's DTC with China, which rather uses the term "foreseeably relevant". Mauritius's authorities confirm that they make no distinction between

42. In addition, 13 DTCs provide for the possibility to consult with a view to "develop appropriate conditions, methods and techniques concerning the matters in respect of which exchanges of information shall be made, including where appropriate, exchanges of information regarding tax avoidance". However, no such consultations have taken place so far. (DTCs with Botswana, Lesotho, Luxembourg, Madagascar, Oman, Pakistan, Russia, South Africa, Sri Lanka, Swaziland, Sweden, Uganda and Zimbabwe.).

the two terms. All the agreements therefore meet the "foreseeably relevant" standard.

229. The Mauritian authorities have not set up a checklist of items that a requesting state should provide in order to demonstrate that the information sought is foreseeably relevant. The Mauritian authorities have nonetheless indicated that they first check the residence of the person subject to a request, whether an examination or audit was carried out and whether the request has any nexus with that person, to ensure that the requesting party is not involved in a fishing expedition. However, the competent authority has not been able, during the on-site visit, to delineate exactly what it considers to be a justified request, compared to a fishing expedition. It later indicated that it would rely on existing UK case law that already distinguishes between "fishing" and "relevance".[43] In addition, a requesting jurisdiction to whom information would not have been provided on the basis that it amounts to fishing can challenge this decision and apply for a judicial review to obtain information.

230. During the on-site visit, the competent authority indicated that Mauritius was quite liberal in its interpretation of the standard in the first place and usually answers the request without further inquiring whether the information was really needed for the purpose of the treaty or the avoidance of tax (depending on the drafting of the treaty). The information is nonetheless sent with the mention that "the information can only be used for the purposes of the treaty".

231. So far the Mauritian competent authority has never refused to answer an EOI request on the ground that it was not foreseeably relevant. They were nonetheless considering two pending requests at the time of the on-site visit, in order to determine if they could amount to fishing expeditions. In the first case, the issue arose when the taxpayer concerned refused to provide the information on the basis that the request was not appropriately grounded. After having obtained further explanations from the requesting party, the competent authority wrote to the companies again for the bank statements and action will be taken under the existing legal framework should the companies fail to comply. In the second case, the requesting country merely found Mauritian bank statements when raiding the home of a taxpayer, and the competent authority was not convinced that the requesting party tried to first obtain the information in its own jurisdiction. The Mauritian authority questioned the treaty partner accordingly. The cases are still pending. Mauritius should provide feedback on these cases in the framework of the follow-up process.

232. Questioned on what would amount to the exhaustiveness of internal procedures in the requesting state, Mauritius conveyed that they would

43. Re State of Norway's Application – Kerr CJ said [1989].

adhere to the procedures provided in the Model TIEA and expect that the requesting party inform Mauritius of all the means taken to obtain the information before making the EOI request. In particular, the competent authority was of the view that when a request relates to a taxpayer of the requesting state, the requesting state should have requested the information from the taxpayer first. After the on-site visit, the competent authority consulted with the Ministry of Justice and indicated that the requesting jurisdiction must show that the taxpayer has been written to and has refused to provide the requested information; prosecution would not be required. However, similarly to what is indicated under section B.2 of this report, should the treaty partner indicate that informing the taxpayer would undermine the chance of success of the investigation it conducts, Mauritius would readily accept that explanation.

233. As mentioned above, and confirmed by peer inputs, the Mauritian competent authority usually answers the request without further inquiring about the request, even if it is unclear. The competent authority does not routinely seek clarifying information from the requesting jurisdiction, but provides only what it is expressly and clearly requested. It is then up to the requesting jurisdiction to specify or clarify its request if it considers that the first answer does not address its needs. As such, treaty partners making requests are advised to be specific on the information requested (e.g. accounts audited or not, address of the service provider or of the shareholders) to avoid unnecessary delays and miscommunication. In this regard, the Mauritian competent authority may consider communicating with its treaty partners where it feels the requests are unclear and generally providing feedback to its treaty partners in view of increasing the efficiency of their EOI relationship.

In respect of all persons (ToR C.1.2)

234. For exchange of information to be effective it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standard for exchange of information envisages that EOI mechanisms will provide for exchange of information in respect of all persons and paragraph 1 of Article 26 of the OECD Model Tax Convention indicates that "The exchange of information is not restricted by Article 1" that defines the personal scope of application of the Convention.[44]

235. Five DTCs do not contain the sentence indicating that the exchange of information is not restricted by Article 1, namely treaties with Germany, India, Malaysia, Oman, and Singapore. The treaties with the four latter

44. DTCs apply to persons who are residents of one or both of the Contracting States.

nonetheless apply to both resident and non-residents. The EOI provision of the treaties with Malaysia, Oman, and Singapore applies to "carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention". These treaties would not be limited to residents because all taxpayers, resident or not, are liable to the domestic taxes listed in Article 2 (e.g. domestic laws also apply taxes to the source of income of non-residents). Exchange of information in respect of all persons is thus possible under the terms of these treaties. The treaty with India provides for exchange of information only for the purposes of "carrying out the provisions of the present Convention". But it also covers the "prevention of evasion of taxes which are the subject of the convention". In this case again the mentioned taxes apply to both resident and non-resident and the treaty applies to all persons.

236. The treaty with Germany restricts exchange of information to "carrying out the provisions of the present Convention". In this case, exchange of information is limited to residents because Article 1 of the treaty indicates that it applies to "persons who are residents of one or both of the Contracting States". The Mauritian authorities assure that this issue should be resolved with the entry into force of the new DTC currently awaiting signature. The present DTC with Germany has been re-negotiated, though it has not yet been signed. The Mauritian authorities assure that this issue will be resolved with the entry into force of the new DTC which is still awaiting signature.

237. The DTC with Luxembourg excludes some entities from the definition of "resident" but since exchange of information is not limited by article 1 in this treaty, the Mauritian authorities confirmed that the contracting parties should exchange information relating to these entities.

238. Despite this apparent conformity of the Mauritian treaties with the standard, some treaty partners indicated that in practice Mauritius has not answered some requests for information in relation to GBC2s. The Mauritian authorities confirmed this statement and explained that the impediment was not in the treaties but in the Mauritian law, whereby section 73A of the Income Tax Act provides that "A company holding a Category 2 Global Business Licence under the Financial Services Act 2007 shall not be resident for the purposes of section 76", and section 76 precluded exchange of information on non-resident persons.

239. Section 76 of the Income Tax Act was amended in July 2009 to add that (3) An arrangement… may contain provision in relation to foreign tax and income tax… "(g) for exchange of information in respect of any person not resident in Mauritius." Therefore Mauritius will no longer refuse to answer a request for information relating to a GBC2 or any other person or

entity not resident in Mauritius. In practice Mauritius is gathering information on a GBC2, to answer a request received after July 2009.

240. This amendment to the law increases the ability of Mauritius to answer EOI requests. In particular, it appears that some treaty partners refrained from sending requests on GBC2s to Mauritius in anticipation of a non-response. During the on-site visit, the assessment team noted that Mauritius's competent authority could have usefully notified this amendment to its regular treaty partners (France, India) as well as jurisdictions to which it denied access to information on GBC2s. Following the on-site visit, Mauritius prepared a notification to all its 35 treaty partners informing them of Mauritius's ability to exchange information on GBC2 companies. Partner jurisdictions of Mauritius are invited to send EOI requests to Mauritius in relation to GBC2s whenever foreseeably relevant, and report to the Global Forum in case of non-response.

Exchange information held by financial institutions, nominees, agents and ownership and identity information (ToR C.1.3)

241. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD Model Tax Convention and the Model Agreement on Exchange of Information, which are the 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.

Bank information

242. Apart from the protocol to the treaty with China, none of Mauritius's DTCs currently in force include the provision contained in paragraph 26(5) of the OECD Model Tax Convention, which states that a contracting state may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

243. However, the absence of this paragraph does not automatically create restrictions on exchange of bank information. The commentary on article 26(5) indicates that whilst paragraph 5 (added to the Model Tax Convention in 2005) represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information. Mauritius has access to bank information for tax purposes in its domestic law (see section

B), and pursuant to its treaties is able to exchange this type of information when requested, on a reciprocal basis, i.e. where there are no domestic impediments to exchange bank information in the case of the requesting party.

244. Despite the fact that most Mauritian treaties do not include paragraph 5 of the Model Tax Convention, and therefore subject exchange of bank information to reciprocity, the competent authority assured that it would nonetheless provide bank information, even if the requesting jurisdiction would not be able to do the same, because the Mauritian law does not require reciprocity. During the on-site visit, the assessment team encouraged Mauritius's competent authority to clarify this interpretation with its treaty partners. Since then, during summer 2011, Mauritius reports that it sent a letter to inform all its treaty partners that it is able and willing to exchange bank information even in the absence of any explicit provisions to that effect in the treaty, and whether or not the partner provides a reciprocal treatment to Mauritius's EOI requests (see Annex 5).[45]

245. Since January 2011, protocols have been signed with the Seychelles, France and Italy introducing paragraph 5 in its EOI provision. India, Mauritius's main EOI partner has contacted Mauritius about updating the EOI provision of the DTC and no negotiation has yet started but Mauritius informed that it is willing to negotiate a TIEA with India. It should be noted that the existing agreement does conform to the standard although it does not contain paragraphs 4 and 5 of the OECD Model Tax Convention. Concerning in particular treaty partners that are not able to exchange banking information absent paragraph 26(5), Mauritius has started negotiations with Luxembourg and Botswana with the intention to include *inter alia* this paragraph. Also, because Belgium is now able to exchange bank information despite the absence of an explicit provision in the treaty, its agreement with Mauritius now meets the standard.

246. In practice, Mauritius has exchanged bank information in several instances, in particular with India, but some treaty partners indicated that they have not (yet) received some bank information from Mauritius. The

45. Among Mauritius' treaty partners, Belgium, Botswana, Luxembourg and Singapore are currently unable to access bank information for exchange purposes absent an explicit provision in the treaty. For treaties with some other jurisdictions, the peer review process of these jurisdictions will assess whether their domestic law permits effective exchange of information. Mauritius also has a number of treaty partners not covered by the Global Forum assessment, for which no assessment has been made as whether they can exchange bank information; Bangladesh, Croatia, Kuwait, Lesotho, Madagascar, Mozambique, Namibia, Nepal, Oman, Pakistan, Rwanda, Senegal, Sri Lanka, Swaziland, Thailand, Tunisia, Uganda and Zimbabwe.

obstacles met were not linked to bank secrecy in treaties but *(i)* to the non-resident status of the person subject to the request at a date when Mauritius did not exchange information on non-resident, *(ii)* to the timeliness of access to bank information when the taxpayer refuses to provide the information directly (one pending case), and *(iii)* the foreseeable relevance of the bank information required (one pending case). The legislative amendments and the commitment undertaken by Mauritius vis-à-vis its EOI partners appear proper to overcome these obstacles in future.

Absence of domestic tax interest (ToR C.1.4)

247. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party.

248. Apart from the protocol to the treaty with China, none of Mauritius's DTCs currently in force include the provision contained in paragraph 26(4) of the OECD Model Tax Convention, which states that the requested party "shall use its information gathering measures to obtain the requested information, even though that [it] may not need such information for its own tax purposes". However, the absence of a similar provision in other treaties does not in principle create restrictions on exchange of information provided there is no domestic tax interest impediment to exchange information in the case of either contracting party (see Commentary 19.6 to the OECD Model Tax Convention).

249. Mauritius amended its Income Tax Act in 2000 to clarify that a domestic tax interest requirement does not prevent Mauritius from exchanging information for tax purposes. Section 124 specifically states that every person has an obligation to furnish information to the MRA for the purpose of enabling the Director-General to make an assessment or to collect tax or, alternatively, "to comply with any request for the exchange of information under an arrangement made pursuant to section 76", i.e. arrangements for relief from double taxation and for the exchange of information. In practice, none of Mauritius's treaty partner mentioned an issue of domestic tax interest.

Absence of dual criminality principles (ToR C.1.5) and Exchange of information in both civil and criminal tax matters (ToR C.1.6)

250. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters"). All of the EOI article in DTCs signed by Mauritius may be used to obtain information to deal with both civil and criminal tax matters.

251. Apart from the protocol to the treaty with China, none of Mauritius's DTCs in force contain the explicit wording of Article 26(1) of the OECD Model Tax Convention, which refers to information foreseeably relevant "for carrying out the provisions of this Convention or to the administration and enforcement of the domestic [tax] laws". Most treaties refer more broadly to information necessary for carrying out the provisions of the Convention or of the domestic laws concerning taxes covered by the Convention, without excluding either civil nor criminal matters. In addition, the EOI article in twenty DTCs specifically mentions that the information exchange will occur including for the prevention of fraud and/or evasion in relation to taxes (criminal matters).

252. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested jurisdiction if it had occurred in the requested jurisdiction. In order to be effective, exchange of tax information should not be constrained by the application of the dual criminality principle. There are no dual criminality provisions in Mauritian DTCs and no issue linked to dual criminality arose in practice.

253. Mauritius can also exchange information with all countries in serious criminal tax matters (i.e. in the case of offences punishable by imprisonment of at least one year), on the condition of reciprocity, pursuant to the Mutual Assistance in Criminal and Related Matters Act 2003 (sections 2 and 5). Some tax offences meet this threshold.[46] Although this law does not meet the international standard, it may assist jurisdictions that have not entered into an exchange of tax information mechanism with Mauritius. These jurisdictions can obtain information for criminal tax matters, if they can prove that the information is sought to prevent fiscal evasion.[47] In practice, Mauritius

46. The Mauritian law provide for tax-related criminal offences, for which the upper imprisonment penalty is either 6 months or 2 years. Therefore mutual legal assistance applies to some of the tax offences only.

47. Mauritius can for instance exchange bank information: Section 6(9) of the Mutual Assistance in Criminal and Related Matters Act provides that "notwithstanding section 26 of the Bank of Mauritius Act, section 64 of the Banking Act

has already been requested to render mutual legal assistance related to a tax offence in two instances and has answered positively.

254. Finally, Mauritius can also exchange information in relation to all tax offences when they are the predicate offence of a money laundering offence.[48] This avenue of exchange is untested.

Provide information in specific form requested (ToR C.1.7)

255. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

256. None of Mauritius's treaties expressly addresses this question but they do not contain any restrictions either, which would prevent Mauritius from providing information in a specific form, so long as this is consistent with its own administrative practices.

In force (ToR C.1.8)

257. Exchange of information cannot take place unless a jurisdiction has EOI arrangements in force. Where EOI arrangements have been signed, the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

258. Mauritius has bilateral DTCs in force with 35 jurisdictions as of 31 August 2010. The latest DTCs entered into force less than a year after having been signed. The DTCs with Bangladesh was signed in 2009 and the DTC with Russia in 1995. In addition, the first seven TIEAs of Mauritius have been finalised with Nordic jurisdictions and Australia. The Mauritian

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(…), a Judge in Chambers hearing a request from a foreign State (…) may grant an evidence-gathering order or search warrant against the Bank of Mauritius, a bank or financial institution where he is satisfied that (a) the information is material and necessary to the proceedings in the foreign State (…); and (b) the law of the foreign State permits the disclosure of information to foreign States in circumstances similar to the one relating to the request.".

48. The FIAMLA also entitles the Mauritian FIU to exchange information with other FIUs.

authorities indicated that Mauritius has ratified the DTC with Russia in 1997 and the DTC with Bangladesh in May 2010 and awaits ratification from its partners.

Be given effect through domestic law (ToR C.1.9)

259. For information exchange to be effective the parties to an EOI arrangement need to enact any legislation necessary to comply with the terms of the arrangement. In Mauritius, DTCs and TIEAs become effective once the Minister of Finance issues a regulation under section 76 of the Income Tax Act, published in the Government gazette.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
One DTC limits exchange of information to the carrying out of the provisions of the Convention and does not extend to the administration and enforcement of domestic laws of the contracting states.	Mauritius should continue to negotiate with existing partners (or take steps to expedite entry into force of) new exchange of information arrangements where the existing treaties do not meet the international standard.
Most of Mauritius's DTCs do not include paragraphs 4 and 5 of Article 26 of the Model Tax Convention in its treaties, but Mauritius has indicated that it is ready to exchange bank information even in the absence of reciprocity.	Exchange of bank information should be ensured with all Mauritius's treaty partners. Although Mauritius is willing to exchange information even in the absence of paragraphs 4 and 5 of Article 26 of the Model Tax Convention and reciprocity, Mauritius is encouraged to continue upgrading the exchange of information provision in its treaties to include paragraphs 4 and 5, to secure the benefit of reciprocity from its treaty partners, especially those jurisdictions that are unable to do so without paragraphs 4 and 5 being explicitly provided.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
The Mauritian competent authority has faced difficulties in some cases in deciding whether a request meets the foreseeably relevance standard.	Mauritius is encouraged to continue communicating quickly with its treaty partners when the competent authority is unsure that the received request meets the foreseeably relevance standard.

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

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

260. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

261. Mauritius has bilateral DTCs or TIEA signed with 38 jurisdictions of which 35 are in force. The oldest treaty is that signed with Germany in 1978 and the most recent with Bangladesh in 2009 (see Annex 2). Mauritius has signed and ratified its first tax information exchange agreement (TIEA), with Australia, which follows the standard set in the OECD Model TIEA. The DTCs with France, Italy, the Seychelles and the United Kingdom have been updated through protocols that introduce the language of Article 26 of the OECD Model Tax Convention. Mauritius is also actively negotiating a number of new treaties, protocols or TIEAs since 2009, especially to upgrade its oldest treaties. Importantly, the EOI arrangement with Germany, which raises several concerns in the present report, has been re-negotiated though it has not yet been signed.

262. Mauritius's authorities advised that they are currently negotiating DTCs with Algeria, Burkina Faso, the Czech Republic, Greece, Iran, Monaco, Portugal, Saudi Arabia, Vietnam and Yemen. Further, TIEAs with the Nordic jurisdictions, including Finland, one of its major trading partners, are negotiated. Further, TIEA negotiations are underway with Argentina, Austria, Botswana, Greece, Guernsey, the Netherlands, Samoa and St. Lucia.

263. The geographical position of Mauritius is central to its economic activities, at the junction of several continents. Mauritius's DTCs reflect this geographical position where it has DTCs with 13 Asian jurisdictions (including Middle East jurisdictions), 13 African jurisdictions and 9 European jurisdictions.

264. Mauritius has DTCs in force and up to the standard with some of its main trading partners: France, Italy, Madagascar and the United Arab Emirates (exports); India, France, South Africa, China (imports). Mauritius has no DTC or TIEA with the United States (third country for Mauritian exports), which have not answered Mauritius's invitation to open negotiations. A TIEA is awaiting signature with Finland (fifth jurisdiction for Mauritian imports). Mauritius also has DTCs with other financial centres such as Barbados, Cyprus,[49] Luxembourg and Singapore.

265. Foreign direct investments in Mauritius in 2010 come mainly from its trading partners, as well as Switzerland. Mauritius investments abroad go mainly to India, South Africa, Switzerland and Madagascar.

266. Until recently, Mauritius's policy was to negotiate DTCs rather than tax information exchange agreements (TIEAs). However, a number of TIEAs have been recently finalised (with Australia, Denmark, Faroe Islands, Finland, Greenland, Iceland and Norway) and await signature.

267. In addition, Mauritius indicates that it is prepared to conclude a TIEA with any jurisdiction with which a DTC already exists. Negotiations are already under way with some of Mauritius's treaty partners to upgrade Article 26 on exchange of information.

268. Finally, it appears that Mauritius has never refused to enter an EOI arrangement.

49. See notes 40 and 41.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
Mauritius is actively negotiating a number of new treaties, protocols or TIEAs (Tax Information Exchange Agreements) to upgrade its oldest treaties that do not meet the standard. Although Mauritius has a wide treaty network, it does not have a DTC with some of its important trade partners.	Mauritius should continue to develop its EOI network with all relevant partners.

Phase 2 rating
Compliant

C.3. Confidentiality

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

269. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protection afforded by the confidentiality provisions of information exchange instruments, tax jurisdictions generally impose strict confidentiality requirements on information collected for tax purposes.

270. Reciprocal assistance between tax administrations is feasible only if each administration is assured that the other administration will treat with proper confidence the information which it will receive in the course of their co-operation. The confidentiality rules should apply to all types of information received, including information provided in a request and information transmitted in response to a request.

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

Double tax conventions

271. All EOI articles in Mauritius's DTCs, protocols and its TIEA have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the treaties. While each of the articles might vary slightly in wording,[50] these provisions generally take the following form, which contain all of the essential aspects of paragraph 2 of Article 26 of the Model Tax Convention:

> Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

272. Three DTCs substantially depart from this text. The provisions of the DTCs with Germany, Malaysia and the United Kingdom do not specify that the information exchanged shall be disclosed for the enumerated purposes nor that it can be disclosed in public court proceedings or in judicial decisions. The Indian provision expressly authorises the disclosure of information to the persons in respect to whom the information or document relates.

273. Many of the treaties require the information exchanged to be treated as secret "in the same manner as information obtained under the domestic law". Mauritius's domestic legislation contains relevant confidentiality provisions under section 154 of the Income Tax Act (see below). The confidentiality provisions of the DTCs with Germany, India, Malaysia, and the United Kingdom do not refer to the confidentiality provision of the domestic laws of the Contracting States. In the case of Mauritius, this does not prevent the enforcement of the confidentiality duty since information received from partner jurisdictions are received on the basis of a treaty signed in application of the Income Tax Act, and therefore the domestic provision assessed below will apply. This is nonetheless a provision of the treaties that would benefit from being fixed at the occasion of more general upgrading.

50. The protocol to the Chinese DTC uses the same wording as Article 26 of the Model Tax Convention.

Mauritius legislation

274. The maintenance of secrecy in the Contracting State receiving information is a matter of domestic laws (whether it is the requested or the requesting jurisdiction). Sanctions for the violation of such secrecy in that State are governed by the administrative and penal laws of that State. Mauritius's domestic legislation contains relevant confidentiality provisions under section 154 of the Income Tax Act.

275. Every officer of the MRA is required to take an oath of fidelity and secrecy before he/she begins to perform his/her duties. He/she has to maintain and aid in maintaining the confidentiality and secrecy of any matter coming to his/her knowledge in the performance of his/her duties.

276. In principle, no officer can communicate to any person any matter relating to the Income Tax Act. The law lists exceptions to this duty: information can be disclosed for the purpose of the Income Tax Act and other tax laws, as well as for the purpose of the Prevention of Corruption Act and the Dangerous Drug Act. In addition, an officer can disclose confidential information when he/she is authorised to do so by the Minister. They can also disclose information to courts for tax purposes. Finally, officers can disclose to the taxpayer information relating to him/her.

277. The penalties for breach of the duty of confidentiality appear dissuasive. The Income Tax Act makes it an offence to contravene the secrecy provisions in section 154. On conviction, the person is liable to a fine not exceeding MUR 5 000 (EUR 125) and to imprisonment for a term not exceeding 2 years. In practice no such sanction has been applied so far.

278. The Mauritius Revenue Authority Act also contains a confidentiality obligation on the MRA employees on any matter relating to this Act, which come to their knowledge.

279. Section 76(5) allows disclosure by the Director-General of confidential information required to be disclosed by a DTC or a TIEA.[51]

280. The Procedure Manual on Exchange of Information reminds tax officers of their confidentiality duty under section 154 and of the exception in section 76 for answering requests based on a DTC or TIEA. The Manual also reminds officers to insert a clause in the EOI letter to the effect that the information exchanged should be used only for the purposes authorised in the

51. "Where an arrangement is made [for relief from double taxation and for the exchange of information], the obligations as to secrecy imposed under section 154 shall not prevent the Director-General from disclosing to an officer authorised by the government with which the arrangement is made such information as is required to be disclosed under the arrangement.".

treaty in question. On the contrary, the Manual does not remind tax officers that all information received from a treaty partner should be considered as confidential in the same manner as information obtained under the Mauritian law. It does not either draw their attention to the fact that this information cannot be used for other purposes than the implementation of the treaty or domestic tax law (e.g. not for the purpose of the Prevention of Corruption Act and the Dangerous Drug Act).

281. In practice, the Mauritian authorities indicate that there have not been any cases where information received by the competent authority from an EOI partner has been made public other than in accordance with the terms under which it was provided. Mauritius's treaty partners have not raised any concerns either.

All other information exchanged (ToR C.3.2)

282. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests. The Mauritian authorities confirmed that in practice they consider as confidential all types of information exchanged, even though the Procedure Manual on Exchange of Information does not remind tax officers in charge of exchange of information that the information they received from a treaty partner should be treated as confidential.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

283. 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 legitimate secret may arise.

Exceptions to requirement to provide information (ToR C.4.1)

284. All Mauritius's DTCs and protocols and its TIEA ensure that the parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy. The Mauritian authorities indicate that the MRA has so far not received any request from any treaty partner where the request has been denied because of the above-mentioned reasons.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

Responses within 90 days (ToR C.5.1)

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

286. Nothing in Mauritius's law prevents the Mauritian authorities to respond to EOI requests within 90 days of receipt by providing the information requested or an update on the status of the request.

287. In practice, Mauritius indicates that over the three years under review (2007-09), 81% of their replies to EOI requests have been made within 90 days (57% within 30 days) and 5% have been sent after more than a year. The fastest reply was provided within 3 days and the longest after a year and 4 months. On the other hand one request is pending, for 19 months, with one of its main treaty partners. In addition, one of Mauritius's treaty partners has indicated that many of its requests are only partially answered and that much

information is still awaited. The Mauritian competent authority indicates that the last assertion is due to a problem of communication between the two jurisdictions, and that most information allegedly missing has been sent by Mauritius but not received by its partner. The two authorities are working on this issue at the time of drafting this report.

288. Partner jurisdictions indicate that Mauritius sometimes provides a status report within 90 days when the information is not submitted, but not systematically. An important partner also noted that reminders have been sent for some cases. Mauritius recently took steps to enhance its communication with treaty partners (see below section on organisational process). In addition, an Indian tax attaché acting as a liaison officer was posted at the Embassy of India in Mauritius in June 2010. This should enhance communication between the MRA and its main treaty partner and the volume of exchange of information.

289. The most important factor impacting on the timeliness of the response is essentially whether the MRA already has the requested information in its files or not. When the information is in the MRA files, it is sent within 90 days most of the time. It is expected that with the new performance targets set in the Unit (see below), all such information will be provided in a more timely manner.

290. When the information is not in the MRA files, the MRA seeks the information from the person concerned by the request or a third party. Given that information can now be exchanged on GBC2s, the main third party interlocutor of the MRA will be the FSC, which is the sole entity authorised to collect information on GBC2s. The assessment team has been assured that with the signing of the MoU between the two authorities and the awareness raising activities that surrounded the signature, delays will be reduced. This should be followed-up carefully since requests on GBC2s have been received by Mauritius over the three years under review (2007-09).

291. An uncertainty relates to the time needed to access bank information when the person concerned by the request refuses to disclose the information to the MRA. Although Mauritius is confident that such information will be exchanged in a timely manner, the MRA has not yet tested its options to gather information with banks directly (or through a judge).

292. The January 2011 Report recommended that "Mauritius should respect the deadlines recently introduced in its new Procedure Manual for Exchange of Information and ensure responses or updates are received by treaty partners within 90 days of receipt".

293. One year later, the Mauritius's authorities reported that these recommendations were being incorporated. Mauritius keeps detailed statistics on the time the competent authority needs to answer requests and on the

type of information requested. From this self-monitoring, it appears that the Mauritian competent authority systematically sends acknowledgement letters when receiving a new request for information. It has answered a number of requests from various treaty partners within 90 days of receiving the request. In other instances, the competent authority sent partial information within 90 days and informed the treaty partners that further information would follow, or requested further particulars. Nevertheless, it is too early to assess whether Mauritius's actions sufficiently implement the recommendation and no changes were made to the recommendation.

Resources and Organisational process *(ToR C.5.2)*

294. Mauritius's DTCs indicate that the competent authority for the exchange of information for tax purposes is the Minister of Finance or his authorised representative, the Director-General of Inland Revenue/ Commissioner of Income Tax, or both. Mauritius's authorities explained that the Minister is designated as competent authority in those treaties where their treaty partners had proposed their Minister as competent authority – to ensure parity in status. In other treaties, the Commissioner of Income Tax (now replaced by the Director General of the Mauritius Revenue Authority) is the competent authority.

295. There is a delegation of power by the Minister to the Director General and in turn to the Director of the Large Taxpayers Department to deal with treaty matters. In practice, when the Minister receives EOI requests from treaty partners, he refers them to the Director General for necessary action. In turn, the Director General refers the requests to the Director of the Large Taxpayers Department, who acts as competent authority for answering requests.

296. The website of the MRA clearly identifies the Director of the Large Taxpayers Department as the competent authority to contact for EOI purposes, and provides his full contact details: www.gov.mu/portal/sites/mra/dta.htm.[52]

Resources

297. Until four years ago, most of the EOI activity relied on the broad knowledge of a single person: the Income Tax Commissioner. He directly handled all requests for the previous 11 years and is Mauritius's lead negotiator for tax treaties. He also represents Mauritius at the Global Forum, the OECD and other international forums dealing with tax matters.

52. All treaties in force and the list of negotiated treaties are also available on the same webpage.

298. Mauritius's tax administration was restructured and replaced with the MRA in 2006. The International Taxation Unit was then set up to deal with international tax issues, including answering EOI requests from treaty partners, issuing tax residence certificates and dealing with foreigners non tax resident in Mauritius. It is located within the Large Taxpayers Department for continuity reasons since the Department is headed by the former Income Tax Commissioner.

299. Since the creation of the International Taxation Unit Mauritius received EOI requests from nine treaty partners. It received 81 requests in 2006, 35 requests in 2007, 23 requests in 2008, 12 requests in 2009 and 49 in 2010 (not full year). It is expected that Mauritius will receive more requests now that exchange of information on GBC2s is possible and the possibility for Mauritius to exchange bank information has been clarified. It is therefore crucial that the International Taxation Unit dealing with EOI requests is appropriately staffed.

300. The International Taxation Unit is staffed with two technical officers and a support officer, who report to their team leader (who also supervises an audit and examination team), who in turn reports to a section head. The final approval for exchange of information is given by the Director who personally signs the EOI letter. The staff has been stable since its creation and followed a course on current issues in International Taxation by IBFD International Tax Academy conducted by foreign resource persons. They also had a course on interpretation and application of Tax Treaties by the Director of the Large Taxpayers Department. Moreover, the officers receive constant on-the-job training from the Director. For each request received, the Director is always consulted for his instructions and advice. The assessment team met with dedicated professionals, conscious of the importance of exchange of information for Mauritius's reputation as a sound financial centre.[53]

301. The process to answer EOI requests is being rationalised and formalised in Mauritius, notably with the adoption of a Procedure Manual on Exchange of Information in January 2010. The manual, which is quite succinct, is based on the practice of the Unit and should be developed as practice develops over time (a first update took place in August 2010, following the on-site visit). Another aspect of this rationalisation is the above-mentioned signature of MoUs for exchange of information purposes with the relevant public authorities of Mauritius (Bank of Mauritius, Registrar, FSC and FIU). Mauritius should continue in this way.

53. The Mauritian authorities indicate that in the event the present staff at the International Taxation Unit is unable to cope with any increased workload, other experienced officers from the Large Taxpayers Department dealing with audits and repayments may be redeployed to that Unit.

Organisational process

302. The Procedure Manual on Exchange of Information sets the internal management of request. The International Taxation Unit maintains a register where, in respect of each EOI request, are recorded: *(i)* the date of the request; *(ii)* the name of the treaty partner; *(iii)* full details of the entity concerned; and *(iv)* the date of the reply. In addition, separate files are kept for each treaty partner with which Mauritius has an EOI activity. An index is attached in each of these files, which shows all the correspondences that have been exchanged in relation to a particular request. Information is also recorded in the tax file of the person concerned by the request (Mauritius taxpayers do not have access to their files).[54]

303. The Manual sets the following deadlines:

- If information is not available in tax files, a letter acknowledging receipt of the request and informing on its status should be sent within 7 days;
- Information already in the hands of the MRA should be exchanged within 15 days;[55]
- Information maintained by another public authority should be submitted within 15 days;
- Information requested from taxpayers should be submitted within 21 days;
- Information requested from third parties should be submitted within 21 days;
- Bank information requested from taxpayer should be submitted within a month; when the bank statements relate to past years, the time allowed may be longer. If the taxpayer does not provide the information, the MRA turns to the bank, which has a month to submit the information. Ultimately, when the MRA has to turn to the judge, it does not have control over the deadlines.

304. These targets appear to be very ambitious, especially considering the statistics over the three years under review (2007-09) and feedback received from treaty partners.

54. Apart from the register, a monthly report on the status of the EOI cases with each treaty partner is submitted to the Ministry of Finance, the Ministry of Foreign Affairs and the FSC.

55. In addition, for the first time in 2010, performance targets of the MRA Large Taxpayers Department include performance indicators for the Unit, to ensure prompt and effective exchange of information with Mauritius' treaty partners. The deadlines of the first two bullets are reiterated in the targets.

305. The substantial handling of a request starts with checking whether the person subject to the request is registered with the MRA as taxpayer. If so, his/her tax file is requested from the central filing (and obtained the same day). The officer also checks whether the person or entity is resident in Mauritius.

306. When the requested information is readily available, Mauritius is usually able to send the information within a week. When only part of the information is readily available, Mauritius sends what is available and informs its partner that further measures would be taken to obtain the remaining information. Treaty partners confirm that Mauritius sends information in pieces upon availability.

307. The tax officer then sends a request of information to the taxpayer with the deadlines mentioned above. When no response is received, the Mauritian authorities indicate that they (from now on) will send a reminder after 10 days of the expiration of the deadline. The Manual does not set any deadline after which the information should be sought from secondary sources, typically the Registrar, a bank or the FSC. Guidance on these situations may be useful. In one recent case, a request was sent to the FSC four months after the MRA received the original request, and the FSC replied almost 2 months later. Where delays are anticipated in securing information, Mauritius should update its treaty partners within 90 days of receipt of the EOI request.

308. When the tax officer receives information (from any person), he/she first checks its accuracy and completeness. So far, the Mauritian competent authority has almost always received the needed information. In one ongoing procedure, the taxpayer provided sanitised bank statements that the requesting jurisdiction considered insufficient. The Mauritian authorities are considering the validity of the additional request and the outcome should be informed in due course.

309. When the person concerned in the request is not a taxpayer in Mauritius (typically a GBC2), the competent authority seeks the information from the FSC. The FSC has assured the assessment team that it will provide information on GBC2s to the MRA.

310. If need be, Mauritius's authorities indicate that they seek clarification or additional information when the request is incomplete. It appears from the peers' contributions to the review that if the request does not precisely indicate which element of information is required, for instance as concerns address of companies, Mauritius would send information at hand and wait for the requesting jurisdiction to evaluate whether it is sufficient or not.

311. Overall it appears that the Mauritian competent authority is in the process of putting in place a sound organisational process, provided that some potential deficiencies highlighted above are resolved quickly. During the on-site visit, the assessment team strongly encouraged the competent authority

to contact its partner jurisdictions to inform them about this new framework. The MRA has done it following the on-site visit.

312. Mauritius was recommended to monitor the implementation of its Procedure Manual on Exchange of Information practice develops, and improve it where needed. A first update had taken place in August 2010, following the on-site visit. The latest update took place in February 2011 (see section B.2). One year after the January 2011 Report, it is too early to assess whether Mauritius's actions sufficiently incorporate the recommendation and Mauritius should continue its work on implementing the recommendation.

Absence of restrictive conditions on exchange of information (ToR C.5.3)

313. There were no aspects of Mauritius's laws that appear to impose additional restrictive conditions on exchange of information.

314. As noted above, the treaty with Germany restricts exchange of information to residents of one of the contracting states. However, the restrictive conditions contained in this treaty should be removed once the new DTC enters into force.

Determination and factors underlying recommendations

Phase 1 determination
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
In the past, when the information requested was not available in Mauritian tax files or the person concerned did not provide the information, it has taken too long to obtain information from third parties. The competent authority has adopted a Procedure Manual very recently. It sets new deadlines for different steps of an exchange of information procedure but it is too recent for its implementation to be assessed at this stage.	Mauritius should continue respecting the deadlines recently introduced in its new Procedure Manual and ensure responses or updates are received by treaty partners within 90 days of receipt. In addition, the competent authority should continue monitoring the implementation of the Manual as practice develops, and improve it where needed.

Summary of Determinations and Factors Underlying Recommendations

Determination/rating	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1)*		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement	There are no obligations to maintain ownership and identity information in case of nominee shareholding, except for public companies and GBCs.	Mauritius should establish a requirement that information is maintained indicating the person on whose behalf any legal owner holds his interest or shares in any company or body corporate.
	No identity information is available on non-resident foreign trusts administered in Mauritius or in respect of which a trustee is resident in Mauritius, where these are not management companies.	An obligation should be established for all trustees and administrators resident in Mauritius to maintain information on the settlor, trustees and beneficiaries of their trusts
Phase 2 rating: Largely Compliant	Mauritius has no enforcement experience where provisions on the availability of information are recent.	Enforcement of the legal provisions on the availability of ownership and accounting information in the global business sector should be monitored.

Determination/rating	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
Phase 1 determination: The element is in place but certain aspects of the legal implementation of the element need improvement.		
	Underlying documentation is not explicitly required to be kept for trusts that are not considered resident for tax purposes and do not carry on a business or derive income in Mauritius.	Mauritius should ensure that all relevant entities and arrangements maintain underlying documentation, for at least five years.
Phase 2 rating: Largely Compliant	Mauritius has no enforcement experience where provisions on the availability of accounting information are recent.	Enforcement of the legal provisions on the availability of accounting information in the global business sector should be monitored.
Banking information should be available for all account-holders. *(ToR A.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(ToR B.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Largely Compliant	Mauritius has the legal framework in place to access information, including compulsory powers, but has never exercised its compulsory powers in practice, and their effectiveness cannot be assessed.	Mauritius should exercise its powers to compel information and sanction failure to provide information whenever appropriate. The implementation of these powers in practice should be monitored by Mauritius.

Determination/rating	Factors underlying recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Largely Compliant	The rights and safeguards that apply to persons in Mauritius appear to be compatible with effective exchange of information. Some of them have not yet been tested in practice to assess whether they could unduly prevent or delay exchange of information.	Mauritius should ensure that its new guidelines regarding prior notification are applied in practice.
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
Phase 1 determination: The element is in place.	One DTC limits exchange of information to the carrying out of the provisions of the Convention and does not extend to the administration and enforcement of domestic laws of the contracting states.	Mauritius should continue to negotiate with existing partners (or take steps to expedite entry into force of) new exchange of information arrangements where the existing treaties do not meet the international standard.
	Most of Mauritius's DTCs do not include paragraphs 4 and 5 of Article 26 of the Model Tax Convention in its treaties, but Mauritius has indicated that it is ready to exchange bank information even in the absence of reciprocity.	Exchange of bank information should be ensured with all Mauritius's treaty partners. Although Mauritius is willing to exchange information even in the absence of paragraphs 4 and 5 of Article 26 of the Model Tax Convention and reciprocity, Mauritius is encouraged to continue upgrading the exchange of information provision in its treaties to include paragraphs 4 and 5, to secure the benefit of reciprocity from its treaty partners, especially those jurisdictions that are unable to do so without paragraphs 4 and 5 being explicitly provided

Determination/rating	Factors underlying recommendations	Recommendations
Phase 2 rating: Largely Compliant	The Mauritian competent authority has faced difficulties in some cases in deciding whether a request meets the foreseeably relevance standard.	Mauritius is encouraged to continue communicating quickly with its treaty partners when the competent authority is unsure that the received request meets the foreseeably relevance standard.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
Phase 1 determination: The element is in place.	Mauritius is actively negotiating a number of new treaties, protocols or TIEAs (Tax Information Exchange Agreements) to upgrade its oldest treaties that do not meet the standard. Although Mauritius has a wide treaty network, it does not have a DTC with some of its important trade partners.	Mauritius should continue to develop its EOI network with all relevant partners.
Phase 2 rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		

Determination/rating	Factors underlying recommendations	Recommendations
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		
Phase 2 rating: Largely Compliant	In the past, when the information requested was not available in Mauritian tax files or the person concerned did not provide the information, it has taken too long to obtain information from third parties. The competent authority has adopted a Procedure Manual very recently. It sets new deadlines for different steps of an exchange of information procedure but it is too recent for its implementation to be assessed at this stage	Mauritius should continue respecting the deadlines recently introduced in its new Procedure Manual and ensure responses or updates are received by treaty partners within 90 days of receipt. In addition, the competent authority should continue monitoring the implementation of the Manual as practice develops, and improve it where needed.

Annex 1: Jurisdiction's Response to the Report[56]

Mauritius would like first of all to put on record its appreciation for the hard work undertaken by the Expert Team of assessors, particularly given the complex nature of, and the parameters set for, the exercise.

We are thankful to the Secretariat for having given us the opportunity to present our views on our draft ratings before the PRG.

We are reproducing below the important points made in the comments we submitted prior to the PRG meeting. We still believe that those views are highly relevant for our rating purposes.

A.1 – Phase 1 rating

The recommendation under this sub-heading is for Mauritius to establish an obligation on a resident trustee of a non-resident foreign trust administered in Mauritius to maintain information on the settlor, trustee and beneficiaries.

As already reported, where a resident trustee is a management company or is professional trustee, there is already a legal requirement for the trustee to maintain the required information. Where the trustee is not a qualified trustee (i.e. not a management company or a professional trustee) he is still required for banking purposes to carry out the due diligence exercise and provide information relating to the settlor and the beneficiaries to the bank.

In practice, it is unthinkable that a foreign settlor will appoint a "lay man" in Mauritius as trustee to administer a non-resident foreign trust. He will rather wish to ensure that the trust is ably and properly administered by somebody who is qualified for the job.

We therefore submit that this is a very minor issue which is merely a theoretical issue. We have never come across such a case in practice. We have, however, amended the Trusts Act to implement the recommendation.

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

The draft rating for this item is "largely compliant". Given the immateriality of the issue and for the sake of consistency with the ratings of other jurisdictions, we request that the rating be uplifted to "compliant".

B.1

As stated in the report Mauritius has the legal framework in place to access information, including compulsory powers. The recommendation in the report is for Mauritius to exercise its compulsory powers to compel information and sanction failure to provide requested information.

In our opinion this recommendation does not indicate any shortcoming. So far Mauritius did not have to use its compulsory powers as taxpayers have always been complying with our request for information. The review has not identified any case where there has been non-compliance in the production of information for exchange purposes nor have we failed to sanction any non-compliance.

It is our view that Mauritius should score a "compliant" rating for B1. What will happen if we continue not getting any case of non-compliance? Does this mean that Mauritius will continue to be rated "largely compliant"?

As stated in the Note on Assignment of Phase 2 Ratings, a rating depends on the seriousness of Phase 2 recommendation. The recommendation does not, we repeat, reflect any shortcoming – the question of "seriousness" does not arise.

B.2

The report recommends the application of guidelines regarding prior notification. As stated at paragraph 206 in the report, Mauritius has no legal requirement for prior notification. The Procedure Manual incorporates guidelines that have been applied in practice to ensure information is exchanged in time.

There is no case identified where prior notification procedure has been applied and which has delayed information exchange. This recommendation too does not indicate any shortcoming. It merely recommends that we should continue to ensure that the guidelines are effectively applied in practice. No treaty partner has ever complained that information exchange has been delayed because of prior notification.

We therefore request that the rating be upgraded to "compliant" as the site review has not revealed any shortcoming in practice.

C.1

The Phase 1 recommendation is for Mauritius to continue upgrading its existing treaties. The Phase 2 recommendation is for Mauritius to continue communicating quickly with its treaty partners about the foreseeably relevance standard.

Both recommendations speak about the need to continue actions that Mauritius is already undertaking. Again, these recommendations cannot be considered as shortcomings.

The Phase 2 recommendation was made with reference to one particular case where we wrote to our treaty partner to enquire about the actions the partner had taken in its own jurisdiction to get bank statements of its own residents prior to asking us to obtain the bank information.

It was not a "foreseeably relevance" case. The case has since long been abandoned by our treaty partner.

Thus, the Phase 2 recommendation does not necessarily have its *raison d'être* since the case was an isolated one with no bearing on the foreseeably relevance standard. We could add here that we did not forcefully challenge this recommendation earlier since we did not expect that it would impact on our rating.

C.5

The recommendation is for Mauritius to continue respecting deadlines and to continue monitoring implementation of the Procedure Manual.

Again, Mauritius is advised to continue actions that it puts into practice to ensure effective EOI. No shortcoming is identified which requires remedial actions. We are prepared to provide recent statistics to prove that deadlines are effectively met. There is no treaty partner that can complain about any delay. In many cases, we are able to exchange information within weeks. We request that the rating for C5 be upgraded to "compliant".

Overall rating

The A.1 and A.2 Phase 2 ratings are "largely compliant". We do agree with those ratings since the legal amendments brought to implement the Phase 2 recommendations have not yet been examined by the assessing team.

We have requested for another supplementary report which, we understand, will be discussed at the PRG meeting early next year.

We do hope the assessing team will, when drafting the ratings for Mauritius, take into account the comments we are making here and the steps we have taken to implement the Global Forum recommendations.

Annex 2: List of All Exchange of Information Mechanisms

	Treaty partner	Type of EOI arrangement	Date signed	Date in force
1	Germany	DTC	15-Mar-78	1-Jan-81
2	France	DTC	11-Dec-80	17-Sept-82
		Protocol	23-Jun-11	Ratified by Mauritius on 6-Aug-11
3	United Kingdom	DTC	11-Feb-81	26-Oct-87
		Protocol	10-Jan-11	Ratified by Mauritius on 28-May-11
4	India	DTC	24-Aug-82	11-June-85
5	Italy	DTC	09-Mar-90	28-April-95
		Protocol	09-Dec-10	Ratified by Mauritius on 28-May-11
6	Zimbabwe	DTC	06-Mar-92	5-Nov-92
7	Sweden	DTC	23-Apr-92	21-Dec-92
8	Malaysia	DTC	23-Aug-92	19-Aug-93
9	Swaziland	DTC	29-Jun-94	8-Nov-94
10	China (People's Rep.)	DTC	01-Aug-94	4-May-95
		protocol	05-Sept-06	25-Jan-07
11	Madagascar	DTC	30-Aug-94	4-Dec-95
12	Pakistan	DTC	03-Sep-94	19-May-95
13	Luxembourg	DTC	15-Feb-95	12-Sept-96
14	Namibia	DTC	04-Mar-95	25-July-96
15	Belgium	DTC	04-Jul-95	28-Jan-99
16	Singapore	DTC	19-Aug-95	07-June-96
17	Russia	DTC	24-Aug-95	
18	Botswana	DTC	26-Sep-95	16-March-96

19	Sri Lanka	DTC	12-Mar-96	2-May-97
20	South Africa	DTC	05-Jul-96	20-June-97
21	Mozambique	DTC	14-Feb-97	8-May-99
22	Kuwait	DTC	24-Mar-97	1-Sept-98
23	Lesotho	DTC	29-Aug-97	9-Sept-04
24	Thailand	DTC	01-Oct-97	10-June-98
25	Oman	DTC	30-Mar-98	20-July-98
26	Nepal	DTC	03-Aug-99	11-Nov-99
27	Cyprus[57]	DTC	21-Jan-00	12-June-00
28	Rwanda	DTC	30-Jul-01	14-April-03
29	Senegal	DTC	17-Apr-02	15-Sept-04
30	Croatia	DTC	06-Sep-02	9-Aug-03
31	Uganda	DTC	19-Sep-03	21-July-04
32	Barbados	DTC	28-Sep-04	28-Jan-05
33	Seychelles	DTC	11-Mar-05	22-June-05
		Protocol	03-Mar-11	Ratified by Mauritius on 28-May-11
34	United Arab Emirates	DTC	18-Sep-06	31-July-07
35	Tunisia	DTC	12-Feb-08	28-Oct-08
36	Qatar	DTC	28-Jul-08	28-July-09
37	Bangladesh	DTC	21-Dec-09	
38	Australia	TIEA	08-Dec-10	Ratified by Mauritius on 11-Feb-11

The text of most DTCs is available on the website of the Mauritius Revenue Authority at: www.gov.mu/portal/sites/mra/dta.htm.

57. Footnote 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 United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Footnote by all the European Union Member States of the OECD and the European Commission: 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."

Annex 3: List of Laws, Regulations and Other Relevant Material

Income Tax Act 1995 at www.gov.mu/portal/sites/mra/legis.htm

Income Tax (Foreign Tax Credit) Regulations 1996 at www.gov.mu/portal/sites/mra/legis.htm

Amendments to Section 153 of the Income Tax Act (24 December 2010)

Procedure Manual on Exchange of Information (updated February 2011)

Companies Act 2001 at www.gov.mu/portal/sites/ncb/fsc/legisnguides.html

Amendments to the 14th Schedule to the Companies Act (12 July 2011)

Companies (Amendment) Regulations 2006 at www.gov.mu/portal/sites/ncb/fsc/legisnguides.html

Protected Cell Company Act 2005 at www.gov.mu/portal/sites/ncb/fsc/legisnguides.html

Code de Commerce

Code civil

Trusts Act 2001 at www.gov.mu/portal/sites/ncb/fsc/legisnguides.html

Registration Duty Act at www.gov.mu/portal/goc/registrar/file/regdty09.pdf

Financial Services Act 2007 at www.gov.mu/portal/sites/ncb/fsc/legisnguides.html

Banking Act 2004 at http://bom.intnet.mu/?id=90601

Bank of Mauritius Act 2004 at http://bom.intnet.mu/?id=90600

Financial Intelligence and Anti Money Laundering (Amendment) Regulations 2006

Financial Intelligence and Anti Money Laundering Act 2002 (FIAMLA) at www.gov.mu/portal/sites/ncb/fsc/legisnguides.html

Financial Intelligence and Anti Money Laundering Regulations 2003 at www.gov.mu/portal/sites/ncb/fsc/legisnguides.html

Bank of Mauritius Guidance Notes on Anti-Money Laundering and Combating the Financing of Terrorism for Financial Institutions, as amended on 31 December 2009 at http://bom.intnet.mu/?id=90721

Mutual Assistance in Criminal and Related Matters Act 2003

Annex 4: Persons Interviewed During the On-site Visit

The assessment team met with representatives of the following entities:

Mauritius Revenue Authority

Director-General

Director of the Large Taxpayers Departments

Members of the International Taxation Unit

Financial Services Commission

Chief Executive

Executive

Lawyers

Registrar of Companies

Acting Deputy Registrar of Companies

Principal Compliance Officer of Global Business Category 1 Section

Principal Compliance Officer of Global Business Category 2 Section

Acting Chief Compliance Officer of Complaints Section

Principal Compliance Officer of Incorporation and Information Section

Systems Analyst of IT Section

Bank of Mauritius

Head, Regulation, Policy and Licensing

Director, Change, Management Office

Attorney-General's Office and Ministry of Justice

Principal State Counsel

Ministry of Finance

Minister

Counsellors to the Minister

Judiciary

Supreme Court judge

Financial Intelligence Unit

Director

Management companies

Annex 5: Letter to Treaty Partners

Doc2

01 September 2010

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Dear Sir,

Exchange of Information

1. We are pleased to inform you of the organisational structure we have put in place at the MRA to ensure effective exchange of information with our treaty partners in a timely manner.

2. Exchange of information under tax treaties and other international taxation issues are dealt with by a dedicated International Taxation Unit attached to the Large Taxpayers Department. A Procedure Manual where clear timelines have been set for effective exchange of information has been adopted since early this year. An acknowledgement letter is required to be sent within a period of 7 days to all treaty partners making a EOI request. All efforts are made to ensure that EOI requests are satisfied within a period of 90 days.

3. The Financial Services Act was amended last year to require companies holding a Category 2 Global Business Licence (GBC2 companies) to submit to the Financial Services Commission (FSC) their annual financial summary as well as information on beneficial ownership.

4. The MRA and the FSC have recently signed a Memorandum of Understanding which sets out the framework for effective exchange of information between the two Authorities. The MRA is now able to exchange information on GBC2 companies as well.

5. Mauritius has the power under its laws to access bank information for exchange purposes. We can exchange such information on request from any of our treaty partners even in the absence of any explicit provisions to that effect in our treaty with the partner and whether or not the partner provides a reciprocal treatment to our information requests.

6. We hope the above information would help to give a better understanding of the MRA commitment to exchange tax information in a prompt manner. We undertake to keep you informed of any major amendments to our tax law and system.

7. For any further clarifications or EOI request, you may wish to address to –

Mr. Mustupha Mosafeer
Director
International Taxation Unit
Large Taxpayers Department
Tel: 2076000
Fax: 20676053
e-mail: mustupha.mosafeer@mra.mu

Yours faithfully

M. Mosafeer

for Director-General

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, COMBINED: PHASE 1 + PHASE 2, incorporating Phase 2 ratings – MAURITIUS

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by 120 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 *OECD Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the *OECD Model Tax Convention on Income and on Capital* and its commentary as updated in 2004. The standards have also been incorporated into the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

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 review reports, please refer to ***www.oecd.org/tax/transparency*** and ***www.eoi-tax.org***.

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