

## **2016 METHODOLOGY FOR PEER REVIEWS AND NON-MEMBER REVIEWS**

### **I. INTRODUCTION**

1. The Global Forum at its 1-2 September 2009 meeting in Mexico decided to engage in a robust and comprehensive monitoring and peer review process. In order to carry out an in-depth monitoring and peer review of the implementation of the standard of transparency and exchange of information for tax purposes, the Global Forum set up a Peer Review Group (PRG), which developed the detailed terms of reference and the methodology for a robust, transparent and accelerated process.

2. The Terms of Reference for the first round of peer reviews were adopted by the Global Forum in February 2010 (hereafter the 2010 Terms of Reference). They break down the international standard for transparency and exchange of information on request (hereafter EOIR) into ten essential elements which ensure the availability of, the access to, and the exchange of all information foreseeably relevant for tax purposes. The methodology for the first round of peer reviews was also adopted by the Global Forum in February 2010 (hereafter the 2010 Methodology). The 2010 Methodology has been updated twice since its initial adoption in order to provide for a post-Phase 1 and a post-Phase 2 supplementary report procedure in 2011 and 2013 respectively<sup>1</sup>.

3. The first round of reviews was conducted via a two-stage process, involving a Phase 1 review, which assessed the legal and regulatory framework for transparency and the exchange of information for tax purposes and a Phase 2 review, which assessed the implementation of the standard in practice. Members that had a lot of experience in exchanging information were subject to ‘combined’ reviews, having both a Phase 1 review and a Phase 2 review at the same time. The determinations and ratings for each of the ten elements as well as the overall rating were guided by the Note on the Assessment Criteria (hereafter the 2010 Assessment Note). The first round of reviews was carried out according to a six year schedule which commenced in March 2010 (hereafter the 2010 Schedule) with the final reviews being launched in the last quarter of 2015.

4. At its November 2013 plenary meeting in Jakarta, the Global Forum agreed that another round of peer reviews with respect to EOIR would be initiated following the completion of the existing 2010 Schedule. With the final reviews from the 2010 Schedule to be launched by the last quarter of 2015, the second round of reviews shall commence in 2016 in accordance with the 2016 Schedule of Reviews (hereafter the 2016 Schedule).

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<sup>1</sup> All references to the 2010 Methodology include these subsequent revisions.

5. The 2010 Terms of Reference and 2010 Methodology as developed by the PRG for the first round of reviews form the basis for the 2016 Terms of Reference and 2016 Methodology. In light of the experience gained in carrying out the first round of reviews as well as the revision to the terms of reference, certain aspects of the 2010 Methodology have been substantially amended. The main changes include the fact that all reviews under the second round of reviews will now be carried out as a combined review. The supplementary report procedure has also been modified and other aspects of the Methodology have also been amended in order to reflect the best practices adopted over the course of carrying out the first round of reviews.

6. The 2016 Methodology for Peer Reviews and Non-Member Reviews was adopted by the Global Forum at its meeting on 29-30 October 2015 (the 2016 Methodology) and shall be applicable to all reviews conducted during the 2016 Schedule.

7. There are a number of general objectives and principles that govern the Global Forum monitoring and peer review process:

**Effectiveness.** The mechanism must be systematic and provide an objective and coherent assessment of whether a jurisdiction has implemented the standard.

**Fairness.** The mechanism must provide equal treatment for all jurisdictions under review. Peer review of Global Forum members is an exercise among peers that can be frank in their evaluations. Reviews of non-members should be conducted only after a jurisdiction has been given the opportunity to participate in the Global Forum. The review process should provide the jurisdiction with an adequate opportunity to participate in its evaluation by the Global Forum.

**Transparency.** The mechanism will need to include a process for providing regular information to the public on the Global Forum work and activities and on implementation of the standard. This general responsibility must be balanced against the need to ensure confidentiality of the information in order to facilitate frank evaluation of performance.

**Objectivity.** The mechanism should rely on objective criteria. Jurisdictions must be assessed against the internationally agreed standard in accordance with an agreed methodology.

**Cost-efficiency.** The mechanism should be efficient, realistic, concise and not overly burdensome. It is necessary, however, to ensure that monitoring and peer review are effective, since together with the standard, they guarantee the level playing field. A high degree of procedural cooperation is necessary both for effectiveness and cost efficiency.

**Co-ordination with other organisations.** The mechanism should aim to avoid duplication of effort. Efforts should be made to use and take account of existing resources, including the Global Forum peer review reports and, where appropriate, relevant findings by other international bodies including standard setting bodies such as the FATF<sup>2</sup> that engage in monitoring of performance in related areas. The FATF assessments<sup>3</sup> are a complementary authoritative source of the work of the Global Forum, and in those cases

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<sup>2</sup> The reference to FATF assessments includes the assessments carried out for the same purposes by all other FATF regional style bodies, including, Moneyval, GAFI and by the IMF.

<sup>3</sup> It is noted that the purpose for which the FATF materials have been produced (combatting money-laundering and terrorist financing) are different from the purpose of the standard on EOIR (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the 2016 Terms of Reference do not evaluate issues that are outside the scope of the Global Forum's mandate. See 2016 Terms of Reference, Annex 2.

where those assessments have been published prior to the launch of the peer review, they should be carefully examined in the context of the EOIR reviews. In particular, where the facts and circumstances remain similar, the report has been published relatively recently (within 12 months of the launch of the peer review) and where the conclusions are relevant in respect of beneficial ownership for the purposes of the terms of reference, the FATF assessments may be considered to have persuasive value in the conducting of the reviews.

8. The 2016 Methodology sets forth procedures for the peer review of members and the equivalent review of non-members. It identifies the procedures and steps in the peer review process and additional procedures for reviews of non-members.<sup>4</sup>

9. Generally, over the first round of reviews, all reviews were conducted in two phases. Phase 1 reviewed the legal and regulatory framework for transparency and the exchange of information for tax purposes and Phase 2 reviewed the implementation of the standard in practice. For jurisdictions that had considerable experience in exchanging information on request, a Combined Phase 1-2 review encompassing both review of the legal and regulatory framework (Phase 1) and the implementation of the standard in practice (Phase 2) was carried out.

10. In light of the fact that the majority of Global Forum members have considerable experience with EOI, throughout the course of the second round of reviews, all members will undergo a single EOIR review which will examine both the legal and regulatory framework as well as the implementation of the standard in practice. New members will also undergo one single review covering both the legal and the practical aspects.

11. The 2016 Methodology sets out guidelines to conduct the peer reviews and the monitoring of members and non-members that have been identified as being of interest to the work of the Global Forum. They should be understood as guidelines rather than as rigid rules. The need to conduct fair, effective and transparent reviews should remain of paramount importance in applying the guidelines. However, the 2016 Methodology cannot and does not seek to address every possible contingency. During the first round of reviews, certain aspects of the 2010 Methodology were amended in light of the experience gained in carrying out the reviews. Therefore, while much of the process is well established, the PRG should expect to maintain the same approach in retaining the possibility of future modifications or improvements to the 2016 Methodology to ensure the most efficient and equitable results for all jurisdictions.

## **II. PEER REVIEWS**

### ***A. Creation of assessment teams, setting dates for evaluations and obtaining input***

12. The EOIR Review will be conducted by an assessment team. Assessment teams will usually consist of two expert assessors coordinated by one member of the Global Forum Secretariat. Expert assessors will be drawn primarily from PRG members, although Global Forum members outside of the PRG will also be eligible to provide expert assessors.

13. In selecting the expert assessors, who act in their personal capacity during the peer review process, account should be taken of the expertise and background of each assessor, the language of the

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<sup>4</sup> Annex 1 summarises the key responsibilities of each of the participants in the review process. Annex 2 presents Model Assessment Schedules. Annex 3 presents a flowchart summarising the procedure for adoption of a report. Annex 4 sets out the Framework for the attendance of Observers at the PRG meetings. Annex 5 contains the standardised form for the Follow-up report.

evaluation, the nature of the legal system (civil law or common law), and the specific characteristics of the jurisdiction (e.g. size and geographical location). The team of assessors should include at least one member who is familiar with the nature of the legal system of the assessed jurisdiction, as well as one who can provide a different perspective. In selecting the assessment team, care should be taken to avoid any potential or apparent conflict of interest. In the event that a conflict of interest arises, the assessed jurisdiction or its peers are encouraged to communicate this to the Secretariat in order to find an appropriate solution.

14. Expert assessors must be public officials drawn from relevant public authorities and should have substantial relevant experience of transparency and exchange of information for tax purposes, including relevant practical experience. Expert assessors will be provided with a handbook which will include the 2016 Methodology, the 2016 Terms of Reference and related source documents. In particular, expert assessors are encouraged to be thoroughly familiar with the 2016 Terms of Reference and the 2016 Note on Assessment Criteria.

15. The Secretariat will request each Global Forum member to designate a central point of contact to coordinate the identification of potential expert assessors to be recommended by the member. The designated central point of contact will be invited to provide the name(s) and qualifications of potential expert assessor(s). Any designated central point of contact may be requested by the Secretariat to provide the name(s) and qualifications of expert assessor(s) that would be available for a particular review within seven days of the request being received. The chair and vice-chairs of the PRG will allocate jurisdictions to provide expert assessors to each of the jurisdictions for review for the upcoming six month period based on the criteria set out in paragraph 13. To the extent practicable, expert assessors should be appointed from different jurisdictions to those that provided the assessors for the first round of review of the assessed jurisdiction.

16. The PRG will be given four days to comment on the proposal of the chair and vice-chairs of the PRG, with these comments to be taken into account to the extent possible. This process will be repeated for subsequent periods. The chair or a vice-chair, as the case may be, will not participate in the allocation of the expert assessors for the assessment of their own jurisdictions.

17. Each expert assessor could participate in parallel in a number of EOIR reviews rather than in only one review. Coverage of multiple jurisdictions would provide each participating expert assessor with a stronger comparative perspective on each jurisdiction, while reducing the number of expert assessors required to incur costs to travel to the meeting.

18. The Secretariat will fix precise dates for the carrying out of the review, consistent with the overall PRG schedule, in consultation with the assessed jurisdiction and the assessment team. The jurisdiction will advise whether it wishes to conduct the review in English or French, and additional time for translation will be provided for as needed.

### ***Review period and basis of assessment***

19. All EOIR reviews shall assess the legal implementation of the standard and its practical implementation. The last date on which changes to the legal and regulatory framework can be considered will be the date that the draft report is first sent to the PRG for written comments (hereafter 'cut-off date'). For this purpose, legislation will be considered only if it is in force by the cut-off date. Any signed EOI agreements will be analysed in the report and reflected in the Annex 2 of the draft report ("List of all exchange-of-information mechanisms"). It is noted that very complex legislation may require a longer period for analysis by the assessment team, and in these cases it would be usual for the assessment team to have had access to draft legislation (to the extent allowable under the law of the assessed jurisdiction) so

that once the legislation is in force any changes to the report can be easily incorporated prior to the cut-off date.

20. Changes to the legal or regulatory framework that take place after the cut-off date cannot be analysed or considered for the purposes of the EOIR review. However, mention of these changes may be made in the “Recent Developments” section of the report and jurisdictions may wish to mention such changes in the Annex 1 to the report (“Jurisdiction’s response to the report”). Changes to the treaty network which occur after the cut-off date may also be reflected in the “Annex 2” of the peer review report until the first reading of the report.

21. The practical implementation of the standard will be assessed over a three year period ending on the last day of the quarter, two quarters prior to the launch date of the review. For example where a review is launched in April of a particular year, the review period will end on the last day of December of the previous year.

22. In cases where there are changes to the exchange of information in practice after the end of the review period, or developments that relate to requests received during the review period, these may be reflected in the report up until the first reading of the report at the PRG meeting. However, in such cases the assessment team must be careful to fully explain its ability to evaluate and assess information provided at a late stage, particularly where this may require cross-checking with partner jurisdictions.

23. In limited circumstances, a jurisdiction may be permitted to update information regarding practice where this can be verified by the assessment team, until the second reading of the draft report by the PRG. This will be the case where the assessed jurisdiction provides additional information following written comments from the PRG or in response to questions raised during the first reading of the draft report. For example, this is often the case with respect to statistical information.

24. Jurisdictions will be assessed against the 2016 Terms of Reference which shall be applied for the entire three year review period applicable for the EOIR review as set out in paragraph 21.

25. However, in respect of the 2016 Terms of Reference relating to replying to group requests which reflects the revised commentary to Article 26 of the OECD Model Double Tax Convention adopted in 2012 (the revised Art. 26 commentary), the period to be taken into account for review of group requests will vary as follows<sup>5</sup>:

- OECD Member countries, which adopted the revised Art. 26 commentary on 17 July 2012, will be reviewed on the basis of a 3-year period preceding the commencement of the review as determined via the formula set out under paragraph 21.
- For those OECD Members countries and other jurisdictions that adopted the revised Art. 26 commentary, but where legislative changes were required to give effect to the revision (irrespective of whether these legislative changes are applied either prospectively or retrospectively), the period taken into account for the review of group requests will commence from the date of entry into force of these legislative changes in the jurisdiction.
- For non-OECD jurisdictions that are party to the multilateral Convention on Administrative Assistance (hereafter referred to as the MAAC) or for which the MAAC has been extended, the period taken into account for the review of group requests will commence from the date of entry

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<sup>5</sup> The revised Art. 26 commentary, among other changes, clarified that requests on a group of taxpayers not individually identified (i.e. group requests) are covered under Article 26.

into force of the MAAC in those jurisdictions, unless an earlier commencement date would apply for those jurisdictions that adopted the revised Art. 26 commentary, as referred to above.

- In every case, the 2016 Terms of Reference in respect of replying to group requests will apply to the portion of any review period that is after 31 December 2015.

### ***Obtaining input from jurisdictions' peers***

26. Important to the process of peer review is the opportunity for other members of the Global Forum to provide their input into understanding the assessed jurisdiction's compliance with the standard. This applies both generally and more specifically to jurisdictions that have an exchange of information (EOI) relationship with the assessed jurisdiction<sup>6</sup>. Accordingly, members of the Global Forum will have an opportunity to provide input into the process of drafting the report by the assessment team.

27. Prior to the commencement of the EOIR review, a questionnaire (the "Peer Questionnaire") will be sent to all Global Forum members. The Peer Questionnaire will have a standard format and will require various inputs on the quality of information exchange. It will elicit information about how active the EOI relationship is, the type of information exchanged, *e.g.* bank, ownership and accounting information and the timeliness and quality of responses. It will also seek information about the difficulties, if any, that the requesting jurisdiction has faced in obtaining information from the assessed jurisdiction as well as information about positive experiences. The Peer Questionnaire will also request feedback on the completeness and quality of the requests it has received from the jurisdiction under review. Finally, Global Forum members will be asked to provide comments on any issues that have arisen since the adoption of the assessed jurisdiction's latest Global Forum Peer Review report which have impact on EOI during the review period and to indicate any issues that they would like to see raised and discussed during the assessment.

28. Partner jurisdictions should provide their responses to the questionnaire to the Secretariat within 3 weeks. While Peer Questionnaires will be sent to all Global Forum members, there is an increased responsibility on those jurisdictions that have an EOI relationship with the assessed jurisdiction to respond to it. While ensuring that confidentiality is preserved, partner jurisdictions should be specific and provide as much detail as possible to aid the assessment team and assessed jurisdiction in their efforts to analyse and evaluate the difficulties encountered. Issues or concerns previously raised by the assessed jurisdiction with the partner jurisdiction in relation to its requests should also be described by the partner jurisdiction<sup>7</sup>. Responses will be made available to the assessment team and to the assessed jurisdiction.

29. The assessment team will analyse the peer input to identify issues and to develop appropriate questions for the assessed jurisdiction to allow it to respond to any concerns. These questions should be sent to the assessed jurisdiction concurrently with the formal issuance of the standard EOIR questionnaire (see below). In assessing responses to the Peer Questionnaire, the assessment team should take into account the nature of the EOI relationship and the degree of detail provided by the partner jurisdiction. Further, the assessment team will also carefully evaluate the views expressed in the input provided by the requesting/requested partner jurisdiction.

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<sup>6</sup> In this regard, an EOI relationship should be understood to refer to one that meets the information exchange standard set forth in the Model Agreement on Exchange of Information on Tax Matters and in Article 26 of the OECD Model Tax Convention on Income and on Capital or any other agreement with a partner jurisdiction(s) that provides for the exchange of information.

<sup>7</sup> For example, if a partner jurisdiction is aware that the assessed jurisdiction is concerned about a lack of confidentiality or lack of reciprocity on behalf of the partner jurisdiction, it should make such issues known, so that the review may proceed more expeditiously.

30. Documents produced by Global Forum members concerning an assessed jurisdiction (*e.g.* responses to the questionnaire, proposed questions for the assessed jurisdiction, and responses by the assessed jurisdiction) will be treated as confidential and will not be made publicly available<sup>8</sup>.

31. Because peer review is an intergovernmental process, business and civil society groups' participation in the formal evaluation process and in particular, in the evaluation exercise and the discussions in the PRG or Global Forum is not foreseen. The publication of the schedule of upcoming reviews would enable business and civil society groups to provide information or opinions if they so wish. However, as the process works on the basis of a peer review system, the report ultimately reflects the views of the peers of the assessed jurisdiction.

### ***Getting responses from the assessed jurisdiction to the questionnaire***

32. From the perspective of the assessed jurisdiction, the first step in the review is the receipt of the EOIR questionnaire from the Secretariat (the EOIR questionnaire). The EOIR questionnaire for the assessed jurisdiction will have a standard format. It will generally be supplemented by jurisdiction-specific questions. These may include questions regarding specific institutions or procedures in the assessed jurisdiction, issues raised by other Global Forum members (see above) and issues arising from its most recent Global Forum peer review report. At the time of sending the EOIR questionnaire to the jurisdiction, a copy of its most recent Global Forum peer review report (along with a link to the on-line version) and a copy of its responses to the questionnaires as submitted during the first round of reviews will also be sent to the jurisdiction.

33. The EOIR questionnaire will encompass both the legal and regulatory framework and EOIR in practice and will include requests for quantitative data (including statistical information as specified in the EOIR Questionnaire) allowing meaningful review of the treatment of requests and the period between request and response, and qualitative data in order to help assess the reliability and relevance of information provided to the requesting jurisdictions. It will also allow the assessed jurisdiction to comment on the completeness and quality of the requests it has sent to its exchange of information partners.

34. The questionnaire format is designed to facilitate the preparation of a focussed and relevant response. Jurisdictions should provide a detailed description (and analysis where appropriate) of the relevant measures and actions, including appropriate citations from supporting laws or other material.

35. All necessary laws, regulations, guidelines and other relevant documents should be available in the language of the review and the original language (unless otherwise agreed with the assessment team), and both these documents and the responses to the questionnaire should be provided in an electronic format. The time required for translation of documents must be taken into account by the jurisdiction under review. Where English or French is not the native language of the assessed jurisdiction, the process of translation of relevant laws, regulations and other documents should start at an early stage.

36. Documents produced by an assessed jurisdiction during a review (*e.g.* documents describing a jurisdiction's regime, responses to the questionnaire, or responses to assessors' queries) and by the Secretariat or assessors (*e.g.* reports from assessors, draft reports, etc.) will be treated as confidential and

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<sup>8</sup> To ensure appropriate confidentiality with respect to the Peer Questionnaire, prior to circulation of a report to the PRG, a partner jurisdiction that is explicitly or implicitly identified in the text of the draft report will be given the opportunity to review and comment upon any text in the report that explicitly or implicitly identifies that partner jurisdiction. The partner jurisdiction will be given the opportunity to request changes that allow its identity to remain anonymous from the PRG and the public (although not the assessment team or the assessed jurisdiction, which will have seen earlier drafts of the report as well as the peer input).

should not be made publicly available, unless the assessed jurisdiction, the assessment team and the Secretariat consent to their release. In cases where documentation may include information related to the interests of another jurisdiction, consent for their release should also be obtained from that jurisdiction. Strict respect of the confidentiality of the work is a must for the credibility of the process. Any breach of the confidentiality of the process shall be brought to the attention of the PRG Chair and vice-Chairs, who shall decide on the most appropriate action, in consultation with the PRG as appropriate.

37. The assessed jurisdiction should provide its responses to the EOIR questionnaire (and any additional questions) within a maximum of six weeks of receipt of the EOIR questionnaire.

### ***B. The on-site visit***

38. On-site visits are an important aspect of the EOIR reviews. They provide the assessed jurisdiction with an opportunity to participate more fully in its evaluation and allow an open, constructive and efficient dialogue between the assessed jurisdiction and the assessment team. Face-to-face dialogue will help avoid misunderstandings and improve the quality of the resulting draft report, and ultimately may avoid the need for an oral discussion at the PRG. It will also focus high level government attention on any existing deficiencies in jurisdiction's practices in the area of transparency and exchange of information. In exceptional cases, where the assessment team considers that an on-site visit would serve no useful purpose, the assessment team should present its views in writing to the members of the PRG. If there is no objection within 1 week and the assessed jurisdiction agrees, then the on-site visit will be dispensed with.

#### *a) Timing*

39. Each Global Forum member jurisdiction agrees to allow an on-site visit of approximately two – four days, or longer as appropriate, for the purpose of providing information from a variety of sources concerning its law and practice with regard to the issues covered by the EOIR review. The schedule should provide for the on-site visit taking place after the receipt of the responses to the questionnaire.

#### *b) The agenda for the on-site visit*

40. The primary goal of the on-site visit should be to obtain evidence required to evaluate the assessed jurisdiction's overall effectiveness in exchanging requested information. The on-site visit should be carried out in accordance with an agenda programme agreed between the assessed jurisdiction and the assessment team, taking account of the specific requests expressed by the team. The agenda should be finalised by the assessed jurisdiction at least one week before the on-site visit.

41. The focus of the on-site visit will be primarily on the assessed jurisdiction's competent authority and all of the agencies and entities with which it may interact in the process of responding to information requests. Where relevant for assessing the practice of the availability of, access to, or exchange of information, the assessment team may also meet with other government entities, such as supervisory or regulatory bodies. Further, in cases where non-government entities (such as company service providers) or bodies (for example, associations of self-regulated professions such as the local Bar Association or Chamber of Notaries) have a role in the assessed jurisdiction that impacts directly on the availability of, access to, or exchange of information, assessment teams may also meet with such entities or representatives of such bodies in the course of the on-site visit.

42. The nature of the discussions over the course of all meetings during the on-site visit will depend on the legal and regulatory institutions and policies of the assessed jurisdiction. Discussions should encompass both potential areas of weaknesses and of best practices in all areas covered by the standard, as set forth in the 2016 Terms of Reference. The inability of the assessment team to meet with entities or bodies in the assessed jurisdiction which have a specific role that impacts directly on the availability of,

access to, or exchange of information may mean that the assessment team will be unable to conclude positively that the standard is met.

### *C. Compiling Information for the EOIR Review*

43. The assessment team shall consider comprehensively the legal and regulatory framework of the assessed jurisdiction in order to assess its adequacy for meeting the standard for transparency and exchange of information.

44. In assessing the practice of the jurisdiction, typical areas of investigation that the assessment team would consider include the following:

- The degree to which in practice information is maintained and by whom, including the oversight and enforcement activities applied to those persons who are obliged to maintain information.
- The practical application of the jurisdiction's compulsory powers to obtain information.
- The timeliness of the jurisdiction's responses in relation to different types of requests for information, e.g. bank, ownership and accounting information, and any factors contributing to delays in response times.
- The quality and completeness of EOI requests made by the assessed jurisdiction. EOI partners will provide inputs on the quality of the requests received from the assessed jurisdiction. The assessed jurisdiction will be reviewed for the quality of the requests it has made during its EOIR review and will be based on a common set of questions set out in the EOIR questionnaires, with additional questions based on the particular facts and circumstances including the peer input received.
- The quality and completeness of EOI responses provided by the assessed jurisdiction. EOI partners will provide inputs on the quality of the responses provided by the assessed jurisdiction. The assessed jurisdiction will be reviewed for the quality of the responses it has provided during its EOIR review and will be based on a common set of questions set out in the EOIR questionnaires, with additional questions based on the particular facts and circumstances including the peer input received.
- The comprehensiveness of the jurisdiction's exchange of information program such as the tools and processes that have been implemented in the jurisdiction for the processing of exchange of information requests (e.g. the use of EOI manuals and EOI databases).
- The adequacy of the organisational structure and resources having regard to the exchange of information demands made on the jurisdiction.
- The practical application of the jurisdiction's rules regarding the confidentiality of information exchanged.

45. In order to engage in the cross-checking that is at the core of the assessment of EOI in practice, the circumstances involved in cases where the exchange of information process was seen as unsatisfactory by partner jurisdictions should be explored. This may require consultation with partner jurisdictions, in particular cases, to understand all of the relevant facts and circumstances for the assessment team to be able to evaluate the issue. Because of the confidentiality of tax information, however, the assessment team will not generally be expected to have access to the actual requests for information and the responses from

the requested jurisdiction. It is recognised that the confidentiality of information that identifies a specific taxpayer is a fundamental principle of the standard and jurisdictions' domestic laws.

46. However, in cases where negative feedback has been provided or there are differing accounts of the partners concerning a request or response, the assessed jurisdiction should provide the assessment team with a sufficiently detailed description of the facts and circumstances of the request or response. This should be verified by the assessment team with the requesting/requested jurisdiction. The role of the assessment team in liaising with the two partners in order to reconcile the versions of the request or response should provide a positive effect in itself by facilitating a dialogue between the two partners and resolving the issue. This process may take place any time prior to the cut-off date of the report, but should be commenced as soon as the issue is identified in order to facilitate agreement on the facts.

47. In cases where the assessment team is unable to reconcile the accounts of the two jurisdictions concerning a request and/or response, it may be appropriate for the assessment team to request a redacted copy of the request and/or response (*i.e.*, the original request with all confidential information rendered illegible) to the extent permitted by the domestic laws of both jurisdictions. In such a case, the redacted text must be agreed by both the assessed jurisdiction and the partner jurisdiction to ensure that it does not disclose any confidential information. A jurisdiction may take the view that all parts of the original request are covered by confidentiality rules and should not be disclosed to the assessment team. Where jurisdictions are unable to provide redacted copies of requests or responses, this will not have an impact on the assessment of the assessed jurisdiction. Nevertheless, it is the responsibility of both parties to ensure that the clear factual position of such cases can be presented to the PRG.

#### ***D. Completing the draft report for the PRG***

48. The EOIR report will be initially drafted after the on-site visit. Following the on-site visit, the Secretariat will prepare the draft report in four to six weeks.

49. The Secretariat will cross-check other Global Forum peer review reports to ensure consistency of evaluation across reports. The initial draft reports on the assessed jurisdictions will be provided to the assessors for review and the assessors will be expected, as much as possible, to independently cross-check the reports against other assessments of the Global Forum in order to ensure consistency across assessments. The assessment team may ask additional questions to the assessed jurisdiction during the course of drafting.

50. The additional steps in finalising a draft report prior to a PRG meeting, and the approximate time that is required for each step, are as follows (see also Annex 2):

- i. Expert assessors to provide comments on the draft report to the Secretariat (maximum two weeks).
- ii. Secretariat to revise the draft report in light of the assessor comments. Draft report containing the executive summary to be sent to the assessed jurisdiction (maximum one week).
- iii. Jurisdiction to provide comments to the Secretariat (maximum six weeks), which are forwarded to the assessors for their views.
- iv. Assessment team to review the jurisdiction's comments and decide on the changes that need to be made to the draft report (maximum two weeks).

51. It is important to note that the assessors and the jurisdiction need to respect the timetables, since delays may significantly impact the ability of the PRG to discuss the report in a meaningful way. By agreeing to participate in the review process, the jurisdiction and the assessors undertake to meet the

necessary deadlines and to provide full and accurate responses, reports or other material as required under the agreed procedure.

52. The assessment team should endeavour to explain these timetables to the assessed jurisdiction to ensure a timely completion of the draft report. Where, in the view of the assessment team, there is a significant failure to comply with the agreed procedure that may compromise the peer review process of that jurisdiction, the assessment team should refer the matter to the PRG chair and vice-chairs who shall take into consideration the jurisdiction's views and assessment team's explanations and shall take appropriate measures. The following examples illustrate the types of actions that could be taken:

- i. Failure by the jurisdiction to provide a timely or sufficiently detailed response to the questionnaire or additional questions in the eyes of the assessment team could lead to the deferral of the review, and the PRG chair may write to the head of delegation or the relevant Minister in the jurisdiction. The PRG is to be advised as to reasons for deferral so that it may consider appropriate action.
- ii. Upon a failure by the jurisdiction to provide a timely response to the draft report, the chair may write a letter to the head of delegation or where appropriate, the relevant Minister in the jurisdiction. Where the delay results in a report not being discussed, the PRG is to be advised of the reasons for deferral so that it may consider appropriate action, including with regard to disclosure of the name of the jurisdiction.

53. Throughout the drafting of the report, the assessed jurisdiction and the assessment team should take all reasonable steps to resolve any differences or difficulties. To this end, the assessed jurisdiction is encouraged to provide as much information and material as possible for the assessment team to complete its report. However, the information can only be taken into consideration to the extent that it can be effectively analysed and verified by the assessment team as set out in paragraphs 43 to 47 above.

#### ***E. Circulation of the report to the PRG and the PRG meeting***

##### **a) Circulation of the report to the PRG for comments**

54. The Secretariat will send the draft reports and executive summaries to all PRG members at least seven weeks prior to the PRG meeting and they will be given four weeks to provide comment.

55. There is the possibility for draft reports to be approved by the PRG under a written procedure. When there is agreement between the assessment team and the assessed jurisdiction on the content of the draft report, then the draft report is sent to the PRG for approval by written procedure. If no comments or objections by any PRG member are received within four weeks from circulation of such draft, it is considered to be approved by the PRG.

56. Draft reports that are not approved by written procedure will be discussed orally during the PRG meeting. PRG members making comments or objections should explain clearly the basis for their comments or objections so that the assessment team and the assessed jurisdiction have a proper appreciation of them. A document containing a compilation of all comments or objections on each draft report along with responses by the assessment team ("Table of Comments") will be sent to the PRG members at least seven days prior to the meeting. In the event that there are differences or difficulties between the assessment team and the assessed jurisdiction at the time the report is circulated to the PRG, the assessed jurisdiction may submit comments outlining its concerns or disagreement with the draft report and these comments shall also be included in the Table of Comments.

57. The assessment team, in consultation with the assessed jurisdiction, will address all comments or objections received. The Secretariat will then circulate any amended draft reports including editorial

adjustments and substantive comments the assessment team considered appropriate as early as possible and at the latest seven days before the meeting. Outstanding issues will be highlighted by the Secretariat in the Table of Comments which will be submitted to the PRG, along with an amended version of the draft report, including any comments or objections of the assessed jurisdiction documenting the outstanding issues it has with the draft report.

#### b) PRG Meeting

58. The Chair of the PRG, the Secretariat, at least one delegate from each PRG member jurisdiction, representatives from the assessed jurisdiction and all members of the assessment team are expected to attend the PRG meeting. Jurisdictions that have ongoing reviews are permitted to attend as observers one of the two PRG meetings preceding that in which their draft report is scheduled to be examined. Their attendance is governed by the “Framework for the attendance of observers at PRG meetings” (Annex 4). All attendees at the PRG meeting are under a strict duty of confidentiality regarding all matters discussed at the PRG meeting and all draft reports remain strictly confidential until such time as they have been adopted and published by the Global Forum.

59. The procedure for the discussion of a draft report and its executive summary at the PRG meeting will be as follows:

60. During the first reading, the following steps will be taken:

- i. Assessment team briefly introduces itself and provides a very brief overview of the report and the review process. This is followed by the opening statement from the assessed jurisdiction. At this stage, the assessed jurisdiction may address any aspects of the draft report including any outstanding issues. However, such references should be at a high level, since there will be an opportunity to discuss these in detail during the reading of the report. Requests for editorial changes should not be discussed orally but provided to the assessment team separately.
- ii. The Chair of the PRG then asks the assessment team to present a brief overview of the introduction section of the draft report highlighting issues of significance and any other factors which may impact on the implementation of the international standard (e.g. such as the hierarchy of laws or any recent developments).
- iii. The Chair of the PRG then asks the assessment team to present a brief overview of the first element of the draft report focusing on the substantive outstanding issues and the basis for the rating chosen. The assessed jurisdiction may then comment on that element of the draft report. Following this, the Chair opens the floor to the PRG members for questions or requests for clarification on that element of the draft report. As a matter of good practice, delegations should generally not raise comments that they have not previously raised in writing, although it is recognised that circumstances may arise in the course of the PRG discussion which may permit a new comment to be reasonably raised. Should a delegation wish to bring up a new issue, it should, where possible, inform the assessment team and the assessed jurisdiction in advance of the discussion. The first reading of the draft report shall proceed in this manner for each element of the draft report. If there are no requests for changes by the PRG, the Chair will ask the PRG if the determinations and ratings are agreed.
- iv. The executive summary is presented by the assessment team at the end of the first reading of the draft report at which time the Chair will also open the floor to the PRG members for questions or requests for clarification on the contents of the executive summary. However, if there remain any ratings or determinations that have not been approved during the first reading, then the executive

summary may not be considered during the first reading. In agreeing the wording of the draft report, the PRG should give careful consideration to the views of the assessment team and the assessed jurisdiction, as well as taking into account the need to ensure consistency between reports.

- v. If all sections of the draft report have been approved and no substantive changes to the report have been requested by the PRG, then the chair shall ask if there is any objection to the draft report being approved. If the draft report is approved, the assessed jurisdiction is provided an opportunity to make any final statement it wishes.

61. If the draft report is not approved during the first reading, it shall be revised to address the concerns or questions raised by the PRG. The assessment team, first in consultation with the assessed jurisdiction, will incorporate any amendments agreed by the PRG into the draft. Copies of the revised sections of the draft report will then be circulated as a room document.

62. The second reading will take place at the same PRG meeting in the following manner:

- i. Assessment team presents the revised version of the draft report and summarises any changes made to the draft report to reflect the discussions of the first reading.

- ii. Assessed jurisdiction has an opportunity to respond to the changes and whether it agrees or disagrees with them.

- iii. The PRG then discusses the revisions made after the first reading with a view to approving the revised draft report.

- iv. The draft report is approved when consensus of the PRG is reached.

63. Consensus in the context of the approval or adoption of a report means that no one jurisdiction can block the approval of the report.

64. Where the assessed jurisdiction is a PRG member, it will only participate in the discussion of its draft report at the PRG meeting as an assessed jurisdiction. Therefore, a PRG member does not participate in the decision-making on the approval of its own draft report at the PRG meeting. The PRG member can, however raise an objection to its report as a member of the Global Forum when the PRG approved report is sent to the Global Forum for adoption.

65. The approved draft report is a report of the PRG for submission to the Global Forum, and not simply a report by the assessment team.

66. EOIR reports may include an annex (Annex 1) emphasising recent changes made to the assessed jurisdiction's EOI framework or EOI mechanisms or presenting future plans which impact on transparency and exchange of information for tax purposes. Any legislative changes that take place between the cut-off date and the first reading of the draft report may also be already documented in the "Recent Developments" section of the report. Annex 1 presents the jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views. The assessed jurisdiction should provide the annex to the Secretariat within one week of the approval of the draft report by the PRG.

67. When consensus is not reached at the PRG meeting, the text of the draft report is not approved. The PRG will task the assessment team in consultation with the assessed jurisdiction to revise the draft report, which will then be dealt with under the procedures set out in section (a) ("Circulation of the report to the PRG") for comments. If the revised draft report is not approved through written procedure, the next

PRG meeting will discuss only those issues on which consensus was not reached in the first meeting. The assessed jurisdiction will be invited to participate in this meeting.

68. If approval of the draft report is not obtained after a second discussion in the PRG, it shall be presented to the Steering Group within one week of the second PRG discussion. The Steering Group shall include a discussion of the draft report in the agenda of the next Global Forum meeting.

#### ***F. Procedures following the PRG meeting: review and adoption of the report by the Global Forum***

69. When the report has been approved by the PRG, it will be circulated to the Global Forum together with Annex 1 within one week. The Annex 1 may reflect the comments of the assessed jurisdiction on the weaknesses that have been identified and its plans to address them. In case the annex has not been finalised, the text will be circulated to the Global Forum without the annex, which will be circulated when ready, at the latest prior to the adoption of the report. Members of the Global Forum will be invited to adopt the draft report under written procedure. In the absence of any objections within three weeks, the draft report is considered to be adopted. If there are objections, the Steering Group of the Global Forum shall decide whether to refer the draft report back to the PRG for consideration at its next meeting or to include discussion of the draft report in the agenda for the next Global Forum meeting. In these cases, the assessed jurisdiction will have an opportunity to update Annex 1 to reflect substantial changes in the jurisdiction's EOI framework that occurred in the meantime, but not later than two weeks before the next meeting where the draft report will be discussed.

70. The Global Forum shall use an approach to consensus that ensures that no one jurisdiction can block the adoption or publication of a review. Nevertheless, every effort should be made to arrive at a consensus and the views of the jurisdiction would be fully noted. The discussions and consultations in the Global Forum are open to Global Forum members and observers. Only Global Forum members, however, will take part in the adoption of the draft report.

#### ***G. Publication of reports***

71. Transparency is an important principle of Global Forum peer reviews. Regular information should be provided to the public on the Global Forum work and on implementation of the standard such as the overall ratings from the EOIR reports as well as the findings regarding individual elements. After each report has been adopted by the Global Forum, it shall be made public by the Secretariat on the Global Forum website. Jurisdictions are encouraged to distribute the reports within the relevant bodies of their own administration to ensure that all parties are informed of the outcome of the report and to raise awareness of EOI in practice within their jurisdiction.

72. In the exceptional circumstance that the Global Forum fails to adopt a report, the public will be provided with an explanation for the absence of a report in order to maintain the credibility of the Global Forum process. The text of the explanation will be in a standard format agreed by the Global Forum and will identify the issue(s) at stake and the jurisdictions that object to the draft report. This text would be circulated to the Steering Group and the jurisdictions concerned two days in advance of putting it on the Global Forum website.

#### ***H. Post-EOIR Review: Follow-up reports and Supplementary reviews***

73. It is important for the credibility and effectiveness of the peer review process for the Global Forum to follow-up on the progress made by jurisdictions in addressing the recommendations made in the EOIR reports, both from the first and second round of reviews, and to evaluate and publicise significant improvements.

74. The 2010 Methodology (as revised) included procedures for both follow-up and supplementary reviews to re-evaluate determinations and ratings and assisted jurisdictions in rapidly implementing the international standard. Both procedures are maintained for the second round of reviews, but the process has been modified in order to provide for a more efficient and coherent system of follow-up. In addition, a transitional rule has been set out in paragraph 84 to accommodate jurisdictions that would have qualified for a post-Phase 2 supplementary review under the first round of reviews.

### ***Follow-up reports***

75. In those cases where the Global Forum has issued a recommendation to a jurisdiction to address a deficiency in its implementation of the standard, it is imperative that the progress made by the jurisdiction in this regard, or the lack thereof, is monitored.

76. Following the publication of its EOIR report, each jurisdiction shall submit a follow-up report via a standardised form (Annex 5) to the Secretariat that indicates, in respect of each in-box<sup>9</sup> recommendation made in its report, whether the recommendation has been fully addressed, is in the process of being addressed, or that it has not been addressed. In each case a short description of the actions taken to address the recommendation should be provided.

77. A jurisdiction may consider that a recommendation has been fully addressed where all actions necessary to correct the deficiency have been definitively completed (e.g. legislative changes have been enacted and are in force, or in cases where a monitoring recommendation has been issued, the jurisdiction reports that it has undertaken the requisite monitoring with positive results). A jurisdiction may consider a recommendation as in the process of being addressed where some actions have been taken to address the recommendation but these have not been completed as yet or further action is still required to fully address the recommendation (for example, draft legislation has been submitted to Parliament for approval or steps have been taken to put in place an EOI Unit). A jurisdiction may consider that a recommendation has not been addressed where no action to address the recommendation has been undertaken. Where a jurisdiction has been recommended to monitor a particular issue then the report should include a description of the manner in which the monitoring is carried out and the results, supported by statistical information where appropriate.

78. The jurisdiction should also indicate in its follow-up report(s) if there are other developments not related to the recommendations made in its report, but that are relevant to the implementation of the standard (for example new legislation allowing for the establishment of a new type of entity, the signing of new EOI agreements or any case law that may be related to or have an impact on EOI in practice).

79. Each jurisdiction must provide its follow-up report on an annual basis no later than 30 June of each year, but is not required to submit a follow-up report fewer than 6 months after the date of publication of its last peer review or EOIR report. Jurisdictions are also not required to submit a follow-up report where its EOIR review is scheduled to be launched within the six months period after June 30 of that year.

80. The jurisdiction shall continue to provide follow-up reports for so long as any recommendation remains less than fully addressed. After this time, follow-up reports may be provided on a voluntary basis to report on any relevant developments in the jurisdiction.

81. In order to submit a follow-up report, each jurisdiction shall receive a pre-filled follow-up form from the Secretariat with any outstanding in-box recommendations listed in the form. The jurisdiction will use this form to document the actions taken in respect of these recommendations (if any) and also to

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<sup>9</sup> See 2016 Assessment Criteria Note for guidance on in-text and in-box recommendations.

document any developments that have an impact on EOI. Jurisdictions are also invited to report any actions taken in regards to in-text recommendations where appropriate.

82. The follow-up report procedure is a self-assessment mechanism. Neither the Secretariat nor the PRG shall examine the basis for the jurisdiction's self-assessment. Therefore, the follow-up report documenting progress by a jurisdiction cannot be interpreted or portrayed in any way as a judgment or validation of the Global Forum. The evaluation of progress can only be achieved through the peer review process.

83. As soon as practicable following the June 30 deadline, the Secretariat will compile the follow-up reports and draft a note for the PRG that describes the overall status of the recommendations and progress made. The note will form the basis of a report on the follow-up of recommendations to be included in the Global Forum's annual report. While the report should generally deal with the status of the recommendations on an aggregate basis, particular reference may be made to individual recommendations where no action has commenced to address the recommendation in more than 3 years.

#### ***Transitional rules for follow-up reports from first round of reviews***

84. In many cases jurisdictions from the first round of reviews are no longer required to provide follow-up reports as they have already reported that all recommendations have been addressed and the situation in those jurisdictions will be followed up in their EOIR review. Where a jurisdiction reviewed in the first round of reviews still has an obligation to provide a follow-up report, the jurisdiction shall follow the new procedure as outlined above for doing so. To facilitate this process, the Secretariat will identify those jurisdictions that are still required to follow-up from the first round of reviews and shall send a pre-filled follow-up form with any outstanding recommendations listed in the form to the jurisdiction which shall be required to be submitted by 30 June 2016 and thereafter in accordance with the generally applicable provisions. In addition to the recommendations listed in the form, jurisdictions are also invited to report on any action taken in regards to any outstanding in-text recommendations from the first round of reviews.

#### ***EOIR Supplementary reviews***

85. Where a jurisdiction has made significant improvements by addressing recommendations made by the Global Forum, then the jurisdiction should have the opportunity to have these improvements evaluated by the Global Forum and any determinations or ratings updated accordingly.

#### ***Qualifying for an EOIR Supplementary review***

86. In order to qualify for an EOIR supplementary review, the assessed jurisdiction must be able to demonstrate that it has taken actions that are likely to result in an upgrade in the rating of an essential element to "compliant" or in an upgrade in its overall rating, as assessed against the 2016 Terms of Reference.

87. In order to ensure that there is a sufficient basis to establish that it is likely that a rating should be upgraded, particularly as regards the practical implementation of any changes, one year should elapse from the adoption of a report before a request for an EOIR supplementary review is submitted to the PRG. Depending on the facts and circumstances, particularly where very serious deficiencies were identified in the EOIR report, it would be a matter for the PRG to consider whether a jurisdiction may only be able to establish that it meets the criterion after more than one year has elapsed.

88. In exceptional circumstances, the PRG may decide that a jurisdiction meets the criterion before a year has elapsed. However, these circumstances should be decided on a case by case basis.

### ***Requesting an EOIR Supplementary Review***

89. If a jurisdiction is of the opinion that it meets the criterion to qualify for an EOIR supplementary review, then this may be communicated to the Secretariat at any time via submission of a follow-up report by the jurisdiction, including reference to the specific elements that it believes are likely to be upgraded. The jurisdiction should also provide a detailed written report clearly indicating the basis for its request for a supplementary review, along with all relevant supporting materials.

90. Where a jurisdiction submits a follow-up report in order to request a supplementary review, the Secretariat will send the follow-up report and any accompanying materials as submitted by the jurisdiction to the PRG within seven days.

### ***Processing the request for an EOIR supplementary review or an acceleration in EOIR review by the PRG***

91. Where a jurisdiction has requested an EOIR supplementary review or an acceleration of its EOIR review (as set out at paragraphs 100-102) PRG members will be invited to provide written input in relation to the changes relating to the specific essential elements that the requesting jurisdiction considers are likely to be upgraded.

92. Once written input has been received, the Secretariat shall prepare a note taking into account all the input submitted and shall formulate a proposal for the approval of the PRG by written procedure as to whether or not the request should be accepted. If the PRG approves the jurisdiction's request by written procedure, the jurisdiction is informed and the EOIR supplementary review or EOIR review, as the case may be, will be launched shortly afterwards at a time agreeable to the assessment team and the assessed jurisdiction.

93. If the jurisdiction's request is not approved via written procedure, then the Secretariat note shall be tabled for discussion at the next PRG meeting. The assessed jurisdiction will be invited to be present at the PRG and to participate during the discussion. If the jurisdiction is not present, then it should be informed in writing of the decision of the PRG.

94. In all cases the decision as to whether or not to launch an EOIR supplementary review or accelerate an EOIR review should take into account the resource constraints of the Secretariat, the PRG and assessment teams and the need to ensure fair and equal treatment of all jurisdictions. The decision as to whether or not to approve a request shall be subject to the same approach to consensus as is applicable to the approval of EOIR reports generally.

95. In considering a request for an EOIR supplementary review, the PRG may decide that an EOIR supplementary review should include an on-site visit (e.g., when the exchange of information process or access powers are substantially amended, or when inputs from peers indicate substantial changes in practice).

96. If the PRG agrees to accelerate an EOIR review then it shall inform the Global Forum of the change to the 2016 Schedule. In those cases where the PRG does not agree to accelerate the EOIR review, the scheduling of the jurisdiction for its EOIR review shall remain unchanged.

### ***EOIR Supplementary Review initiated by PRG***

97. There are two circumstances where the PRG may initiate an EOIR supplementary review even though the jurisdiction has not requested one. First, if the PRG becomes aware, either through a jurisdiction's follow-up report, from another member of the Global Forum or otherwise, that a jurisdiction

has back stepped in its legal and regulatory framework, or has put in place practices that may negatively impact the implementation of the international standard, the Chair of the PRG may ask the jurisdiction to report in writing on the situation to the PRG. The PRG shall consider and discuss the report at its next PRG meeting. If the PRG is of the view that the jurisdiction may have back stepped its implementation of the standard, then a supplementary review shall be launched.

98. Secondly, because the follow-up report is a self-assessment mechanism, there is a risk that jurisdictions may overestimate the extent to which they have addressed the Global Forum's recommendations. It can be expected that if a jurisdiction believes that it has addressed all the recommendations from its EOIR report then it would also request a EOIR supplementary review, unless it already has an overall rating of Compliant. In the case where a jurisdiction reports that it has addressed all the recommendations but has not requested a supplementary report, then the jurisdiction should provide to the PRG a detailed written report clearly indicating the improvements it has made.

#### ***Post first round of reviews – supplementary report procedure***

99. The below paragraphs 100-106 set out the procedures for the scheduling of jurisdictions from the first round of reviews that were blocked from progressing to the Phase 2 review ("blocked jurisdictions") and for jurisdictions from the first round of reviews that may have qualified for a post-Phase 2 supplementary report.

#### ***Accelerating a jurisdiction's EOIR review***

100. The 2010 Methodology provided for a jurisdiction to request a supplementary review following its Phase 2 review in order for progress to be recognised, provided it fulfils certain conditions for a supplementary review. Under the 2016 Methodology, supplementary reviews are only possible following a jurisdiction's EOIR review that takes place in accordance with the 2016 Schedule.

101. In certain cases in the first round of reviews, jurisdictions that were reviewed later in the 2010 Schedule may not have had the same opportunity to have the improvements that they have made evaluated and recognised by the Global Forum via a post Phase 2 supplementary report. Therefore, to ensure equitable treatment for those jurisdictions, where certain conditions are met, it may instead be possible to accelerate the jurisdiction's EOIR review.

102. In order to advance its EOIR review, a jurisdiction will have to meet the same criterion as is the case for requesting an EOIR supplementary review as set out in paragraphs 86-88. The request for acceleration of an EOIR review will be considered against the 2016 Terms of Reference. The jurisdiction will have the opportunity to indicate in its follow-up report if it wishes to accelerate its EOIR review, with specific reference to which essential elements are likely to be upgraded or whether it is likely that its overall rating will be upgraded. In this case, the jurisdiction should also provide a detailed written report clearly indicating the basis for its request, along with all relevant supporting materials. The process shall then follow the same steps set out for processing the request for an EOIR supplementary review as set out at paragraphs 91-96.

#### ***Process for blocked jurisdictions***

103. In the course of the first round of Global Forum peer reviews, an assessed jurisdiction may have been blocked from progressing to its Phase 2 review where it did not have in place elements crucial to achieving an effective exchange of information in practice. In all cases, these jurisdictions are included in the 2016 Schedule and will therefore eventually proceed to an EOIR review and receive ratings in accordance with the normal procedure.

104. Under the 2010 Methodology, a blocked jurisdiction would have had the opportunity to request a supplementary review to enable assessment of changes to its legal and regulatory framework, and, if successful, it would have moved to its Phase 2 review. Under the 2016 Methodology also, at any time following six months from the publication of its Phase 1 report, a blocked jurisdiction is entitled to demonstrate that it has taken sufficient action to address the recommendations made in the Phase 1 report such that it is likely that, if reviewed under the 2010 Terms of Reference, it would have been allowed to move to its Phase 2 review.

105. To this end, the jurisdiction will submit a copy of its follow-up report, along with a detailed report on the action taken by the jurisdiction to address the Phase 1 recommendations. This report will be dealt with by means of the same procedure as applies to requests for an acceleration of an EOIR review. If the PRG agrees that the changes are such that it is likely that the jurisdiction would have moved to a Phase 2 review, then its EOIR review will be accelerated in the 2016 Schedule and launched as soon as possible in order for progress to be quickly recognised. In the event that the PRG does not agree that the jurisdiction would have moved to its Phase 2 review under the 2010 Terms of Reference, the jurisdiction shall remain as a blocked jurisdiction and its placement in the 2016 Schedule for its EOIR review shall remain unchanged.

106. If, after one year from the publication of its Phase 1 report, a blocked jurisdiction has not submitted a request for an acceleration of its EOIR review, then the jurisdiction will be invited to submit a request within six months. If the PRG concludes that sufficient progress has been made, then its EOIR review will be accelerated. In exceptional cases a blocked jurisdiction may request a deferral of the supplementary report procedure (such as in the case of civil war or natural disasters). On receipt of such a request, the PRG will then decide if this should be permitted and for what length of time it will be deferred. Aside from the exceptional case, if the request is not submitted or the PRG concludes that sufficient progress has not been made, then the jurisdiction will be assigned an overall rating of “non-compliant” by the Global Forum on the basis of its Phase 1 results under the first round of reviews (“Deemed non-compliant”). In such a case, the ten essential elements will not be rated individually. Nevertheless, the scheduling of the jurisdiction for its EOIR review shall remain unchanged. In cases where a jurisdiction has received a “Deemed non-compliant” rating from the first round of reviews and wishes to have progress recognised prior to its scheduled EOIR review, the jurisdiction may request an acceleration of its EOIR review as set out in paragraphs 100 – 102.

### ***Preparing an EOIR Supplementary Report***

107. Although the decision to launch an EOIR supplementary review is based on the improvements to specific essential elements, the EOIR supplementary review itself will cover all aspects of EOIR, and inputs will be sought on all elements from Global Forum members.

108. A supplementary report will be prepared as follows:

- Sufficient time will have to be allocated in order to allow for (i) the PRG time to provide the inputs, consider the request and decide whether an on-site visit is required, and (ii) Global Forum member jurisdictions to complete and return the Peer Questionnaire, which will be circulated once a decision has been taken to launch a review. Where no on-site visit is required the analysis would be completed and the EOIR supplementary report prepared in 12-14 weeks. Where an on-site visit is required the analysis would be completed and the report prepared in 16-18 weeks.
- In the event that the assessment team proposes to revise any of the determinations or ratings, the EOIR supplementary report will include a revised summary of determinations, recommendations

and ratings. If a jurisdiction has not corrected all of its deficiencies, the assessment team may propose that a further follow-up procedure be decided.

- The assessment team's draft report is sent to the PRG at least seven weeks prior to the next meeting of the PRG which will consider the draft report, in line with existing approval procedure for peer review reports in paragraphs 55-68.
- The draft EOIR supplementary report approved by the PRG will be immediately submitted to the Global Forum for adoption through written procedure, in accordance with the procedure in paragraphs 69-70.
- The adopted EOIR supplementary report will be made public on the Global Forum website, in accordance with the procedure in paragraphs 71-72, alongside the original EOIR and, where applicable, previous Global Forum Peer Review report. The original EOIR report itself will not be revised since it reflects the situation at a particular time.

109. Given the time that may elapse between the adoption of the EOIR report and the preparation of an EOIR supplementary report, the original expert assessors may no longer be available to prepare the EOIR supplementary report. In the event that an original expert assessor is not available, or no longer qualifies as an expert assessor in paragraph 13-14, the Secretariat will liaise with the central point of contact in the member jurisdiction that provided the expert assessor to identify a successor. In case a successor is not available, then an expert assessor from another jurisdiction may be appointed in accordance with the procedure for appointing expert assessors in set out in paragraphs 15-18.

### **III. PROCEDURES FOR REPORTS ON NON-MEMBERS**

110. EOIR reviews of non-members of the Global Forum will occur in a manner similar to EOIR reviews of members to the greatest extent possible except as otherwise provided hereunder.

#### ***A. Selection of non-members for review***

111. The purpose of EOIR review of non-members is to prevent jurisdictions from gaining a competitive advantage by refusing to implement the standard or participate in the Global Forum.

112. The PRG should discuss any issues with regard to non-members on a regular basis. It can make a proposal to the Steering Group for approval of the review of a non-member and seek approval of the Global Forum under the written procedure. The PRG should ensure that all Global Forum members are invited to identify appropriate non-members for review.

113. Prior to a review commencing, the non-member jurisdiction should be informed about the possibility of becoming a member of the Global Forum if the jurisdiction commits to implement the standard, accepts to be reviewed and pays the membership fee.

#### ***B. Participation of non-members in their review by the Global Forum***

114. Non-members who do not seek to become members will generally be given the same opportunity to participate in their EOIR review as Global Forum members, including the opportunity to organise an on-site visit. However, while participation should be encouraged, it is important that the report be prepared using the best available information even if the assessed jurisdiction is not cooperative. Non-members do not participate in the formation of consensus.

115. In the event the invitation to agree to an on-site visit is not accepted or the jurisdiction otherwise fails to cooperate with the review process, the PRG may also consider other appropriate action.

#### **IV. FUNDING**

116. The budget of the Global Forum will bear the expenses for the travel and per diem expenses for the members of the Secretariat who are part of assessment teams.

117. The members taking part in the evaluations as assessor jurisdictions will bear the costs of travel and per diem expenses for their experts assigned to assessment teams. To the extent possible, each PRG member should expect to provide expert assessors to participate in up to six to eight peer reviews over the course of the 2016-2020 Schedule of reviews, dependent on the size of the PRG member jurisdiction. In order to facilitate a more equal distribution of the workload of the peer review process, all other Global Forum member jurisdictions are also encouraged to provide expert assessors to participate on reviews over the 2016 Schedule.

118. The assessed jurisdiction will bear the cost of replying to the questionnaire, translating all relevant materials as well as interpretation costs and defraying the travel and per diem expenses of experts who attend the PRG and Global Forum meetings to present the jurisdiction's views on the report. The assessed jurisdiction will also bear the costs to organise the on-site visit (other than the travel and per diem expenses for the expert assessors and members of the Secretariat as addressed above).

## ANNEX 1: KEY RESPONSIBILITIES OF PARTICIPANTS IN A REVIEW

This annex summarises the key responsibilities of participants in the EOIR and EOIR supplementary reviews. As a foreword to the below outlined responsibilities, it is noted that due to the nature of the peer review process, there is a strict duty of confidentiality by all participants whereby any element of the review process should only be disclosed where it is specifically permitted to do so. In the event that participants have concerns or are unsure as to the confidentiality of any aspect of the process, they should seek guidance from the Secretariat.

### *I. RESPONSIBILITIES OF SECRETARIAT*

- A. **Assessment Schedule:** In accordance with the overall schedule adopted by the Global Forum, the Secretariat establishes, in consultation with the expert assessors and the assessed jurisdiction, a schedule of the steps of each individual review.
- B. **Assessment Team:** Secretariat staff coordinates the assessment team.
- C. **Questionnaire and Additional Questions:** The Secretariat reviews the assessed jurisdiction's most recent review (where applicable), inputs from Global Forum members and additional materials, and where necessary, prepares a list of additional questions to supplement the standard questionnaire(s). Specific questions may also relate to issues arising from an earlier review. The additional questions are sent to the assessed jurisdiction after consultation with the expert assessors.
- D. **On-site visit:** in consultation with the expert assessors and the assessed jurisdiction, the Secretariat prepares the agenda.

### **E. Preparation of EOIR Report and Supplementary Report:**

119. **Pre-PRG Discussion:** The Secretariat coordinates the drafting of an EOIR report which incorporates the views of the assessment team. It is then provided to the assessed jurisdiction. The Secretariat, in consultation with the assessment team, makes any appropriate changes in response to comments and corrections submitted by the assessed jurisdiction. The report reflects the comments of the assessed jurisdiction and its plans to address the weaknesses identified.

120. **PRG and Global Forum meetings:** As part of the assessment team, the Secretariat will have the opportunity to intervene or comment on issues concerning the report.

121. **Post-meetings:** After the PRG approval of a draft EOIR report, the Secretariat will be responsible for editing and transmitting the draft report to the Global Forum. After the Global Forum's adoption, the Secretariat will be responsible for publishing the report.

### *II. RESPONSIBILITIES OF ASSESSORS*

A. **General:** Each jurisdiction that agrees to provide an expert assessor, and each individual expert assessor that accepts such a role, fully accepts all of the obligations relating to such service, including the provision of timely comments, participation in on-site visits, and full attendance at all possible meetings (preparatory, PRG and if necessary Global Forum). Jurisdictions that are not able to carry out their obligations should notify the Secretariat without delay to allow another assessor jurisdiction to be chosen. The PRG shall be notified if the Secretariat is unable to find a substitute expert assessor and will decide on how to proceed. Expert assessors are bound by a confidentiality duty and cannot share documents related to the review they are performing outside the assessment team.

**B. Appointment of Expert Assessors:** The steps below should be followed:

122. Once a Global Forum member has indicated that it is prepared to provide expert assessors, it should designate a central point of contact and, if possible, provide a list of the names and qualifications of potential individual expert assessors. Expert assessors should be public officials drawn from relevant public authorities. Expert assessors should also have relevant practical experience with actual exchange of information for tax purposes. Potential expert assessors receive a handbook compiling the relevant documents.

123. Global Forum members providing expert assessors are informed by the Secretariat, with as much notice as possible, of the decision of the chair and vice-chairs of the PRG about the jurisdictions their expert assessors will be asked to review, and the dates for the reviews.

124. The Global Forum members will inform the Secretariat of any reasons why they consider it would not be appropriate for them to be involved in reviewing one or more of the jurisdictions selected.

125. The assessed jurisdiction will inform the Secretariat of any reasons why it considers that it would not be appropriate for a particular jurisdiction to be part of the assessment team.

126. The Global Forum members providing expert assessors propose, through their central point of contact, which of their individual potential assessors could undertake the review and should supply the name and qualifications of the prospective assessors to the Secretariat within seven days from the receiving of a Secretariat request.

**C. Composition of Assessment Team:** The assessment team which usually consists of two expert assessors as a whole should include experts in areas relevant to the issues presented by a specific jurisdiction's examination, e.g. interpretation of tax treaties, statutes, regulations and practices including in the areas of international exchange of information; accounting and transparency issues; and access to information. The potential assessment team may consult with each other to ensure that there is adequate coverage of relevant issues. Individuals serving as assessors have a duty to assess objectively, in their personal capacity.

**D. Written Review. The Expert assessors:**

127. Work with the Secretariat to develop a list of additional questions to enhance responses already provided for in the questionnaire.

128. Identify issues raised by the assessed jurisdiction's response to the questionnaire and communicate these issues to the Secretariat for inclusion in follow-up questions or incorporation into the draft EOIR report.

129. Work with the Secretariat in the preparation of the draft report.

**E. On-site Visit: Expert** assessors participate in all aspects of the on-site visit, and substantively contribute to the discussions during the on-site meeting with the assessed jurisdiction as well as during the preparatory and debriefing discussions with the Secretariat.

**F. EOIR Supplementary reports:** In the event that a request by the assessed jurisdiction for an EOIR supplementary report is approved, the expert assessors shall then assist in drafting the EOIR supplementary report.

**G. PRG and Global Forum Meetings:** The expert assessors are expected to attend, the PRG meeting to present and discuss the draft report.

### ***III. RESPONSIBILITIES OF THE ASSESSED JURISDICTION***

**A. Central Point of Contact:** The assessed jurisdiction designates a central point of contact who is responsible for ensuring that communications with the Secretariat are forwarded promptly to the relevant persons in the assessed jurisdiction and for ensuring the confidentiality of the documents related to the review process within the assessed jurisdiction.

**B. Questionnaire and Supporting Materials:** In accordance with the schedule established by the Secretariat, the assessed jurisdiction submits a written response to the questionnaire and additional questions, as well as supporting materials, including summaries of relevant cases.

130. Although it is preferable that these answers be integrated into a single written response, the assessed jurisdiction should not delay providing a response for that purpose. Further, if the answers to specific questions are not complete by the deadlines set in the assessment schedule, the assessed jurisdiction should submit such answers as are complete and supplement its response as needed.

131. The assessed jurisdiction provides supporting materials, such as laws, regulations, and judicial decisions. It is essential that all materials be provided on a timely basis to allow the assessors and the Secretariat to review them. Supporting materials should be provided in English or French, as well as in the original language unless otherwise agreed with the Secretariat. Where the materials are voluminous, the assessed jurisdiction should discuss with the Secretariat which items should be translated on a priority basis.

132. The assessed jurisdiction also answers any additional follow-up questions, triggered by its answers to the questionnaire.

#### **C. On-site Visit:**

133. The assessed jurisdiction provides access to relevant officials as required in the agenda, in consultation with the Secretariat and the assessment team. The names, titles, and responsibilities of each participant are provided to the Secretariat in advance of the on-site visit. The assessed jurisdiction should do its utmost to ensure that the list of participants reflects the proposals of the assessment team.

134. The assessed jurisdiction is responsible for providing a venue for the on-site visit.

135. Although the assessed jurisdiction is not required to make travel arrangements for the assessment team, it may consider negotiating for hotel rooms at a government rate at a location convenient to the venue of the meetings.

136. The language (English or French) in which the assessment will be conducted is agreed upon in advance. The assessed jurisdiction may be required to provide interpretation and translation as deemed necessary by the assessment team.

#### **D. The Draft EOIR Report:**

137. The assessed jurisdiction should carefully review the draft EOIR report and submit any corrections or clarifications it deems appropriate, indexed to specific paragraphs of the draft EOIR report. This should not be viewed as an opportunity to rewrite the draft EOIR report.

138. Comments must be submitted within the time limits set in the assessment schedule. To ensure that the PRG receives the draft EOIR report in time to review it prior to the PRG meeting, comments that are submitted late will not be included in the draft EOIR report circulated to the PRG but will be circulated separately.

139. When a draft EOIR report is discussed orally during a PRG meeting, the assessed jurisdiction may present its views.

#### **E. Post-Review:**

140. By June 30 of every year, the assessed jurisdiction shall provide a follow-up written report of the steps it has taken or is planning to take to implement the recommendations in the manner prescribed in paragraphs 79 - 83 above. In addition if, at any time one year after the Global Forum's adoption of an EOIR review, the assessed jurisdiction implements changes that are likely to result in an upgrade in a rating to "compliant" or an upgrade in the overall rating, it can submit a request for an EOIR supplementary report as set out in paragraphs 86-90.

### ***IV. RESPONSIBILITIES OF PRG MEMBERS AND GLOBAL FORUM MEMBERS***

**A. Providing input for all reviews:** Global Forum members are invited to indicate any issues they would like to see raised and discussed during the evaluation or issues that may give rise to concerns about back-stepping. In the case of a supplementary EOIR review, this includes input in relation to the changes relating to the essential elements that the requesting jurisdiction considers are likely to be upgraded to compliant or the changes that are likely to result in an upgrade to the overall rating.

**B. Questionnaire for EOIR Reviews and EOIR supplementary reports:** Global Forum members with an exchange of information relationship with the assessed jurisdiction are invited to fill-in a questionnaire on the quality of information exchange, and to indicate any issues they would like to see raised and discussed during the review. Those jurisdictions that have a significant exchange of information relationship with the assessed jurisdiction have a particular responsibility to respond to the questionnaire within the assigned deadline. Global Forum members who have filled-in the questionnaire should be ready to answer possible follow-up questions from the assessment team.

**C. Comments on Draft Reports:** PRG and Global Forum members ensure that a qualified expert(s) reviews the draft reports, and provides, as need be, comments on requests for written approval or adoption. PRG and Global Forum members respect the confidentiality of all documents related to the review process.

**D. Follow-up to Reviews:** PRG members ensure that a qualified expert(s) reviews the follow-up reports prepared by the assessed jurisdiction and assessment team, and provides comments, objects or raises questions, as need be.

**E. Attendance at PRG Meetings:** PRG members ensure the attendance of a qualified expert(s) at each PRG meeting. Absences should be notified one week in advance of the meeting. PRG members who fail to attend three successive meetings will be automatically removed from the PRG, and the Global Forum will elect a new member.

## **ANNEX 2: EOIR ASSESSMENT SCHEDULE**

- A. Peer Questionnaire sent to Global Forum members: 3 weeks to respond
- B. EOIR Questionnaire sent to Assessed Jurisdiction: 6 weeks to respond
- C. On-Site visit: as soon as possible, generally after receipt of completed EOIR Questionnaire
- D. Draft report prepared by Secretariat: provided to assessors 4-6 weeks following on-site visit
- E. Comments by assessors: 2 weeks following delivery of draft report
- F. Finalising draft report and sending to Assessed Jurisdiction: 1 week following comments from assessors
- G. Comments from Assessed Jurisdiction on draft report: 6 weeks to respond
- H. Finalising draft report: 2 weeks following comments from Assessed Jurisdiction
- I. Draft report sent to PRG: minimum 7 weeks prior to the PRG meeting where the draft report is to be discussed
- J. Comments by PRG delegates: 4 weeks to respond
- K. Revision of draft report by assessment team: 2 weeks following comments by PRG delegates
- L. Revised draft report and Table of Comments sent to PRG: minimum 7 days prior to the PRG meeting where the draft report is to be discussed



#### **ANNEX 4 FRAMEWORK FOR THE ATTENDANCE OF OBSERVERS AT PRG MEETING**

1. Unless decided otherwise by the PRG, all observers are entitled to attend PRG meetings in their entirety.
2. The draft agenda for the PRG meeting will be circulated in advance to PRG Members only. At the time of distributing the draft agenda, the Secretariat may propose that discussion of certain items be restricted to PRG Members, providing reasons for such proposal.
3. Within one week from the date of circulation of the draft agenda, PRG Members may also propose that certain items be restricted to PRG Members, providing reasons for such proposal. The Secretariat will circulate any such proposal to PRG Members.
4. Should a proposal be made by the Secretariat or a PRG Member to restrict certain items to PRG Members, the PRG Members will be given one week to take a position on this proposal.
5. Proposals to restrict certain items to PRG Members will be adopted by consensus. If no objection to the proposal is received within one week, the proposal will be considered adopted by the PRG. In such case, the relevant agenda items will be marked as “Restricted to PRG Members”.
6. All documents for unrestricted items will be made available to observers.

##### *Conditions for the attendance of observers at PRG meetings*

7. Observers attending the PRG meetings do not participate in decision-making in the PRG. They cannot participate in the discussions nor make comments on the PRG documents.
8. Observers shall ensure confidentiality of PRG discussions and documents.

**ANNEX 5 FOLLOW-UP REPORT FORM**

Follow-up report:

**[Name of jurisdiction]**  
**Overall Rating:**  
 30 June 20[XX]

**1. Actions taken in respect of recommendations**

Year of report	Element (Phase)	Rating	Underlying factors	Recommendations	Actions taken	Status	Date action completed
						<input type="checkbox"/> addressed <input type="checkbox"/> in the process of being addressed <input type="checkbox"/> not addressed	
						<input type="checkbox"/> addressed <input type="checkbox"/> in the process of being addressed <input type="checkbox"/> not addressed	

## 2. New developments impacting Exchange of Information in the jurisdiction

Description of change	Impact for EOI

<b>Have all recommendations been addressed</b>	<input type="checkbox"/> <b>yes</b>
	<input type="checkbox"/> <b>no</b>
<b>Request for a supplementary report/acceleration of EOIR review</b>	<input type="checkbox"/> <b>yes</b>
	<input type="checkbox"/> <b>no</b>