
PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST
This peer review report was approved by the Peer Review Group of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) on 19 June 2024 and adopted by the Global Forum members on 18 July 2024. It was prepared for publication by the Global Forum Secretariat.

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# Table of contents

**Reader's guide** .......................... 5  
Abbreviations and acronyms ...................... 9  
Executive summary ................................ 11  
Summary of determinations, ratings and recommendations .............. 17  
Overview of Sint Maarten .......................... 29  

**Part A: Availability of information** .................. 35  
A.1. Legal and beneficial ownership and identity information .......... 35  
A.2. Accounting records ................................ 89  
A.3. Banking information .............................. 99  

**Part B: Access to information** ..................... 113  
B.1. Competent authority’s ability to obtain and provide information ........ 113  
B.2. Notification requirements, rights and safeguards .................. 123  

**Part C: Exchange of information** ...................... 131  
C.1. Exchange of information mechanisms .................. 131  
C.2. Exchange of information mechanisms with all relevant partners ........ 136  
C.3. Confidentiality ................................ 137  
C.4. Rights and safeguards of taxpayers and third parties ................ 142  
C.5. Requesting and providing information in an effective manner ........ 144  

**Annex 1. List of in-text recommendations** .................. 153  
**Annex 2. List of Sint Maarten’s EOI mechanisms** .................. 154  
**Annex 3. Methodology for the review** .................. 157  
**Annex 4. Sint Maarten’s response to the review report** .......... 161
Reader’s guide

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

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

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

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

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

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

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

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

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

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.
The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, Annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum’s mandate.

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

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

More information

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

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>AML</td>
<td>Anti-Money Laundering</td>
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<tr>
<td>AML Law</td>
<td>National Ordinance on the Combatting of Money Laundering and Terrorist Financing</td>
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<td>ANG</td>
<td>Antillean Guilders</td>
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<td>BRK</td>
<td>Tax Arrangement of the Kingdom of the Netherlands (<em>Belastingregeling voor het Koninkrijk</em>)</td>
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<tr>
<td>BV</td>
<td>Private limited liability company (<em>Besloten Vennootschap</em>)</td>
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<td>Central Bank</td>
<td>Central Bank of Curaçao and Sint Maarten</td>
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<td>CDD</td>
<td>Customer Due Diligence</td>
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<td>CFATF</td>
<td>Caribbean Financial Action Task Force</td>
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<tr>
<td>CFT</td>
<td>Countering Financing of Terrorism</td>
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<td>COCI</td>
<td>Chamber of Commerce and Industry</td>
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<tr>
<td>CV</td>
<td>Limited partnerships (<em>Commanditaire Vennootschap</em>)</td>
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<td>DTC</td>
<td>Double Taxation Convention</td>
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<td>EOI</td>
<td>Exchange of information</td>
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<td>EOIR</td>
<td>Exchange of Information on Request</td>
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<td>EUR</td>
<td>Euro</td>
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<td>FATF</td>
<td>Financial Action Task Force</td>
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<td>FIU</td>
<td>Financial Intelligence Unit</td>
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<td>Global Forum</td>
<td>Global Forum on Transparency and Exchange of Information for Tax Purposes</td>
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<tr>
<td>Multilateral Convention</td>
<td>Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010</td>
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<tr>
<td>NV</td>
<td>Public limited liability company (<em>Naamloze Vennootschap</em>)</td>
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<td>TIEA</td>
<td>Tax Information Exchange Agreement</td>
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Executive summary

1. This report analyses the implementation of the standard of transparency and exchange of information on request in Sint Maarten on the second round of reviews conducted by the Global Forum. Due to the COVID-19 pandemic, the onsite visit that was provisionally scheduled to take place in late 2021 was cancelled. Hence, the review of Sint Maarten was phased, starting with a desk-based review that culminated in August 2022 with the adoption of the report assessing the legal and regulatory framework (Phase 1 report). The onsite visit to Sint Maarten eventually took place in August 2023 and the present review complements the Phase 1 report with an assessment of the practical implementation of the standard, including in respect of exchange of information requests received and sent during the review period from 1 October 2019 to 30 September 2022, as well as any changes made to the legal framework since the Phase 1 review, as of 24 April 2024.

2. In 2015, the Global Forum evaluated Sint Maarten against the 2010 Terms of Reference finding that overall Sint Maarten had a legal and regulatory framework that was generally in place, but due to issues of practical implementation, the Global Forum assigned an overall rating of Partially Compliant with the standard (refer to Annex 3 for details).

3. This report concludes that since the previous report, Sint Maarten has made some improvements and is now overall Largely Compliant with the standard.
## Comparison of ratings for First Round Report and Second Round Report

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<tbody>
<tr>
<td>A.1 Availability of ownership and identity information</td>
<td>Partially Compliant</td>
<td>Partially Compliant</td>
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<tr>
<td>A.2 Availability of accounting information</td>
<td>Partially Compliant</td>
<td>Partially Compliant</td>
</tr>
<tr>
<td>A.3 Availability of banking information</td>
<td>Compliant</td>
<td>Largely Compliant</td>
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<tr>
<td>B.1 Access to information</td>
<td>Partially Compliant</td>
<td>Largely Compliant</td>
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<tr>
<td>B.2 Rights and Safeguards</td>
<td>Largely Compliant</td>
<td>Largely Compliant</td>
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<tr>
<td>C.1 EOIR Mechanisms</td>
<td>Compliant</td>
<td>Compliant</td>
</tr>
<tr>
<td>C.2 Network of EOIR Mechanisms</td>
<td>Compliant</td>
<td>Compliant</td>
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<tr>
<td>C.3 Confidentiality</td>
<td>Compliant</td>
<td>Compliant</td>
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<tr>
<td>C.4 Rights and safeguards</td>
<td>Compliant</td>
<td>Compliant</td>
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<tr>
<td>C.5 Quality and timeliness of responses</td>
<td>Partially Compliant</td>
<td>Compliant</td>
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**OVERALL RATING**

| Partially Compliant | Largely Compliant |

*Note: The four-scale ratings on compliance with the standard (capturing both the legal framework and practice) are: Compliant, Largely Compliant, Partially Compliant, and Non-Compliant.*

## Progress made since previous review

4. Sint Maarten has made some progress since the 2015 Report. In respect of availability of ownership information, the 2015 Report had noted the existence of bearer shares by public limited liability companies and the incomplete availability of ownership information of such shares. Effective as of November 2019, Sint Maarten prohibited public limited liability companies from issuing bearer shares.

5. In respect of the requirements for maintaining beneficial ownership information, Sint Maarten relies on its Anti-Money Laundering legal framework. In addition, since August 2019, new requirements have been put in place for all legal entities in Sint Maarten to submit their beneficial ownership information to the Trade Register maintained by the Chamber of Commerce and Industry (COCI).

6. The 2015 Report had identified that exchange of information could be unduly prevented or delayed due to certain issues in respect of appeal rights and notification of taxpayers that applied to persons in Sint Maarten (Element B.2). In this regard, the only notable change has been an increase in the periodicity of the meetings of the Council of Appeal to thrice a year instead of twice, which may improve the time taken for completion of appeal
proceedings. However, the decision of the Council remains challengeable at higher appellate levels. The authorities have drafted a detailed law to address the issues pertaining to Element B.2 noted in the 2015 Report, but the law is yet to be enacted.

7. Lastly, since the previous review, Sint Maarten has made good progress on improving the timeliness of answering EOIR requests in an effective manner.

Key recommendations

8. The standard was strengthened in 2016 to require the availability of information on the beneficial owners of legal entities and arrangements and the key recommendations issued to Sint Maarten in the present report relate to this aspect. In Sint Maarten, the main mechanisms for the availability of this information are new requirements to provide this type of information to the Trade Register coupled with anti-money laundering (AML) customer due diligence (CDD) requirements for a wide range of financial institutions and service providers. However, some gaps have been noted (see Elements A1 and A3):

- While the definition of beneficial owner broadly meets the standard, it does not specify that a triggering interest in the capital or voting rights could be held directly or indirectly.
- The process of identification of beneficial owners does not contain the default position to identify individuals holding senior management positions when no natural person meets the definition of beneficial owner.
- Partnerships are legal arrangements in Sint Maarten. However, the existence of a threshold in terms of capital contribution and benefits from a partnership in the definition of beneficial owner may not ensure the identification of all beneficial owners considering the form and structure of partnerships.
- In respect of trusts where there are legal entities as settlor, trustee, beneficiary(ies), the definition does not require the identification of natural person(s) behind such entities as the beneficial owner(s). Similar concern exists in relation to identification of natural persons in the context of private foundations.
- Identity and beneficial ownership information of silent partnerships may not be available if they do not have taxable income requiring them to file profit tax returns or do not have an on-going relationship with an AML-obliged person.
9. The information in the Trade Register maintained by COCI will not be adequate, as entities must provide beneficial ownership information to the Trade Register only if the persons are not already otherwise registered therein or in the shareholder register held by the companies themselves. Although entities must update the Trade Register within one week of change of beneficial owner, there is no system in place to ensure that changes are brought to their attention, such that the information in the Trade Register might not be up to date. Moreover, the AML framework also does not provide for a specified frequency for updates (Element A.1).

10. Despite the prohibition on issuance of bearer shares by public limited liability companies (NVs), there is no time limit set in the law for holders of bearer shares to claim their rights. Further, it is unclear if limited partnerships with shares can still issue or have issued bearer shares. Recommendations have been made in this regard.

11. While the AML framework requires that banks ensure that beneficial ownership information is updated, there is no specified frequency provided in guidance or regulation to ensure a consistent application of this requirement; so there could be situations where the available beneficial ownership information is not up to date (Element A.3).

12. With respect to accounting records (Element A.2 of the standard), for entities that cease to exist, a custodian or the liquidator is required to maintain the accounting records and underlying documentation of a liquidated legal entity. However, the accounting records and underlying documentation may not be in the possession or under the control of a person in Sint Maarten. The same concern applies to domestic companies that convert into foreign legal entities.

13. In respect of practical implementation of the legal framework, recommendations have been made to ensure effective supervision for ensuring the availability of legal ownership, beneficial ownership, accounting and banking information. The availability of ownership (legal and beneficial) and accounting information is largely dependent on enforcing and supervising the existing requirements under the law as such information can be maintained overseas and there is insufficient compliance with the requirements of submission of periodic returns to relevant authorities that can provide reassurance that the information is being maintained in line with the provisions of law. Supervision over non-bank AML obliged persons is inadequate. Further, for the prohibition of bearer shares in effect since 2019, supervisory and enforcement efforts have not taken place to ensure that pre-existing bearer shares have been registered. In addition, since 2019 due to the impact of the pandemic, supervision over banks has been somewhat limited and there is room for improvement in this regard as well.
14. With respect to access to information for exchange purposes, as indicated in the section on progress, some recommendations issued in 2015 remain to be addressed and are reiterated in the present report on the compatibility of the rights and safeguards that apply to persons in Sint Maarten and an effective exchange of information. The EOIR standard was also clarified in 2016 to indicate that post-exchange notifications should be compatible with EOI and this is also an issue that remains to be addressed by Sint Maarten.

**Exchange of information**

15. Sint Maarten has EOIR instruments with 146 partners, through 23 bilateral agreements, the Tax Arrangement of the Kingdom of the Netherlands (BRK) and the Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010 (the Multilateral Convention). The EOI mechanisms that Sint Maarten has in place have no material deficiencies.

16. Over the review period, Sint Maarten received 12 requests and did not send any. Sint Maarten was able to answer all the requests in a timely manner although status updates were not always provided for requests not answered within 90 days. The comments received from peers for this review indicate general satisfaction with the information provided by Sint Maarten.

**Overall rating**

17. Sint Maarten is rated Compliant on Elements C.1, C.2, C.3, C.4 and C.5, Largely Compliant on Elements A.3, B.1 and B.2 and Partially Compliant on Elements A.1 and A.2. Overall, Sint Maarten is rated Largely Compliant with the standard.

18. This report was approved at the Peer Review Group of the Global Forum on 19 June 2024 and was adopted by the Global Forum on 18 July 2024. A self-assessment report on the steps undertaken by Sint Maarten to address the recommendations made in this report should be provided to the Peer Review Group in accordance with the methodology for enhanced monitoring as per the schedule laid out in Annex 2 of the methodology. The first such self-assessment report from Sint Maarten will be expected in 2026, and thereafter, once every two years.
## Summary of determinations, ratings and recommendations

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<th>Determinations and ratings</th>
<th>Factors underlying recommendations</th>
<th>Recommendations</th>
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<tr>
<td>Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities (Element A.1)</td>
<td>Public limited liability companies (NVs) could issue bearer certificates until November 2019. Since then, Sint Maarten prohibited NVs from issuing new bearer shares and holders of previously issued shares are prohibited from exercising the rights attached to such shares if their names are not entered in the shareholders’ register. However, there is no time limit for holders of bearer shares to claim their rights.</td>
<td>Sint Maarten is recommended to set a time limit after which holders of bearer shares can no longer claim rights over these shares, to ensure that full legal and beneficial ownership information is available for all companies in line with the standard.</td>
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<tr>
<td>The legal and regulatory framework is in place but needs improvement</td>
<td>It is unclear if limited partnerships (CVs) can still issue bearer shares and if information on the identity of partners is available in respect of all CVs that may have issued some in the past. Sint Maarten considers that, with effect from April 2014, it is no longer possible for limited partnerships to issue bearer shares since there was a requirement to identify all limited partners, resulting in partnerships divided by bearer shares de facto being abolished. In the absence of an express prohibition, however, it is uncertain whether there are still bearer shares on limited partnerships in circulation.</td>
<td>Sint Maarten is recommended to ensure that information on identity of partners is available in relation to all limited partnerships divided by bearer shares.</td>
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<td>The same general definition of beneficial owner applies to companies and partnerships which must file information to the Trade Register and to AML-obliged persons. This definition does not expressly cover both direct and indirect ownership and control. In addition, the process of identification of beneficial owners does not contain the default position to identify individuals holding senior management positions when no natural person meets the definition of beneficial owner. In respect of partnerships, which are legal arrangements, the application of threshold of 25% may result in missing out the identity of all beneficial owners in line with the standard. Moreover, entities must provide beneficial ownership information to the Trade Register only if the shareholders/partners are not already otherwise registered therein or in the shareholder register held by the company/partnership, which will make the information difficult to reconstruct for the competent authority. Finally, although companies and partnerships must update the Trade Register within one week of change of beneficial owner, there is no system in place to ensure that changes are brought to their attention. Moreover, the AML framework also does not provide for a specified frequency for updates, which may result in available beneficial ownership under the AML framework on all types of entities and arrangements to not always be up to date.</td>
<td>Sint Maarten is recommended to ensure that its legal and regulatory framework requires the identification of all beneficial owners of all relevant legal entities and arrangements and that the information be adequate, accurate and up to date in line with the standard.</td>
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<td>Identity and beneficial ownership information of silent partnerships may only be available when they are subject to tax obligations or have an on-going relationship with an AML-obliged person.</td>
<td>Sint Maarten is recommended to ensure that identity and beneficial ownership in line with the standard is available in respect of all relevant silent partnerships.</td>
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<td>Determinations and ratings</td>
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<td>Although the anti-money laundering law requires the identification of the settlor, the trustee, protector, beneficiaries, and any person who exercises control over the trust, it does not explicitly require identification of all the beneficial owners of trusts as required under the standard (i.e. including the identity of any natural person behind a trustee, settlor, protector or beneficiary which are legal entities). The same concern applies to private foundations. Also, it is unclear how the beneficiaries with less than 25% interest in trusts are treated. In addition, the customer due diligence measures do not apply in case the trustee does not act in a professional capacity.</td>
<td>Sint Maarten is recommended to ensure that adequate, accurate and up-to-date beneficial ownership information of trusts having nexus to Sint Maarten and private foundations is always available in Sint Maarten.</td>
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<td>Rating: Partially Compliant</td>
<td>Legal ownership information of entities in Sint Maarten at the time of incorporation is provided to the notary concerned and also submitted to the Trade Register maintained by the Chamber of Commerce and Industry. However, subsequent changes in shareholding/membership are not required to be communicated to either. Only entities that are active in Sint Maarten and need Trade Register excerpts update their registration information at the Chamber of Commerce and Industry. All entities are obliged to file profit tax returns. Shareholder/membership/partners’ information is sought in the profit tax returns and entities are required to update any changes in the legal ownership information in their annual profit tax returns. However, the rate of filing of tax returns is low and the tax authorities have not taken sufficient actions against non-filers. While members have an inherent interest to have their names included in the membership registers to benefit from membership rights, given that the management of entities</td>
<td>Sint Maarten is recommended to ensure an effective supervisory and monitoring framework to ensure that legal ownership information on all entities is available in line with the standard.</td>
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<td>can maintain legal ownership and identity information wholly outside of Sint Maarten, there are concerns that up-to-date legal ownership on entities might not always be available to the Competent Authority unless the obligations are supervised. However, there is no oversight by any authority that all entities and arrangements are complying with their obligations under the Civil Code to maintain up-to-date legal ownership information. Although sanctions for non-compliance are provided in the law, no specific actions have been taken by Sint Maarten authorities to monitor and enforce compliance. Further, there are concerns that updated legal ownership information on companies that cease to exist through self-dissolution or domicile out of Sint Maarten would not always be available for the stipulated retention period.</td>
<td>Sint Maarten is recommended to ensure that there is effective supervision and enforcement of the legal requirements to maintain adequate, accurate and up-to-date beneficial ownership information on all relevant legal entities and arrangements.</td>
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<td>The availability of beneficial ownership information in Sint Maarten is primarily through the application of the AML law. Although there are some requirements in law to submit beneficial ownership information on entities and arrangements in limited circumstances, the Chamber of Commerce and Industry has not yet started receiving this information systematically for all entities and is still working on further improvements of the existing law and putting in place the necessary mechanisms for gathering such information.</td>
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<th>Factors underlying recommendations</th>
<th>Recommendations</th>
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<td>The supervision in respect of AML obligations by the relevant authorities has not been sufficient. The Financial Intelligence Unit that is the supervisory authority for a variety of AML-obliged persons including notaries, has not carried out any specific supervisory actions during the review period due to pandemic related reasons as well as significant resource constraints. The supervision of the Central Bank over trust service providers has also been very limited. Hence, there are concerns that beneficial ownership information on all relevant entities and arrangements in Sint Maarten may not be available in line with the standard.</td>
<td>Sint Maarten is recommended to put in place a suitable supervisory mechanism to ensure that the identity of the owners of all existing bearer shares issued by public limited liability companies is known in all cases.</td>
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<td>While new public limited liability companies (NVs) are not permitted to issue bearer shares, there have not been any supervisory efforts to identify companies who issued bearer shares in the past and to make sure that such companies have converted all their bearer shares into registered shares. Hence, currently Sint Maarten authorities are yet to ascertain how many companies had issued bearer shares and what amount of capital is represented by such shares. While it is required that shareholder rights be exercised only by those shareholders whose names appear in the shareholder registers maintained by the companies themselves, it is not clear how this requirement is being supervised. There are no specific sanctions on companies if they are found non-compliant with these requirements. Considering that companies in Sint Maarten can have their entire management outside of Sint Maarten and shareholder registers maintained outside of Sint Maarten, there are risks that in the absence of due supervision, the prohibition may not be effective in practice.</td>
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## Determinations and ratings

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<thead>
<tr>
<th>Factors underlying recommendations</th>
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<tbody>
<tr>
<td>Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (Element A.2)</td>
<td>Sint Maarten is recommended to ensure that all accounting records and underlying documentation for all entities are available in a timely manner for exchange purposes for a minimum period of five years, in line with the standard in situations where the entity ceases to exist or domiciles out of Sint Maarten.</td>
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### The legal and regulatory framework is in place but needs improvement

Although a custodian or the liquidator is required to maintain the accounting records and underlying documentation of a liquidated legal entity, there is no requirement that liquidation take place in Sint Maarten. In addition, a Sint Maarten company can convert into a foreign legal entity and there is no obligation to keep records for at least five years in Sint Maarten. Therefore, the accounting records and underlying documentation may not be in the possession or under the control of a person in Sint Maarten in situations where an entity ceases to exist or domiciles out of Sint Maarten.

Sint Maarten is recommended to ensure that all accounting records and underlying documentation for all entities are available in a timely manner for exchange purposes for a minimum period of five years, in line with the standard in situations where the entity ceases to exist or domiciles out of Sint Maarten.

### Rating: Partially Compliant

Accounting records by all relevant entities and arrangements can be maintained outside of Sint Maarten. The Tax Law requires that all types of relevant entities and arrangements (including Tax Exempt Companies) submit their financial statements at the point of filing of tax returns. Tax law requirements are the only source of supervisory checks in respect of monitoring compliance with legal obligations to maintain accounting records. However, the rate of filing of tax returns is very low and many entities are non-compliant with the tax return filing obligations. In 2022, Sint Maarten Tax authorities conducted some limited examination of the requirements to file tax returns with financial statements. However, there are still a significant number of entities that are not complying with these obligations and no specific measures have been taken in this regard to ensure that all accounting information in line with the standard is being maintained by all entities.

Sint Maarten is recommended to put in place an efficient system of oversight and enforcement to ensure compliance with the obligations to maintain accounting information in accordance with its law.
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<td>Although, in practice, during the review period, Sint Maarten was able to provide accounting information in the one case where it was sought, the number of requests were limited. The lack of supervision can pose important risks to the availability of accounting information if a request were received on a non-compliant company.</td>
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<tr>
<td>Banking information and beneficial ownership information should be available for all account-holders (Element A.3)</td>
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<tr>
<td>The legal and regulatory framework is in place but needs improvement</td>
<td>The general definition of beneficial owner does not expressly cover both direct and indirect ownership and control. In addition, the process of identification of beneficial owners does not contain the default position to identify individuals holding senior management positions when no natural person meets the definition of beneficial owner. In respect of partnerships, which are legal arrangements, the application of threshold of 25% may result in missing out the identity of all beneficial owners in line with the standard.</td>
<td>Sint Maarten is recommended to take appropriate measures to ensure that beneficial ownership information is available in line with the standard for all bank accounts.</td>
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<td>While the AML Law requires that banks ensure that beneficial ownership information is updated, there is no specified frequency provided for in guidance or regulation to ensure a consistent application of this requirement; so, there could be situations where the available beneficial ownership information is not up to date.</td>
<td>Sint Maarten is recommended to ensure that beneficial ownership information on all bank accounts is kept up to date, in line with the standard.</td>
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<tr>
<td>Although the anti-money laundering law requires the identification of the settlor, the trustee, protector, beneficiaries, and any person who exercises control over the trust, it does not explicitly require identification of all the beneficial owners of trusts as required under the standard (i.e. including the identity of any natural person behind a trustee, settlor, protector or beneficiary which are legal entities). The same concern applies to private foundations. Also, it is unclear how the beneficiaries with less than 25% interest in trusts are treated.</td>
<td>Sint Maarten is recommended to ensure that adequate, accurate and up-to-date beneficial ownership information of bank accounts is always available in Sint Maarten, including when trusts and private foundations are involved.</td>
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<td>In a situation where a bank were to cease to exist in Sint Maarten or where a foreign bank were to cease its operation there, there are no clear legal requirements for ensuring the availability of all banking information held by such a bank for a period of at least five years.</td>
<td>Sint Maarten is recommended to ensure that all banking information is available for the retention period in line with the standard in a situation where a bank ceases to exist or ceases its operations in Sint Maarten.</td>
</tr>
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#### Rating: Largely Compliant

- The Central Bank follows risk-based supervision over banks in Sint Maarten. However, since 2019, due to pandemic related reasons, there has been limited on-site supervision of banks with a focus on AML compliance in Sint Maarten. The Central Bank has carried out some off-site supervisory activities with follow-up with banks. However, the depth and comprehensiveness of these exercises is not clear. The Central Bank has indicated plans for more on-site supervisory activities. Although, in general, banks in Sint Maarten frequently interact with the Central Bank and appear to be aware of their AML obligations, there is room to enhance the supervisory and enforcement measures. | Sint Maarten is recommended to monitor the level of enforcement and supervision over banks to ensure the availability of up-to-date, adequate and accurate banking information on all bank account holders. |
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (Element B.1)

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<tr>
<td><strong>The legal and regulatory framework is in place</strong></td>
<td>Access by the competent authority to beneficial ownership information held by the Financial Intelligence Unit (FIU) is uncertain because of conflicting obligations of co-operation with the competent authority and confidentiality of information.</td>
<td>Sint Maarten is recommended to ensure that its competent authority can obtain information from the FIU for EOI purposes.</td>
</tr>
<tr>
<td><strong>Rating: Largely Compliant</strong></td>
<td>The practical application of legal professional privilege in Sint Maarten appears to go beyond that defined in the standard, however, it remains to be tested in respect of obtaining information for exchange of information purposes.</td>
<td>Sint Maarten is recommended to monitor the practical application of legal professional privilege to ensure that it does not prevent effective exchange of information.</td>
</tr>
<tr>
<td><strong>The legal and regulatory framework is in place but needs improvement</strong></td>
<td>Appeals to the Joint Court, which meets only three times a year, may delay the effective exchange of information in Sint Maarten.</td>
<td>Sint Maarten is recommended to ensure that appeal rights applicable to persons do not unduly prevent or delay effective exchange of information.</td>
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<td>The power of Sint Maarten's tax authorities to promptly provide information for exchange purposes is subject to interpretation issues. There is an exception from prior notification for urgent reasons but no express exceptions in the law to cover situations where notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction. Although the EOI manual considers it as an urgent reason and Sint Maarten authorities have also considered this as an urgent reason, in the absence of express legal provisions, the situation remains open to interpretation. Further, the minimum two month waiting period after notification could prevent effective exchange of information within reasonable time. When exception to prior-notification is granted, a time-specific post-exchange notification applies, where notification must occur up to four months after the decision to respond to the request. No exceptions are provided to such time-specific post-exchange notification to cover situations when such notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction.</td>
<td>Sint Maarten is recommended to ensure that rights and safeguards applicable to persons do not unduly prevent or delay effective exchange of information. It is recommended that wider exceptions from time-specific post-exchange notification be permitted in exchange of information matters (e.g. in cases in which the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction).</td>
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<tr>
<td>Rating: Largely Compliant</td>
<td>Exchange of information mechanisms should provide for effective exchange of information (Element C.1)</td>
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<tr>
<td>The legal and regulatory framework is in place</td>
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<tr>
<td>Rating: Compliant</td>
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<td>The jurisdictions’ network of information exchange mechanisms should cover all relevant partners (Element C.2)</td>
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<td>The legal and regulatory framework is in place</td>
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<td>Rating: Compliant</td>
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<td>The jurisdictions’ mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (Element C.3)</td>
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<td>The legal and regulatory framework is in place</td>
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<td>The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (Element C.4)</td>
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<td>Rating: Compliant</td>
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<td>The jurisdiction should request and provide information under its network of agreements in an effective manner (Element C.5)</td>
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<tr>
<td>Legal and regulatory framework:</td>
<td>This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.</td>
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<td>Rating: Compliant</td>
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<td>In 5 out of 12 requests that Sint Maarten received during the review period, it took Sint Maarten more than 90 days to provide the requested information. In none of these cases, status updates were provided to the treaty partner.</td>
<td>Sint Maarten is recommended to ensure that it provides status updates to EOI partners within 90 days when it is unable to provide the requested information within that time.</td>
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</table>
Currently the EOI function in Sint Maarten is performed by the Head of the Tax Administration with the support of one auditor. So far this has been sufficient to handle the limited number of requests received by Sint Maarten. However, there are no procedures in place to ensure that EOI knowledge is maintained within the tax administration in case of staff turnover. There is an EOI Manual available, but it is not very detailed on certain important EOI aspects like foreseeable relevance and group requests. The manual has not been updated since 2014 when it was first published.

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<td>Sint Maarten is recommended to monitor the volume of EOI requests it receives and sends and accordingly ensure that there are sufficient trained resources available with adequate guidance to ensure the continuity of the EOI function.</td>
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Overview of Sint Maarten

19. This overview provides some basic information about Sint Maarten that serves as context for understanding the analysis in the main body of the report.

20. Sint Maarten forms part of the Kingdom of the Netherlands, along with the Netherlands, Aruba and Curaçao. The island of Sint Maarten/Saint Martin is divided between the Kingdom of the Netherlands and France. Dutch Sint Maarten (which is covered in this report) encompasses the southern part of this Caribbean Island. Sint Maarten has a land area of 41.43 square kilometres and a population of 52,729 inhabitants (as of April 2024). Dutch and English are the official languages of Sint Maarten. The monetary unit of Sint Maarten is the Netherlands Antillean Guilder (ANG).

21. Sint Maarten’s Gross Domestic Product (GDP) is ANG 2.647 billion (EUR 1.357 billion) (the latest estimated figure for 2022). Sint Maarten’s economy is mainly based on tourism. Main trading partners of Sint Maarten include France, the Netherlands and the United States.

Legal system

22. Pursuant to the Charter for the Kingdom of the Netherlands, Sint Maarten is self-governing to a large degree and accordingly has legislative autonomy on various subjects, including taxes. In contrast, defence, foreign relations, nationality and extradition are handled at the level of the Kingdom (article 3(1), Charter for the Kingdom of the Netherlands). Apart from Kingdom legislation, the legal system now relies on a unitary law. The Constitution of Sint Maarten regulates the basic rights of citizens, the institutions and separation of the judiciary, legislative and executive branches, the organisation of government and its tasks and obligations, along with related subjects.

23. Sint Maarten has a parliamentary system with a unicameral parliament, which consists of 15 members who are elected by popular vote for a four-year term of office. The legislative power is shared by the Government (the Council of Ministers together with the Governor) and the Parliament and is exercised via National Ordinances (or National Acts). The authority to regulate a subject further can be delegated to the Government and is exercised through National decrees and Ministerial regulations. The laws applicable in Sint Maarten have the following hierarchy: (i) Kingdom Laws; (ii) Constitution of Sint Maarten; (iii) National Ordinances; (iv) National Decrees containing general measures; (v) National Decrees and (vi) Ministerial regulations. The Constitution of the Netherlands which partially applies to Sint Maarten (articles 93 and 94 of the Constitution) expressly provides for the precedence of directly effective binding provisions of international treaties. International treaties (including tax treaties) take precedence over any conflicting national law and enjoy priority over national ordinances, decrees, regulations and even over the Constitution itself.

24. Sint Maarten is a civil law jurisdiction. The legal system of Sint Maarten is derived from the law of the former Netherlands Antilles, which is based on the Dutch legal system with some modifications due to local and/or regional circumstances. Before attaining country status, the legal system of the Netherlands Antilles was divided between federal and sub-national powers which include the legislative power, together with the administrative authority of the Island Government: the island territory of Sint Maarten had the discretion to adopt Island Ordinances. After 10 October 2010, these Island Ordinances received the status of National Ordinances since the distinction between federal and island territory government ceased to exist. The transition from Dutch Antilles Law into Sint Maarten Law is governed by the National Ordinance on transitional provisions for legislation and administration.

**Tax system**

25. The National Ordinance on Income Tax (governing individual taxation), the National Ordinance on Profit Tax (taxation of entities) and the General National Ordinance on National Taxes (procedural law) are the key tax laws of Sint Maarten. The Ministry of Finance is responsible for the tax

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2. The Kingdom of the Netherlands has been restructured on 10 October 2010. Formerly, the Kingdom was constituted by three countries: the Netherlands, Aruba and the Netherlands Antilles. As from the aforementioned date, the Netherlands Antilles have ceased to exist. The five islands that it comprised have acquired different statuses: Curaçao and Sint Maarten have become constituent countries within the Kingdom, while Bonaire, Sint Eustatius and Saba are now municipalities of the Netherlands.
laws and their execution. The tax division of the Ministry of Finance consists of the Department of Fiscal Affairs (tax policy) and the Tax Administration (Belastingdienst), which is subdivided into three units: Inspectorate of Taxes, Receivers Office, and Audit and Criminal Investigation.

26. There are two different systems for filing and payment of the taxes due in Sint Maarten:

- assessment taxes, such as corporate and individual income taxes, where the taxpayer must file an annual return based on which the tax authorities will issue an assessment
- filed return taxes, such as wage tax, turnover tax and social security premiums, where the taxpayer has to file a return and pay taxes on a monthly basis or upon dividend distribution.

27. Individual income tax is levied on individuals resident in Sint Maarten on the basis of the individual's worldwide income. Individual income tax rates range from an overall tax rate of 12.5% to 47.5%.

28. Corporate income tax is levied on the profits or net taxable income of entities. The corporate income tax rate is 30% (a 15% local surcharge is levied, resulting in an overall tax rate of 34.5%). All companies incorporated in Sint Maarten, whether or not managed from within Sint Maarten, are resident for tax purposes and are taxed on their worldwide income. Foreign companies incorporated outside Sint Maarten are subject to tax on the income sourced from Sint Maarten. In Sint Maarten, there is no concept of tax residency due to place of effective management in Sint Maarten. The law provides that where a foreign company has its place of management in Sint Maarten, such a physical place will constitute permanent establishment of that entity and such entity will be taxed as a non-resident on the income of the permanent establishment as sourced from Sint Maarten. Except for dividends, all sources of income are subject to normal corporate income tax rates. A trust or a private foundation, that is not doing business other than solely to promote a general social interest, may opt, pursuant to Article 1B (first paragraph) of the National Ordinance on Profit Tax, for the status of “Target Funds” (doelevermogens) so that their profits are taxed at 10% under Article 15 (paragraph 5) of the National Ordinance on Profit Tax. Consequently, they can enjoy treaty benefits. Private limited liability companies (BVs) may obtain a tax-exempt status provided certain criteria are met (see paragraph 69). Moreover, dividends received by a resident company from a company in connection with a participation, as referred to in Article 11 (first paragraph) of the National Ordinance on Profit Tax are not taxed. There are no withholding taxes on dividends paid to (offshore) shareholders.

29. Sint Maarten is a free-port and as such it does not levy customs or excise duties (except on gasoline).
Financial and offshore services sector

30. The concept of offshore or international entities (companies, associations or foundations) exists under the provisions of the Foreign Exchange Transactions Regulations for Curacao and Sint Maarten, as well as under the National Ordinance on Supervision of Trust Service Providers. An offshore company is defined as “a public limited company or a private limited company established in the country of Curacao or the country of Sint Maarten, whose statutory object is pursued upon orders and for the benefit of one or more non-residents or the company itself, by means belonging to one or more non-residents or the company itself and whose issued shares are owned by one or more non-residents or as such by virtue of these Regulations by a limited or private company considered as non-resident” (article 1(12), Foreign Exchange Transactions Regulations for Curacao and Sint Maarten). The Central Bank of Curacao and Sint Maarten grants this status to an entity seeking such status and meeting the requirements set under the law. An offshore entity enjoys special status in respect of economic transactions and is essentially considered a non-resident entity. Such an entity does not require a foreign exchange licence to transact with non-residents and does not need to pay a 1% transaction fee on foreign exchange transactions. Till 2001, the tax regime granted tax benefits to such entities. However, in 2001, the former Netherlands Antilles (now Curacao and Sint Maarten) abolished its offshore tax regime (preferential tax rates from 2.4% to 3%). Grandfathering rules in the context of the tax laws applied until 2019 for qualifying offshore companies incorporated before 1 January 2000, provided certain conditions were met. Prior to the abolition of the offshore tax regime in 2001, there were approximately 666 offshore companies registered in the tax system. As of 1 January 2001, there were 269 companies covered under the grandfathering provisions and registered with the tax authorities. Sint Maarten’s tax authorities indicate that of these entities, there could be a significant number that are currently inactive but have not formally been discontinued or de-registered. The Sint Maarten authorities indicated that the other 397 offshore companies either re-located their seats to other jurisdictions, were not eligible under the grandfathering rule (are thus deemed to be onshore companies) or became inactive. As of April 2024, there are a total of 36 offshore or international entities in Sint Maarten as per the data provided by the Central Bank. Of these, 7 are public limited companies, 14 are private limited companies and 15 are private foundations. In terms of their tax obligations, after the discontinuation of the offshore tax regime, such offshore entities have the same tax obligations as applicable to domestic entities.

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3. In order to qualify for the transitional arrangements to 2019, offshore companies needed to have exclusive or almost exclusive income from dividends, interest and/or royalties.
i.e. registration with the tax authorities, filing profit tax returns and payment of taxes on their worldwide income.

31. The financial sector of Sint Maarten has a variety of financial institutions. Their offshore operations are larger than their local operations because Sint Maarten had attracted foreign investment under the old offshore tax regime which has been abolished (with the application of grandfathering rules until the end of 2019). As at December 2023, the financial sector of Sint Maarten comprises eight credit institutions: five branches of local banks⁴(volume of assets ANG 5.03 billion (EUR 2.57 billion)), one branch of a foreign bank (volume of assets ANG 490 million (EUR 250 million)), one subsidiary of a foreign bank (volume of assets ANG 470 million (EUR 240 million), and one specialised credit institution (volume of assets ANG 54 million (EUR 27.5 million)). Further, there are three licensed trust service providers, one trust service provider dispensed from licensing,⁵ two money transfer companies, five insurance companies and one life insurance company. They are all regulated by the Central Bank of Curaçao and Sint Maarten (the Central Bank).

Anti-Money Laundering Framework

32. The National Ordinance on the Combatting of Money Laundering and Terrorist Financing (hereafter AML Law) sets out Sint Maarten’s AML framework including customer due diligence (CDD) obligations that AML-obliged persons must follow. The AML supervisors are the Central Bank for financial institutions and the Financial Intelligence Unit (FIU)⁶ for non-financial institutions and persons. Among the non-financial institutions that

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4. Banks incorporated in Curaçao are local banks with branches in Sint Maarten.
5. A “dispensation” may be granted to either a legal person or natural person providing trust services for other considerations than as part of the exercise of its, his or her profession or business. Consequently, a dispensation has limitations attached to it relative to the number of offshore or international companies (maximum of 10) for which the trust service provider renders services and the amount of annual income in exchange for the services provided. According to the Policy Guidelines on Dispensation for Trust Service Providers, trust service providers with a licence or dispensation have to comply with the same regulatory requirements. It is prohibited to provide trust services without a licence or dispensation from the Central Bank. Failure to comply with the requirements of the Central Bank will compel the Central Bank to take (disciplinary) measures.
6. The FIU is the supervisory authority under the Ministry of Justice responsible for the enforcement of the national ordinances on reporting unusual transactions and for supervising the compliance of the AML-obliged persons which are not financial institutions (see paragraph 108) that are obliged to submit their beneficial ownership information to the FIU when they register themselves with the FIU.
are obliged under the AML law are 3 notaries, 30 practicing lawyers and 32 accountants and tax advisors in Sint Maarten.

33. Sint Maarten is a member of the Caribbean Financial Action Task Force (CFATF). The CFATF conducted an evaluation of Sint Maarten’s compliance with the Financial Action Task Force (FATF) standards in 2012 under its third round of mutual evaluations. Following the evaluation and the serious deficiencies identified, Sint Maarten was placed under expedited follow-up and 12 follow-up reports were issued until December 2020, when Sint Maarten exited the follow-up process. Sint Maarten was found to have improved compliance with the following recommendations to a level equivalent to Largely Compliant: Recommendation 5 (customer due diligence), Recommendation 9 (third party introducers), Recommendation 12 (designated non-financial businesses and professionals), Recommendation 33 (legal persons – beneficial owners) and Recommendation 34 (legal arrangements – beneficial owners).  

Recent developments

34. Sint Maarten committed to implement the Common Reporting Standards for the exchange of financial account information with other participating jurisdictions from 2018. Sint Maarten started exchanging financial account information in 2022 on a non-reciprocal basis. With automatic exchange becoming effective in Sint Maarten, there is a possibility of follow-up EOI requests increasing in the coming years.

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7. Sint Maarten’s mutual evaluation and all follow-up reports can be found at https://www.cfatf-gafic.org/member-countries/sint-maarten. The next CFATF review is scheduled for 2024.
Part A: Availability of information

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

A.1. Legal and beneficial ownership and identity information

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

36. The 2015 Report concluded that Sint Maarten had a legal and regulatory framework in line with the standard for the retention and maintenance of legal ownership and identity information for domestic companies, partnerships, trusts and foundations, and penalties available to enforce these obligations.

37. However, the 2015 Report found that public limited liability companies (naamloze vennootschap, NV) could issue bearer certificates, if permitted under their articles of incorporation. The report further noted that although some limitations existed on their issuance, the limitations were neither sufficient nor properly enforced. Effective as of November 2019, Sint Maarten prohibited NVs from issuing new bearer shares. Holders of previously issued bearer shares cannot exercise the rights attached to their shares if their names are not entered in the shareholders’ register maintained by the company. However, there is no time limit for holders of bearer shares that have not respected the obligation to enter their name in the company’s register to claim their rights. Sint Maarten is recommended to set such a time limit, to ensure that full ownership information is available for all companies. With respect to limited partnerships (CVs) divided by shares, it is unclear whether they can still issue bearer shares and if information on the identity of partners is available in respect of all CVs that may have issued bearer shares in the past. Sint Maarten is recommended to clarify its legal framework to ensure that full identity information is available in respect of all
In addition, no specific enforcement and monitoring actions have been reported in respect of NVs that may have issued bearer shares. Considering that some of these NVs might be managed from outside Sint Maarten, there are doubts that prohibition in respect of bearer shares has been applied by all entities with shareholders duly entered into the shareholder registers. Sint Maarten is recommended to address these issues.

38. The standard was strengthened in 2016 to require the availability of beneficial ownership information for all relevant legal entities and arrangements. There are obligations in Sint Maarten for entities and arrangements to provide some beneficial ownership information to the Trade Register. Beneficial ownership information must also be collected by AML-obliged persons as part of their customer due diligence obligations, but these might not cover all Sint Maarten legal persons and arrangements. Some issues have been identified regarding the definition of “beneficial owner”, which might affect the availability of this information in certain instances. In particular, the process for the identification of beneficial owners of legal persons and arrangements does not explicitly cover both direct and indirect ownership and control and does not contain a fall-back option for the identification of senior managers when no natural person meets the definition of beneficial owner. Moreover, entities must provide beneficial ownership information to the Trade Register only if these shareholders/partners are not already otherwise registered therein or in the shareholder register held by the company/partnership, which will make the information difficult to reconstruct for the competent authority. Identity and beneficial ownership information of relevant silent partnerships is not contained in the Trade Register and may only be available when they have taxable income requiring them to file tax returns (identity information) or when they have an on-going relationship with an AML-obliged person (beneficial ownership information), which is not required by law. Deficiencies are also noted in respect of the applicable definition of beneficial owners of trusts and private foundations.

39. The 2015 Report had noted that Sint Maarten did not have an effective system of oversight to monitor and enforce the compliance of entities with their obligations and a recommendation on enforcement and supervision for ensuring availability of legal ownership and identity information had been issued. The deficiencies still persist. The enforcement and oversight measures to ensure the availability of legal ownership information on all types of entities and arrangements are inadequate, considering that there is significant non-compliance with the obligations for filing annual returns under the commercial and tax laws. A significant number of entities in Sint Maarten do not have any business dealings in Sint Maarten and have no or limited physical presence in Sint Maarten. Oversight over compliance with the legal requirements for such entities is limited leading to the risk of
non-availability of legal ownership information on such entities. Sint Maarten is recommended to address these issues.

40. Enforcement and supervision in respect of beneficial ownership information is also a concern. Despite existing since 2019, the requirements of submitting this information in the Trade Register have not been enforced. Further, supervision over compliance with AML obligations of the non-bank AML-obliged persons has not been adequate.

41. During the review period, Sint Maarten received eight requests for legal ownership information and one request for beneficial ownership information. Sint Maarten was able to provide the requested information. No issues have been reported by the commenting peers.

42. The conclusions are as follows:

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

<table>
<thead>
<tr>
<th>Deficiencies identified/Underlying factor</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public limited liability companies (NVs) could issue bearer certificates until November 2019. Since then, Sint Maarten prohibited NVs from issuing new bearer shares and holders of previously issued shares are prohibited from exercising the rights attached to such shares if their names are not entered in the shareholders’ register. However, there is no time limit for holders of bearer shares to claim their rights.</td>
<td>Sint Maarten is recommended to set a time limit after which holders of bearer shares can no longer claim rights over these shares, to ensure that full legal and beneficial ownership information is available for all companies in line with the standard.</td>
</tr>
</tbody>
</table>

It is unclear if limited partnerships (CVs) can still issue bearer shares and if information on the identity of partners is available in respect of all CVs that may have issued some in the past. Sint Maarten considers that, with effect from April 2014, it is no longer possible for limited partnerships to issue bearer shares since there was a requirement to identify all limited partners, resulting in partnerships divided by bearer shares de facto being abolished. In the absence of an express prohibition, however, it is uncertain whether there are still bearer shares on limited partnerships in circulation.

<p>| Sint Maarten is recommended to ensure that information on identity of partners is available in relation to all limited partnerships divided by bearer shares. |</p>
<table>
<thead>
<tr>
<th>Deficiencies identified/Underlying factor</th>
<th>Recommendations</th>
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<tbody>
<tr>
<td>The same general definition of beneficial owner applies to companies and partnerships which must file information to the Trade Register and to AML-obliged persons. This definition does not expressly cover both direct and indirect ownership and control. In addition, the process of identification of beneficial owners does not contain the default position to identify individuals holding senior management positions when no natural person meets the definition of beneficial owner. In respect of partnerships, which are legal arrangements, the application of threshold of 25% may result in missing out the identity of all beneficial owners in line with the standard. Moreover, entities must provide beneficial ownership information to the Trade Register only if the shareholders/partners are not already otherwise registered therein or in the shareholder register held by the company/partnership, which will make the information difficult to reconstruct for the competent authority. Finally, although companies and partnerships must update the Trade Register within one week of change of beneficial owner, there is no system in place to ensure that changes are brought to their attention. Moreover, the AML framework also does not provide for a specified frequency for updates, which may result in available beneficial ownership under the AML framework on all types of entities and arrangements to not always be up to date.</td>
<td>Sint Maarten is recommended to ensure that its legal and regulatory framework requires the identification of all beneficial owners of all relevant legal entities and arrangements and that the information be adequate, accurate and up to date in line with the standard.</td>
</tr>
<tr>
<td>Identity and beneficial ownership information of silent partnerships may only be available when they are subject to tax obligations or have an on-going relationship with an AML-obliged person.</td>
<td>Sint Maarten is recommended to ensure that identity and beneficial ownership in line with the standard is available in respect of all relevant silent partnerships.</td>
</tr>
<tr>
<td>Although the anti-money laundering law requires the identification of the settlor, the trustee, protector, beneficiaries, and any person who exercises control over the trust, it does not explicitly require identification of all the beneficial owners of trusts as required under the standard (i.e. including the identity of any natural person behind a trustee, settlor, protector or beneficiary which are legal entities).</td>
<td>Sint Maarten is recommended to ensure that adequate, accurate and up-to-date beneficial ownership information of trusts having nexus to Sint Maarten and private foundations is always available in Sint Maarten.</td>
</tr>
<tr>
<td>Deficiencies identified/Underlying factor</td>
<td>Recommendations</td>
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<td>----------------------------------------</td>
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<tr>
<td>The same concern applies to private foundations. Also, it is unclear how the beneficiaries with less than 25% interest in trusts are treated. In addition, the customer due diligence measures do not apply in case the trustee does not act in a professional capacity.</td>
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**Practical Implementation of the Standard: Partially Compliant**

<table>
<thead>
<tr>
<th>Deficiencies identified/Underlying factor</th>
<th>Recommendations</th>
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<tr>
<td>Legal ownership information of entities in Sint Maarten at the time of incorporation is provided to the notary concerned and also submitted to the Trade Register maintained by the Chamber of Commerce and Industry. However, subsequent changes in shareholding are not required to be communicated to either. Only entities that are active in Sint Maarten and need Trade Register excerpts update their registration information at the Chamber of Commerce and Industry. All entities are obliged to file profit tax returns. Shareholder/membership/partners’ identity information is sought in the profit tax returns and entities are required to update any changes in the legal ownership information in their annual profit tax returns. However, the rate of filing of tax returns is low and the tax authorities have not taken sufficient actions against non-filers. While members have an inherent interest to have their names included in the membership registers to benefit from membership rights, given that the management of entities can maintain legal ownership and identity information wholly outside of Sint Maarten, there are concerns that up-to-date legal ownership on entities might not always be available to the Competent Authority unless the obligations are supervised. However, there is no oversight by any authority that all entities and arrangements are complying with their obligations under the Civil Code to maintain up-to-date legal ownership information. Although sanctions for non-compliance are provided in the law, no specific actions have been taken by Sint Maarten authorities to monitor and enforce compliance. Further, there are concerns that updated legal ownership information on companies that cease to exist through self-dissolution or domicile out of Sint Maarten would not always be available for the stipulated retention period.</td>
<td>Sint Maarten is recommended to ensure an effective supervisory and monitoring framework to ensure that legal ownership information on all entities is available in line with the standard.</td>
</tr>
<tr>
<td>Deficiencies identified/Underlying factor</td>
<td>Recommendations</td>
</tr>
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<tr>
<td>The availability of beneficial ownership information in Sint Maarten is primarily through the application of the AML law. Although there are some requirements in law to submit beneficial ownership information on entities and arrangements in limited circumstances, the Chamber of Commerce and Industry has not yet started receiving this information systematically for all entities and is still working on further improvements of the existing law and putting in place the necessary mechanisms for gathering such information. The supervision in respect of AML obligations by the relevant authorities has not been sufficient. The Financial Intelligence Unit that is the supervisory authority for a variety of AML-obliged persons including notaries, has not carried out any specific supervisory actions during the review period due to pandemic related reasons as well as significant resource constraints. The supervision of the Central Bank over trust service providers has also been very limited. Hence, there are concerns that beneficial ownership information on all relevant entities and arrangements in Sint Maarten may not be available in line with the standard.</td>
<td>Sint Maarten is recommended to ensure that there is effective supervision and enforcement of the legal requirements to maintain adequate, accurate and up-to-date beneficial ownership information on all relevant legal entities and arrangements.</td>
</tr>
<tr>
<td>While new public limited liability companies (NVs) are not permitted to issue bearer shares, there have not been any supervisory efforts to identify companies who issued bearer shares in the past and to make sure that such companies have converted all their bearer shares into registered shares. Hence, currently Sint Maarten authorities are yet to ascertain how many companies had issued bearer shares and what amount of capital is represented by such shares. While it is required that shareholder rights be exercised only by those shareholders whose names appear in the shareholder registers maintained by the companies themselves, it is not clear how this requirement is being supervised. There are no specific sanctions on companies if they are found non-compliant with these requirements. Considering that companies in Sint Maarten can have their entire management outside of Sint Maarten and shareholder registers maintained outside of Sint Maarten, there are risks that in the absence of due supervision, the prohibition may not be effective in practice.</td>
<td>Sint Maarten is recommended to put in place a suitable supervisory mechanism to ensure that the identity of the owners of all existing bearer shares issued by public limited liability companies is known in all cases.</td>
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</table>
A.1.1. Availability of legal and beneficial ownership information for companies

Types of companies

43. In Sint Maarten, there are effectively two types of companies:

- **Public limited liability company** (*naamloze vennootschap*, NV): NVs must have at least one shareholder (natural or legal person) and one director (natural or legal person) who exercises wide powers (articles 100-144, Civil Code, Book 2). A registered office must always be maintained in Sint Maarten. As of August 2023, there were 4,261 NVs in Sint Maarten registered with COCI. Of these, 624 NVs were reported to have at least one foreign director.

- **Private limited liability company** (*besloten vennootschap*, BV): BVs must have at least one shareholder (natural or legal person) and one director (natural or legal person) who exercises wide powers (articles 200-242, Civil Code, Book 2). A registered office must always be maintained in Sint Maarten. As of August 2023, there were 2,533 BVs in Sint Maarten registered with COCI. Of these 2,186 BVs had at least one foreign director.

44. Both – NVs and BVs – must be established through a notarial deed signed by a civil law notary in Sint Maarten, and must include, among other things, the number and classes of shares subscribed on incorporation and the names and addresses of the persons who subscribed for such shares (i.e. founders) as well as the names and places of residence of the initial managing directors. There are no minimum capital requirements for NVs and BVs. Both are permitted to list their shares on a stock exchange although in practice, BVs are seldom seen listing their shares. There is no difference in the tax treatment between NVs and BVs.

45. The main difference between a BV and an NV used to be the ability of an NV to issue bearer shares. However, after the abolition of issuing bearer shares by NV in 2019, there are only a couple of differences in the opinion of the Sint Maarten authorities. First, in practice, the shares of a BV are generally not freely transferable. Second, while NVs can allow for differences in voting rights among shareholders, that is not possible in the case of BVs. There has been a growing preference in recent years for BVs compared to NVs, especially since NVs were prohibited from issuing bearer shares. Sint Maarten authorities have explained that BVs provide slightly

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8. Articles of incorporation of an NV or BV can limit the transferability of shares of that NV or BV (Articles 111 and 211 respectively). Sint Maarten authorities indicate that this is more often seen in the case of BVs.
more flexibility and have marginally less compliance burden than NVs. It is always possible to convert an existing NV into a BV and vice versa. BVs are particularly popular with foreign investors as noted in the much higher number of BVs with foreign directors. Sint Maarten authorities have provided further statistics on the registration of new companies for the last years.

### New registration by legal form

<table>
<thead>
<tr>
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<th>2023</th>
<th>2022</th>
<th>2021</th>
<th>2020</th>
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<tbody>
<tr>
<td>NVs</td>
<td>80</td>
<td>77</td>
<td>83</td>
<td>54</td>
</tr>
<tr>
<td>BVs</td>
<td>302</td>
<td>260</td>
<td>258</td>
<td>243</td>
</tr>
</tbody>
</table>

46. The tax database has some difference in the number of registered NVs and BVs. As of August 2023, there were 4,671 NVs and 1,591 BVs registered in the tax database in Sint Maarten. The difference exists due to lack of complete synchronisation between the databases of COCI and the Tax Administration. The difference is especially noticeable in respect of BVs.

### Legal ownership and identity information requirements

47. The 2015 Report concluded that the availability of legal ownership and identity information for all companies was in place. There have been no changes since the last report on the requirement to collect, keep and update legal ownership and identity information for companies, except the prohibition of bearer shares analysed under section A.1.2 below.

48. The availability of legal ownership and identity information in Sint Maarten is mainly ensured by obligations on companies’ directors to maintain such information, pursuant to the Civil Code and related legislation, tax law and to a lesser extent the AML Law. In the context of foreign companies operating through their branches in Sint Maarten and having a place of effective management in Sint Maarten, the primary source of availability of ownership information are the tax law obligations of submitting such information as part of the profit tax returns. The following table shows a summary of the legal requirements to maintain legal ownership information in respect of companies.
Companies covered by legislation regulating legal ownership information

<table>
<thead>
<tr>
<th>Type</th>
<th>Company law</th>
<th>Tax law</th>
<th>AML law</th>
</tr>
</thead>
<tbody>
<tr>
<td>BVs</td>
<td>All</td>
<td>All</td>
<td>Some</td>
</tr>
<tr>
<td>NVs</td>
<td>All</td>
<td>All</td>
<td>Some</td>
</tr>
<tr>
<td>Foreign companies with place of management in Sint Maarten</td>
<td>None</td>
<td>All</td>
<td>Some</td>
</tr>
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</table>

Ownership information maintained by the Trade Register and Notaries

49. Companies (NVs as well as BVs) are incorporated by notarial deed, signed by a public notary in Sint Maarten, which must contain the constitution (also known as articles of incorporation) of the company. The deed of incorporation contains the articles of incorporation, the name and address of the first directors and other officers who must be appointed according to the law or the articles, the number and classes of the shares subscribed on incorporation and the name and address of the persons who subscribed for such shares (the initial legal owners) (articles 4 and 100, 101, 200, 201, Civil Code, Book 2). The notarial deed must be signed by each founder or by anyone having the written power of attorney from the founder(s). In general, the public notary is obliged by law to keep the original of the notarial deed for at least 30 years (articles 47 and article 74, National Ordinance Containing New Rules on the Notarial Profession).

50. Upon incorporation through a notarial deed, companies formed under the law of Sint Maarten or the former Netherlands Antilles must register in the Trade Register kept by COCI (articles 2 and 3, Trade Register Ordinance). Registration must include the personal data (name, gender, residential address, date, place, and country of birth, nationality, and signature) concerning each managing director and supervisory director, including his/her date of admission, and a certified copy of the deed of incorporation (article 18, Trade Register Decree). In the event of changes, this information must be updated within one week from the occurrence of the fact giving rise to this change (article 6, Trade Register Decree); these updates, however, do not include legal ownership information. Article 4 of the Trade Register Decree gives COCI the authority and obligation to investigate the completeness and accuracy of information and to request further documentary evidence as necessary.

9. The table shows each type of entity and whether the various rules applicable require availability of information for “all” such entities, “some” or “none”. “All” means that the legislation, whether or not it meets the standard, contains requirements on the availability of ownership information for every entity of this type. “Some” means that an entity will be covered by these requirements if certain conditions are met.
51. The Trade Register and notaries therefore have information on the founders of companies in Sint Maarten but as the deed does not need amendment when shares are transferred to a new owner, they do not keep up-to-date legal ownership information. Hence, neither COCI, nor the notaries is the source of up-to-date legal ownership information on NVs and BVs. Therefore, as indicated in paragraph 48, the availability of updated legal ownership would be through the obligations to maintain shareholder registers by NVs and BVs (further see paragraphs 60 to 65).

**Implementation in practice**

52. In terms of implementation of these legal provisions in practice, the incorporation procedures follow the legal requirements closely. The founders must first decide on the form of the company they wish to incorporate, i.e. an NV or a BV, and proceed to prepare a deed of incorporation of the company through a civil law notary who has an established office in Sint Maarten. There are three notaries at law with established offices in Sint Maarten. The notary requires the founders or incorporators to submit a declaration indicating the ultimate beneficial owners of the intended company and an anti-money laundering declaration that the capital has been sourced legally. The founders must also submit information on police records to indicate proper conduct, and copies of their passports or national identification cards.

53. Notaries require the founders to provide their address together with proofs of address. The incorporators or founders must have an initial shareholders register. Once all this information is submitted to the notary, the notary must carry out background checks on the submitted documents. This is typically done by verifying the information provided through internet searches, searches on available public databases and comparing submitted photocopies against original documents. After the completion of these checks, the notary draws out the draft deed for incorporation.

54. Once the founders have agreed with the draft deed and paid the notary costs, the notary submits an application to the Federal Department of Justice to obtain a Declaration of No Objection. The Department of Justice provides this declaration after checking the background of the founders and satisfying itself that the intended company will not be used for unlawful activities. The notary also consults COCI to confirm if all documents are in order and check for the availability of names, after which the deed is finalised and signed. This process takes about one week if all documents are readily available. The signing of the notarial deed results in incorporation of a company in Sint Maarten.

55. As a next step, in accordance with Article 5 of the Civil Code Book 2, the notary submits the complete incorporation file with all the necessary documents in hard copy to COCI immediately upon the signing of the notarial
Upon receiving such documentation, COCI registers the entity as a Sint Maarten company and issues an excerpt of registration to the company. The excerpt carries the registration number of the company and details like the nature of business, directors’ names and date of incorporation. This excerpt is widely required for carrying on all business activities in Sint Maarten, including the maintenance of a bank account. The validity of this excerpt for bank purposes is two months, following which the company must seek a fresh excerpt.

56. Finally, the notary is responsible for ensuring that the notice of incorporation of the legal entity is given for publication in the official gazette of the Government.

57. Upon registration with COCI, a company that intends to carry on business in Sint Maarten must seek an appropriate business licence from the Department of Economic Affairs of Sint Maarten. Further, any foreign director of such a company is required to register and obtain a director’s licence from this department as well. In addition, the company must register with the Tax Authority and obtain a tax identification number. It also has obligations of registration with the social insurance authority in respect of its employees. There is no centralised database, one-stop shop arrangement or automatic sharing of information on the newly incorporated company. Hence, the company must approach the relevant public authorities and complete the obligations with them sequentially and separately.

58. Any subsequent changes to the articles of incorporation are also required to be effected through a notarial deed and through submission to COCI within seven days of the change.

59. Further, all companies are required to update their registration with COCI on an annual basis and pay an annual registration fee which depends on the type of business and size of the company in terms of employees and assets. However, as noted from the legal provisions, there is no specific legal requirement to report changes to shareholding to COCI, although Sint Maarten authorities have noted that updating of registration annually means that changes in shareholding and directorship would be reported to COCI. Overall, while the original shareholding information as contained in the notarial deed is available with COCI, details of any subsequent share transfers may not always be provided to COCI. Companies that require the registry excerpt for business purposes do keep their registration information up to date in the Trade Register. However, not all companies in Sint Maarten seek such excerpt regularly. The share transfer deed is also not required to be kept with a notary. Therefore, in respect of updated legal ownership information, the requirements on companies to maintain a shareholder register and to submit updated legal ownership information in the profit tax returns (as discussed below) would be the key sources of the availability of up-to-date legal ownership information.
Ownership information held by companies

60. Up-to-date legal ownership information on NVs and BVs is required to be available in the respective shareholder registers.

61. Articles 109 to 111 of the Book 2 of the Civil Code deal with the maintenance of a shareholders register by the boards of NVs and transfer of shares for NVs. Articles 209 to 211 deal with the same for BVs. While the legal provisions require the maintenance of shareholder registers, these can be maintained at a place decided by the board of the company.

62. The managing directors of both NVs and BVs must keep a shareholder register containing, among other things, the name and address of all shareholders of registered shares, the class of share and voting rights attached thereto, the amount paid up, and the date of acquisition. Moreover, a note must also be made of the establishment or assignment of a usufruct on the shares (including the name of the usufructuary), the creation of a pledge on the shares, as well as any transfer of voting right connected therewith. Shareholders and others whose details are included in the register have the right to inspect the register. However, articles of incorporation of the NV can provide for limiting this right to access the data or providing for access to an extract from the shareholders register containing the data related to the shareholder concerned. While the shareholders register may be kept by a third party under the responsibility of the board, or in electronic form, the articles of association can provide for keeping the shareholder’s register in another manner.

63. Article 110 for NVs and Article 210 for BVs provide that the shares can be transferred through a deed of transfer signed by the parties and service of the deed on the company or acknowledgement of the transfer by the company. Recognition of the transfer takes place by means of a signed note on the deed of transfer or a written statement from the company addressed to the transferee. For fully paid-up shares, recognition can only take place if the deed of transfer bears a fixed date. Therefore, in the absence of providing the information about the transfer of share ownership to the company for registration in the shareholder register, the legal rights associated with ownership of shares are not transferred.

64. The obligations to maintain updated shareholder registers do not apply to foreign companies.

65. The managing directors of NVs and BVs may be held severally liable for not fulfilling their obligations, unless they can prove that they did not act with negligence (article 14(4), Civil Code, Book 2). Further, the sanction for not maintaining an up-to-date register of shareholders is punishable with an imprisonment of maximum three months or a fine of second category (maximum ANG 5 000) (EUR 2 346) (Article 1:54, paragraph 4, Penal Code).
Ownership information maintained by third parties in the anti-money laundering framework

66. Under the 2019 AML Law, a wide range of financial institutions and service providers are required to perform customer due diligence and identify their customer and the customer’s beneficial owner(s), though Sint Maarten entities have no obligation to have a continuous business relationship with an AML-obliged person. The AML-obliged persons must notably record details pertaining to the client’s legal form and representation (AML Law, Article 8(1)) and take reasonable measures, which, at a minimum, result in gaining insight into the ownership and actual control structure of the client (AML Law, Article 8(2)). This might not always result in knowing the full legal ownership of the client but could provide useful information to complement or cross-check the main sources of legal ownership information. As the AML obligations are particularly relevant in relation to the availability of beneficial ownership information, they will be analysed in detail in that section.

Ownership information maintained by the tax authorities

67. Upon registration with the Chamber of Commerce, a Sint Maarten company, being an entity liable to keep an administration¹⁰ (article 43(1)(c) of the General National Ordinance on National Taxes), must register with the Tax Authority and obtain a tax identification number (article 43(8)).

68. Sint Maarten companies are required to file tax returns with the tax authorities.¹¹ Sint Maarten has a dedicated tax return form for Profit Tax. Among other details, the profit tax return requires the submission of up-to-date legal ownership information, i.e. the name, address and total share possession of the shareholders, and details of any changes thereof. In addition, companies are required to submit their deed of incorporation (unless already submitted with a previous tax return) and any updates to the deed that occurred during the year. This information must be systematically kept and made available at a Tax Inspector’s request (article 40(1), General National Ordinance on National Taxes). Offshore companies were required to submit a tax return annually which included the same ownership

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¹⁰ Article 2(1)(c) of the General National Ordinance on National Taxes defines entities as associations and other legal entities, partnerships, corporations and allocated funds. Under Article 43, all entities are liable to keep an administration. Inter alia, all these entities are obliged to maintain all legal ownership information as it has bearing on distribution of profits, assets and liabilities, rights and obligations of relevant persons and for suitably levying taxes (see also discussion under Element A.2).

¹¹ Sint Maarten entities whose management is conducted outside of Sint Maarten are also covered by the requirement to file the annual profit tax return.
information until the closure of the offshore tax regime in 2019, and since then they are subject to the same tax obligations as other domestic companies. The Inspector can issue a tax return form to anyone who, in his/her opinion, is presumably subject to taxation or responsible for withholdings at source (articles 6 and 8, General National Ordinance on National Taxes).

69. As noted in the 2015 Report, legal entities opting for corporate income tax exempt regime are known as “exempt companies”. Exempt companies, which in principle are always BVs, are subject to additional disclosure requirements. The management of the company must keep a register wherein is mentioned the names and addresses of the ultimate beneficiaries who have an interest of 10% or more in the company (article 1a (f,1°) of the General National Ordinance on National Taxes). The Tax Authorities have indicated that there are 23 companies that have opted for the exempt regime. Although exempt from tax, these companies are nevertheless required to file profit tax returns. Further, as with other companies, they must maintain their shareholder registers with complete legal ownership information.

70. Foreign companies which derive income from business operations in Sint Maarten and to the extent that they are conducted by means of a permanent establishment located in Sint Maarten are required to register and file profit tax returns with the tax authorities (article 1(1)(c), National Ordinance on Profit Tax (NOPT) and Article 8 of General National Ordinance on National Taxes). The term “permanent establishment” is defined under article 1(6) of the NOPT and means a durable establishment in which or with the aid of which activities of an entity are carried on in whole or in part and inter alia specifically includes a place where management is carried out. Thus, a foreign company with a permanent establishment by way of a place of effective management in Sint Maarten, although not considered resident for tax purposes, would be required to register with the tax authorities and submit a profit tax return if it has any business income arising from operations in Sint Maarten. Similarly, where a foreign company were to have its headquarters in Sint Maarten, it would constitute a permanent establishment of such foreign company and same tax return filing obligations shall apply. All such companies are required to disclose

12. Other requirements: the board of managing directors may only consist of individuals or licensed trust service providers residing in Sint Maarten, or their directors and employees; the board must annually prepare financial statements which are audited and approved by an independent expert within 12 months after the end of the financial year; the purpose of the BV and more than 90% of its actual activities consist of providing credit and/or investment in securities and deposits; and the BV may not be a financial institution subjected to the supervision of the Central Bank (article 1a(1)(f), National Ordinance on Profit Tax).
ownership information in the profit tax return form by submitting details of the name, address and total share possession of their shareholders, in the same way as for domestic companies. As of August 2023, there were 19 foreign companies with branches in Sint Maarten.

Nominees

71. The concept of nominee does not explicitly exist in Sint Maarten’s civil or company law, but the concept is used in tax and AML legislation.

72. A Sint Maarten resident acting as a nominee, whether a natural person conducting a business or profession or a legal entity, would be covered by the general record-keeping obligations imposed by the General National Ordinance on National Taxes in article 43(1). Persons acting as nominees are required to keep records of any information that is relevant for the enforcement of tax laws in respect of their own business, assets and liabilities, including identifying the beneficiaries who are entitled to receive payments for fiduciary services rendered (article 43(2), General National Ordinance on National Taxes). Persons acting as nominees are also subject to the record-keeping obligations with regard to the taxation of third parties, as the dividend income received by the nominee is actually attributable and taxable to the economic owner (article 45(1), General National Ordinance on National Taxes). Therefore, the nominee must maintain information about nominators, i.e. economic owners of shares held by the nominee.

73. The 2019 AML Law also requires persons providing administrative, trust and management services, whether or not for payment, at all times including acting or causing to act as an authorised shareholder for another person (Article 2(18th)(d)), to perform customer due diligence and identify the customer (the nominator) and the customer’s beneficial owner(s) (Art. 3(2)(c)(4th)).

74. In addition, in Sint Maarten, legal and economic ownership can be separated by contract (a notarial or a private deed), which means that the person receiving dividends might be different from the person entered in the shareholder register. As noted in paragraphs 61 and 62, articles 109 and 209 of the Civil Code Book 2 provide for the possibility of usufruct on shares. A shareholder and a beneficiary may become parties to a notarial or a private deed by which a usufruct is established between them. The existence of this usufruct needs to be notified to the managing board of the company. Article 112 of the Book 2 of the Civil Code provides that the authority to establish usufruct on shares cannot be limited or excluded by the articles of incorporation of an NV. The voting and controlling rights belong to the shareholder registered in the shareholder register. However, the usufruct contract may provide otherwise as well. Further, the articles
of incorporation of the NV may limit or exclude the granting of these rights to the usufructuary. Similar provisions for BVs exist under Article 212 of the Civil Code Book 2. As noted in paragraph 60, articles 109 and 209 of the Civil Code Book 2 require that the shareholder registers maintained in respect of NVs and BVs respectively, must indicate the creation or transfer of a usufruct on the shares or the creation of a pledge on the shares, as well as any related transfer of voting rights. The name and address of the usufructuary and the pledgee must also be recorded in the share register. Further, similar information must also be recorded in relation to any person entitled to attend meetings but is not a shareholder, pledgee or usufructuary.

Thus, the legal provisions in Sint Maarten suitably require the identification of any type of nominee in the shareholder register of the company. Hence, this information would be known to the company itself. Further, Sint Maarten companies are required to identify their beneficial owners, and in that process they may require legal owners to identify whether they own shares on their own behalf or on behalf of another person, although this may not cover all nominee arrangements.

75. During the on-site visit, the issue of availability of information on nominee shareholders was discussed with the authorities as well as representatives from the private sector. They all noted that in their experience, they had not encountered the concept of nominee shareholding. Further, although not ruled out, the contractual separation of economic and legal ownership through the use of usufruct or pledge was also not very common in their experience. Sint Maarten authorities have indicated that unless the usufructuary arrangement is created by way of a notarial or private deed and the existence of such an arrangement duly notified to the board of the company, the entitled usufructuary or such similar person may not be able to benefit from the contractual benefits. Hence, even if such arrangements exist, their existence would be known to the company through notification of the usufructuary arrangement to the company’s board and it would be known on whose behalf a person is holding shares on contractual basis.

Legal ownership information – Enforcement measures and oversight

76. Enforcement and oversight measures to ensure the availability of legal ownership information are sufficient only in respect of those companies that are carrying on business in Sint Maarten (and, therefore, often requiring periodic registration excerpts from COCI) or are filing their profit tax returns on a regular basis, and/or companies that have been updating their registration annually with COCI while paying annual registration fees. However, there is a significant number of companies that do not carry on business in Sint Maarten, are non-compliant with filing of profit tax returns
or annually updating registrations with COCI. There are many companies that have their management outside of Sint Maarten. Further, there is a significant difference in the number of BVs registered with COCI and those registered with the tax authorities (see paragraph 46). There is no or limited oversight over such companies and there remains a risk of non-compliance with legal requirements to keep a shareholder register and availability of up-to-date, accurate and adequate legal ownership information.

77. In Sint Maarten, companies may be established under Sint Maarten laws, but the management of companies is not required to always be physically present in Sint Maarten. However, where a managing director of a company is non-resident or foreigner, he/she is required to obtain a director’s licence from the Department of Economic Affairs (within the Ministry of Tourism, Economic Affairs, Transport and Telecommunications (MTEATT)) and subsequently seek a work or residence permit from the Immigration Department which falls under the Ministry of Justice, if he/she wishes to reside in Sint Maarten. Otherwise, the directors can authorise a resident of Sint Maarten to act on their behalf for the company. Where a licensed director moves overseas or stays outside of Sint Maarten for a continuous period of 12 months, the directorship can be automatically revoked. However, there is no information on how frequently such directorship has been revoked in practice. There is no requirement in the Civil Code to maintain legal ownership information, i.e. shareholder register, at the registered office of the NV or BV. Thus, if the management of the entity is wholly outside of Sint Maarten, the shareholder register could be maintained outside of Sint Maarten.

78. COCI issues registration excerpts to entities that request it for their business purposes. Sint Maarten authorities have explained that while issuing such excerpt, COCI would ensure that the company has updated its registration and paid the annual registration fees. The annual registration update requires updating of directors’ information but does not explicitly seek the submission of changes to the shareholding of a company. Thus,

13. Where a licensed director relocates abroad, the Minister may revoke the licence. Further, there is automatic revocation of the licence where the individual is absent from Sint Maarten for more than 12 consecutive months (unless the 12-month period is interrupted by a temporary stay of at least 2 months in Sint Maarten) (National Ordinance for Business Licensing, Article 7, paragraph 1, section E).

14. As per the 2022 Annual Report of the Chamber of Commerce, the Chamber had issued 7 446 registration excerpts to businesses of all types in 2021 as against 5 960 in 2020. The number of registration excerpts should not be directly compared with the number of companies because these excerpts can be requested multiple times by the same entity for different purposes. Such excerpts are often required for availing government support under certain programmes. Further, the number of excerpts is for all types of entities and not just NVs and BVs.
in the absence of any legal requirement, COCI has not been systematically verifying if up-to-date shareholder registers are maintained by the managements of all companies or if they are submitting their updated shareholding as part of their annual registration update at COCI. Moreover, the registration excerpt is required by entities that are active in Sint Maarten. Those that have a legal personality but are wholly managed outside of Sint Maarten may not necessarily need this excerpt as often.

79. As noted in paragraph 58, changes to articles of incorporation are required to be notified to COCI. Where businesses fail to notify changes to COCI, depending on the type of infraction, fines ranging from ANG 250 (EUR 125) to ANG 1 000 (EUR 500) are applicable. In practice, the applicable penalties have not been applied as Sint Maarten authorities indicate that companies seeking an updated excerpt from COCI (needed for business purposes) on a regular basis would comply and update their details (see paragraph 59). Similarly, penalty provisions exist for not maintaining up-to-date shareholder registers. However, in practice, no penalty has been imposed in this regard by any supervisory authority.

80. Since 2021, article 25 of the Civil Code Book 2 permits COCI to dissolve and de-register any legal person if:

- No directors have been registered in the register for at least one year and no further filings have been submitted to COCI.
- The registered directors or managers have died or cannot be reached at the registered address.
- The annual registration fees have not been paid for at least one year.
- There is a failure to provide the official operating address of the business or legal entity
- the entity is not compliant with the stipulations on annual accounts set forth in articles 59, 89 and section 4 of the Civil Code Book 2
- The FIU has reported an entity of having conducted suspicious transactions.

81. The 2021 Annual Report of COCI had indicated some enforcement activities with a deregistration campaign for non-compliant entities, which were to continue in 2022. The 2021 Annual Report had noted that the Chamber had notified 543 businesses of impending dissolution following sufficient efforts at sensitising the public about the compliance obligations. Subsequently, 529 businesses were eventually dissolved (as 14 businesses

complied) (for availability of ownership information on these entities, see discussion in paragraphs 86 to 94). However, since this exercise in 2021, COCI has not carried out further actions in this regard. Limited and infrequent checks have been made on these aspects and since 2021, only two companies have been de-registered by COCI. Sint Maarten authorities have indicated that they paused the exercise to reconsider their processes for de-registration.

82. It is recognised that there is an inherent incentive for shareholders to ensure that their names are correctly recorded in the shareholder register for enjoying shareholder rights and benefits. Thus, ordinarily whenever there is a transfer of shares, the parties would ensure that the transfer deed is made available to the company and the company acknowledges the transfer by updating the share register. However, in situations where the entire management is outside of Sint Maarten and a resident of Sint Maarten is authorised to act on behalf of the company, there is a risk that changes in legal ownership remain unrecorded in the share register (for instance, if there is an intention to conceal ownership information, including in situations where usufructuary rights have been transferred). Although this would be in violation of the law, without supervision and enforcement, such instances may not come to light. The risk arises largely from the fact that there appear to be a significant number of companies in Sint Maarten that have not updated their registration at COCI and have not paid their annual registration fees (statistics are not available in this regard). Hence, it cannot be confirmed that for entities that do not have any other physical presence or activity in Sint Maarten or that do not have any responsible directors resident in Sint Maarten, legal ownership information is being maintained as required by law and in line with the standard and will always be available to the Competent Authority.

83. The profit tax return is a helpful source of ensuring the availability of up-to-date legal ownership information as the requirement to file tax returns applies on all types of companies. However, the tax return filing rates are very low across the board (see discussion under Element A.2). Sint Maarten authorities acknowledged that close to 1,500 companies in the tax database have not been filing profit tax returns. There is a significant difference in the number of registered BVs in the tax database as against those registered with COCI. The concern is greater in respect of NVs and BVs with foreign directors. The number of tax inspections and tax audits for all types of companies remains low (see discussion under Element A.2).

84. No penalties for non-filing of profit tax returns exist (see paragraphs 233 and 239) and the authorities have not been able to enforce sufficient compliance with the tax law obligations in this regard. No systematic follow-up with non-filers has been undertaken by the authorities. Thus, in practice, the tax return, despite having the potential of being a helpful source of
up-to-date legal ownership information, does not ensure the availability of accurate and up-to-date legal ownership information for all companies due to the low levels of supervision and enforcement.

85. Given that companies can have minimal presence in Sint Maarten without the need to maintain up-to-date legal ownership information there, the availability of adequate, accurate and up-to-date legal ownership information should be better supervised. The incentive for shareholders to have their names registered in the shareholder register cannot be solely relied upon for ensuring the availability of legal ownership information for companies that maintain their records outside Sint Maarten. Similarly, reliance cannot solely be placed on the need for companies to seek registration excerpts as many companies may not have any activity in Sint Maarten and may not need such an excerpt on a regular basis. Hence, **Sint Maarten is recommended to ensure an effective supervisory and monitoring framework to ensure that legal ownership information on all companies is available in line with the standard.**

**Struck-off companies, corporate mobility and companies that cease to exist**

86. Companies in Sint Maarten may cease to exist through provisions in Civil Code, Book 2. This may happen either by decision of the court (article 24), by being struck-off and dissolved by COCI (article 25), or by a resolution of the general meeting of the company, by any means as indicated in the articles of incorporation of the company or on declaration of bankruptcy (article 27). In all cases, the entities are liquidated and deregistered from the Trade Register.

87. The board of management of a legal entity (both types of companies) must, for a period of ten years, keep records showing everything concerning the activities of the legal entity, in accordance with the requirements of such activities, and must keep such records and the related books, papers and other data carriers in such a way that its rights and obligations may be established at any time (article 15, Civil Code, Book 2 in respect of all legal persons). The ten-year record retention period under this provision would also apply to dissolved and liquidated legal persons that have been struck off from the Trade Register and ceased to exist (Sint Maarten

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16. Sint Maarten informed that the Chamber of Commerce may dissolve and deregister entities registered in the Trade Register in the events mentioned in paragraph 80. In addition, dissolution and deregistration can be ordered by court decision. Entities are further deregistered on the request of the entity in the event of cessation of operations. In the event of liquidation, deregistration will occur when the liquidation process is completed with a liquidator’s report.
authorities confirm that companies cannot be restored after they ceased to exist) (article 33 of Book 2, Civil Code).

88. After de-registration, the books and records of the extinguished legal person are held by the liquidator (trustee for bankruptcy), a custodian or ultimately the (former members of the) board for a period of ten years (articles 33 and 29, Civil Code, Book 2).

89. Enforcement measures drawn from both the Civil Code and Penal Code apply in case of non-compliance. However, no enforcement or supervisory actions in practice have been reported in this regard. There are no legal requirements for the liquidator or custodian to be a resident of Sint Maarten. Nevertheless, for dissolution of a company under Article 25 of the Civil Code, Book 2 (where COCI seeks to dissolve a company), COCI can also seek a liquidator to be appointed (Article 25b, Civil Code, Book 2). The law does provide for the possibility for COCI to be appointed as a liquidator by the court. In both situations, the legal provision obliges COCI to maintain all books, documents and data carriers of the dissolved legal person, insofar as these are held by it, for a period of ten years at the offices of COCI. Sint Maarten authorities maintain that in such cases either COCI will itself act as the liquidator or appoint a local liquidator and maintain all records for a period of at least ten years. Similarly, in practice, the liquidator appointed by the court would also usually be resident in Sint Maarten or at least in the Netherlands Antilles. Where the company seeks to self-dissolve based on a board resolution or a method in its articles of incorporation, the board is expected to appoint a liquidator or a custodian or itself be responsible for maintaining all the books, documents and data carriers. The systematic maintenance of records submitted by entities registered with COCI was confirmed during the on-site visit. A significant proportion of records are currently maintained physically, and preliminary efforts are being made at digitising them.

90. Further, upon dissolution, a notification in the Government Gazette and to the Trade Register is mandatory within six months. Upon being notified, COCI proceeds to de-register such a company.

91. Sint Maarten authorities indicated that self-dissolution is fairly easy but is not very common. Companies tend to remain inactive and do not formally extinguish their legal personality. Sint Maarten authorities have indicated that they have been raising awareness among entities that a formal closure of business including liquidation and informing the Sint Maarten COCI as well as the Tax Authority and the Social Services Department is a requirement for ceasing to exist.

92. Notwithstanding the above, legal ownership information is also included in tax returns which are kept by the tax authorities for a minimum period of ten years. Sint Maarten informed that the tax authorities may
obtain information from the liquidator or custodian based on articles 40 and 45 of the General National Ordinance on National Taxes. In practice, as noted earlier, the compliance with the filing of profit tax returns has been low. Hence, while this can be a potential source of legal ownership information on companies that have ceased to exist, in the absence of higher levels of compliance, supervision and enforcement, it falls short of always ensuring availability of legal ownership information on companies that cease to exist in line with the standard.

93. Sint Maarten’s Civil Code (articles 303 and 304, Book 2) allows domestic companies to be converted into foreign legal persons and vice versa i.e. have a change of seat of the company. The conversion requires a resolution to that effect of the meeting of shareholders, adopted on the unanimous proposal of the board and with due observance of at least the requirements for a resolution to amend the articles of incorporation. A notarial deed is also required, in which the decision to convert is recorded. The conversion is also registered with the Trade Register (article 25 of the Trade Register Decree). All documents submitted to the Trade Register are maintained by COCI for a period of ten years. Since the conversion process requires a notarial deed with amended articles of incorporation being submitted to COCI, legal ownership information, to the extent updated in the amended articles, would be available with COCI. In addition, the latest legal ownership information submitted by such companies to the tax authorities in the profit tax returns would be kept by the tax authorities. However, the tax return filing rates are low and supervisory concerns remain.

94. In conclusion, where legal ownership information has been submitted to COCI or to the tax authorities, legal ownership information would be available for companies that cease to exist or domicile out of Sint Maarten. Similarly, where the liquidator or the custodian is resident in Sint Maarten, the information is likely to be available. However, where companies dissolve themselves through a board resolution or by any other means specified in their articles of incorporation and where the board or an appointed custodian is obliged to maintain records, in the absence of specific oversight and enforcement of requirements by COCI, legal ownership information may not always be available for the retention period in line with the standard. It is not clear if all such companies always notify their self-dissolution in the Government Gazette and to COCI. This raises concerns about the availability of legal ownership information of such companies. Further, as noted in paragraph 93, where a company changes its seat, unless the amended articles of incorporation have reflected updated legal ownership information or the tax authorities have ensured that such a company has filed its profit tax return and submitted updated legal ownership information before changing its seat, up-to-date legal ownership information may not always be available in Sint Maarten for the retention period in line with the standard.
Sint Maarten is recommended to ensure an effective supervisory and monitoring framework to ensure that legal ownership information on all such companies is available in line with the standard.

Beneficial ownership information requirements

95. In Sint Maarten, the two sources of beneficial ownership information are a) the information collected by companies under commercial law, which requires the registration of beneficial ownership information with the Trade Register at COCI in some situations; and b) the obligations under AML Law for financial institutions and a broad range of service providers to identify beneficial owners of their customers. There is no legal requirement for companies to engage an AML-obliged person at all times; however, companies commonly do so. The two obligations under the commercial law and the AML law rely on the same definition of “ultimate beneficiary” (used in the legal framework to refer to beneficial owner), as provided in the AML Law. No obligations relating to the availability of beneficial ownership information exist under tax law.

<table>
<thead>
<tr>
<th>Type</th>
<th>Company law</th>
<th>AML law</th>
<th>Tax law</th>
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<tbody>
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<td>Some</td>
<td>None</td>
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<tr>
<td>NVs</td>
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<td>All(^{17})</td>
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</tr>
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Definition of beneficial owner

96. Beneficial owner or ultimate beneficiary is defined in Article 1(ee) of the AML Law as

a natural person who:

1. has an interest of more than 25% of the capital, or can exercise more than 25% of the client’s voting rights at a shareholders’ meeting, or in some other way can exercise effective control in or on behalf of the client;

\(^{17}\) Where a foreign company has a sufficient nexus, then the availability of beneficial ownership information is required to the extent the company has a relationship with an AML-obligated service provider that is relevant for the purposes of EOIR (Terms of Reference A.1.1 Footnote 9).
2. is the beneficiary of 25% or more of the capital in a legal construction, including a foundation or a trust, or can exercise effective control in the legal construction; or
3. has control over 25% or more of a client’s capital.

97. This definition applies both for purposes of CDD obligations for AML-obliged persons and for the obligations for NVs, BVs and branches of foreign companies to provide beneficial ownership to the Trade Register (Articles 1, 18 and 22, Trade Register Decree modified by Article 35, AML Law).

98. While the definition contains the elements of ownership and control required under the standard, some aspects are not clear or are lacking. It is not specified that an interest in the capital or voting rights could be held directly or indirectly. This issue might be mitigated by the requirement to simultaneously identify the person that exercises effective control “in some other way” (i.e. regardless of any threshold), if interpreted broadly. The notion of effective control is not specified, so in the absence of guidance in this regard, it is unclear whether this will be applied consistently with the standard. The Provisions and Guidelines for Credit Institutions and the Provisions and Guidelines for Company (Trust) Service Providers do not clarify this matter. Moreover, it is not explicit in the law that each and every natural person that falls within the definition must be identified, even though some guidance corrects this gap (see paragraph 110).

99. In addition, when no natural person holds a minimal ownership threshold or exercises control by other means, it is not specified that natural persons holding the position of senior management officials must be registered. As directors of an NV or a BV can be either natural or legal persons, the information is also not necessarily readily available in Sint Maarten. In the case of CDD measures, this is partly compensated by the obligation to record “the surnames, first names, places and dates of birth of those who hold executive positions, those who act on behalf of the legal entity, the ultimate beneficiary, or those who have effective control of the legal entity” (Article 7(3)(b)(2°), AML Law).

100. Sint Maarten should take steps to provide sufficient guidance on the application of definition of beneficial owners. Hence, Sint Maarten is recommended to ensure that its legal and regulatory framework requires the identification of all beneficial owners of all companies and that the information be adequate, accurate and up to date in line with the standard.

Beneficial ownership provided to the Trade Register

101. Effective as of August 2019, the personal details defined in article 1 of the Trade Register Decree (surname and first name, gender, residential
address; date, place and country of birth; nationality and signature) of the beneficial owners of BVs, NVs and branches of foreign companies must be registered to the Trade Register maintained by COCI, provided that these details have not already been registered on the grounds of the other provisions of the Trade Register Decree. Alternatively, companies must submit to COCI, the details of the place where the register referred to in article 109 of Book 2 of the Civil Code (i.e. shareholder register, see paragraph 60) can be inspected, to the extent it relates to ultimate beneficiaries registered in that register (AML Law, Article 35, modifying the Trade Register Decree).

102. In the event of changes, information required to be filed at the Trade Register must be updated within one week from the occurrence of the fact giving rise to this change (article 6, Trade Register Decree). Sint Maarten indicated BO information should also be updated in application of this general provision. There is no guidance on a specified frequency for entities to review their existing BO information in order to ensure that the information in the Trade Register is adequate and up to date. The standard requires that the beneficial ownership information be up to date. As beneficial owners can change without the responsible persons in the company being made aware of these changes, the information will only be updated when the change is brought to the attention of the company.

103. No regulation or guidance has been issued to implement these provisions. On the face of it, companies that are directly owned by their beneficial owners (i.e. their legal owners are natural persons and hence, beneficial owners) are not required to provide information to the Trade Register, provided that their shareholder registers are available and accessible. Companies that have some beneficial owners that are also legal owners would not be required to provide information on them while being required to provide the Trade Registrar information on the other beneficial owners that exercise control by means other than direct ownership.

104. Anyone who intentionally provides incorrect or incomplete information for registering with the Trade Register is punishable with a maximum fine of ANG 100 000 (EUR 51 800). Further, any person who provides incorrect or incomplete information due to that person’s fault is punishable with a maximum fine of ANG 25 000 (EUR 12 963) (article 21, Trade Register Ordinance and article 1:54, paragraph 4 of the Penal Code). However, it is unclear how COCI has monitored compliance with the requirement to keep and provide beneficial ownership information. Unless it requires all companies to confirm the status of their beneficial owners (e.g. by attesting that the company is not required to provide beneficial ownership information because all beneficial owners are legal owners and maintain supporting documentation to confirm that), it is difficult to assess whether companies did not file information due to being beneficially owned by their legal owners or because they did not comply with their filling
obligations. In addition, the authorities, when requested to provide beneficial ownership information to an EOI partner, will have to determine which of the legal owners qualify as beneficial owners.

105. In practice, Sint Maarten authorities confirmed that there are deficiencies in the existing legal framework, and it has not been possible to implement the provisions sufficiently and satisfactorily. While companies being incorporated after 2019 have been expected to submit their beneficial ownership information at the time of incorporation, no process has been put in place for existing companies during the review period and the information has not been collected systematically for all companies. Furthermore, as companies are not required to follow a definition of beneficial ownership in line with the standard, they would not always provide the Trade Register with adequate beneficial ownership information. The deficient definition and the challenges in relation to updating the Trade Register in respect of beneficial ownership information mean that the users of the register, including the Competent Authority, will be unable to rely on the information available and will have to reconstruct the beneficial ownership of the company by going both to the Trade Register and the register of shareholders held by companies, especially to identify which ones also qualify as beneficial owners due to control by other means. Further, all through the review period and until very recently, companies did not need to submit the beneficial ownership information if such information had already been submitted to the Trade Register. Compliance with this provision has been difficult to ascertain. Further, companies also have the option to only notify the place to the Trade Registry where the information can be inspected, which need not necessarily be in Sint Maarten. This poses further challenges for the authorities to ascertain if the information is being adequately and accurately maintained.

106. Sint Maarten has indicated that it is considering amending its legislation to require companies to provide information on all their beneficial owners to the Registrar and to provide the Chamber of Commerce with sufficient supervisory mandate in this regard. As a first step in this direction, the Chamber of Commerce and Industry issued a public notice on its website to indicate that from 1 March 2024, the Chamber will commence the registration of ultimate beneficial owners of all new entities. Further, from 3 May 2024, the registration will open for all existing registered legal entities. Notaries at the time of incorporation of entities, shareholders and the ultimate beneficial owners, or their representing attorneys are permitted to register the shareholding and beneficial ownership information in this regard. The public notice indicates that the beneficial ownership registry is

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18. The Chamber has notified that a dedicated Form I-F will be used for submitting this information in the first instance and for updating the information Form I-A will be in place. Form I-F is to be used for every new shareholder.
a closed registry to which access is granted to the shareholder registered or the beneficial owners and to the AML authorities (i.e. FIU). While welcome, this is a very recent and preliminary step. It is unlikely that the deficiencies and challenges posed by the legal framework can be overcome through the public notice. Moreover, by limiting access to the registry to only AML authorities, the Competent Authority may not have access to the beneficial ownership information available in the registry.

107. In light of the discussion above, **Sint Maarten is recommended to ensure that its legal and regulatory framework requires the identification of all beneficial owners of all companies and that the information be adequate, accurate and up to date in line with the standard.**

**Beneficial ownership information maintained by AML-obliged persons**

108. Sint Maarten’s AML regime covers a wide range of financial institutions and service providers, including trust and company service providers, lawyers, notaries, accountants and tax advisors. There is no legal requirement for all companies in Sint Maarten to have an on-going relationship with an AML-obliged person. A notary is systematically engaged at the time of incorporation of the entity as a notarial deed is a legal requirement, but this is an isolated event that would not ensure that the information recorded is subsequently updated. Notaries are also engaged when changes to articles of incorporation need to be made. However, this again, is not a very regular event.

109. AML-obliged persons are required to perform customer due diligence (CDD) and identify their domestic and foreign customers and the customer’s beneficial owner (AML Law, Articles 3 and 4). Article 7(1) sets the content of the CDD requirement:

1. To prevent and combat money laundering or the financing of terrorism, a service provider shall conduct standard customer due diligence which shall, at least, include the following:
   a. the identification of the client and the verification of the client’s identity;
   b. the identification of the ultimate beneficiary and taking reasonable measures to verify the identity of the ultimate beneficiary in such a way that the service provider is convinced of the identity of the ultimate beneficiary;

110. The requirement does not anticipate the possibility that several natural persons can meet the definition of beneficial owner, contrary to the standard that requires the identification of all persons that meet the definition. The Provisions and Guidelines on the Detection and Deterrence
of Money Laundering and Terrorist Financing for Credit Institutions (the Provisions and Guidelines for Credit Institutions) issued by the Central Bank of Curaçao and Sint Maarten (the Central Bank) clarifies that “all” beneficial owner(s) must be identified and the Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing for Company (Trust) Service Providers issued by the Central Bank (the Provisions and Guidelines for Company (Trust) Service Providers) also most of the time refers to beneficial owner(s) thus anticipating that more than one person can meet the definition and be identified. However, no guidance from the Financial Intelligence Unit is available for other (not supervised by the Central bank) AML-obliged persons and therefore a gap may remain for other AML-obliged persons.

111. A financial service provider is generally required to conduct customer due diligence prior to entering into a business relationship (Article 4.1 of the AML Law). However, Article 4.2 also allows a service provider to verify the client’s identity and that of the ultimate beneficiary during the procedure for entering into a business relationship, if this is necessary to ensure the service provision is not disrupted and there is little risk of money laundering and the financing of terrorism. In such cases, the service provider should verify the identity as quickly as possible after the business relationship with the client has been established. The Provisions and Guidelines for Credit Institutions also states that the timing of verification occurs as soon as reasonably practicable and if the verification is completed after the establishment of the business relationship the reasons must be documented. The article further notes that a bank may open an account prior to verifying the client’s identity, if it can guarantee that this account will not be used before the identity is verified.

112. There are rules on reliance on third parties and those are described under Element A.3 below.

113. Article 7(3) of the AML Law requires that AML-obliged persons obtain the full names, places and dates of birth, and residential address of those who hold executive positions, those who act on behalf of the legal entity, the beneficial owner, or those who have effective control of the legal entity. They must also keep a copy of the document containing a personal identification number on the basis of which their identification was confirmed.

114. Article 9 of the AML Law provides that an AML-obliged person is responsible for ensuring that the data and information, which is obtained in the context of CDD, in particular data and information related to clients, beneficial owners or business relationships which pose a higher risk of money laundering and the financing of terrorism are updated and relevant. Guidance exists for banks and company service providers on how often CDD is expected to be updated. The Provisions and Guidelines for Credit
Institutions illustrates the cases of when CDD may be appropriate to be conducted by banks throughout the course of relationship with its clients: (a) a significant transaction takes place, (b) a material change takes place in the way the account is operated, (c) customer documentation standards change substantially, and (d) the bank becomes aware that it lacks sufficient information about an existing customer. The Provisions and Guidelines for Credit Institutions also states that banks must apply CDD requirements to existing customers on the basis of materiality and risk, and must conduct CDD on such existing relationships at appropriate times. However, no specified frequency is provided in the AML framework to ensure a consistent application of this requirement; so there could be situations where the available beneficial ownership information is outdated. During the onsite visit, representatives from the banks informed that they update customer due diligence documentation on their customers periodically, based on the risk associated with each type of customer, based on their internal policies. In general, they noted that as per their internal policies they were updating CDD annually for high-risk customers, once in two years for normal risk customers and at least once in three years for low-risk customers. In its supervision, while the Central Bank checks the internal policies to note that updating of customer due diligence is based on risk, there is no specified frequency under the legal framework and banks may suitably adapt their internal policies in this regard.

115. In the absence of a specified frequency for updating customer due diligence including beneficial ownership information, there may be situations that the available information is not up to date in respect of some customers. Hence, Sint Maarten is recommended to ensure that its legal and regulatory framework requires the identification of all beneficial owners of all companies and that the information be adequate, accurate and up to date in line with the standard.

116. AML-obliged persons can conduct simplified CDD in respect of certain clients, including private limited companies and comparable entities which are subject to statutory provisions regarding public financial reporting and have issued shares which are traded on stock markets designated by the Minister, and the public legal entity (Article 6, AML Law). Simplified CDD must always include identification and verification of the client’s identity and of the identity of the ultimate beneficiary, measures to establish the objective and envisaged nature of the business relationship, conducting ongoing checks of the business relationship and transactions carried out during the relationship. During the on-site visit, representatives from banks indicated that their internal policies permit simplified CDD in limited situations and in most cases they either do normal or enhanced CDD.

117. AML-obliged persons must conduct enhanced CDD if the nature of a business relationship or transaction carries a higher risk of money laundering and the financing of terrorism. The law lists a number of
circumstances where enhanced CDD is required, including (i) where a client is not a resident of Sint Maarten; (ii) where a transaction is complex and unusually large; (iii) where a transaction has no clear economic or legal purpose; (iv) private asset management for the benefit of high-net-worth natural persons; (v) legal entities, trusts or comparable entities are intended for the placement of personal assets; and (vi) companies and comparable entities in which the shares have been converted into bearer shares or are registered shares held for the benefit of a third party (Article 10, AML Law).

During the on-site visit, representatives from banks noted that associated risks of the customer are carefully considered and their internal policies require them to undertake enhanced CDD where perceived risks are high.

118. At a minimum, enhanced CDD must consist of standard CDD, supplemented with additional information provided under Article 10.4, which includes additional information about the client and the ultimate beneficiary, source of funds, intended nature of the business relationship and reasons for transactions. Sint Maarten has not indicated what information is included in the additional information. The AML Law requires obliged persons to pay specific attention to the situations below and, if they arise, to investigate the background and purpose of the transaction and record the findings in writing (Article 12):

- business relationships and transactions with natural persons, legal entities and trusts which are registered or based in a country or jurisdiction which does not (sufficiently) comply with internationally accepted standards for the prevention and combatting of money laundering and the financing of terrorism;\(^{19}\) and
- all complex and unusual transactions and all unusual features of transactions which have no explicable economic or legal purpose.

119. AML-obliged persons formulate their internal guidelines and policy documents for risk-assessment of their customers and identifying situations for enhanced due diligence based on these provisions. These internal policy documents are examined during supervisory checks.

120. CDD records must be maintained for at least ten years after the end of the business relationship (Article 22, AML Law). In application of Article 31 of the AML Law, the supervisory authorities (i.e. the Financial Intelligence Unit supervising the compliance of non-financial service providers and the Central Bank supervising the compliance of financial service providers).

\(^{19}\) A country or jurisdiction is deemed to be noncompliant or insufficiently compliant with internationally accepted standards for the prevention and combatting of money laundering and the financing of terrorism if it appears on a list of “high-risk and non-co-operative jurisdictions” as published on the website of the FATF (Article 14(2), AML Law).
providers) can impose an order subject to a penalty or an administrative fine of a maximum amount of ANG 4 million (EUR 1.92 million). Sint Maarten has indicated that both – the FIU as well as the Central Bank – can impose suitable penalties (subject to the maximum amount stipulated in Article 31 of the AML Law) on the AML-obliged persons that they supervise for any non-compliance with the provisions of the AML Law including for a failure to conduct or update CDD.

121. In practice, there are differences in the level of understanding of the concept of beneficial ownership among different AML-obliged persons. During the on-site visit, the three representatives from the banking sector and one from the trust and corporate service providers sector reflected a satisfactory understanding of the concept of beneficial owners. All noted the importance of ensuring the identification of natural persons as beneficial owners. Furthermore, they were aware that control on a legal person may be exercised through other means besides ownership. The representatives of banks noted that while on-boarding customers, where a customer is a legal entity or arrangement, they take the necessary steps to identify and verify the identity of the beneficial owners. Moreover, even though the ownership threshold of 25% is prescribed under the legal framework, they indicated that most banks adopt a lower threshold of 10% in their internal policies. Further, banking representatives noted that they have well-defined parameters for considering customers’ risks. While one bank representative noted that where legal arrangements like trusts exist in the ownership structure of a customer, his bank’s internal policies do not permit entering into relationship with such customers, the other noted that his bank’s internal policies required enhanced due diligence on such a customer.

122. Other AML-obliged persons (representatives from notaries, lawyers and accountants) did not reflect a similar level of understanding. All these other persons are under the supervision of the FIU. The representative of the notaries informed that identification of beneficial owners is strictly based on ownership threshold of 25%. It was not clear that control through means other than ownership is systematically examined. Efforts at verifying the information submitted were also not undertaken. Furthermore, other professionals (lawyers and accountants) were not very aware of their AML-obligations and did not reflect a good understanding of the concept. They noted that there was no specific guidance in this regard issued by the FIU.

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

123. As noted in paragraph 105, the oversight over the requirements to maintain and submit beneficial ownership information by all companies to COCI or to indicate the place where such information is being
maintained has not taken place. These legal provisions are admittedly difficult to implement. The legal provisions in this regard are being re-visited by Sint Maarten. COCI has indicated that once the revised provisions for submission of beneficial ownership information are in place and it has been suitably empowered to oversee the submission of these details, it will take the necessary steps in respect of supervision and enforcement. A very recent effort has been made (see paragraph 106) but the legal deficiencies remain and, this source of beneficial ownership information has not yet been systematically supervised. Hence, it cannot be considered reliable.

124. In respect of AML-obliged persons, financial institutions and trust service providers are under the supervision of the Central Bank. Supervisory efforts of the Central Bank are discussed in greater details under Element A.3 (see paragraphs 281 to 288).

125. The FIU has oversight responsibility in respect of non-financial AML-obliged persons. The FIU has worked primarily on increasing the registration of service providers and increasing awareness among them.

126. The FIU has faced significant resource constraints and budgetary cuts since the hurricanes of 2017. For overseeing 238 registered AML-obliged entities, the FIU currently has a staff strength of 9 against a sanctioned strength of 42 employees (i.e. there is under-staffing even by Sint Maarten’s own estimate of the required resources). The nine staff include non-supervisory administrative staff.

127. The FIU adopts a risk-based supervisory approach. Prior to 2017, no specific supervisory measures were taken. After the hurricanes in 2017, efforts were made to commence supervisory actions. However, before on-site supervision could resume, efforts were suspended in the wake of the pandemic. Sint Maarten has explained that some efforts have resumed after the pandemic. Hence, so far desk-based efforts of sending out questionnaires to AML-obliged persons and organising compliance and information sharing sessions have been undertaken.

**Supervisory and enforcement measures reported by the FIU**

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*Source: FIU, Sint Maarten.*

128. Supervision and enforcement of the AML requirements are key to ensuring the availability of reliable beneficial ownership information in Sint Maarten. However, supervisory efforts from the FIU, while increasing,
have not been sophisticated enough due to the inadequate availability of resources. Further, as noted in paragraph 122, the concept of beneficial ownership and the associated obligations pertaining to CDD are not well understood or applied by the AML-obliged persons supervised by the FIU. Supervision from the Central Bank over banks is better but has still been limited, especially in recent years affected by the pandemic. In respect of trust and corporate service providers, the supervision by the Central Bank has also been limited. Further, there has been no supervision of the requirements of maintaining or submitting beneficial ownership information to the Trade Register at COCI. Hence, **Sint Maarten is recommended to ensure that there is effective supervision and enforcement of the legal requirements to maintain adequate, accurate and up-to-date beneficial ownership information on all relevant legal entities and arrangements.**

**Availability of legal and beneficial ownership information in EOIR practice**

129. During the review period, Sint Maarten received eight requests for legal ownership information and one request for beneficial ownership information. Sint Maarten was able to provide the requested information. No issues have been reported by the commenting peers.

**A.1.2. Bearer shares**

130. The 2015 Report found that the legislation provided for the possibility of bearer shares only in NVs. The managing directors of NVs were required to keep a shareholder register containing, among other things, details on the identity of the shareholders and whether or not a bearer share certificate has been issued (article 104(2) of the Civil Code, Book 2). This did not result in the information on ownership of a bearer share being kept or disclosed on the shareholder register. Nevertheless, some mechanisms would restrict the circulation of bearer shares or require the disclosure of information on their owners, notably the business licence policy of the Department of Economic Affairs regarding local companies and the requirement for company service providers of offshore companies (NVs) to have updated data regarding the person(s) who can directly or indirectly make claims to the distribution, capital and the surplus after dissolution, which includes all bearer certificate holders. The 2015 Report also found that there was limited oversight of a policy prohibiting a company that could issue bearer shares from obtaining a business licence and no mechanisms to identify owners of bearer shares of NVs that did not meet the two categories above. That report recommended Sint Maarten to introduce measures to ensure that the identity of all legal owners of NVs which issued bearer shares is known in all cases.
131. Effective as of November 2019, which was also the year of the closure of the offshore sector, Sint Maarten prohibited NVs from issuing bearer shares, with the repeal of article 104(2) of the Civil Code, Book 2. Holders of bearer shares previously issued may not exercise the rights attached to their shares if their names are not entered in the shareholders’ register, maintained by the company. The following Transitional Provisions have been enacted:

Article 1

Bearer shares in a public limited company that were validly issued before the entry into force of this national ordinance may also be delivered after that time in the manner applicable to those shares.

Article 2

A holder of bearer shares in a public limited company cannot exercise the rights attached to his share after the entry into force of this national ordinance as long as he is not registered in the register [of shareholders] referred to in Article 109 of Book 2 of the Dutch Civil Code.

Article 3

Registration will not take place until the bearer share certificates are handed over to the company, without prejudice to the provisions of Article 108 of Book 2 of the Dutch Civil Code [on the issuance of registered share certificates].

132. Notwithstanding the legal prohibition, a legacy issue may remain. There is no time limit for holders of bearer shares to claim their rights to the company and, as a result, holders of such shares may have the right to, at any time, inform the companies to claim their rights. Until they do so, legal ownership information may not be available. In this regard, Sint Maarten is recommended to set a time limit after which holders of bearer shares can no longer claim rights over these shares, to ensure that full legal and beneficial ownership information is available for all companies in line with the standard.

133. As noted in the 2015 Report, similar to NVs, limited partnerships divided by shares were allowed to issue bearer shares. Sint Maarten considers that, with effect from April 2014, it is no longer possible for limited partnerships to issue bearer shares since there was a requirement to identify all limited partners, resulting in partnerships divided by bearer shares de facto being abolished. Nevertheless, the 2015 Report had noted that there is no mechanism to identify holders of bearer shares issued by such a partnership if a trust service provider is not involved and the partnership does not
conduct business in Sint Maarten. Furthermore, unlike for NVs, an express prohibition on issuance of bearer shares has not been made in respect of limited partnerships divided by shares. For limited partnerships, general partners are identified to the Trade Registry, but identity of limited partners needs to be maintained by general partners who may not always be in Sint Maarten. Where bearer shares have been issued, there are risks that the identity information of bearer share holders of such limited partnerships would be unknown. In the absence of an express prohibition in law and demonstration of supervision or control (for example, whether any limited partnership was dissolved for this reason), it is unclear if there are bearer shares of limited partnerships still in existence. Sint Maarten is recommended to ensure that information on identity of partners is available in relation to all limited partnerships divided by bearer shares.

While new NVs are not permitted to issue bearer shares, there have not been any supervisory efforts to identify companies who issued bearer shares in the past and to make sure that such companies have converted all their bearer shares into registered shares. Hence, currently Sint Maarten authorities are yet to ascertain how many companies had issued bearer shares and what amount of capital is represented by such shares. While it is required that shareholder rights be exercised only by those shareholders whose names appear in the shareholder registers maintained by the companies themselves, it is not clear how this requirement is being supervised. There are no specific sanctions on companies if they are found non-compliant with these requirements. Considering that companies in Sint Maarten can have their entire management outside of Sint Maarten and shareholder registers maintained outside of Sint Maarten, there are risks that in the absence of due supervision, the prohibition may not be effective in practice. Hence, Sint Maarten is recommended to put in place a suitable supervisory mechanism to ensure that the identity of the owners of all existing bearer shares issued by public limited liability companies is known in all cases.

A.1.3. Partnerships

The 2015 Report concluded that the legal framework to ensure the availability of information on the identity of partners for all partnerships was in place. This remains the case.

Partnerships are legal arrangements in Sint Maarten and come into existence by way of a written contract. There are three types of partnership that can be formed in Sint Maarten under the Civil Code:

- **Public partnerships (Openbare Vennootschap):** A public partnership is characterised as a contract without legal personality and each of the partners (natural or legal persons) is, in principle, personally liable for the obligations incurred by a public partnership.
The public partnership acts out in a clearly recognisable way for third parties under a name made known to the public. The partners have equally the authority to directly manage the affairs and represent the open partnership when dealing with third parties. The partners are jointly and severally liable for the obligations of the partnership.

- **Silent partnerships** (*Stille Vennootschap*): A silent partnership is a partnership which is not a public partnership. This could be because it does not conduct a business or profession or because it does not act out in a recognisable way towards third parties under a name made known to the public. The partners have only the authority to directly manage the affairs and represent the silent partnership when dealing with third parties if they have been authorised by the other partners. The partners are equally liable for the obligations of the partnership.

- **Limited partnerships** (*Commanditaire Vennootschap, CV*): Similar to public partnerships, limited partnerships are not considered legal persons in Sint Maarten and the individual partners operate a business under a name made known to the public. In a CV, a distinction must be drawn between general (or managing) partners and limited partners. The general partners are jointly and severally liable for the debts of the CV, as they manage the affairs and represent the CV in dealings with third parties. The limited partners’ liability is limited to the amount of capital contributed to the CV. They are prohibited from directly managing the affairs of the CV, but they can represent the general partners as their attorneys-in-fact. If a limited partner is involved in the direct management of a CV, this forfeits his/her right to the protection of limited liability and he/she becomes jointly and severally liable for the debts of the partnership, together with the general partners. Limited partnerships can be local or international (with at least one partner who is a foreigner). Further, limited partnerships may be open or closed. Closed limited partnerships are fiscally transparent, while open limited partnerships are not fiscally transparent.

137. In practice, partnerships are not a common way of conducting business or other activities, as there were 11 partnerships registered with COCI as of August 2023. Of these, five were limited partnerships (not divided by shares) and six were public or general partnerships. The number of silent partnerships in Sint Maarten is not available. During the review period, Sint Maarten did not receive any requests on partnerships.
Requirements to maintain information on the identity of partners

Information maintained by the Trade Register and general partners

138. Public partnerships are registered with the Trade Register and provide information on all partners and the amount of funds contributed and value of the property brought into the partnership. If there are changes in partners, this information must be provided to the Trade Register (article 13 and 16, Trade Register Decree). This information must be updated within one week from the occurrence of the fact giving rise to the change (article 6, Trade Register Decree).

139. Limited partnerships are required to register and provide identity information of the general partners as well as information on the number of limited partners and their respective country of residence (Articles 13 and 17 Trade Register Decree). The general partners are required to keep the names and addresses of all limited partners and the amount of their contribution (article 7:836b, Civil Code). Updating requirements in the event of changes also apply to the general partners of limited partnerships. Non-compliance with the provisions are punishable offences under the Trade Registry Decree (article 21) and invite a fine under the fourth or fifth category offences. The Penal Code establishes the monetary equivalent of these categories of penalties for non-compliance (article 1:54, paragraph 4, Penal Code) and range from ANG 25 000 (EUR 12 900) to ANG 100 000 (EUR 51 700).

140. Silent partnerships are not required to be registered with the Trade Register, but their partners may be subject to tax obligations (see below).

Tax law requirements

141. Public, closed limited and silent partnerships are generally considered transparent for tax purposes and therefore as a business entity only liable for wage tax (when having employees) and Turnover Tax (when selling goods or rendering services liable to tax); the individual partners are required to file an annual tax return for their share of income derived by the partnership.

142. Open limited partnerships are considered non-transparent and are required to register and to annually file tax returns with the Tax Authorities (article 1(1)(a), National Ordinance on Profit Tax). They are treated like limited liability companies and are required to disclose in the tax returns a copy of the deed of incorporation and any amendments thereof on a yearly basis in accordance with article 19 of the National Ordinance on Profit Tax (which contain updated identity information concerning their general partners, unless bearer shares have been issued). The Profit Tax Return Form
requires the submission of shareholding information and hence, identity of partners and any changes thereof would need to be submitted to the Tax Authorities. As per the data from COCI as well as from the Tax Authority, no limited partnership divided by shares is registered with the Trade Register or in the tax database.

143. Under the General National Ordinance on National Taxes, partnerships (whether or not considered transparent for tax purposes) and each of the partners individually must keep records of all information that is relevant for the enforcement of tax laws, both to the partnership itself, the partners and to third parties (articles 43(1)(c), 43(2) and 45(1) of the General National Ordinance on National Taxes). Furthermore, qualifying partners who exercise control over the partnership, or who hold directly or indirectly at least 50% of the share capital, are required to have all information that is relevant for the enforcement of tax legislation and may be compelled to provide it to a Tax Inspector upon request (article 40(3), General National Ordinance on National Taxes). The identity of partners is to be entered into the tax database upon registration of the partnership but is not systematically updated in case of change of partner. Sint Maarten informed that all silent partnerships that have any taxable income are subject to tax obligations and therefore the identity information of silent partnerships must be registered in the tax administration. However, where the silent partnership does not have taxable income, identity information on the partners in line with the standard may not always be known or available to the authorities. Sint Maarten is recommended to ensure that identity of partners in line with the standard is available in respect of all relevant silent partnerships (see also paragraph 158).

Foreign partnerships

144. Sint Maarten has indicated that a partnership created under the laws of a foreign jurisdiction (foreign partnership) which establishes a branch, subsidiary or office in Sint Maarten will be subject to the same registration requirements as domestic partnerships; as such, they are required to register in the Trade Register their general partners, the number of their limited partners, and their residence countries. Furthermore, foreign partnerships must make public in Sint Maarten anything that must be filed at the Trade Register or otherwise made public under the foreign law governing them.

145. For tax purposes, foreign partnerships are transparent. Foreign persons conducting a business or profession in Sint Maarten or a foreign legal entity doing business in Sint Maarten are subject to the general record-keeping obligations imposed by the General National Ordinance on National Taxes (article 43(1)). Foreign partners are required to keep records of any
information that is relevant for the enforcement of tax laws, in respect of their own business, assets and liabilities.

146. As such, foreign partnerships carrying on business or having income, deductions or credits for tax purposes in Sint Maarten are required to provide identity information on their general partners to the Trade Register as a part of registration requirements, and to maintain complete identity information on all partners.

Record retention

147. Under civil and tax laws, individuals conducting any business or profession, companies, foundations and partnerships are obliged to keep for ten years records of their financial position and of anything related to the business, in accordance with the requirements arising from such business, in such a manner that rights and obligations can be ascertained from those records, at any time (article 15a Civil Code, Book 3, with reference to article 15(3), Civil Code, Book 2, and article 43(6), General National Ordinance on National Taxes). Sint Maarten authorities explain that this would imply that the partners of a partnership must retain identity information on partnerships for a period of ten years even where a partnership were to cease to exist although these records do not necessarily have to be kept in Sint Maarten. Nevertheless, all information submitted to the Chamber of Commerce at the time of registration would remain available perpetually.

Identity information – Enforcement and oversight

148. As discussed in respect of companies, the enforcement and oversight over the requirements for maintaining identity information are driven by the need for submitting a registration extract from the Trade Register for commercial purposes in different situations. While this on its own would not have been sufficient, Sint Maarten authorities have confirmed that identity information of general partners of the 11 partnerships (6 general and 5 limited) registered with the Chamber of Commerce is available as all partnership agreements are required to be submitted to the Trade Registry. Nevertheless, the information on limited partners may not be fully available with COCI as only the number of limited partners needs to be indicated to the Trade Register. Where general partners of such limited partnerships are resident in Sint Maarten, the identity information is readily available from the general partners. However, like companies (see paragraph 85) that have minimal presence in Sint Maarten, availability of complete identity information on partnerships, especially limited partnerships, can be affected if none of the general partners are in Sint Maarten. Where the general partners of a limited partnership are outside of Sint Maarten and identity details of limited partners are maintained by the general partners outside of Sint Maarten,
unless effectively supervised, there are risks to the availability of such information, including where such partnerships cease to exist. **Sint Maarten is recommended to ensure an effective supervisory and monitoring framework to ensure that identity information on partnerships is available in line with the standard.**

**Beneficial ownership**

149. A key source of beneficial ownership information on partnerships would be the information collected by the Trade Register on the beneficial owners of public and limited partnerships. This requirement does not apply in relation to silent partnerships. Beneficial ownership information on partnerships will also be maintained by AML-obliged persons (for instance, banks and notaries) if they have an on-going relationship with partnerships, but this is not required by law.

**Definition of beneficial owner**

150. The definition of “beneficial owner” provided under the AML Law applies both in relation to the obligations provided under the amended Trade Register Decree as well as the CDD obligations provided under the AML Law itself (Articles 1 and 35 of AML Law). Pursuant to Article 1(ee) of the AML Law beneficial owner is defined in the following terms:

Beneficial owner: a natural person who:

1°. has an interest of more than 25% of the capital, or can exercise more than 25% of the client’s voting rights at a shareholders’ meeting, or in some other way can exercise effective control in or on behalf of the client;

2°. is the beneficiary of 25% or more of the capital in a legal construction, including a foundation or a trust, or can exercise effective control in the legal construction; or

3°. has control over 25% or more of a client’s capital.

151. The determination of beneficial ownership should take into account the different forms and structures of partnerships. In respect of partnerships in Sint Maarten, the application of a specific ownership threshold in the determination of the beneficial owners may not always be appropriate as all general partners are jointly and severally liable for all the obligations of the partnership, regardless of the amount of their contribution in the partnership, and have equally the authority to directly manage the affairs of

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20. Refer to paragraphs 16 and 17 of the Interpretive Note to FATF Recommendation 24.
the partnership. This is a fundamental difference from companies, where members are usually liable up to the amount of their investment contribution. Given that partnerships are legal arrangements in Sint Maarten, all relevant natural persons who directly or indirectly contribute capital or benefit from the partnership as well as those that exercise ultimate effective control over the partnership should be identified without regards to any kind of thresholds on ownership, capital contribution, benefits or control.

152. In addition, as mentioned for companies, the definition does not indicate that an interest in capital or voting rights could be held directly or indirectly. There is no obligation to look-through corporate partners either in legislation or in existing guidance issued by the Central Bank. In practice, during the on-site, representatives from the banks did reflect an understanding that they would need to look through any legal person partners of a partnership to identify the beneficial owners of the partnership. However, the representative of the notaries indicated reliance on 25% ownership or capital contribution threshold. Other AML-obliged persons did not reflect sufficient understanding of beneficial owners of partnerships, noting that partnerships are not a preferred structure for carrying on business. Considering the deficiencies in the definition of beneficial ownership as it applies to partnerships and also noting that AML-obliged persons have a varied understanding in this regard, Sint Maarten is recommended to ensure that its legal and regulatory framework requires all beneficial owners of partnerships be identified in line with the standard.

Beneficial ownership provided to the Trade Register

153. Effective as of August 2019, beneficial ownership information in respect of public partnerships and limited partnerships is required to be provided to the Trade Register (2019 AML Law, Article 35, modifying the Trade Register Decree), under the condition that this information has not already been registered on the grounds of the other provisions (of articles 16 and 17 of the Trade Register Decree, which deal with the information to be provided upon registration by respectively public and limited partnerships). In the event of changes, information filed at the Trade Register must be updated within one week from the occurrence of the fact giving rise to this change, if BO information has been registered with the Trade Register (article 6, Trade Register Decree; see paragraph 102 for conditions). Where the partner in a partnership is also the beneficial owner of such partnership, there would not be a requirement to file this information again. No regulation or guidance has been issued to implement these provisions and the same weaknesses identified for companies apply for partnerships.

154. It is unclear how COCI will monitor compliance with this requirement. It is difficult to assess whether partnerships did not file information
due to being beneficially owned by their partners or because they did not comply with their filling obligations.

155. In practice, COCI has not carried out any supervision in respect of availability of beneficial ownership on partnerships similar to the situation on companies (see paragraph 105).

156. Hence, Sint Maarten is recommended to ensure that its legal and regulatory framework requires the identification of all beneficial owners of all partnerships and that the information be adequate, accurate and up to date in line with the standard.

Anti-Money Laundering framework

157. The AML obligations described in respect of companies also apply in respect of partnerships. Appropriate CDD measures must be taken to identify an applicant for business, customer and any person who purports to act on behalf of an applicant or customer. In addition, relevant persons must take reasonable measures, on a risk-sensitive basis, to verify the identity of each beneficial owner of an applicant for business or a customer. AML CDD obligations apply to a wide range of financial institutions and service providers in Sint Maarten, including persons that provide corporate services, including of a registered office, business address or accommodation, correspondence or administrative address to an enterprise, company or partnership or other legal entity or organisational form. The AML framework is the only source of information for silent partnerships, but there is no legal requirement for partnerships to engage the services of AML-obliged persons. As silent partnerships are not required to register with the Trade Register, no information on their beneficial owners is provided there either.

158. Therefore, beneficial ownership on silent partnerships may not be available. Sint Maarten is recommended to ensure that beneficial ownership in line with the standard is available in respect of all silent partnerships.

159. In terms of enforcement and supervision of the existing provisions of the Trade Register and the AML obligations, as noted in respect of companies, the supervision and enforcement is inadequate especially considering that COCI has not taken sufficient measures in this regard and the non-bank AML-obliged persons are insufficiently supervised on their obligations. Hence, Sint Maarten is recommended to ensure that there is effective supervision and enforcement of the legal requirements to maintain adequate, accurate and up-to-date beneficial ownership information on all partnerships.
Availability of information in EOIR practice

160. During the review period, Sint Maarten did not receive a request for identity or beneficial ownership information on partnerships. Commenting peers did not indicate any issues in respect of partnerships.

A.1.4. Trusts

161. Since April 2014, trusts can be established under the laws of Sint Maarten through the National Trust Ordinance that incorporates provisions pertaining to trusts in Book 3 of the Civil Code. In addition, it is possible for a foreign trust to have a trustee or administrator resident in Sint Maarten. The 2015 Report found that a combination of civil, AML and tax law obligations would ensure the availability information on settlors, trustees and beneficiaries of domestic trusts and of foreign trusts administered or having a trustee in Sint Maarten.

162. As of August 2023, there were no domestic trusts or segregated trust companies registered in Sint Maarten. During the peer review period, Sint Maarten received no request related to trusts.

Requirements to maintain identity information in relation to trusts

Domestic trusts

163. The National Trust Ordinance defines a trust as the juridical relations constituted by a juridical act amongst persons living (inter vivos) or on the death of a person (testamentary trust), by a person, the “settlor”, when the trustee acquires legal title to property and has the power and duty to administer it for the benefit of a beneficiary or for a specific purpose. The assets of the trust constitute a separate estate which does not form part of the estate of the trustee. Both individuals and legal entities can be a trustee. In Sint Maarten, it is possible for the settlor to reserve specific rights and powers (a settlor may also be a trustee), or for the trustee to have specific rights as beneficiary (but such a trustee may not be the sole beneficiary) (Article 127 Civil Code, Book 3). A trust may also have one or more protectors, distinct from a trustee. A trustee cannot be the protector of a trust and vice versa. A trustee appointed as a protector ceases to be a trustee of a trust in Sint Maarten.

164. A trust is constituted by notarial deed executed by or before a notary based in Sint Maarten. Any amendments to the trust provisions or revocation of the trust must also be done by notarial deed. The trust deed must include at a minimum (a) the identity of the settlor; (b) the designation of a beneficiary or specific object; (c) the appointment of at least one
trustee resident or established in Sint Maarten and the acceptance of such appointment by the trustee; (d) a provision ensuring that there will always be a trustee resident or established within Sint Maarten; (e) a description of the trust estate and (f) the name of the trust, in which the word “trust” must feature. The Central Bank may grant dispensation from (c) and (d) subject to conditions.

165. All trust deeds including any subsequent amendments must be registered in the Trade Register of the COCI in Sint Maarten by the notary engaged for the constitution of the trust through trust deed or for any amendments to it (article 161, Civil Code, Book 3). Any person who has an interest in the registration and is of the opinion that incorrect information has been registered, may request the Court of First Instance to order the registration of a trust or amendments to be made in the Trade Register. Any information that is declared by judicial decision to be partly wrongful needs to be noted in the Trade Register by the COCI. In practice, there are currently no trusts registered in the Trade Register in Sint Maarten. Sint Maarten authorities confirm that since 2014, no trusts have been registered in Sint Maarten.

166. All domestic trusts are required to be registered with the tax authorities and, unless the trust is created exclusively for the promotion of a general social interest, to file profit tax returns (article 1(1)(b), National Ordinance on Profit Tax). Trusts exempt from profit tax would be still subject to wage tax, turnover tax and/or other taxes, where applicable. Under the National Ordinance on Profit Tax, the profits of a trust created for purposes other than charity are treated in the same way as those of a NV or BV. The trust is tax exempt if it does not conduct a business (article 2(1)(i), National Ordinance on Profit Tax). 21

167. Sint Maarten informed that trustees are required to provide the names and addresses of trustees, settlors and ultimate beneficiaries when registering the trust at the Tax Administration. In addition, resident trustees in Sint Maarten are required to keep information available regarding the names and addresses of all beneficiaries and what is due to them, in instances where the trust is established for one or more beneficiaries (Article 137a of the Civil Code, Book 3) in order to substantiate the tax liability of the persons concerned.

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21. The term “business” is defined under article 1(3) of the National Ordinance on Profit tax as “the term “business” includes the performance of acts, activities or services of any kind.” Hence, if a trust has only passive income arising from holding of assets, it is exempt from profit tax and filing of profit tax returns.
Segregated trust companies

168. The National Trust Ordinance provides the possibility of creating separate capital or cells within one legal entity. This is known as a segregated trust company which can be a trustee of two or more Sint Maarten trusts within the segregated trust company. Given that assets brought into a trust are segregated from the assets of the trustee, a NV or BV can be incorporated and organised as a “segregated trust company” to be trustee of segregated trust cells. Based on the National Ordinance on Trusts, the Central Bank issued a Policy Memorandum on Specific Regulation for a Segregated Trust Company that describes the application procedures to obtain an exemption so that the segregated trust company can become the trustee of two or more Sint Maarten trusts within the entity. In this regard, segregated trust companies are required to request and obtain the approval from the Central Bank to act as a trustee.

169. The segregated trust company and its trusts are established by a notarial deed. The Central Bank informed that Sint Maarten currently has no segregated trust companies.

Foreign trusts

170. Sint Maarten has not ratified the Hague Convention on the Law Applicable to Trusts and their Recognition. However, Sint Maarten law allows residents to act as a trustee for foreign trusts, subject to obtaining a licence or dispensation from the Central Bank. As of 30 June 2019, there were three licensed trust service providers and one with dispensation in Sint Maarten, all of which were supervised by the Central Bank. Sint Maarten informed that they did not administer domestic or foreign trusts.

171. Under the General National Ordinance on National Taxes, a resident trustee or administrator of a foreign trust, whether a natural person conducting a business or profession or a legal entity, would also be covered by the general record-keeping obligations imposed by the General National Ordinance on National Taxes (article 43(1), General National Ordinance on National Taxes). Such persons acting as trustees or administrators are required to keep records of any information that is relevant for the enforcement of tax laws, in respect of their own business, assets and liabilities. Sint Maarten’s authorities have confirmed that this would include trusts e.g. identification of settlors who transferred assets to the trustee and identification of beneficiaries who are entitled to receive payments from the trustee (article 43(2), General National Ordinance on National Taxes).

172. The 2015 Report noted that the gap in respect of non-professional trustees would have low materiality, as confirmed by the Sint Maarten authorities and by the fact that non-professional trustees resident in
Sint Maarten are covered by other obligations. In particular, persons acting as trustees are subject to record-keeping obligations with regard to the taxation of third parties, e.g. payments and assets received from or transferred to settlors and other trustees, or income attributed and distributed to the beneficiaries (article 45(1), General National Ordinance on National Taxes). This would include information about settlors, trustees and beneficiaries.

173. Finally, persons deemed resident in Sint Maarten according to article 1 of the National Ordinance on Income Tax and who are beneficiaries to a (local or foreign) trust and as such, receiving (periodical or one-time) benefits and allowances from a trust, must file a tax return in respect of that income (articles 7(3) and 11(1), National Ordinance on Income Tax).

AML Law obligations applicable to professional trusts (of domestic and foreign trusts)

174. AML obligations are relevant not only to ensure the availability of information on the parties of the trusts but also to ensure the availability of beneficial ownership information in respect of trusts. They are detailed below.

Beneficial ownership information

175. As noted under section A.1.1, the 2019 AML Law requires a broad range of financial institutions and service providers to perform CDD and identify their customers and their beneficial owners. This covers persons that provide administrative, trust and management services, whether or not for payment, at all times, including:

• creating trusts or having them created
• acting as a trustee or having someone act as a trustee for another person.

176. Article 1 of the AML Law defines beneficial owner of a trust as a natural person who (2) is “the beneficiary of 25% or more of the capital in a legal construction, including a foundation or a trust, or can exercise effective control in the legal construction”.

177. This provision is complemented by Article 7 of the AML Law which requires, in respect to trusts, that customer due diligence includes the documents used to verify the identity of the following parties to the trust:

• the settlor of the trust
• the trustee
• the protector
• the beneficiaries or categories of beneficiaries and the beneficial owners of the assets of the trust (if different).
• the person who exercises effective control over the trust

178. Where any of these persons are not natural persons, the law does not prescribe to look through them to identify the natural persons who are their beneficial owners. Sint Maarten has not indicated how the beneficiaries with less than 25% interest in trusts are treated. Also, there is no clear guidance on determining the beneficial ownership in respect of segregated trust companies, considering the specificities of their structure. Although Sint Maarten currently has no segregated trust companies, Sint Maarten should ensure that beneficial ownership information in line with the standard is available for all segregated trust companies/trusts (see Annex 1).

179. Articles 7 and 9 of the AML Law provide for the updating of information. Guidance for banks and company service providers who provide trust services indicate when CDD is expected to be updated only if some events happen and not otherwise (see paragraph 278).

180. While the customer due diligence obligations listed above would apply to any person providing trust services, whether or not for payment, they would not apply in case the trustee does not act in a professional capacity. Although the AML Law requires the identification of the settlor, the trustee, protector, beneficiaries, and any person who exercises control over the trust, it does not explicitly require identification of all the beneficial owners of trusts as required under the standard (i.e. including the identity of any natural person behind a trustee, settlor, protector or beneficiary which are legal entities). Also, it is unclear how the beneficiaries with less than 25% interest in trusts are treated. Sint Maarten is recommended to ensure that accurate and up-to-date beneficial ownership information of trusts having nexus to Sint Maarten is always available in Sint Maarten.

181. In practice, Sint Maarten authorities indicated that there have been two instances in the past (as also reported in the 2015 Report) where Sint Maarten resident professional trustees (trust service providers) were trustees of foreign trusts and information was needed from them for domestic tax purposes (not for exchange of information). Further, the authorities and the AML-obliged persons interviewed during the on-site visit never detected a situation where a Sint Maarten resident acted as a non-professional trustee. However, they noted that in situations, where such a non-professional trustee were to act on behalf of the trust and engage with an AML-obliged person, the AML obligations would lead to the availability of beneficial ownership information. Representatives from banks were clear that they would be extra cautious in onboarding such a customer and would do enhanced customer due diligence. In their experience, they had rarely
encountered trusts in the ownership structure of their customers. Where they existed in the ownership chain, they were invariably foreign trusts with foreign trustees.

**Enforcement and oversight in respect of trusts**

182. The Central Bank is in-charge of supervision over the activities of the trust service providers, including their compliance with the AML obligations. The Central Bank has sufficient powers to ensure compliance with the AML obligations. The Central Bank can take informal measures like issuing written warnings or directly communicating the legal obligations or through a letter. Further, there are formal supervisory measures available to the Central Bank which include written warnings under the relevant legal provisions, instructions, orders subject to penalty, issuance of administrative penalties, disclosure of violations, public warnings, disqualification of managerial officials, appointing an administrator, revocation of dispensation or licence, and/or seeking judicial intervention for appointing decision makers for the entity. Although no domestic trust or segregated trust companies are registered and none of the three existing trust service providers submitted information on their local and foreign clients since October 2023, the three trust service providers make other periodic submissions to the Central Bank and have on-going interactions with the Central Bank. The frequency and intensity of the off-site supervision is determined by the desk supervision through review of AML/CFT Questionnaires, annual accounts, statistical information, signals, newspapers and additional information that the Central Bank deems necessary. During the review period the Central Bank conducted one on-site examination of a trust service provider in Sint Maarten. Further details about specific examinations or inspections in their regard and whether they are duly complying with their AML obligations has not been reported. Given that there are only three trust service providers, Sint Maarten should ensure that there is sufficient supervision over the trust company service providers to ensure the availability of identity and beneficial ownership information on trusts managed by such professionals (see Annex 1).

**A.1.5. Foundations**

183. The law of Sint Maarten provides for the establishment of two types of foundations which are legal persons in Sint Maarten: private foundations (stichting particulier fonds) and (common) foundations (stichting). The 2015 Report found that only private foundations are relevant under the Terms of Reference, as a common foundation may not make distributions, save for charitable or social purposes (article 50(3), Civil Code, Book 2). In any case, the same registration and identity requirements apply to
common and private foundations. As of August 2023, there were 609 private foundations and 857 common foundations in Sint Maarten.

184. The object of the private foundation, as laid down in its articles, may include in general or specific terms the making of distributions to the founders and/or others (such as children of the founder). Beneficiaries of distributions can, but are not required to, be appointed/designated in the articles of incorporation, and if such is done, either in very general or specific terms (article 50(3), Civil Code, Book 2).

185. Private foundations are legal entities created by a notarial deed executed before a civil law notary in Sint Maarten, they have no members or shareholders, and their purpose is to realise specific objects mentioned in their articles, using capital allocated for such purpose (article 50, Civil Code, Book 2). A private foundation is not required to have beneficiaries if such appointment is not desired. A private foundation cannot be established with the purpose of running a business or enterprise for profit. Managing its assets and acting as a holding company does not, however, qualify as running a business.

186. The articles of incorporation must include, among other things, its name, purpose, place where domiciled, the first managing board and the manner how board members are appointed and dismissed (article 51, Civil Code, Book 2). Private foundations must be registered in the Trade Register (article 4(1), Trade Register Ordinance).

**Identity information**

187. Registration with the Trade Register must include a certified copy of the deed and the personal data concerning the founder(s), the board members and the supervisory directors\(^\text{22}\) (article 21, Trade Register Decree). In the event of changes, this information must be updated within one week (article 6, Trade Register Decree).

188. In addition, since April 2014, common foundations and private foundations are required to keep a register of identity information concerning their beneficiaries and holders of certificates of participation\(^\text{23}\) (Article 50a

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\(^{22}\) Under the Trade Register Decree, personal data means name; gender; residential address; date, place and country of birth; nationality and signature (article 1, Trade Register Decree).

\(^{23}\) In Sint Maarten, private foundations are commonly used for the administration of (foreign-owned) real properties and, to a lesser extent, as pension funds. Although not common practice in Sint Maarten, foundations may be used to control shares in companies. In this case, they would be transferred to the foundation against the
Title 2, Book 2, Civil Code). The Penal Code establishes penalties for non-compliance with this provision (article 1:54, Penal Code, Book 3).

189. Under the tax laws, private foundations are legal entities and are thus subject to the same disclosure obligations applicable to other persons, whether taxed or tax exempt (article 43, General National Ordinance on National Taxes).\textsuperscript{24} This may include information about founders, beneficiaries, holders of certificates of participation and directors, when this is necessary to support the information provided in the tax return. However, these record-keeping obligations will not apply where there is no information that is relevant for the enforcement of tax laws, e.g. where a private foundation has no resident beneficiaries and no activities or income derived from sources in Sint Maarten. Since trusts and all foundations are treated in the same way for tax purposes, all non-charitable foundations are subject to profit tax.

190. Accordingly, identity information of private foundations would be available in Sint Maarten in line with the standard mainly through the registration requirements under the Trade Register Decree (for founders, members and directors) with additional requirements under the Civil Code (for beneficiaries).

191. In practice, the issue identified under the discussion on companies (see paragraph 85) that have minimal presence in Sint Maarten, affects private foundations as well. Where the management of a private foundation is outside of Sint Maarten and membership details are maintained by the management outside of Sint Maarten, unless effectively supervised, there are risks to the availability of such information. Sint Maarten is recommended to ensure an effective supervisory and monitoring framework to ensure that legal ownership information on all private foundations is available in line with the standard.

**Beneficial ownership information**

192. Effective as of August 2019, beneficial ownership information in respect of private foundations is required to be provided to the Trade Register (2019 AML Law, Article 35, modifying the Trade Register Decree). This requirement applies unless the personal details of the beneficial owners have already been registered on the grounds of other provisions (of article 21 of the Trade Register Decree, which deal with the details to be provided in relation to the private foundation). Further, AML obligations

\[\text{issuance of certificates of participation, entitling the former shareholders to the benefits from the shares.}\]

24. Common foundations are registered with the tax authorities and are required to file tax returns unless the foundation is created exclusively for the promotion of a general social interest.
require AML-obliged persons to identify beneficial owners of foundations with which they have business relationships.

193. For the purposes of the Trade Register and AML obligations, a beneficial owner is defined in the AML Law (Article 1) as a natural person who:

- has an interest of more than 25% of the capital, or can exercise more than 25% of the client’s voting rights at a shareholders’ meeting, or in some other way can exercise effective control in or on behalf of the client
- is the beneficiary of 25% or more of the capital in a legal construction, including a foundation or a trust, or can exercise effective control in the legal construction
- has control over 25% or more of a client’s capital.

194. The definition would require the identification of natural persons who hold at least 25% of the foundations capital as well as natural persons who exercise effective control in the foundation. It is unclear, however, whether the definition would consistently look through corporate founders and corporate members of the foundation council. As noted in relation to companies and partnerships, no regulation or guidance has been issued to implement the above-referenced provision. Presumably, there should be some look through to the extent that it is required to identify natural persons who exercise effective control in the legal construction; however, this aspect should be clarified to ensure a consistent application of the definition (see paragraph 197).

195. Further, it is unclear how the Chamber of Commerce will monitor compliance with the requirement to submit beneficial ownership information in the Trade Register if it does not already exist in the Register. Unless the Chamber requires foundations to confirm the status of their beneficial owners (e.g. by attesting that, e.g. a private foundation is not required to provide beneficial ownership information because all beneficial owners are also founders or members of the board and maintain supporting documentation to confirm that), it is difficult to assess whether foundations did not file information because all beneficial owners are already identified or because they did not comply with their filing obligations. It is not ascertained that the analysis of the information filed with the Trade Register will in all cases allow the immediate identification of who are all beneficial owners of a foundation. Sint Maarten authorities have indicated that they are considering making suitable legal changes in this regard. **Sint Maarten is recommended to ensure that its legal and regulatory framework requires the identification of all beneficial owners of all private foundations and that the information be adequate, accurate and up to date in line with the standard.**
Anti-Money Laundering framework

196. The same AML obligations as described in respect of companies apply in respect of private foundations. Appropriate CDD measures must be taken to identify an applicant for business, customer and any person who purports to act on behalf of an applicant or customer. In addition, reasonable measures must be taken, on a risk-sensitive basis, to verify the identity of each beneficial owner of an applicant for business or a customer. AML CDD obligations apply to a wide range of financial institutions and service providers in Sint Maarten, including persons that provide corporate services, including of a registered office, business address or accommodation, correspondence or administrative address to an entity. There is no legal requirement for private foundations to engage the services of AML-obliged persons, however.

197. Although the AML Law requires the identification of the beneficial owners of a private foundation, it does not explicitly require identification of all the beneficial owners of private foundations as required under the standard (i.e., including the identity of any natural person behind a founder, board member or beneficiary which are legal entities). Sint Maarten is recommended to ensure that its legal and regulatory framework requires the identification of all beneficial owners of all private foundations and that the information be adequate, accurate and up to date in line with the standard.

198. In practice, as noted in paragraph 105 in respect of companies, supervision of the requirements under the Trade Registry Decree has not been undertaken. Further, except for supervision over banks, the supervision over other AML-obliged persons has been inadequate. During the review period, Sint Maarten did not receive any request pertaining to foundations. Sint Maarten is recommended to ensure that there is effective supervision and enforcement of the legal requirements to maintain adequate, accurate and up-to-date beneficial ownership information on all foundations.

Other relevant legal entities and arrangements

199. The 2015 Report identified two other legal entities that may be of relevance in Sint Maarten:

- co-operative society (coöperatie): legal person established to meet certain material needs of its members, other than insurance, in the course of its business, pursuant to agreements effected with them and aimed at their benefit (articles 90-99, Civil Code, Book 2).
• mutual insurance company (onderlinge waarborgmaatschappij): legal person with the object to enter into insurance agreements with its members and to conduct its insurance business for the benefit of its members (articles 90-99, Civil Code, Book 2).

200. The 2015 Report found that legal ownership information concerning co-operative societies and mutual insurance companies was required to be filed at the Trade Register, including changes. Such information was also required to be provided to the tax authorities. Both obligations continue to apply. As of August 2023, three co-operative societies and no mutual insurance companies were registered in the Trade Register.

201. In addition to these two other legal entities, the Civil Code also provides for Associations under Articles 70 to 89 of Book 2. An association is a legal entity with members (natural persons or legal persons) and is aimed at a specific purpose other than those described in Article 90 (pertaining to co-operatives and mutual insurance company). An association may be established by a multilateral legal act. An association is not permitted to distribute profits among its members. An association can be created with or without a notarial deed. If an association is established by a notarial deed, its articles of association must contain its name and a statement that it has its registered office in Sint Maarten, its purpose, the obligations that the members have towards the association or the way in which such obligations can be imposed, the manner of convening the general meeting, the manner of appointment and dismissal of directors, and the destination of the surplus of the association after its liquidation in the event of dissolution or the way in which the destination will be determined. If an association is created without a notarial deed, it must at least have its articles of association notarised and contain the same information as for an association created through a notarial deed. Unless an association has its articles notarised, it cannot acquire registered property or act as an heir and its directors are jointly and severally liable for all debts of the association. However, if directors of such an association register with the Trade Register and submit their articles of association to the register, the liability of the directors is limited to the performance of the contractual obligations and not to the association’s debts. Sint Maarten authorities indicate that given this, associations are often created through notarial deeds and are also registered with the Trade Register. Further, although there is no explicit provision to the effect, Sint Maarten authorities indicate that membership information on associations would be available with the associations themselves as legal provisions of the Civil Code necessitate the keeping of such information for giving effect to various legal obligations. In addition, such information to an extent would be available through the articles of association notarised by the notaries or submitted to the Trade Register. Sint Maarten authorities indicate that associations are mostly non-profit entities are often used for sports and cultural organisations.
202. The National Trade Registry Ordinance requires that associations with full legal capacity having a registered office in Sint Maarten (i.e. that have a legal personality and can carry out acts in their own name) must register in the Trade Register. As per the data available from the Chamber of Commerce and Industry, as of August 2023, there were 303 associations with full legal capacity. Associations that do not have full legal capacity, can also register with the Trade Register; 14 such associations are registered with the Trade Registry.

203. In practice, the issue identified under the discussion on companies (see paragraph 85) that have minimal presence in Sint Maarten, can affect associations as well. Where the management of an association is outside of Sint Maarten and membership details are maintained by the management outside of Sint Maarten, unless effectively supervised, there are risks to the availability of such information. **Sint Maarten is recommended to ensure an effective supervisory and monitoring framework to ensure that legal ownership information on all associations is available in line with the standard.**

204. With respect to beneficial ownership information, the same requirements established for companies apply to associations, co-operative societies and mutual insurance companies. The 2019 AML Law amended the Trade Register Decree to require the registration of beneficial ownership information, unless such information has already been provided to the Register on the basis of other provisions (that is, for instance, if beneficial owners are the same as legal owners). The same concerns noted in A.1.1 concerning lack of guidance and lack of obligation to provide information on natural persons holding senior management positions apply here as well. **Sint Maarten is recommended to ensure that the legal and regulatory framework requires all beneficial owners of all relevant legal entities and arrangements be identified in line with the standard.** Further, the issues and concerns on supervision noted in respect of the Trade Registry requirements and the supervision of non-bank AML-obliged persons exist for these other entities as well. **Sint Maarten is recommended to ensure that there is effective supervision and enforcement of the legal requirements to maintain adequate, accurate and up-to-date beneficial ownership information on all relevant legal entities and arrangements.**
A.2. Accounting records

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

205. The 2015 Report concluded that the legal and regulatory framework on the availability of accounting records and underlying documentation was in place in respect of all relevant legal entities and arrangements. While the same obligations continue to apply, a legal gap has been identified in this review. Accounting records and underlying documentation for liquidated legal entities and domestic companies converted into foreign legal entities may not be in the possession or under the control of a person in Sint Maarten for a minimum period of five years and hence, not available in a timely manner to the Competent Authority. Sint Maarten is recommended to address this gap.

206. The 2015 Report identified serious issues related to the practical implementation of the standard and Sint Maarten was rated as Partially Compliant with Element A.2 of the standard.

207. The first issue identified was that the system of oversight of accounting obligations was limited to tax supervision, but compliance with tax obligations remained relatively low and no efficient enforcement measures were taken. The situation remains broadly the same. Given that entities may keep their accounting records outside of Sint Maarten, submission of annual profit tax returns and the supervisory efforts of the tax administration remain the only supervisory and enforcement mechanism to ensure effective compliance with the standard. However, supervisory measures have remained inadequate in this respect. Hence, the recommendation is maintained.

208. The second issue was that, although the number of offshore companies in Sint Maarten was small and there was oversight over those that have engaged a trust and company service provider, it could not be determined whether accounting information was actually available in respect of the remainder of these companies. With the cessation of the offshore regime in 2019, this recommendation is deleted. Nevertheless, the aspect of maintenance of accounting records outside of Sint Maarten and limited oversight over compliance with the legal requirements by Sint Maarten authorities remains a concern and is reflected under the recommendation noted above.

209. During the review period, Sint Maarten received one request for accounting information and provided the requested information.
The conclusions are as follows:

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

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<th>Deficiencies identified/Underlying factor</th>
<th>Recommendations</th>
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<td>Although a custodian or the liquidator is required to maintain the accounting records and underlying documentation of a liquidated legal entity, there is no requirement that liquidation take place in Sint Maarten. In addition, a Sint Maarten company can convert into a foreign legal entity and there is no obligation to keep records for at least five years in Sint Maarten. Therefore, the accounting records and underlying documentation may not be in the possession or under the control of a person in Sint Maarten in situations where an entity ceases to exist or domiciles out of Sint Maarten.</td>
<td>Sint Maarten is recommended to ensure that all accounting records and underlying documentation for all entities are available in a timely manner for exchange purposes for a minimum period of five years, in line with the standard in situations where the entity ceases to exist or domiciles out of Sint Maarten.</td>
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Practical Implementation of the Standard: Partially Compliant

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<th>Deficiencies identified/Underlying factor</th>
<th>Recommendations</th>
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<td>Accounting records by all relevant entities and arrangements can be maintained outside of Sint Maarten. The Tax Law requires that all types of relevant entities and arrangements (including Tax Exempt Companies) submit their financial statements at the point of filing of tax returns. Tax law requirements are the only source of supervisory checks in respect of monitoring compliance with legal obligations to maintain accounting records. However, the rate of filing of tax returns is very low and many entities are non-compliant with the tax return filing obligations. In 2022, Sint Maarten Tax authorities conducted some limited examination of the requirements to file tax returns with financial statements. However, there are still a significant number of entities that are not complying with these obligations and no specific measures have been taken in this regard to ensure that all accounting information in line with the standard is being maintained by all entities. Although, in practice, during the review period, Sint Maarten was able to provide accounting information in the one case where it was sought, the number of requests were limited. The lack of supervision can pose important risks to the availability of accounting information if a request were received on a non-compliant company.</td>
<td>Sint Maarten is recommended to put in place an efficient system of oversight and enforcement to ensure compliance with the obligations to maintain accounting information in accordance with its law.</td>
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**A.2.1. General requirements and A.2.2. Underlying documentation**

211. The 2015 Report found that a combination of civil, commercial and tax laws require the availability of full accounting records, including underlying documents, for all relevant entities, arrangements and entrepreneurs, for a minimum of ten years, in such a manner that rights and obligations can be ascertained from those records, at any time. There is a range of sanctions available under the tax laws to support the record-keeping obligations. These obligations have not changed since the 2015 Report. Nevertheless, a legal gap on availability of accounting information is identified in this review in relation to entities that cease to exist or domicile out of Sint Maarten.

**Corporate and Trust law**

212. Sint Maarten’s Civil Code establishes general bookkeeping obligations. Anyone (individuals, partners of a partnership, companies, foundations, trusts, etc.) who carries on a business or an independent profession is obliged to keep for ten years such records of their financial position and of anything related to the business, in accordance with the requirements of such business, in such a manner that rights and obligations can be ascertained from those records, at any time (article 15i Civil Code, Book 3, with reference to article 15(1 and 3), Civil Code, Book 2).

213. The management of a legal entity, including an association, foundation, co-operative society, mutual insurance company, public limited liability company (NV) and private limited liability company (BV), must for administrative purposes, keep a record of the financial condition and of everything relating to the activities of the legal person suitably. It must keep the books, documents and other data-carriers in such a manner that the rights and obligations of the legal person can be ascertained at any time (article 15(1), Civil Code, Book 2). Concerning a (domestic) trust, which is not considered as a legal entity, according to article 137(2) Civil Code, Book 3 and the National Trust Ordinance, the trustee must keep separate accounts and books of each trust estate and keep the books, records and other data-carriers pertaining thereto in such a manner that the composition, income and expenditure of each trust estate can be established from the books and accounts. A similar obligation exists for all types of partnerships (article 814 Civil Code, Book 7).

214. Further, each year, within eight months from the end of the financial year, unless this period has been extended by the general meeting for a maximum of six months on account of special circumstances, the management of all legal entities must prepare annual accounts consisting of at least

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25. This does not include persons with only passive income (such as investment income).
a balance sheet, a profit and loss account and notes to these accounts (articles 116 and 216, Civil Code, Book 2 for NVs and BVs respectively). The accounting records have to be organised in such a way that the financial position of the legal entity can be determined with reasonable accuracy at any time (article 15(3), Civil Code, Book 2).

215. The annual accounts, prepared in accordance with generally accepted accounting principles, must provide such a view that enables a sound judgment to be formed on the assets and liabilities and results of the legal person and, insofar as the nature of annual accounts permit, of its solvency and liquidity. For large companies, the accounts should be prepared in accordance with the accounting principles set by the International Accounting Standards Board (IASB) or other international accepted accounting principles (articles 94, 116, 119, 120, and 216, Civil Code, Book 2). The large company is obliged to keep complete copies of the financial statements at the company’s offices to be made available to interested parties, within eight days after their adoption (article 122, Civil Code, Book 2).

216. Similar obligations apply to the management board of associations, (common) foundations, private foundations, co-operative societies and mutual insurance companies (articles 59 and 94, Civil Code, Book 2). As of April 2014, foundations with 20 employees or more and a turnover of ANG 10 million (EUR 4.8 million) or more are required to have an expert (usually an auditor) examine the books and to submit them to the Trade Register.

217. While these obligations exist, there is no requirement that accounting records must be maintained in Sint Maarten. Hence, entities can keep such accounting information outside of Sint Maarten. However, Sint Maarten authorities indicate that accounting information must be made available to the tax authorities upon request.

Tax law

218. For tax purposes, individuals (including partners and trustees) conducting any business or profession, associations, companies, foundations and partnerships are required to keep accounting records comprising all relevant information in order to determine the financial position of the taxpayer at all times (article 43(2) read with the definition of

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26. Large company is a company which has at least 20 employees at any time in the period between one month before and after the balance sheet date or the value of the assets in the balance sheet exceeds ANG 5 million (EUR 2.4 million) or the net turnover during the past financial year exceeds ANG 10 million (EUR 4.8 million).
entities in article 2(1)(c). General National Ordinance on National Taxes). Furthermore, these accounting records must be substantiated by all relevant documents (i.e. underlying documentation) such as contracts and detailed invoices (article 43(4)). Tax law requirements related to record keeping also apply to co-operative societies and mutual insurance companies (article 2(1)(c) in conjunction with article 43(1)(c) of the General National Ordinance on National Taxes).

219. These accounting records constitute the basis for the entities’ financial statements. All legal persons and entrepreneurs providing services or selling goods are required to issue invoices that are numbered consecutively and dated on the date on which the delivery or service was provided, as well as the name and address of the person providing the delivery or service, the registration number assigned by the Tax Authorities to the one providing the delivery or service, a clear description of the goods delivered, the compensation, and the amount of tax that has become due with respect to the delivery or service (not applicable to turnover taxes) (article 44, General National Ordinance on National Taxes).

220. In addition, companies must supply each year a statement concerning third parties (not being employees) that rendered services to the company as well as a statement concerning third parties that were employed by these companies during the past year, including managing directors, supervisory directors, and any persons other than persons working on a commission basis (articles 49 and 45, General National Ordinance on National Taxes).

221. Finally, for tax purposes, individuals conducting any business or profession (including partners and trustees), individuals liable for withholding taxes, and entities (including associations, resident companies, partnerships, trusts, foundations, co-operative societies and mutual insurance companies, regardless of whether conducting a business) “are liable to keep an administration”. As such, they are required to document the state of their assets and liabilities and of everything concerning their business in accordance with the requirements of that business, when carrying on a business. They must keep the corresponding data carriers in such a manner that their rights and obligations, and also the information that is of importance for levying tax, clearly appear from this administration at all times (article 43, General National Ordinance on National Taxes). This obligation may also be fulfilled by any director of an entity, which includes “the general partner of a partnership and the local representative of an entity which is not established

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27. Article 2(1)(c) of the General National Ordinance on National Taxes defines entities as associations and other legal entities, partnerships, corporations and allocated funds. Under Article 43, all entities are liable to keep an administration.
in Sint Maarten as well as the person charged with the liquidation in the event of dissolution” (article 3(1)(a), in connection with article 34(2), General National Ordinance on National Taxes).

222. Article 45(1) of the General National Ordinance on National Taxes extends the disclosure obligations under articles 40 to 43 to individuals and bodies (co-operative societies, mutual insurance companies, associations, partnerships, trusts, allocated funds and other legal entities – such as companies and foundations, article 2(1)(c), General National Ordinance on National Taxes) that are liable to keep accounting records, for the purposes of levying taxes on third parties and for withholding taxes. Such record keeping obligations are equally applicable to any persons, such as residents of Sint Maarten acting as trustees, who administer a foreign trust with respect to their business as well as with respect to the taxation of third parties, including settlors, other trustees and beneficiaries.

223. Individuals performing services gratuitously or in the course of a purely private non-business relationship will not be subject to these record-keeping obligations under tax laws, provided they are not liable for withholding taxes or not considered to be the director (e.g. local representative) of the entity under article 3(a) of the General National Ordinance on National Taxes. The National Trust Ordinance nonetheless includes obligations (see paragraph 213). The finding from the 2015 Report that individuals performing trusteeship services gratuitously or in the course of a purely private non-business relationship are likely to be rare and not to prevent effective EOI, continues to apply.

Record retention period

224. Pursuant to the Civil Code, the board of management must, for a period of ten years, keep a record of the financial condition and of everything relating to the activities of the legal person according to the requirements to which such activities give rise, and it must keep the books, documents and other data carriers in such a manner that the rights and obligations of the legal person can be ascertained therefrom at any time (article 15(1), Civil Code, Book 2). After the liquidation, the books and records of the dissolved legal person are held by the liquidator, a custodian or ultimately the board for a period of ten years (article 33, Civil Code, Book 2. See also article 29 that provides for the responsibility of the board).

225. The Sint Maarten authorities confirm that companies cannot be restored after they ceased to exist.

226. Sint Maarten’s Civil Code (articles 303 and 304, Book 2) allows domestic companies to be converted into foreign legal entities and vice versa. The Code is silent on the record keeping obligations of converted
entities, and it is unclear if the provisions for companies that cease to exist would apply by analogy on accounting records and documentation related to periods preceding the conversion.

227. Although a custodian, the liquidator or ultimately the board is required to maintain the accounting records and underlying documentation of a liquidated legal entity, there are no requirements for the liquidation to take place in Sint Maarten and for the liquidator or custodian to be a resident of Sint Maarten (see paragraph 86).

228. Therefore, the accounting records and underlying documentation of a liquidated company or of a domestic company converted into a foreign legal entity may not always be in the possession or under the control of a person in Sint Maarten.

229. In concurrence with the requirements of the Civil Code, the General National Ordinance on National Taxes requires “those liable to keep an administration” (see paragraph 68) to keep it and the corresponding data carriers for ten years (article 43(6), General National Ordinance on National Taxes). As seen above (paragraph 221), for entities this obligation may also be fulfilled by any director, which includes “the general partner of a partnership and the local representative of an entity which is not established in Sint Maarten as well as the person charged with the liquidation in the event of dissolution” (article 3(1)(a), in connection with article 34(2), General National Ordinance on National Taxes). However, this appears to be an option (for the director, general partner, local representative or liquidator) rather than a joint obligation, and it is thus uncertain to what extent this provision applies to liquidated and converted companies. Furthermore, it would not solve the issue in case the liquidator or the director or general partner (for converted companies) is not resident of Sint Maarten.

230. **Sint Maarten is recommended to ensure that all accounting records and underlying documentation are available in a timely manner for exchange purposes for a minimum period of five years, in line with the standard in situations where the entity ceases to exist or domiciles out of Sint Maarten.**

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

**Applicable framework**

231. Article 49(1) of the General National Ordinance on National Taxes imposes a fine up to ANG 25 000 (EUR 12 730) (or the amount of the tax due and unpaid if higher) and/or detention for a maximum of six months, in case someone’s action or omission causes the violation of an obligation
under this ordinance. In particular, such penalties apply for failure to keep administration and accounting records in accordance with the requirements laid down in a tax ordinance, or to lend co-operation to a Tax Inspector for the investigation of such records. If proven that non-compliance was wilfully committed, the punishment may be increased to a fine up to ANG 100 000 (EUR 50 900) (or twice the amount of the tax due and unpaid if higher) and/or imprisonment up to four years (article 49(2), General National Ordinance on National Taxes). Furthermore, if the requested information is not provided, the burden of proof may be reversed (article 30(6), General National Ordinance on National Taxes) i.e. the burden of proving that the non-compliance is not deliberate will be on the taxpayer.

232. Further, article 2:323 of the Penal Code imposes the penalty of imprisonment of up to six years or a fine of up to ANG 100 000 (EUR 51 800) in the event a controlling shareholder or a director of a company or co-operative intentionally discloses a false balance sheet, profit and loss account or the explanatory notes. The director of a public or private limited liability company which is declared bankrupt may be punished with an imprisonment of maximum one year if found at fault of not meeting the general accounting obligations of article 15i of Book 3 of the Civil Code or that the books, records and other data carriers cannot be presented in an undamaged condition (article 3:327, paragraph c, Penal Code). Finally, in the event of fraudulent bankruptcy, the penalty is a maximum imprisonment of six years (article 3:328, paragraph d, Penal Code).

233. No fine is applicable against an entity that does not file its profit tax return. The revised (formal) legislation which would enable the Tax Inspector to apply sanctions (fines) for late or non-filing of profit tax returns, is under way to Parliament to be ratified.

**Practical implementation**

234. In practice, oversight and enforcement activities for ensuring the availability of accounting information are carried out only by the tax administration to some extent as the COCI does not examine or supervise compliance with requirements of keeping accounting records.

235. Sint Maarten’s tax administration comprises three key divisions – inspections, collection and audit – each headed by a senior official/manager. The inspections division is in charge of desk-based assessments on taxpayers in respect of the tax returns filed by them. It has a staff strength of 30 but only 6 are dedicated assessors for business taxes and another 6 for income taxes. The rest of the staff are administrative. The collections division, comprising 40 staff, is in charge of collecting all dues for the government. The audit division has a team of seven assessors to carry out the
An audit in Sint Maarten is always a full-scale investigative field audit that usually includes visits to the premises of the taxpayer. To select cases for audits, the tax administration relies on third party information received from informants or through examination of financial statements submitted with tax returns and comparing them with information on commercial transactions carried out by businesses. Usually, an audit is undertaken for a two-week period and the taxpayer is informed about it beforehand.

During the review period, enforcement and supervision in respect of the tax law obligations have continued to be fairly limited, as in the previous review period. Sint Maarten has indicated that efforts were made in 2019 to improve compliance by means of acquiring third party information from government-owned companies (e.g. utility companies, harbour and airport) by way of Compliance Surveys and desk Audits. However, due to the Covid-19 pandemic in 2020, these efforts were halted due to the severe impact on businesses, many of which ceased to exist. From 2021, audits, surveys and compliance activities have recommenced.

There are concerns in respect of oversight by the tax authorities. First, the rate of filing of tax returns by all registered taxpayers has been consistently low – 67% in 2019, 63% in 2020 and 61% in 2021. This is an improvement compared to the previous review period as the filing rate was between 56% and 45% in 2011-13. These filing rates across different types of taxpayers are still low, indicating low levels of compliance.

For the profit tax, no sanction in the form of fines was possible due to a court verdict that pointed out a flaw in the legislation. This prohibited the Tax Inspector from levying a fine for late or non-filing of the profit tax returns. The Sint Maarten authorities nevertheless indicated that the Inspector does levy assessments (estimated) ex-officio in the event that a taxpayer does not file the profit tax return. They were however not able to provide statistics in respect of how many ex-officio assessments have been carried out.

The only effective means to ensure that all entities incorporated or established in Sint Maarten, including those whose management is wholly outside of Sint Maarten, are duly maintaining their accounting information, is if their compliance with the requirement to file tax returns is effectively supervised and breaches sanctioned. With the end of the offshore regime and the associated grandfathering provisions, all companies incorporated in Sint Maarten must file their profit tax returns. Sint Maarten authorities provided the following data on profit tax return filing rates for the period 2019 to 2022.

<table>
<thead>
<tr>
<th>Year</th>
<th>Filing Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>67%</td>
</tr>
<tr>
<td>2020</td>
<td>63%</td>
</tr>
<tr>
<td>2021</td>
<td>61%</td>
</tr>
<tr>
<td>2011-13</td>
<td>56%-45%</td>
</tr>
</tbody>
</table>
### Profit tax return filing rates

<table>
<thead>
<tr>
<th>Year</th>
<th>Profit tax registered taxpayers</th>
<th>Profit tax returns filed</th>
<th>Filing rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>7 502</td>
<td>3 771</td>
<td>50%</td>
</tr>
<tr>
<td>2020</td>
<td>6 612</td>
<td>3 643</td>
<td>55%</td>
</tr>
<tr>
<td>2021</td>
<td>6 886</td>
<td>3 261</td>
<td>47%</td>
</tr>
<tr>
<td>2022</td>
<td>7 182</td>
<td>2 591</td>
<td>36%</td>
</tr>
</tbody>
</table>

*Source: Sint Maarten Tax Administration.*

241. As a significant number of taxpayers do not comply, it is difficult to draw satisfaction that there is sufficient compliance with maintenance of accounting records under the tax law obligations. Sint Maarten authorities indicate that filing rates are low because many such taxpayers are commercially inactive. However, there is lack of clarity on how many of the non-filers are commercially inactive and have no activities even outside of Sint Maarten. In respect of entities that have limited physical presence in Sint Maarten (for instance, NVs and BVs that have foreign directors), it is not clear if there is an oversight on their compliance with the requirements to maintain accounting information.

242. Second, even in respect of those who have been filing tax returns, the oversight and enforcement activities have been limited. Sint Maarten indicated that the inspections division carried out 42 desk audits in 2019, 13 in 2020, 66 in 2021, 57 in 2022 and 23 in 2023.

243. Further, Sint Maarten has provided the following statistics in relation to the other supervisory activities carried out by the audit division:

#### Supervisory actions carried out by Sint Maarten Tax Administration

<table>
<thead>
<tr>
<th>Year</th>
<th>Field audits</th>
<th>Compliance checks and surveys</th>
<th>Criminal investigations</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>6</td>
<td>25</td>
<td>2</td>
</tr>
<tr>
<td>2020</td>
<td>4</td>
<td>24</td>
<td>4</td>
</tr>
<tr>
<td>2021</td>
<td>74</td>
<td>106</td>
<td>0</td>
</tr>
<tr>
<td>2022</td>
<td>83</td>
<td>68</td>
<td>1</td>
</tr>
<tr>
<td>2023</td>
<td>38</td>
<td>69</td>
<td>0*</td>
</tr>
</tbody>
</table>

*Source: Sint Maarten Tax Administration.*

*Actions are on-going.

244. Compared to the number of entities and the number of tax return filers, the level of activities of the inspection division and of the audit division
is fairly low. There is also no improvement since the previous review period, as the number of audits conducted was 86 in 2011, 60 in 2012 and 69 in 2013.

245. Sint Maarten has explained that there is a general lack of resources in the tax administration. Against a sanctioned strength of over 140 employees, the actual staff strength is only about 94. Thus, the tax administration has faced staffing and resource constraints.

246. Finally, Sint Maarten has not provided any details of the types of failures detected, and related sanctions or penalties imposed on non-compliant taxpayers for failure to comply with tax law obligations or to maintain accounting information as required. Sint Maarten authorities indicate that penalties are imposed for incorrect or false declaration of income, ex-officio assessments are conducted, and audits often result in imposition of penalties. However, it is not clear whether the sanctions under the law have been imposed to be effective and dissuasive.

247. Overall, the effectiveness of the supervision and enforcement activities undertaken by the tax authorities continues to be a concern as was noted in the 2015 Report. Hence, **Sint Maarten should put in place an efficient system of oversight and enforcement to ensure compliance with the obligations to maintain accounting information in accordance with its law.**

**Availability of accounting information in practice**

248. During the review period, accounting information was requested from Sint Maarten in one case. Sint Maarten was able to obtain and provide the requested information. No peer has raised any specific concerns in respect of the accounting information provided. However, given the issues identified in respect of implementation and supervision over the availability of accounting records, there is concern about the availability of accurate and adequate accounting information in all cases.

**A.3. Banking information**

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

249. The 2015 Report had noted that banks are required to identify their clients and verify their identity and maintain accurate records of their financial and transactional information under the National Ordinance of 1996 on Identification of Clients when Rendering Services. This Ordinance has since been replaced by the National Ordinance on the Combating of Money
Laundering and Terrorist Financing (the AML Law), which requires banks to maintain banking information in respect of all account-holders for a period of ten years following the date of the termination of the business relationship. Banks are in general governed by the provisions of the National Ordinance on the Supervision of Banking and Credit Institutions (Central Bank Law), as amended by National Ordinance on Actualisation and Harmonisation of Supervision Ordinances.

250. The standard was strengthened in 2016, requiring the availability of beneficial ownership information of account holders. The AML Law requires banks to collect beneficial ownership information; however, some issues have been identified which may affect the availability of this information in certain instances or the available information might not be up to date. Sint Maarten is therefore recommended to take measures to address these issues. In addition, in a situation where a bank ceases to exist or ceases operations in Sint Maarten, the absence of specific legal provisions to ensure the availability of all banking information may result in unavailability of such information in line with the standard.

251. The Central Bank of Curaçao and Sint Maarten (the Central Bank) is in-charge of the overall supervision of all banks to monitor their compliance with the requirements under the AML law as well as the Central Bank Law. Although there is supervisory oversight, since 2019 Central Bank supervision over banks in Sint Maarten has been largely through off-site inspections and supervisory measures. There is room to strengthen the supervisory activities.

252. During the review period, Sint Maarten received six requests for banking information and was able to respond satisfactorily in all cases.

253. The conclusions are as follows:

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

<table>
<thead>
<tr>
<th>Deficiencies identified/Underlying factor</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>The general definition of beneficial owner does not expressly cover both direct and indirect ownership and control. In addition, the process of identification of beneficial owners does not contain the default position to identify individuals holding senior management positions when no natural person meets the definition of beneficial owner. In respect of partnerships, which are legal arrangements, the application of threshold of 25% may result in missing out the identity of all beneficial owners in line with the standard.</td>
<td>Sint Maarten is recommended to take appropriate measures to ensure that beneficial ownership information is available in line with the standard for all bank accounts.</td>
</tr>
</tbody>
</table>
## Practical Implementation of the Standard: Largely Compliant

<table>
<thead>
<tr>
<th>Deficiencies identified/Underlying factor</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>While the AML Law requires that banks ensure that beneficial ownership information is updated, there is no specified frequency provided for in guidance or regulation to ensure a consistent application of this requirement; so, there could be situations where the available beneficial ownership information is not up to date.</td>
<td>Sint Maarten is recommended to ensure that beneficial ownership information on all bank accounts is kept up to date, in line with the standard.</td>
</tr>
<tr>
<td>Although the anti-money laundering law requires the identification of the settlor, the trustee, protector, beneficiaries, and any person who exercises control over the trust, it does not explicitly require identification of all the beneficial owners of trusts as required under the standard (i.e. including the identity of any natural person behind a trustee, settlor, protector or beneficiary which are legal entities). The same concern applies to private foundations. Also, it is unclear how the beneficiaries with less than 25% interest in trusts are treated.</td>
<td>Sint Maarten is recommended to ensure that adequate, accurate and up-to-date beneficial ownership information of bank accounts is always available in Sint Maarten, including when trusts and private foundations are involved.</td>
</tr>
<tr>
<td>In a situation where a bank were to cease to exist in Sint Maarten or where a foreign bank were to cease its operation there, there are no clear legal requirements for ensuring the availability of all banking information held by such a bank for a period of at least five years.</td>
<td>Sint Maarten is recommended to ensure that all banking information is available for the retention period in line with the standard in a situation where a bank ceases to exist or ceases its operations in Sint Maarten.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Deficiencies identified/Underlying factor</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Central Bank follows risk-based supervision over banks in Sint Maarten. However, since 2019, due to pandemic related reasons, there has been limited on-site supervision of banks with a focus on AML compliance in Sint Maarten. The Central Bank has carried out some off-site supervisory activities with follow-up with banks. However, the depth and comprehensiveness of these exercises is not clear. The Central Bank has indicated plans for more on-site supervisory activities. Although, in general, banks in Sint Maarten frequently interact with the Central Bank and appear to be aware of their AML obligations, there is room to enhance the supervisory and enforcement measures.</td>
<td>Sint Maarten is recommended to monitor the level of enforcement and supervision over banks to ensure the availability of up-to-date, adequate and accurate banking information on all bank account holders.</td>
</tr>
</tbody>
</table>
A.3.1. Record-keeping requirements

254. As of December 2023, Sint Maarten has eight banks – five branches of local general banks (with head offices incorporated in Curaçao), one subsidiary of a foreign bank (incorporated in Sint Maarten), one branch of a foreign bank (with head office in another jurisdiction) and one specialised credit institution (see paragraph 31).

255. Both the Central Bank Law and the AML Law provide for the availability of banking information. The AML Law also specifically requires the availability of beneficial ownership of bank accounts.

Availability of banking information

256. Pursuant to article 42 of the Central Bank Law, banks and credit institutions are obligated to keep all letters, documents and data carriers concerning their business and also transactions records (movements and changes in the accounts) relating to all accounts maintained by the banks in their own name or for third parties for a period of ten years.

257. The National Ordinance of 1996 on Identification of Clients when Rendering Services referenced in the 2015 Report has been replaced by the National Ordinance on the Combating of Money Laundering and Terrorist Financing (the AML Law). Article 22 of the AML Law requires financial service providers, including banks, to maintain banking information in respect of all clients for a period of ten years following the date of the termination of the business relationship.

258. Information to be maintained under the AML Law includes data related to all transactions, both on a national and international level, information acquired through customer due diligence (CDD), information on the accounts, commercial correspondence and the results of the analyses of any unusual transactions. Transaction data must be stored in such a way that individual transactions can be always reconstructed (article 22). Banks are prohibited from operating anonymous accounts or accounts under unmistakably false names (article 5).

259. There are no specific legal provisions governing retention of all banking information in the situation where a bank ceases to exist in Sint Maarten. However, Sint Maarten authorities have explained that the record retention requirements pursuant to article 42 of the Central Bank Law and Article 22 of the AML Law are expected to be adhered to regardless of closure of banks. Further, the same general rules as those applied to all

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28. One of the five local banks headquartered in Curaçao is a subsidiary of a foreign bank.
companies under the Civil Code (article 33, Book 2) apply to banks. The liquidator or custodian would be responsible for keeping the documents. As noted in paragraph 254, all but one of the banks in Sint Maarten are incorporated either in Sint Maarten or in Curacao as companies with the obligations under the Civil Code of the two jurisdictions (liquidation requirements in Curacao are similar and the custodian is expected to maintain all books, records and data carriers of the dissolved entity). Further, if the Sint Maarten branch of any of the banks incorporated in Curacao were to close, the head office in Curacao would still maintain such information. Sint Maarten authorities indicate that where a bank were to cease operations in Sint Maarten, the closure would ordinarily be under supervision and guidance of the Central Bank, which can oversee the maintenance of all banking information. Cessation of banking activities in Sint Maarten is accompanied by a cancellation of licence of the banking entity. Cancellation of banking licence would happen where either the Central Bank forces a bank to cease operations or where the bank itself closes its business in Sint Maarten. Article 9 of the Central Banking Law covers various situations of cancellation of the banking licence. Specifically, article 9(6) of the Central Bank Law provides that a credit institution whose licence is cancelled by the Central Bank is under the obligation to wind up its activities as a credit institution in accordance with the conditions stipulated by the Central Bank and within the terms specified by the Central Bank. Sint Maarten authorities indicate, that among other things, retention of all banking information in line with the requirements of article 42 of the Central Bank Law and article 33 of Book 2 of the Civil Code, would be ensured as part of the approval process for ceasing banking operations.

260. While the provisions of the Civil Code are helpful, it is not clear what level of details would be kept by the liquidator or custodian – only the information relevant for conducting the liquidation, or all transactional and beneficial ownership information on all the bank accounts as well. Furthermore, there is no legal requirement that such information is kept in Sint Maarten or be available to the Central Bank. Where the custodian of such information is not in Sint Maarten, there is no legal provision available to the authorities to compel compliance. Moreover, while currently most banks are incorporated in Sint Maarten or in Curacao (with a common supervisor), more branches of international banks incorporated elsewhere cannot be ruled out in future.

261. In practice, Sint Maarten has informed that there has been one instance where banking information was requested which was held by a branch of a foreign bank that ceased operations in Sint Maarten. In this case, Sint Maarten authorities were able to obtain the information from the bank’s headquarters by writing to the bank directly and this information was subsequently shared with the requesting jurisdiction.
262. While Sint Maarten did manage to obtain and exchange the requested banking information, there does exist a risk that in a situation where a bank ceases to exist or where a foreign bank ceases its local operations, in the absence of clear legal provisions to ensure the availability of banking information in Sint Maarten, such information might not always be available in line with the standard. Hence, **Sint Maarten is recommended to ensure that all banking information is available for the retention period in line with the standard in a situation where a bank ceases to exist or ceases its operations in Sint Maarten.**

**Beneficial ownership information on account holders**

263. The standard was strengthened in 2016 to specifically require that beneficial ownership information be available in respect of all bank accounts. Article 7 of the AML Law requires banks to conduct customer due diligence which must include:

- the identification of the client and the verification of the client’s identity
- the identification of the beneficial owner and taking reasonable measures to verify the identity of the beneficial owner in such a way that the bank is convinced of the identity of the beneficial owner
- measures to establish the objective and the envisaged nature of the business relationship
- measures to establish whether a client is acting for him/her/itself or on behalf of a third party and taking measures to establish and verify the identity of the third party.

264. The information to be collected as part of customer due diligence includes:

- in respect of natural persons:
  - the surnames, first names, place and date of birth, address of the place of residence or domicile of the client and the beneficial owner, as well as anyone who acts on behalf of these natural persons, or a copy of the document containing a personal identification number on the basis of which their identification was confirmed
- in respect of legal entities:
  - the legal form, the deed of incorporation, the articles of incorporation, the trade name, the address and, if the legal entity is registered with the COCI, its registration number, as well as the way in which its identity has been verified by a reliable and independent source
the surnames, first names, places and dates of birth of those who hold executive positions, those who act on behalf of the legal entity, the beneficial owner, or those who have effective control of the legal entity, as well as the way in which these identities have been verified by a reliable and independent source.

265. Article 1 of the AML Law defines beneficial owner for legal entities and broadly meets the standard, except that indirect beneficial ownership is not explicitly captured, as noted under section A.1 (see paragraph 98). **Sint Maarten is recommended to take appropriate measures to ensure that beneficial ownership information is available in line with the standard for all bank accounts.** There is no obligation as default position to identify a senior manager when no beneficial owner can be identified but Article 7(3)(b)(2°) contains an obligation for financial institutions to identify the natural persons who hold executive positions in the legal entity. Also, there is no clear guidance on determining the beneficial ownership in respect of segregated trust companies (see paragraph 178). Although currently no such companies exist, Sint Maarten should ensure that beneficial ownership information in line with the standard is available for all segregated trust companies/trustees (see Annex 1).

266. In relation to partnerships, which are legal arrangements in Sint Maarten, the definition provides for a threshold of ownership which could, depending on the form and structure of the partnerships, hamper the identification of all beneficial owners. Further, there is the absence of mention of indirect beneficial ownership as noted above (see paragraphs 150 to 152).

267. While the clarification in Article 7 permits the identification of all relevant parties to a trust or a private foundation, a concern remains regarding the identification of all beneficial owners when a participant to the trust or private foundation is not a natural person (see paragraphs 180 and 197). **Sint Maarten is recommended to ensure that adequate, accurate and up-to-date beneficial ownership information of bank accounts is always available in Sint Maarten, including when trusts and private foundations are involved.**

268. In practice, during the on-site visit, the three representatives from the banking sector displayed a reasonable understanding of the concept of beneficial ownership as applicable to different types of entities (see also paragraph 121). While representatives from the banks noted that the Central Bank has not conducted any specific trainings in respect of AML aspects, banks in Sint Maarten do conduct internal trainings based on the information and guidelines issued from time to time by the Central Bank. They noted that all potential customers’ beneficial owners must be identified before
establishing customer relationships, i.e. unless beneficial owners are identified, they would not establish customer relationships. Bank representatives noted that in all situations beneficial owners of different types of entities and arrangements would have to be natural persons and they do not accept or record a non-natural person as a beneficial owner. There was an understanding that control may be exercised by other means besides ownership. The representatives from each of the three banks were able to explain the processes and procedures they would adopt in respect of identifying and verifying beneficial owners for different types of entities. There were similarities in their approaches. They noted that while onboarding new customers, they require all submitted documents to be not older than three months. For legal entities, registration documents with shareholding information together with a recent excerpt from the Chamber of Commerce is required. Most banks adopt a lower ownership threshold of 10% as against 25% prescribed under the law for identifying beneficial owners. Identification of the natural person with signing authority on behalf of the customer is also required. In respect of partnerships, banks noted that they would apply a look-through approach, i.e. seek to identify the natural person controlling partners as beneficial owners. However, it was unclear how the controlling partners would be identified in all situations. None of the bank representatives were familiar with silent partnerships or had experience handling such a customer.

269. In respect of trusts, while one bank indicated that it views trusts as high-risk customers and as per its internal bank policy it does not do business with them, another bank noted that its internal policy requires that enhanced due diligence be carried out in all cases where a trust is a customer or is in the ownership chain of a customer. The bank representatives indicated that in their experience most of their customers have simple structures, and in general they have not faced difficulties in conducting CDD on their customers. Bank representatives noted that not all banks take on widely held companies as customers. Those that do, do so in collaboration and under the guidance of the Central Bank in order to ensure that suitable documentation and identification details are collected in the process.

Reliance on third parties

270. Reliance on third parties to conduct CDD is regulated by a combination of provisions in the AML Law and the Central Bank Law.

271. According to Article 13 of the AML Law, if a client is introduced by a service provider based in Sint Maarten, the bank can rely on the CDD conducted by that service provider to the extent this due diligence contains the elements required under Article 7(1) under points a, b and c (i.e. identity of the client and its beneficial owners has been established and the nature and objective of the business relationship). This is without prejudice to the
bank’s own responsibility to conduct CDD in Article 7 of the AML Law, and provided that:

- The bank has ascertained that copies of all the supporting documents relating to the CDD conducted by the third party, as referred to in the opening lines, will be made available by the third party without delay upon request.
- The bank has ascertained that the third party has procedures and measures in place which enable it to conduct CDD and to store the data and information so obtained in the way referred to in chapter IV of the AML Law.

272. Additional obligations are provided for banks in Article 15 of the AML Law for establishing corresponding banking relationships, and a prohibition to enter into or maintain a correspondent bank relationship with a shell bank is provided under Article 16. Moreover, the Central Bank Law provides that banks and credit institutions may rely on intermediaries or other third parties to introduce business or perform the following elements of the CDD process:

- the identification and verification of the customer’s identity
- the identification and verification of the beneficial owner and
- obtaining information on the purpose and intended nature of the business relationship.

273. The following steps must be taken by banks when so relying on intermediaries or third parties:

- Immediately obtain from the third party the necessary information concerning the elements of the CDD process
- satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request within two working days and
- satisfy themselves that the third party is AML/CFT regulated and supervised (in accordance with FATF Recommendations 23, 24 and 29), and has measures in place to comply with the required CDD requirements.

274. In addition, the introduced business rule stipulated in Article 13 of the AML Law does not apply to clients that are introduced by foreign service

29. Article 1 of the AML Law defines shell bank as a financial service provider incorporated outside Sint Maarten which has no physical presence in the country in which it is incorporated and is unaffiliated to a financial services group which is subject to effective consolidated supervision.
providers which do not sufficiently comply with internationally accepted standards for the prevention and combatting of money laundering and the financing of terrorism (Article 14 of the AML Law). Accordingly, in case of reliance on foreign third parties, banks must satisfy themselves that these third parties are based in a jurisdiction that is adequately AML/CFT regulated and supervised. Under the Central Bank Provisions and Guidelines on the Detection and Deterrence of ML and TF for Credit Institutions including banks, a jurisdiction is adequately regulated and supervised when its Mutual Evaluation Report published by FATF-style bodies discloses less than 10 “Non-Compliant” or “Partially Compliant” ratings regarding relevant FATF Recommendations. The representatives from the banks interviewed at the on-site visit confirmed these practices and emphasised that in practice, they would almost always do their own CDD.

275. The introduced business rule in Sint Maarten requires banks to obtain from the introducer immediately, for the purposes of answering an EOI request, all records related to financial and transactional information including legal and beneficial owners of the client. Therefore, the introduced business rule in Sint Maarten appears in line with the standard.

**Update of CDD information**

276. Article 7 of the AML Law provides that CDD includes conducting ongoing checks of the business relationship and the transactions carried out during this relationship, in order to ensure these measures correspond to the knowledge the bank has of the client, his/her/its business and the beneficial owner, as well as their risk profiles, including, if necessary, the origin of the financial resources.

277. Article 9 of the AML Law adds that an AML-obliged person is responsible for ensuring that the data and information, which is obtained in the context of CDD, in particular data and information related to clients, beneficial owners or business relationships which pose a higher risk of money laundering and the financing of terrorism, are updated and relevant.

278. Information on the identity of the beneficial owners must be “adequate, accurate and up to date”. While the standard does not set a specific time criterion on how frequently information should be updated, the absence in the legal framework of any frequency of updating beneficial ownership information could lead to situations where the available beneficial ownership information is not up to date. In Sint Maarten, the Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing for Credit Institutions issued by the Central Bank (the Provisions and Guidelines for Credit Institutions), which regulates the rules applied to banks supervised by the Central Bank, illustrates the cases of
when CDD may be appropriate to be conducted by banks throughout the course of relationship with its clients: (a) a significant transaction takes place, (b) a material change takes place in the way the account is operated, (c) customer documentation standards change substantially, and (d) the bank becomes aware that it lacks sufficient information about an existing customer. The Provisions and Guidelines for Credit Institutions also states that banks must apply CDD requirements to existing customers on the basis of materiality and risk, and must conduct CDD on such existing relationships at appropriate times, however, the standard requires that the information should be regularly updated, regardless of the risk.

279. During the on-site visit, officials from the Central Bank noted that although there is no specified frequency for updating CDD by banks in existing regulations and guidance, banks are expected to update CDD every year for high-risk customers, once every two years for normal-risk customers and once every three years for low-risk customers. While the Central Bank does not enforce (by way of sanctioning) any specific time limits for updating CDD, it does examine the internal policies for updating CDD information. The representatives from the banking sector noted that banks have internal policies for updating CDD on their customers. They noted that in their respective banks, for high-risk customers a yearly update is undertaken. For other types of customers there was periodic updating of CDD but this periodicity varied across banks.

280. In conclusion, there is no specified frequency provided in guidance or regulation to ensure a consistent application of this requirement; so there could be situations where the available beneficial ownership information is not up to date. Therefore, Sint Maarten is recommended to ensure that beneficial ownership information on all bank accounts is kept up to date, in line with the standard.

Oversight and supervision

281. The Central Bank supervises all banks in Sint Maarten using a risk-based approach to supervision. The Central Bank’s supervisory team for banking supervision comprises three officials that are based in Sint Maarten. In addition, about ten supervisors are based in Curaçao that support the supervisory activities of the Central Bank in Sint Maarten.

282. During its on-site examinations, the Central Bank assesses the supervised credit institutions’ compliance with the Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing for Credit Institutions and all other AML/CFT legal obligations. The Central Bank supervisors examine if the supervised banks have completed files of their clients containing at least the information prescribed in
the AML Law and the Provisions and Guidelines. The required information must be updated regularly and adequately documented. An important objective for credit institutions is to be able to retrieve this information, without any undue delay. Hence, the Central Bank requires the credit institutions to implement a checklist containing identification and/or transaction information and to maintain a centralised record keeping system to retain copies.

283. In cases of non-compliance, such instances are noted in the on-site examination report together with instructions to remedy the identified shortcomings within a specific deadline. Non-compliance with deadlines imposed can result in the issuance of instruction letters, imposition of penalties and administrative fines up to ANG 4 million (EUR 1.92 million) or eventually revoking the licence from the supervised entity (Article 31 of the AML Law).

284. The Central Bank had conducted 13 on-site examinations in respect of banks in Sint Maarten over the three-year period from 2017 to 2019. However, the supervisory efforts were impeded by the onset of the Covid-19 pandemic. Hence, during the review period from October 2019 to September 2022, the Central Bank conducted only four on-site examinations based on the risk-based approach. These were thematic AML/CFT examinations.

285. Nevertheless, for the period 2019 to 2021, the Central Bank has reported the following off-site/desk-based measures:

<table>
<thead>
<tr>
<th>Year</th>
<th>Supervisory activity</th>
<th>Number of actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>Letter to financial institutions to request among other AML/CFT information</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Meeting with the Managing board in which AML/CFT area was discussed</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Letter to financial institution addressing the follow-up on previously identified findings on the area of AML/CFT</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Risk assessment was prepared for the financial institutions which includes the AML/CFT risks</td>
<td>4</td>
</tr>
<tr>
<td>2020</td>
<td>Letter was sent to a financial institution referring to the independent testing on the AML/CFT area</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Follow-up was conducted on the previously identified AML/CFT findings (progress report)</td>
<td>2</td>
</tr>
<tr>
<td>2021</td>
<td>Survey on requirements to open a bank account</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>E-mail correspondences to financial institutions on the OFAC sanctions</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Follow-ups on the closing of the AML/CFT findings</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Virtual meeting with a financial institution referring to their retrofitting project</td>
<td>1</td>
</tr>
</tbody>
</table>

Source: The Central Bank of Curaçao and Sint Maarten.
286. The Central Bank has informed that through these supervisory measures, certain AML compliance deficiencies were identified in specific cases. These included situations where the identification and verification of customers and beneficial owners were not up to date, some deficiencies in CDD pertaining to politically exposed persons were noted, there were deficiencies in risk classification of customers, independent testing of submitted information had not been carried out, there was room for improvement in continuous monitoring and some deficiencies on monitoring and reporting of suspicious transactions. While no sanctions were imposed in respect of these issues, banks were asked to correct the deficiencies in a time-bound manner. Areas for improvement were noted and communicated to the banks concerned by way of recommendations which the banks addressed in the stipulated timeframe. After the pandemic and the review period, the Central Bank has followed up with a few banks. The Central Bank indicated plans for more on-site supervisory activities from 2024.

287. During the on-site visit, representatives from the three banks confirmed that although on-site inspections from the Central Bank have not been that frequent since the 2019 pandemic, there have been regular virtual sessions (three to four times a month) with the Central Bank. Banks noted that they frequently interact with the Central Bank supervisors and receive regular guidance and directions. Further, banks indicated that they have regular reporting requirements (weekly, monthly and quarterly) for different pieces of information. The Central Bank carries out desk-based analysis of this submitted information for its risk-analysis for planning its supervisory actions.

288. Overall, the supervisory and enforcement efforts of the Central Bank were somewhat impacted by the pandemic since 2019 and have recently resumed. On-site visits since 2019 have been fairly limited although the Central Bank has reported some off-site oversight measures. While issues have been identified through these desk-based activities and corrective measures have been initiated by banks, there is room for strengthening the oversight and supervisory activities through more comprehensive supervisory actions as were taking place in the pre-pandemic period. **Sint Maarten is recommended to monitor the level of enforcement and supervision over banks to ensure the availability of up-to-date, adequate and accurate banking information on all bank account holders.**

**Availability of banking information in practice**

289. During the review period, Sint Maarten received six requests for banking information and provided the requested information in all cases. All peers that provided peer input noted satisfaction with the information provided by Sint Maarten authorities.
Part B: Access to information

290. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information, and whether rights and safeguards are compatible with effective EOI.

B.1. Competent authority’s ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

291. The 2015 Report found that Sint Maarten’s competent authority had power to obtain any relevant information from any person within the jurisdiction who has relevant information within his/her possession, custody or control, even if it is not required to be held by this person. Access to beneficial ownership information is ensured on the basis of the access powers provided under the General National Ordinance on National Taxes. The competent authority of Sint Maarten can use its access powers to obtain beneficial ownership information from different information holders; however, if the only reliable source of the beneficial ownership information is the FIU, the competent authority would not be in a position to access this information. In this regard, Sint Maarten authorities have indicated that the competent authority and the FIU are considering entering a Memorandum of Understanding for sharing information where FIU is in possession or has access to relevant information.

292. There have been no changes in Sint Maarten’s legal and regulatory framework concerning access to information since the 2015 Report.
Three deficiencies regarding the practical implementation of these powers were noted in the 2015 Report, of which two have since then been addressed.

First, it was unclear whether the access powers of the competent authority applied in respect of entities covered under grandfathering rules which set out the transitional rules regarding the previous taxation regime in place for offshore entities. Sint Maarten did not receive a request for information related to an offshore company and therefore the relation between the obligation to provide the information for exchange of information purposes and the grandfathering clause granting exception from providing the information to the tax authority was untested. Since then, the grandfathering rules expired in December 2019, and as such the potential restrictions on tax authorities’ powers to access information on former offshore companies have been lifted. Now that offshore tax regime no longer exists, the Sint Maarten authorities consider that the access powers can be applied retrospectively. In practice, Sint Maarten authorities have never been requested for information on such offshore companies. Sint Maarten authorities maintain that if a request is received, they would be able to obtain and provide the requested information using their usual access powers as now there is no distinction between offshore companies and normal companies from the perspective of the tax authority and no prohibition in law to use the available access powers under the tax laws. The recommendation is therefore removed.

Second, the practical application of legal professional privilege in Sint Maarten appears to go beyond that defined in the standard, however, it remains to be tested in respect of obtaining information for exchange of information purposes. The issue persists and the recommendation in that regard is maintained.

Third, Sint Maarten had received three requests for banking information over the period 2011-13 and one of them was still pending for over a year due to obstacles in obtaining the requested information from the bank. No compulsory powers were applied by Sint Maarten in order to compel the provision of the banking information although compulsory powers are stipulated in article 49 of the General National Ordinance on National Taxes (refer to paragraphs 314 to 315). Sint Maarten authorities have indicated that they were able to obtain and provide information in all the requests received during the review period. There was no case where non-compliance was noted and hence, there are currently no reportable sanctions that were applied. Sint Maarten received six requests for banking information, all of which were answered by using the available access powers in a timely manner. Hence, the recommendation is considered addressed and removed.
297. During the current review period, the competent authority did not have difficulties accessing the information needed for EOI purposes.

298. The conclusion is as follows:

**Legal and Regulatory Framework: The element is in place.**

<table>
<thead>
<tr>
<th>Deficiencies identified/Underlying factor</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Access by the competent authority to beneficial ownership information held by the Financial Intelligence Unit (FIU) is uncertain because of conflicting obligations of co-operation with the competent authority and confidentiality of information.</td>
<td>Sint Maarten is recommended to ensure that its competent authority can obtain information from the FIU for EOI purposes.</td>
</tr>
</tbody>
</table>

**Practical Implementation of the Standard: Largely Compliant**

<table>
<thead>
<tr>
<th>Deficiencies identified/Underlying factor</th>
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<tr>
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<td>Sint Maarten is recommended to monitor the practical application of legal professional privilege to ensure that it does not prevent effective exchange of information.</td>
</tr>
</tbody>
</table>

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

299. In Sint Maarten, the Minister of Finance is the competent authority under EOI agreements and has the ultimate political responsibility for EOI requests. By Ministerial Decree 2013/1321 of 8 August 2013, the Minister mandated the Head of the Tax Administration to act as the Competent Authority for the exchange of information for tax purposes.

**General powers**

300. The legal framework on access powers has not changed since the 2015 Report (paras. 265-274). Sint Maarten’s Competent Authority has information-gathering powers for civil and criminal tax matter purposes, as set out in the General National Ordinance on National Taxes – Chapter VI on Obligations for the purpose of levying tax (articles 40-48) and Section 2 of Chapter VIII (articles 61-67) dedicated to Granting International Assistance. The Competent Authority has equal access powers to obtain information for
domestic as well as international EOI purposes, as article 63(5) provides that articles 40 to 48 can be used for EOI purposes.

301. These powers are used regardless of the type of information sought (i.e. ownership, identity, banking or accounting information) and from whom the information is sought (i.e. directly from the person under investigation or from a third party in its possession or control). In particular, the Competent Authority has powers to obtain information held by any person acting in an agency or fiduciary capacity, including nominees and trustees. These powers include the right to make enquiries, inspect documents, as well as search and seizure (article 54).

302. Under article 48, all institutions and agencies of the Government of Sint Maarten are obliged to provide any information requested by the tax authorities for the implementation of the law. This provision allows the Tax Authority to seek information from any relevant public agency. In practice, the competent authority gathered contact and ownership information from the Chamber of Commerce (as well as from their own internal databases).

303. Further, article 45(1) extends the powers of the tax authorities to seek information from any third party that is liable to keep an administration. Article 43(1) defines those liable to keep an administration as individuals operating a business or practicing a profession; individuals responsible for withholding of taxes and contributions at source; and entities. Thus, all information holders including professionals and banks would be covered by these obligations. When information is held with a third party, a notice is issued requesting the information and imposing a deadline (within four weeks) (EOI Manual, section 3.1). If the information is being requested from a bank, this deadline is two weeks. Extensions if requested by the information holder may be agreed up to 30 days of receipt of the original notice. In practice, for obtaining accounting and banking information, the competent authority used its access powers to obtain information from the taxpayer and from banks by issuing notices to the information holders.

**Criminal tax matters**

304. When an EOI request concerns the investigation of a criminal (tax) offence, the information can only be exchanged by the Minister of Finance after the Minister of Justice has been consulted (article 62(6), General National Ordinance on National Taxes). This consultation aims to inform the Minister of Justice about matters that fall under his/her competence, which could lead to one of the reasons for declining an EOI request. Sint Maarten informed that the Minister of Justice has not objected to sharing of information to foreign EOI partners and no delay in the process of the consultation, which is supposed to be within two weeks, has been experienced so far.
This was confirmed during the on-site visit (see also paragraph 418 under Element C.5.2). If an investigative action is required, the EOI request is forwarded to the Public Prosecutor, who exercises supervisory powers over such an investigation (articles 183 and 556, Code of Criminal Procedures). During the review period, no EOI request was forwarded to the Public Prosecutor as no investigative action was needed in respect of any of the requests.

**Beneficial ownership information**

305. Access to beneficial ownership information is based on the access powers provided under articles 40, 45, 48 and 46(1) of the General National Ordinance on National Taxes which lifts secrecy and confidentiality provisions under Sint Maarten’s law for EOI purposes (see paragraph 317). In addition, based on articles 61 and 63(1) in conjunction with article 48(1), public authorities are obliged, if requested in writing, to provide data and information that the tax inspector deems necessary for the implementation of the Tax Ordinance, including exchange of information with foreign jurisdictions, free of charge. Therefore, the competent authority has the power to request the beneficial ownership information from all persons and third parties as well as other government authorities in Sint Maarten. So far, given the availability of beneficial ownership information through the AML framework, the competent authority seeks such information directly from the relevant AML-obliged persons holding such information. During the review period, there was only one request for beneficial ownership information and the competent authority was able to obtain it from the relevant AML-obliged tax professional. It is expected that once the new requirements of submission of beneficial ownership information to COCI are properly implemented, the competent authority will be able to access it from there as well.

306. It emerged during the Phase 1 review of Sint Maarten in 2022, that some diverging views exist among Sint Maarten authorities as to whether the competent authority can obtain any information held by the FIU for answering an EOI request. The competent authority considers that it can use its access powers to obtain beneficial ownership information from various information holders (including the FIU if it possesses such information or is able to obtain such information) in line with the standard, whereas the FIU considers that it is allowed to share the information it holds or can obtain with the tax authority only for domestic criminal cases (articles 6(1))

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30. Article 6(1) states that upon request or on its own initiative, the FIU is required to provide some categories of data to the authorities charged with investigating and prosecuting criminal offences relating to money laundering or an underlying criminal offence.
and 16\textsuperscript{31} of the National Ordinance Financial Intelligence Unit). Being the supervisory authority for non-financial AML-obliged persons, the FIU would have the beneficial ownership information on such AML-obliged persons registered with it (who are required to provide this to the FIU at the time of registration) or to obtain such information from these supervised persons on their customers. For instance, notaries can provide it with all information it requests. Notaries, on the other hand, appeared hesitant to comply with notices from the tax authorities citing professional privilege (see discussion under B.1.5 and paragraph 325). Therefore, where reliable beneficial ownership information is available with or is obtainable by the FIU, given the diverging views of the two authorities on the legal provisions, the competent authority would not be in position to access this information. This issue has not arisen in practice as on the single occasion where beneficial ownership information was requested from Sint Maarten during the review period, the competent authority did not need to seek it from the FIU and obtained it from another source which complied with the competent authority’s notice.

307. During the on-site visit, this issue was discussed further with officials from the Tax Administration and the FIU and the two agreed to work on arriving at a Memorandum of Understanding to resolve this divergence of views so that in future there is no bar on the Tax Administration seeking information from the FIU for EOI purposes, if needed. Consequently, **Sint Maarten is recommended to ensure that its competent authority can obtain information from the FIU for EOI purposes.**

308. In practice, Sint Maarten has been able to use all available access powers to obtain and provide the requested information. During the review period, Sint Maarten had received eight requests for ownership information, one for accounting information, six for banking information and six for other types of information. Sint Maarten authorities have explained that they gathered the contact information and ownership information from COCI as well as from their own internal databases. In all cases, information was obtained and exchanged successfully.

\textsuperscript{31} Article 16 states that except to the extent that the need to disclose ensues from the objective of this National Ordinance, the following have a duty of confidentiality:  
\begin{itemize}
  \item a) the Director and other employees of the FIU who, by application of this national ordinance, perform or have performed any duty and have, therefore, taken cognisance, or could take cognisance, of data and information provided or received pursuant to this national ordinance; and
  \item b) persons and bodies which, at the request of the FIU, provide data and information or grant access to registers or other information sources which are under their control.
\end{itemize}
Grandfathering of the offshore sector

309. As noted in the 2015 Report (paragraph 274), based on provisions concerning the offshore companies contained in the National Ordinance on Profit Tax and the grandfathering rules regarding the offshore tax regime (paragraph 10 article VI), companies which qualified as offshore entities appeared to not be required to disclose information to the tax administration up until 31 December 2019. Entities covered under the grandfathering provisions were subjected to ownership and accounting information obligations under the civil, commercial and tax laws as described in the assessment under Elements A.1 and A.2. Nevertheless, in accordance with article 45E(4) of the National Ordinance on Profit Tax, the administration officer who executes activities on behalf of an offshore company was not required to assist in third party inspections. In practice, this means that the administration officer for the offshore companies would not be obligated to provide ownership and accounting information when requested by the tax administration. With respect to banking information of these offshore companies, the Sint Maarten authorities indicate that the information could be obtained by the tax administration from the banks for EOI purposes.

310. With the expiration of the grandfathering rules in December 2019, the restrictions on tax authorities’ powers to access information on former offshore companies have been lifted. Now that offshore companies have been abolished, Sint Maarten authorities consider that the access powers can be applied retrospectively. For the review period, Sint Maarten did not receive any request that pertained to these erstwhile offshore companies covered by grandfathering provisions and hence, the application of access powers has not yet been tested in practice. However, given that the distinction in law no longer exists, the doubts about the applicability of the access powers to obtain information from such companies are relieved. Hence, the recommendation made in this regard in the 2015 Report can be considered resolved.

32. In 2015, Sint Maarten’s authorities explained that the tax authority’s access powers under article 63 of the National Ordinance remained applicable in respect of the offshore companies. As Sint Maarten’s law contains a rule that international treaties take precedence over any conflicting national law, the authorities argued that the obligation under the treaty to provide the requested information would overrule the grandfathering clause. However, as there had been no related case during the previous period under review this explanation remained untested and the 2015 Report noted the risk that the grandfathering provisions would obstruct the access powers of Sint Maarten for EOI purposes.
B.1.3. Use of information gathering measures absent domestic tax interest

311. The General National Ordinance on National Taxes expressly provides that information gathering powers provided to Sint Maarten’s competent authority can be used to provide exchange of information assistance, thus regardless of whether Sint Maarten needs the information for its own domestic purposes (Article 63(5)). The officials from the Competent Authority confirmed their understanding in this regard during the on-site visit.

312. In practice, in respect of all the 12 requests for information received during the review period, in no case Sint Maarten authorities needed the information for their domestic tax interest.

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

313. The 2015 Report determined that Sint Maarten’s legal framework provided for a set of enforcement provisions, including monetary penalties, imprisonment and search and seizure powers, to compel the production of information (refer to paragraphs 280 to 287). There have been no changes to these enforcement provisions.

314. Under article 49 of the General National Ordinance on National Taxes, any person failing to comply with a request for information is committing a criminal offence and will be penalised by a term of imprisonment of up to six months and/or a fine amounting to ANG 25 000 (EUR 12 000). If the failure is intentional, the person will be punished by a term of imprisonment up to four years and/or a fine amounting to ANG 100 000 (EUR 48 000). Search and seizure are also available, in application of article 54.

315. The 2015 Report found that, in practice, the tax authority’s compulsory powers were rarely used and work mainly as a deterrent factor. During the current review period, Sint Maarten authorities did not use the sanctioning provisions in respect of any EOI case as in all cases, the information holders complied. Sint Maarten authorities explained that due to the small size of the territory, all information holders could be accessed directly by the case officer in charge of the EOI requests and information obtained.

33. Article 61 also specifically indicates that the Minister of Finance may ask a tax auditor to make inquiries or conduct an investigation to satisfy an EOI request in accordance with the Tax Arrangement of the Kingdom of the Netherlands (BRK), a double taxation convention (DTC), a tax information exchange agreement (TIEA) or an arrangement under international law for the provision of mutual assistance in the levying and recovery of taxes, including the Multilateral Convention.
For domestic audit purposes as well, these compulsory powers are rarely invoked as taxpayers concerned ordinarily comply with notices from the tax officials.

**B.1.5. Secrecy provisions**

316. The 2015 Report found that secrecy provisions in Sint Maarten were generally in line with the standard (paragraphs 292-295). The report also found that the practical application of legal professional privilege in Sint Maarten would go beyond that defined in the standard; however, this remained to be tested in respect of obtaining information for exchange of information purposes. Sint Maarten was recommended to monitor the practical application of legal professional privilege to ensure that it does not prevent effective exchange of information.

317. A number of secrecy rules apply in the context of Sint Maarten’s AML/CFT laws; however, these can be lifted if domestic or foreign authorities request information for tax purposes. Under article 46(1) of General National Ordinance on National Taxes, no one may invoke the circumstance that he/she is, for whatever reason, under the obligation to observe secrecy, not even if such obligation is imposed by means of a national ordinance. This rule exonerates a person from any liability to prosecution in respect of other secrecy provisions.

318. Even though secrecy provisions are lifted for EOI purposes, an exception is established to protect professional secrecy. Under article 46(2) of the General National Ordinance on National Taxes, ministers of clergymen, civil law notaries, lawyers, doctors and pharmacists “can invoke the confidentiality that they, by reason of their state, office or profession are obliged to maintain”. The Supreme Court of the Netherlands, in its decision of 27 April 2012 in the case Tradman Netherlands B.V. v. the State of the Netherlands, considered that professional secrecy only applies to information entrusted to such persons in their professional capacity, and excludes information obtained outside of their professional capacity. Paragraph 3.5.1 of this judgement states: “the right to refuse to give evidence (...) only relates to data (carriers) and such which the person bound by secrecy keeps in his capacity as confidant”. In addition, the Supreme Court of the Netherlands in its decision of 26 January 2016 (Case number 15/02336) clarified in the context of a criminal case that the mere provision of documents to a notary not connected to the provision of any services in his/her capacity as notary would not benefit from professional privilege.

319. In addition, article 2(2)c of the AML Law contains an exception to the AML/CFT framework concerning legal privilege. Under the provision, certain legal services are excluded from the scope of the Act, i.e. activities
which are related to the provision of the legal position of a client, its representation at law, giving advice before, during and after a legal action, or giving advice on instituting or avoiding a legal action, insofar as performed by a lawyer or notary. Activities performed by an accountant acting as an independent legal advisor was also included in the exception before, but the exception of the accountant has been abolished by the amendment of the AML/CFT framework in 2019.

320. The 2015 Report noted that a new tax bill was expected to be adopted by Parliament to clarify the scope of legal and professional privilege. Sint Maarten authorities indicate that this process is still ongoing.

321. During the on-site interviews, the representative of the notaries clearly noted the legal professional privilege under General National Ordinance on National Taxes and indicated that while it had obligations to share information with the FIU under the AML/CFT legal framework, notaries would not do so with the Tax Authority. A similar position was conveyed by representatives from the lawyers. Thus, while the Competent Authority did not need to obtain and provide information from any lawyer or notary during the review period, it is unlikely that if there is a need, such information would be obtainable from lawyers and notaries.

322. The 2015 Report had found that although the scope of legal professional privilege appears to meet the standard, its domestic application in practice has been wide and has covered all information held by those professionals, whether or not in relation to their profession. The claim that the information is covered by professional privilege is subject to the decision of the respective lawyer or the civil notary holding the information and there is a limited possibility for the tax administration to effectively appeal against such a claim. In the majority of domestic situations, such claim is not challenged, and the information is therefore not disclosed. A case heard by the Supreme Court of the Netherlands on 1 July 2014 found that where legal professional privilege is claimed, the claim needs to be respected unless there could be reasonable doubt that such a claim is not justified. It appears to be very difficult in practice to verify the claim that the information is protected by professional privilege unless the law enforcement authority already has evidence that the lawyer or the notary participates in criminal activity.

323. During the previous review period pertaining to the 2015 Report, there was no case where a lawyer or a notary was the subject of the notice to provide the requested information and therefore no cases where the lawyer could have claimed professional privilege. A similar situation

34. the tax administration had obtained requested information from lawyers in eight cases related to EOI but in each of these cases the lawyers were acting on behalf of
persists during the current review period. As such, the application of legal professional privilege with regard to exchange of information remained untested in practice.

324. Although it might be difficult to obtain the requested information, Sint Maarten’s authorities confirmed that they will provide all information once obtained from lawyers and notaries regardless of the domestic scope of professional privilege unless providing such information would not be in line with the standard as captured in the commentary to Article 26 of the OECD Model Tax Convention.

325. In conclusion, legal professional privilege has not impeded or affected exchange of information in a material manner up to this point. Nevertheless, Sint Maarten continues to indicate potential legal amendments in this regard to address the recommendation made in the Round 1 Report. Given that notaries play an important role in company incorporation and have important record retention requirements, it cannot be ruled out that they may be a key source of certain types of information (like legal and beneficial ownership) in some cases. While the FIU can obtain information from notaries and lawyers due to the AML law provisions, the FIU and the Tax Authority are yet to arrive at a consensus to exchange information. Hence, the issue of professional privilege remains relevant and unaddressed in Sint Maarten. **Sint Maarten is recommended to monitor the practical application of legal professional privilege to ensure that it does not prevent effective exchange of information.**

### B.2. Notification requirements, rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

326. Before exchanging information, the competent authority must notify the person concerned of its decision to exchange information, indicating the information to be exchanged and identifying the requesting jurisdiction. The person has 30 days to appeal the decision and the competent authority does not send the information to the requesting jurisdiction before two months after sending the notification. This notification can be postponed to after the exchange of information has taken place, in case of urgent reasons.

____________________

their clients under a power of attorney.
327. The 2015 Report identified two issues for improvement in the notification process:

- The prior-to-exchange notification procedure allowed for an exception in case of urgent reasons. However, there is no express exception from prior notification when the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction.

- The minimum two month waiting period and the definition of urgent reasons are subject to interpretation issues that could prevent effective EOI within reasonable time.

328. These issues have not been fully addressed by Sint Maarten yet, although Sint Maarten authorities advised that a bill is currently being finalised that proposes to abolish the notification procedure, which would effectively address these recommendations.

329. The 2015 Report also identified an issue in the appeal process. Appeals are made to the Council of Appeal, which met only twice a year, which might delay exchange of information. Sint Maarten advises that the judicial system in Sint Maarten has been reformed. Since 30 April 2016, the person who is notified as the object of a request for information from a requesting jurisdiction can appeal the decision of the Minister to exchange information to the Court of First Instance within 30 days from the date of the decision taken by the Minister, and then appeals to the ruling issued by the Court of First Instance can be heard by the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba (Joint Court) as a court of second instance. Although the possibility to go first to the Court of First Instance which meets more regularly is an improvement, further appeals are still possible and while the cycle of meetings of the Joint Court has increased from two to three per year after the reform of the judicial system, it may still cause a delay in the effective exchange of information in Sint Maarten as the appeal suspends the exchange of information.

330. In practice, during the review period, Sint Maarten applied the notification procedure in respect of all the 12 requests. Sint Maarten did not receive a request from any treaty partner to exempt prior notification. No appeals in respect of any of the requests were filed by the taxpayers concerned, thus the notification procedure did not result in excessive delays.

331. The EOIR standard was clarified in 2016 to indicate that post-exchange notifications should be compatible with EOI. This applies in Sint Maarten when an exception is granted to the prior-exchange notification, in which case the notification is done up to four months after the exchange of information has taken place. This issue remains to be addressed by Sint Maarten.
332. The conclusion is as follows:

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

<table>
<thead>
<tr>
<th>Deficiencies identified/Underlying factor</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appeals to the Joint Court, which meets only three times a year, may delay the effective exchange of information in Sint Maarten.</td>
<td>Sint Maarten is recommended to ensure that appeal rights applicable to persons do not unduly prevent or delay effective exchange of information.</td>
</tr>
<tr>
<td>The power of Sint Maarten’s tax authorities to promptly provide information for exchange purposes is subject to interpretation issues. There is an exception from prior notification for urgent reasons but no express exceptions in the law to cover situations where notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction. Although the EOI manual considers it as an urgent reason and Sint Maarten authorities have also considered this as an urgent reason, in the absence of express legal provisions, the situation remains open to interpretation. Further, the minimum two-month waiting period after notification could prevent effective exchange of information within reasonable time.</td>
<td>Sint Maarten is recommended to ensure that rights and safeguards applicable to persons do not unduly prevent or delay effective exchange of information.</td>
</tr>
<tr>
<td>When exception to prior-notification is granted, a time-specific post-exchange notification applies, where notification must occur up to four months after the decision to respond to the request. No exceptions are provided to such time-specific post-exchange notification to cover situations when such notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction.</td>
<td>It is recommended that wider exceptions from time-specific post-exchange notification be permitted in exchange of information matters (e.g. in cases in which the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction).</td>
</tr>
</tbody>
</table>

**Practical Implementation of the Standard:** Largely Compliant

No issues have been identified in the implementation of the existing legal framework on the rights and safeguards. However, once the recommendations on the legal framework are addressed, Sint Maarten should ensure that they are applied and enforced in practice.
B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information

Notification rights and possible exception

333. Under article 62(2) of the General National Ordinance on National Taxes, the Minister of Finance is required to inform the person, with respect to whom a request for information was made, of his/her decision to comply with such request. In the notification, the Minister of Finance gives a description of the information to be provided and identifies the requesting jurisdiction.

334. In practice, Sint Maarten authorities have explained the process of notification. After gathering the requested information, a formal notification is sent to the taxpayer concerned. The taxpayer is informed about the request, the requesting jurisdiction, the name of the treaty and that enquiries are being carried out with identified third parties (for instance, bank or any other third-party information holder). The information gathering powers used are also noted to explain the legal basis of the procedure. The notified person is informed about the contact details of the Sint Maarten Competent Authority in case it has any queries related to the procedure. There is a possibility for the notified person to appeal the decision of the competent authority before the Council of Appeal within 30 days of receiving such notification (see paragraph 346).

335. Under article 62(3), the granting of a request is not to occur earlier than two months after the notification has been sent, unless urgent reasons oppose such delay. Article 62(4) provides that such urgent reasons may compel the Minister of Finance to postpone the sending of the notification up to four months after the date of his/her decision to comply with the request. Article 62 does not explicitly provide for counting of the two-month period from the date of service of the notification, but from the date of sending the notification. The two-month waiting period from the date of sending the notification is presumably to allow some grace period to account for any postal delays in the notification process and/or to provide adequate opportunity to the notified person to follow up with the competent authority to seek any clarifications or to consider the appellate procedure. After the two-month period, the competent authority can proceed to exchange information, whether or not the notification was successfully served or not. The two-month compulsory wait is long and can cause delays and remains a concern as raised in Round 1 report (see paragraphs 327 and 341). Nevertheless, during the current review period, this two-month wait has not resulted in inordinate delays in answering requests.

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35. Article 62(2) refers to the requesting competent authority, which is interpreted in practice as meaning the requesting jurisdiction rather than the identity details of the requesting competent staff in the competent authority.
336. Sint Maarten has explained that during the review period, none of the requests from treaty partners indicated that the subject of the request must not be informed. Hence, in all cases the procedure of prior notification was followed. In two cases, the subject of the request was present in Sint Maarten and the notification letter was handed in person to him/her. In the remaining ten cases, the notification request was sent to the taxpayer by registered post.

*Unprecise conditions for the postponement of notification*

337. The 2015 Report noted that there was no definition of urgent reasons under the law and there were no express exceptions for prior notification when it is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction. Sint Maarten was recommended to ensure that notification rights do not unduly prevent or delay effective exchange of information.

338. Sint Maarten’s EOI Manual (section 6.7), from 1 September 2014, indicates that the following circumstances may be considered an urgent reason:

- a case of presumed (international) tax fraud
- when a prior notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction
- a case of imminent expiration of the statute of limitation
- when the competent authority of the requesting state has expressed the urgency as such or specified that the taxpayer should not be notified.

339. While the law itself does not expressly provide that the chance to undermine the foreign investigation is a reason to delay notification, the understanding of Sint Maarten authorities as documented in the EOI Manual is to consider this circumstance as included in the concept of urgency. At the time of the 2015 Report as well, there had been instances where Sint Maarten Competent Authority had notified the taxpayer after exchanging the information on the grounds of urgent reasons.

340. There are no case laws on what constitutes an urgent reason. There is nevertheless one decision of the Council of Appeal of Tax Matters from December 2015 (No. 2011/48786) dealing with an appeal from a taxpayer challenging the exchange of information by the Sint Maarten authorities. In this case, Sint Maarten authorities had gathered and exchanged information with a treaty partner on grounds of urgency and had notified the taxpayer after the exchange. Sint Maarten authorities had contended that the urgency
was due to the urgency expressed by the treaty partner. In its decision, while not going into the specific merits of what constitutes “urgent reasons”, the Council ruled in favour of the authorities and dismissed the appeal, noting that the information had already been exchanged. The decision was not appealed further.

341. While this decision does reflect that “urgent reasons” as determined by the Sint Maarten Competent Authority has been accepted by the Court in one instance, it does not lay down a binding legal principle in this regard. Although the EOI Manual clarifies the situations of “urgent reasons”, in the absence of explicit legal provisions defining this concept, there is a risk that future case law limits the possibilities of granting an exception to the prior notification in a way more restrictive than the standard. Further, the two-month compulsory wait after sending out the notification is fairly long and poses risks of causing undue delays. Hence, Sint Maarten is recommended to ensure that rights and safeguards applicable to persons do not unduly prevent or delay effective exchange of information.

342. Sint Maarten is working on abolishing the notification procedure.

343. The 2016 ToR requires that jurisdictions should provide for exceptions from time-specific post-exchange requirements in cases where notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction. This aspect is not ensured by Sint Maarten’s current legal framework: when prior notification is waived, notification is required to be provided up to four months (which may not be adequate for the requesting jurisdiction to satisfactorily make progress on its investigations) after the decision to comply with the request. This is not in line with the standard.

344. It is further recommended that wider exceptions from time-specific post-exchange notification be permitted in exchange of information matters (e.g., in cases in which the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction).

345. A related practical aspect to the discussions above on “urgent reasons” and “exceptions from prior notification” is such exception from notification would be granted if the requesting treaty partner were to indicate in its request that the taxpayer should not be notified prior to exchanging the information. While Sint Maarten’s EOI Manual carries a template EOI request form which has a specific question in this regard, this is not a binding template and is not available for reference of all treaty partners on either the competent authority’s website or the Global Forum’s competent authority database. While examining an incoming request, the competent authority does systematically check if the incoming request indicates a need for exception from prior notification. However, since Sint Maarten’s notification procedure and the
possibility to seek exception are not communicated to the treaty partners, they may not be aware that they have this possibility or their request must seek an exception in this regard. Hence, Sint Maarten should take steps to ensure that treaty partners are aware of its notification procedures and the possibility to seek exception from prior notification (see Annex 1).

Appeal rights

346. Article 62(5) of the General National Ordinance on National Taxes contains appeal rights in accordance with the National Ordinance on Administrative Justice. The person notified with respect to whom an EOI request has been made can appeal to the Council of Appeal within 30 days from the date of the notification, which suspends exchange until the court decision is taken. The 2015 Report noted that this court only met twice a year. As a result, in case of an appeal, that Report considered that there might be considerable delays until a final decision in the case, thus impeding effective exchange of information.

347. Sint Maarten advises that the judicial system in Sint Maarten has been reformed. Since 30 April 2016, the person notified with respect to whom an EOI request has been made can appeal the decision of the Minister to exchange information to the Court of First Instance within 30 days from the date of the decision taken by the Minister, and then appeals to the ruling of the Court in First Instance can be heard by the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba (Joint Court) as court of second instance. The Joint Court meets in Sint Maarten three times per year. Further appeal is possible at the Supreme Court in the Netherlands as the highest court in case of cassation regarding the ruling of the Joint Court in tax cases. This is possible as from 1 July 2016.

348. Sint Maarten informed that in practice there have been no appeals or cases of judicial review about EOI so far under the new system, so no practice exists to inform the report on the real length of the appeal process. The possibility to go first to the Court of First Instance which meets more regularly is an improvement, but further appeals are possible and while the cycle of meetings of the Joint Court has increased from two to three per year, it may, nevertheless, cause a delay in the exchange of information. Therefore, Sint Maarten is recommended to ensure that appeal rights applicable to persons do not unduly prevent or delay effective exchange of information. Sint Maarten is working on abolishing the possibility of appeal as part of the legislation to abolish the notification procedure.

36. article 17b of the National Ordinance in Appeal in Tax Matters in conjunction with article 62(5) of the General National Ordinance on National Taxes.
Part C: Exchange of information

349. Sections C.1 to C.5 evaluate the effectiveness of Sint Maarten's network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all Sint Maarten's relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether Sint Maarten's network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Sint Maarten can provide the information requested in an effective manner.

C.1. Exchange of information mechanisms

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

350. The 2015 Report found that Sint Maarten's exchange of information mechanisms were in line with the standard, resulting in a determination of the legal framework as “in place” and rated as Compliant. At that time, Sint Maarten's EOI network covered 88 jurisdictions through 22 bilateral Agreements, the Tax Arrangement of the Kingdom of the Netherlands (BRK) and the Multilateral Convention (see Annex 2). All relationships were in force.

351. Sint Maarten has EOI instruments with 146 jurisdictions through 23 bilateral agreements (21 Tax Information Exchange Agreements (TIEA) and 2 Double Taxation Conventions (DTC)), the BRK and the Multilateral Convention. The only new agreement since the 2015 Report is a DTC with the Netherlands signed on 23 December 2015, which entered into force on 1 March 2016 and meets the standard.

352. The interpretation and implementation of these treaties by the competent authority of Sint Maarten during the review period conformed to the standard.
353. The conclusion is as follows:

**Legal and Regulatory Framework: The element is in place**

*No material deficiencies have been identified in Sint Maarten’s exchange of information mechanisms.*

**Practical Implementation of the Standard: Compliant**

*No material deficiencies have been identified in the implementation of Sint Maarten’s exchange of information mechanisms.*

**C.1.1. Foreseeably relevant standard**

354. The 2015 Report concluded that Sint Maarten’s EOI Agreements allowed for exchange of information in accordance with the standard of foreseeable relevance, even if some TIEAs contained alternative formulations. This is also the case for the one DTC (with the Netherlands) signed since that report.

355. Sint Maarten’s EOI Manual contains a template for the formulation of EOI requests. This template broadly follows the model template form for incoming requests contained in the Global Forum’s Model EOI Manual. The template form calls for “background information” on the request. This background information should explain how the requested information relates to the tax examination or investigation in the requesting jurisdiction. There is no separate question seeking explanations on foreseeable relevance of the request. Sint Maarten’s EOI Manual refers to Article 26 of the OECD Model Tax Convention to explain the concept of foreseeable relevance to mean that information to the widest possible extent is to be exchanged. The two officials of the Tax Administration handling incoming requests displayed a good working knowledge of the concept and informed that they interpret the concept broadly. In practice, for establishing the foreseeable relevance of an incoming request, they examine the background information provided in the request to establish the tax purpose of the requested information. The request should be signed by or come from the designated Competent Authority of the treaty partner. The request should indicate the legal basis of the request and should indicate that domestic means have been exhausted by the authorities of the requesting treaty partner. Further, the request should indicate if the information is needed urgently, including reasons for the same and also indicate whether an exception from prior notification of the taxpayer is sought.

356. During the review period, Sint Maarten did not ask for clarifications or decline any request on the grounds of foreseeable relevance.
The peer input did not raise any specific concern on the interpretation of the criteria of foreseeable relevance by Sint Maarten.

**Group requests**

Sint Maarten's EOI agreements and domestic law do not contain language prohibiting group requests. However, no specific process has been put in place for the treatment of group requests either. The EOI Manual does not provide any specific procedural guidance on group requests. Sint Maarten authorities have indicated that they would interpret them as allowing the provision of information requested pursuant to group requests in line with Article 26 of the Model Tax Convention and its commentaries. They noted that, in order to avoid fishing expeditions, they consider it necessary that the requesting authority provides a detailed description of the group and the specific facts and circumstances that have led to the request, an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law, supported by a clear factual basis. The authorities further require showing that the requested information would assist in determining compliance by the taxpayers in the group.

Sint Maarten has not received group requests yet.

**C.1.2. Provide for exchange of information in respect of all persons, C.1.3. Obligation to exchange all types of information, C.1.4. Absence of domestic tax interest, C.1.5 and C.1.6. Civil and criminal tax matters and C.1.7. Provide information in specific form requested**

The 2015 Report found that all EOI instruments entered by Sint Maarten allowed for exchange of information in accordance with the standard in respect of sub-elements C.1.2 to C.1.7. The sole DTC (with Norway as amended by a protocol in 2009) at the time of the 2015 Report provided for the EOI article in line with Article 26 of the OECD Model DTC. Further, all TIEAs entered by Sint Maarten:

- contain a provision similar to Article 5(4) of the OECD Model TIEA, which ensures that the requested jurisdiction shall not decline to supply the information requested solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person
- contain a provision similar to Article 5(2) of the OECD Model TIEA, allowing information to be obtained and exchanged notwithstanding it is not required for domestic tax purposes
• provide for exchange of information in both civil and criminal matters and do not apply the dual criminality principle to restrict the exchange of information and

• allow for information to be provided in the specific form requested.

361. Since the 2015 Report, Sint Maarten has concluded one DTC (with the Netherlands), which also allows for exchange of information in accordance with the standard.

362. In practice, Sint Maarten authorities have indicated that they would be able to exchange information in respect of all persons. While they have exchanged available information on residents of either Sint Maarten or the treaty partner during the review period, there was no instance where the request covered a subject that was not resident of either jurisdiction. Sint Maarten authorities confirm that if the information requested is foreseeably relevant and it is available in Sint Maarten, they will exchange such information regardless of whether the person concerned is resident of either contracting party.

363. Sint Maarten authorities have exchanged all types of information requested in requests from treaty partners, including legal and beneficial ownership, accounting information, banking information and other types of information like tax return filing status, address and residency status. The authorities confirm that all available information will always be exchanged in respect of foreseeably relevant requests.

364. Sint Maarten does not require the existence of domestic tax interest and in respect of all the requests for which information was exchanged during the review period, Sint Maarten did not have any domestic interest.

365. Information is exchanged in both civil and criminal tax matters. While there was no request during the review period where information was sought on a criminal tax matter, Sint Maarten authorities have confirmed that outside of the review period, they exchanged information in regard to a criminal investigation request. Sint Maarten does not apply dual criminality principle. Peer input does not suggest anything adverse in this regard.

366. Sint Maarten authorities have informed that they have no objections in providing the requested information in any specific form as long as it is not excessively burdensome and is permitted within the normal course of their administrative and legal procedures. Where the treaty partner makes a request for information to be provided in a specific form, they may need to consult with the treaty partner, indicating the extent to which they can provide the requested information in the requested specific form. They have not been requested to provide any information in a specific form during the review period. However, the tax authorities have experience in providing...
certified statement confirming the exchanged information in the context of a mutual legal assistance request in criminal matters received through the Public Prosecutor’s office. The Competent Authority officials confirmed that they would be able to do so in the context of an EOI request as well.

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

367. The 2015 Report determined that Sint Maarten’s EOI network covered 88 jurisdictions through 22 bilateral Agreements, the BRK and the Multilateral Convention. The report found 20 bilateral agreements were in force. The TIEAs with the British Virgin Islands and with the Cayman Islands were not in force but an EOI relationship with these jurisdictions existed under the Multilateral Convention. Sint Maarten was nevertheless encouraged to bring these two TIEAs into force. Since then, the TIEA with the Cayman Islands entered into force in 2017 (after some further exchange of letters of understanding on the interpretation to some wording of the TIEA) and the TIEA with British Virgin Islands entered into force in 2019 (the ratification took place in 2014).

368. Sint Maarten signed a new DTC with the Netherlands in December 2015 and the treaty entered into force in March 2016, i.e. expeditiously.

369. There has been no change in the procedure to bring EOI instruments into force and given effect through domestic law. The process involves steps to be taken both by Sint Maarten and the Kingdom of the Netherlands. International treaties are signed by the Kingdom on behalf of Sint Maarten. In the Kingdom of the Netherlands, each of the four countries has authority to decide individually if an international treaty is to be extended to that country or if it wishes a treaty to be concluded on its behalf. Upon signature, EOI agreements are published in the Treaty Series of the Kingdom of the Netherlands. EOI agreements are then sent to the Council of State of the Kingdom for advice. The Council of State will submit its advice, which will be sent to Parliament in The Hague and Parliament in Sint Maarten. The parliaments will automatically adopt the treaty after 30 days if no questions are raised under a tacit consent procedure.

370. Sint Maarten’s EOI network now covers 146 jurisdictions through 23 bilateral agreements (21 Tax Information Exchange Agreements (TIEA) and 2 Double Taxation Conventions (DTC)), the BRK and the Multilateral Convention. The table below summarises outcomes of the analysis under Element C.1 in respect of Sint Maarten’s EOI mechanisms.
**EOI mechanisms**

<table>
<thead>
<tr>
<th>Description</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total EOI relationships, including bilateral and multilateral or regional mechanisms</td>
<td>146</td>
</tr>
<tr>
<td>In force</td>
<td>141</td>
</tr>
<tr>
<td>In line with the standard</td>
<td>141</td>
</tr>
<tr>
<td>Not in line with the standard</td>
<td>0</td>
</tr>
<tr>
<td>Signed but not in force</td>
<td>5</td>
</tr>
<tr>
<td>In line with the standard</td>
<td>5*</td>
</tr>
<tr>
<td>Not in line with the standard</td>
<td>0</td>
</tr>
<tr>
<td>Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms</td>
<td>0</td>
</tr>
</tbody>
</table>

*The Multilateral Convention not in force in partner jurisdictions, i.e. Gabon, Honduras, Madagascar, Philippines, and Togo.

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

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

371. The 2015 Report found that Element C.2 was in place and rated as Compliant. Sint Maarten was recommended to continue to develop its EOI network with all relevant partners. Since then, Sint Maarten’s treaty network has expanded from 88 to 146 jurisdictions. This is due to a great number of jurisdictions becoming members of the Multilateral Convention in recent years. Sint Maarten’s EOI network encompasses a wide range of counter-parties, including all major trading partners, all G20 members and all OECD members through 23 bilateral agreements, the BRK and the Multilateral Convention.

372. In peer input, no Global Forum member reported that Sint Maarten had refused to negotiate or sign an EOI instrument. As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, Sint Maarten should continue to conclude EOI agreements with any new relevant partner who would so require (refer to Annex 1).

373. The conclusion is as follows:

**Legal and Regulatory Framework: The element is in place**

Sint Maarten’s network of information exchange mechanisms covers all relevant partners.
Practical Implementation of the Standard: Compliant

Sint Maarten’s network of information exchange mechanisms covers all relevant partners.

C.3. Confidentiality

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

374. The 2015 Report concluded that the applicable treaty provisions generally met the standard and statutory rules that apply to officials with access to treaty information and the practice in Sint Maarten regarding confidentiality were in accordance with the standard. No relevant changes to the law have been made and the new DTC entered into by Sint Maarten since the 2015 Report is also in line with the standard.

375. In practice, confidentiality measures that are in place within the Sint Maarten Tax Administration and the procedures and processes for handling exchanged information under international agreements should ensure the confidentiality of such information in line with the standard.

376. The conclusion is as follows:

Legal and Regulatory Framework: The element is in place.

No material deficiencies have been identified in Sint Maarten’s legal and regulatory framework in relation to ensuring the confidentiality of information received.

Practical Implementation of the Standard: Compliant

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

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

377. All Sint Maarten’s EOI agreements, including the DTC with the Netherlands signed in 2015, contain a provision ensuring the confidentiality of information exchanged and limit the disclosure and use of information received. These treaty obligations for confidentiality themselves provide sufficient legal basis in Sint Maarten to treat all exchanged information as confidential and protect such information.
378. Confidentiality obligations are also reflected in Sint Maarten’s domestic law. In general, all civil servants in Sint Maarten are governed by a general obligation to maintain confidentiality by reason of holding public office in Sint Maarten (article 61 of the National Ordinance on Material Civil Servants Law). Further, Article 50 of the General National Ordinance on National Taxes provides for confidentiality of all tax information that civil servants in the Tax Administration may handle during the course of their duties (including after leaving office). Article 50 stipulates that:

Anyone who is involved with the implementation of this Ordinance and thereby acquires information about which he knows or should reasonably presume the confidential character, and to whom an obligation to maintain confidentiality does not already apply by reason of office, profession or statutory provisions with respect to such data, is required to maintain confidential such information except insofar as any statutory provision obliges him to divulge such information or the necessity to do so arises from his duties.

379. An exception to this duty of confidentiality applies to anyone who has knowledge of such serious offences as described in articles 198 and 200 of the Criminal Procedure Code (article 50(2), General National Ordinance on National Taxes). Under these articles, anyone with knowledge of crimes related to life threatening danger, kidnapping or rape, is obliged to immediately report the matter to an investigating officer. Moreover, the Minister has the discretion to grant dispensation from the duty of confidentiality (article 50(3), General National Ordinance on National Taxes).

380. Sint Maarten authorities have explained that in the context of all exchanged information under Sint Maarten’s EOI mechanisms, the legal obligations to treat all exchanged tax information as confidential arise from the confidentiality provisions in the EOI mechanisms themselves. This is because all EOI mechanisms (being international tax treaties) assume the status of legal/statutory provisions in Sint Maarten. Since article 50 applies where there is no other legal/statutory confidentiality provision, it is superseded by the treaty provisions for confidentiality which apply directly on the Tax Administration. In the context of the two DTCs of Sint Maarten, where reference is made for treating exchanged information as secret in the same manner as information obtained under the domestic laws of Sint Maarten, article 50 of the General National Ordinance on National Taxes would be relied upon for the overarching confidentiality. However, use of exchanged information for any non-tax purpose would still be governed by the relevant EOI article. As the Constitution of the Netherlands which partially applies to Sint Maarten provides for the precedence of international treaties (including tax treaties) over any conflicting domestic law including national ordinances,
Sint Maarten ensures that the treaty obligations override the domestic law obligations, to protect the confidentiality of information exchanged. In practice, the competent authority never shares any information received under an EOI mechanism with non-tax authorities except in accordance with the treaty provisions.

381. Breaches of the confidentiality obligation can result in a maximum fine of third category i.e. ANG 10 000 (EUR 5 200) and/or a maximum imprisonment of one year (article 2:232(1) of the Penal Code of Sint Maarten).

382. In addition, a wider confidentiality provision applies to all civil servants and sets out that breaches can result in termination of employment. Article 88 of the National Ordinance on Material Civil Servants Law prescribes the procedure to follow in order to administer a disciplinary measure. Briefly, that would be investigate, make a report, confront the worker with the findings, give opportunity to rebut, decide on measure. If the breach constitutes a criminal offence, it will also be reported to the prosecutor’s office. This confidentiality obligation continues following the end of service and sanctions noted in paragraph 381 apply to ex-employees as well.

383. In respect of information received from treaty partners to a request made by Sint Maarten, during the review period Sint Maarten did not make any outgoing request and hence, did not receive any information. Nevertheless, the confidentiality aspects discussed above would apply in respect of any information received from foreign competent authorities.

384. The 2015 Report found that there was no clear regulation in Sint Maarten’s laws setting out whether information obtained from the requesting jurisdiction (including the EOI request) should be included in the taxpayer’s file and open to his/her inspection. The Sint Maarten authorities explained that information obtained from the requesting jurisdiction is not stored in the taxpayer’s file and therefore is not subject to his/her inspection. This continues to be the case. There was one case noted in the 2015 Report where the taxpayer requested to inspect the information received (essentially the request) from the requesting jurisdiction, however this request was declined by the tax authority. Nevertheless, considering the limited experience with this issue and lack of specific legal regulation, Sint Maarten was encouraged to monitor the issue and take necessary measures, if appropriate, to ensure that only the information which the requesting jurisdiction has indicated can be disclosed to the taxpayer be disclosed, for instance in the context of an appeal to the courts.

385. Sint Maarten authorities have confirmed that all information related to an EOI request is treated as confidential and in no case since the 2015 Report the request letter was shown to the taxpayer. The notification process uses a template notice that informs the taxpayer of the EOI request.
but does not provide any details of the letter from the treaty partner. During the review period, there was no instance where the notified taxpayer sought access to the EOI file or appealed against the notification.

386. Sint Maarten authorities advised that in certain narrow circumstances, confidential information received from a treaty partner may be disclosed to persons outside the tax administration, for example, to the taxpayer concerned or in public court proceedings. Information contained in the letter of request cannot be disclosed. Such disclosures may occur when information received is used to support a charge to tax and this is communicated to the taxpayer or when a case against the taxpayer is considered by a court and the information is required by the judicial authorities. Any disclosure outside the tax administration should be authorised by the EOI manager, having checked that such disclosure is allowed under the legal instrument and domestic legislation. The foreign competent authority must be informed of the disclosure to persons outside the tax administration (EOI Manual, section 6.6). Sint Maarten authorities have confirmed that any disclosure of information outside of the tax administration will be in accordance with the treaty under which the information has been received as treaty provisions override anything to the contrary in domestic law. Sint Maarten authorities have not faced this situation since the 2015 Report.

C.3.2. Confidentiality of other information

387. Confidentiality rules apply to all types of information exchanged, including information provided by a requesting jurisdiction in a request, information transmitted in response to a request, and any background documents to such request (EOI Manual, Chapter 6).

388. The EOI Manual details procedures to protect confidentiality of the request letter and other information exchanged:

- All confidential information related to an EOI case should be clearly labelled, with “This information is furnished under the provisions of a tax treaty and its use and disclosure are governed by the provisions of such tax treaty”. This text should also be embedded in electronic documents as a header and/or watermark.

- All of the information received in the EOI Unit is confidential and should be stored securely. EOI Unit files containing taxpayer information must be stored in secure storage units and only retrieved by the EOI manager or the EOI officer assigned to them when they are being worked on.

- When the EOI Unit forwards confidential information to other areas of the tax administration, it should make clear that this is treaty-protected confidential information. The cover letter (or e-mail)
should state that the information must be kept confidential, that the documents must be stored in a secure place and that copies of the material should not be made (nor should e-mails containing the information be forwarded) without consent of the EOI Unit. Sint Maarten informed that the EOI Unit would request the necessary information or documents from other department(s) without informing them of the reason thereof.

- Access to passwords, combinations and keys is restricted to officers working in the EOI Unit. Only EOI Unit staff should have access, by individual login and password, to the EOI Database.

Confidentiality in practice

389. In practice, the Competent Authority officials adhere to the confidentiality aspects noted in the EOI Manual. The Head of the Tax Administration directly oversees all EOI matters and hence, effectively the dedicated room of the Head of the Tax Administration is the office of the Competent Authority. The Tax Administration building is a secure building. All access to the building, including to the relevant floors, is controlled through dedicated employee ID cards. The Head of the Tax Administration has a spacious room with secure cupboards in the office. The single EOI manager who is responsible for collection of all information has a separate office located in a secure zone with controlled access only for authorised personnel. No outsider is permitted to enter this zone of the building. Maintenance and cleaning staff are permitted only during office hours in the presence of an employee of the Tax Administration.

390. All incoming requests are received by the Head of the Tax Administration and dealt by the EOI manager who works on collection of information. All requests and collected information are treaty stamped. The Head of Tax Administration maintains all case files in secure cupboards under lock and key in the Head’s office. Only the Head and the EOI manager have access to these files.

391. When seeking information from a third party, a notice for production of information is issued. The template notice to the information holder contains a description of the requested information, the legal basis for the notice (i.e. reference to Art. 40 and 45 of the General National Tax Ordinance), the deadline for provision of the requested information and the contact person in the Sint Maarten Tax Administration. The notice does not provide the details of the content of the request, including the identity of the requesting jurisdiction.

392. The Tax Administration’s hiring policy provides some safeguards. During the hiring process, references and employment history are checked.
and applicants must provide a criminal record statement, obtainable from the Prosecutor’s Office. Once appointed, all Tax Administration employees must take an oath of office. Further screening is carried out by the Department of National Security Services for anyone appointed to a management post, e.g. the Head of the Tax Administration, who is also the Competent Authority.

393. For staff that leave the Tax Administration, there is no specific guidance or exit procedures in place. A checklist of the Tax Administration’s assets that were issued to the staff is used to ensure that all assets (including electronic assets) are returned before departure. The employee ID card is surrendered as well.

394. All software of the Tax Administration is managed by the Sint Maarten’s Department of Information Technology that serves all public authorities. The IT policies are managed by the department which is also in-charge of the overall cyber security of all Sint Maarten public authorities. Portable storage devices like USBs are issued to employees, upon request, by the IT Department. The USBs are not yet encrypted although Sint Maarten indicated plans to introduce systematic encryption of USBs. The two EOI officials rely primarily on official computers located in their offices for most EOI work. They do have access to their emails through their personal devices, although the access is regulated through a special software installed by the IT Department on their smartphones. The EOI officials use the Departmental USB sticks for their work and have confirmed that these USBs are encrypted, specially marked and kept separate securely in locked storage in the office by the Head of Tax Administration and the EOI manager who are the only persons with access to the keys.

395. Sint Maarten authorities indicated that, whilst there are hiring processes, physical security, electronic security, information disposal policies in place, there is no specific policy to monitor confidentiality breaches. The absence of such policy may make the detection of undue data disclosures difficult, hindering the jurisdiction’s ability to investigate incidents/data breach and apply penalties and sanctions. Sint Maarten should develop a policy to monitor confidentiality breaches to ensure the protection of exchanged information (see Annex 1).

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

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

396. Pursuant to all of Sint Maarten’ EOI agreements, the contracting parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade
process, or information the disclosure of which would be contrary to public policy. Sint Maarten’s domestic law also provides for similar exceptions (articles 64(1) and 64(2) of General National Ordinance on National Taxes). The 2015 Report concluded that Sint Maarten’s legal framework and practices concerning rights and safeguards of taxpayers and third parties was in line with the standard.

397. An information request can be declined where the requested information would reveal confidential communications protected by legal privilege. The term “professional secret” is not defined in the EOI agreements and therefore it derives its meaning from Sint Maarten’s domestic laws. Sint Maarten’s domestic laws allow for exception from obligation to provide information requested for tax purposes in respect of information subject to the legal professional privilege. Specifically, under article 46(2) of the General National Ordinance on National Taxes, ministers of clergymen, civil law notaries, lawyers, doctors and pharmacists “can invoke the confidentiality that they, by reason of their state, office or profession are obliged to maintain”. Regarding lawyers and notaries, although the Supreme Court’s decisions (see paragraph 318) tend to reduce the scope of the information covered by the professional secrecy, representatives of the notaries and lawyers interviewed during the on-site visit suggested an interpretation of legal professional privilege which is wider than that allowed under the standard (see B.1.5, paragraphs 316 to 325).

398. During the previous and current periods under review, there was no case where a lawyer or a notary was the subject of the notice to provide the requested information and therefore no cases where the lawyer could have claimed professional privilege. As such, the application of legal professional privilege with regards exchange of information remained untested in practice. The conclusion is as follows:

**Legal and Regulatory Framework: The element is in place**

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

**Practical Implementation of the Standard: Compliant**

| No material deficiencies have been identified in respect of the rights and safeguards of taxpayers and third parties. |
C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

399. The 2015 Report assessed the practice of exchange of information of Sint Maarten from 1 January 2011 to 31 December 2013. The report noted that Sint Maarten had limited experience with EOI due to a small number of requests being received each year. During the reviewed period, Sint Maarten had received a total of 16 requests from 3 EOI partners. The Report noted it took too long to provide responses to incoming requests. There was no clear internal policy regarding the handling of EOI requests during the period under review for the 2015 Report. The Report also noted that the tax administration had only recently issued an EOI Manual to assist in clarifying the processes and procedures to be followed when a request for information is received. Sint Maarten was recommended to ensure efficient and timely responses and that status updates were sent in relation to incoming requests.

400. Sint Maarten has made important progress compared to the situation at the time of the 2015 Report. Although, its EOI experience remains limited, as the jurisdiction received 12 requests for information during the review period of 1 October 2019 to 30 September 2022 and did not send any, all incoming requests were answered in a generally timely manner. In their input, commenting peers have reported overall satisfaction with the timeliness as well as quality of information provided. During the review period, the Netherlands, France and the United States were Sint Maarten's key EOI partners.

401. The conclusions are as follows:

**Legal and Regulatory Framework**

This element involves issues of practice. Accordingly, no determination has been made.

**Practical Implementation of the Standard: Compliant**

<table>
<thead>
<tr>
<th>Deficiencies identified/ Underlying factor</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
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<td>Sint Maarten is recommended to ensure that it provides status updates to EOI partners within 90 days when it is unable to provide the requested information within that time.</td>
</tr>
</tbody>
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Currently the EOI function in Sint Maarten is performed by the Head of the Tax Administration with the support of one auditor. So far this has been sufficient to handle the limited number of requests received by Sint Maarten. However, there are no procedures in place to ensure that EOI knowledge is maintained within the Tax Administration in case of staff turnover. There is an EOI Manual available, but it is not very detailed on certain important EOI aspects like foreseeable relevance and group requests. The manual has not been updated since 2014 when it was first published.

Sint Maarten is recommended to monitor the volume of EOI requests it receives and sends and accordingly ensure that there are sufficient trained resources available with adequate guidance to ensure the continuity of the EOI function.

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</tr>
</tbody>
</table>

C.5.1. Timeliness of responses to requests for information

402. Sint Maarten received 12 requests for information during the review period. Several types of information were sought in most of these requests: ownership information (8 requests), accounting information (1 request), banking information (6 requests) and other types of information (6 requests). Sint Maarten was able to answer all 12 requests within 180 days with 58.3% requests responded within 90 days of receipt. The procedure for handling incoming EOI requests, including timeframes, is set out in an EOI Manual.

403. The following table relates to the requests received during the period under review and gives an overview of response time of Sint Maarten in providing a final response to these requests, together with a summary of other relevant factors affecting the effectiveness of Sint Maarten’s practice during the period reviewed.
### Statistics on response time and other relevant factors

<table>
<thead>
<tr>
<th></th>
<th>1 October 2019 to 30 September 2020</th>
<th>1 October 2020 to 30 September 2021</th>
<th>1 October 2021 to 30 September 2022</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Num. %</td>
<td>Num. %</td>
<td>Num. %</td>
<td>Num. %</td>
</tr>
<tr>
<td>Total number of requests received</td>
<td>[A+B+C+D+E]</td>
<td>3 7</td>
<td>2</td>
<td>12 100</td>
</tr>
<tr>
<td>Full response: ≤ 90 days</td>
<td>1 33</td>
<td>6 86</td>
<td>0 0</td>
<td>7 58.3</td>
</tr>
<tr>
<td>≤ 180 days (cumulative)</td>
<td>3 100</td>
<td>7 100</td>
<td>2 100</td>
<td>12 100</td>
</tr>
<tr>
<td>≤ 1 year (cumulative)</td>
<td>[A] 3 100</td>
<td>7 100</td>
<td>2 100</td>
<td>12 100</td>
</tr>
<tr>
<td>&gt; 1 year [B]</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
</tr>
<tr>
<td>Declined for valid reasons</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
</tr>
<tr>
<td>Requests withdrawn by requesting jurisdiction [C]</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
</tr>
<tr>
<td>Failure to obtain and provide information requested [D]</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
</tr>
<tr>
<td>Requests still pending at date of review [E]</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
</tr>
<tr>
<td>Outstanding cases after 90 days</td>
<td>2 1</td>
<td>2 1</td>
<td>2 1</td>
<td>5</td>
</tr>
<tr>
<td>Of these, status update provided within 90 days</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
<td>0 0</td>
</tr>
</tbody>
</table>

**Notes:**

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

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

404. Requests that took more than 90 days involved situations where the Competent Authority had to seek the information from third parties, like Trust Companies or Tax Advisors that needed some additional time to finalise the financial statements and provide them to the Tax Administration. In one case, due to the volume of the banking information requested, such information took more than 90 days to collect and exchange. In general, the two-month wait after notification of the taxpayer also resulted in some time being taken (see paragraph 335).

405. During the review period, the Competent Authority did not require to seek clarification in any request and was able to proceed with the requests as received.

406. In 5 out of the 12 requests received during the review period, it took more than 90 days to provide a full response. In these cases, Sint Maarten did not provide status updates to the treaty partners, although in all these cases information was provided within six months of receipt of the request. The EOI Manual does require sending status updates. However, this has not
been done in any case during the review period. **Sint Maarten is recommended to ensure it provides status updates to EOI partners within 90 days when it is unable to provide the requested information within that time.**

407. All the peers that provided peer input reported their satisfaction with their EOIR relationship with Sint Maarten. The peers noted that it was easy to contact the Competent Authority and no particular delays were reported in receiving the information. The peers noted satisfaction with the quality of information received.

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

408. Sint Maarten’s Head of the Tax Administration is responsible for all matters regarding tax, including the exchange of information in tax matters, and is Sint Maarten’s designated Competent Authority. The Head of the Tax Administration is reflected as the Sint Maarten Competent Authority on the Global Forum Competent Authority database and complete contact details are provided. The Tax Administration comprises of three departments – Inspectorate of Taxes, Receivers Office, and Audit and Criminal Investigation. The Competent Authority office is assisted by the EOI manager, who is a tax official from the Audit and Criminal Investigation Department.

409. The EOI Manual provides for the position of an EOI manager and an additional EOI officer to manage the EOI Unit and report to the Competent Authority. As per the job description and roles and responsibilities of various officials provided in the manual, the EOI manager is responsible for managing the exchange of information processes and for monitoring the quality and efficiency and effectiveness of the Unit. The EOI manager is tasked to make an annual report on the effectiveness of the Unit with proposals for improvement (although, in practice, such an exercise has not been undertaken formally. Due to the limited EOI workload, procedural improvements, where needed have been undertaken by the Competent Authority directly). The EOI manager may process some of the EOI cases personally and, in such cases, takes on the appropriate responsibilities of the EOI officer. However, it recognises that in practice, given the workload of the unit, both functions may be undertaken by one official. In Sint Maarten, during the review period, the EOI function was carried out directly by the Competent Authority and the EOI manager considering the relatively limited workload in respect of processing incoming EOI requests.

410. The procedure for handling incoming EOI requests, including timeframes, is set out in the EOI Manual adopted in 2014. All incoming requests must be acknowledged within seven days of receipt. Where a clarification is needed, it should be sought within 60 days. Status updates are to be provided for all unanswered requests within 90 days. Further, for
obtaining information from third parties, a reasonable time is to be provided. Upon gathering the information and following notification, there is a 60-day waiting period. The EOI Manual provides for templates to monitor the timeliness of processing of the request for the benefit of the case worker. The 2015 Report had made a recommendation that Sint Maarten monitor the implementation of the new manual.

411. Sint Maarten has, in practice, broadly adhered to the EOI Manual, including following the procedures and timelines provided in it. This has translated into much better timeliness in responding to requests. Hence, during the review period, the EOI function was performed effectively. However, there is a concern that some of the procedures are known to the Competent Authority and the EOI manager only, especially in respect of collection of information. Should there be a staff turnover, it is not clear how knowledge will be effectively transferred to the new staff. The EOI Manual, while it exists, is not comprehensive on some aspects like examination of foreseeable relevance and handling of group requests. The manual has not been updated since 2014 when it was first published. Sint Maarten has not indicated any specific trainings to suitably train resources for taking up the EOI function, if there is an increase in the workload of the unit or there are staff changes, given that the current two officials have multiple responsibilities. There is a risk that the efficiency of handling the EOI function could be affected if the current two EOI officials were to move on. In this context, Sint Maarten is recommended to monitor the volume of EOI requests it receives and sends and accordingly ensure that there are sufficient trained resources available with adequate guidance to ensure the continuity of the EOI function.

**Incoming requests**

412. The EOI Manual lays down a detailed four-step procedure of logging, validating, working and responding to incoming requests.

413. The EOI Manual provides for logging of all incoming requests. Where an EOI request is received by post, it is received directly in the Competent Authority’s office. Sint Maarten has indicated that there have been instances in the past that delays arose due to the postal mail not being correctly addressed to the Competent Authority address. Secure email is the preferred means of communication with treaty partners in Sint Maarten. In general, the Competent Authority has been normally receiving requests by email from its treaty partners over the last few years.

414. Upon receiving a request, the Competent Authority directly forwards the request to the EOI manager. The EOI manager maintains a detailed Excel database where the incoming request is logged. In the database, the EOI manager registers the incoming request by assigning it a reference
number and noting the date of receipt, the sending treaty partner, the reference or correspondence number from the treaty partner, and a brief description of the type of information requested. Progress made on the case is then systematically tracked and/or dates of further correspondence with the treaty partner are recorded against this case record. When a request has been completed, the date of sending the final response is also included. Brief details like identity and contact details of the taxpayers concerned are also maintained in this database for ease of reference and later review.

415. Once the case record has been created, the Competent Authority sends a signed acknowledgement of the received request to the requesting treaty partner within seven days of receipt. In respect of requests received electronically, at the time of seeking the password to decrypt the encrypted files or while receiving the password, an acknowledgement of the receipt of request is indicated. At the time of sending the acknowledgement, Sint Maarten informs the treaty partner that if necessary, it would contact the taxpayer concerned directly for the information, unless, in the request, the treaty partner has already indicated that it wishes to avoid notifying the taxpayer under examination or investigation.

416. If the request requires any translation before proceeding, it is done at this stage itself.

417. As a next step, the request is validated. Although the EOI Manual provides that the EOI manager should do this validation, in practice, given the low volume of requests, the first checks in this regard are carried out by the Head of Tax Administration, i.e. the Competent Authority. The requests are checked to see if they have a valid legal basis, have been correctly signed and sent by the correct Competent Authority, are complete in indicating that all domestic means have been exhausted, and the requested information is obtainable under the treaty partner’s own laws and received information will be treated as confidential under the treaty. The requests are examined to see if they carry sufficient background information to justify the foreseeable relevance of the request and to clearly identify the taxpayer being examined. If there is any deficiency identified at this stage and a clarification or more information is needed from the treaty partner, the Competent Authority sends such a request to the requesting treaty partner within 60 days of receipt of the request. In practice, during the review period, this did not arise in any case.

418. Once a request has been found to be in order, the EOI manager proceeds with gathering the information, assuming the role of the field audit and investigating officer. In order to work on the request, the EOI manager works with hard copy files as part of the internal procedures of the Tax Administration. All documents associated with a request are filed in a dedicated case folder. The EOI manager uses the available access powers
to gather the requested information from all sources, including, where needed, from the taxpayer concerned. Template notices provided in the EOI Manual are used for gathering information from public authorities, third party information holders like professionals and banks, as well as from the taxpayer itself. The EOI nature of the request is not indicated in these information gathering procedures. As noted in the discussion under Element B.1 (paragraph 304), in criminal tax requests, the Competent Authority would need to consult with the Minister of Justice and the gathered information is exchanged only after such consultation, which takes place in a timebound manner. Sint Maarten confirmed that so far there has been no case where the Minister of Justice objected or the consultation resulted in undue delays.

419. Upon gathering the information requested, the EOI manager carries out a check that the information is complete and is in accordance with the request letter from the treaty partner. Where any deficiencies are noted, the EOI manager would go back to the information holder to fill any missing gaps or seek a clarification where needed (in practice, Sint Maarten explained that during the review period, this was not required to be done, but should a situation so require, this process would be followed). After this first check, the Head of the Tax Administration as the Competent Authority also carries out another check on the completeness of the response.

420. Once the information has been gathered, under the prior notification procedure, the taxpayer is notified. The EOI manager must wait for 60 days as per law, after this notification, before the information is transmitted by the Competent Authority to the requesting treaty partner. Where the request has indicated urgency and requested exemption from prior notification, the taxpayer would not be notified prior to exchanging the information but would be notified after four months of transmitting such information (see paragraphs 333 to 336).

421. The response sent to the requesting jurisdiction includes all the gathered information accompanied by a cover letter from the Competent Authority that the information is being provided under the provisions of the treaty and is to be considered confidential. All transmitted information is treaty stamped in this regard.

422. Sint Maarten authorities have indicated that in some situations where partial information is available, that is provided first, and the treaty partner is informed that the remaining information is being gathered and will be provided once available.

423. In practice, peers that provided input were satisfied with the information provided and did not raise any specific concerns on the quality of the information provided by Sint Maarten.
Outgoing requests

424. The 2016 Terms of Reference includes an additional requirement to ensure the quality of requests made by assessed jurisdictions. Sint Maarten has not sent a request for information to any treaty partner during the review period, but a dedicated process is in place.

425. The Exchange of Information Manual includes rules for handling outgoing requests. An outgoing request may arise from tax investigation needs of the tax auditors in Sint Maarten. Every outgoing request must be submitted to the EOI Unit for seeking information from treaty partners. The EOI Unit will process the request based on examining its completeness and foreseeable relevance, including ensuring that it is intended for the right treaty partners. The EOI Unit will maintain a database of all outgoing requests. The EOI Manual provides for specific timelines for following-up with the treaty partner as well as for providing clarifications, where requested by the partner. Upon receipt of the requested information, the EOI manager is expected to update the EOI database and while communicating it to the auditor, treaty stamp the received information to keep the auditor aware about the confidentiality of the information provided.

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

426. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. There are no legal or regulatory requirements in Sint Maarten that impose unreasonable, disproportionate or unduly restrictive conditions. There were also no factors or issues identified in practice that have unreasonably, disproportionately or unduly restricted the effective exchange of information.
Annex 1. List of in-text recommendations

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

- **Element A.1 and A.3**: Sint Maarten should ensure that beneficial ownership information in line with the standard is available for all segregated trust companies/trusts (refer to paragraphs 178 and 265).

- **Element A.1**: Sint Maarten should ensure that there is sufficient supervision over the trust service providers to ensure the availability of identity and beneficial ownership information on trusts managed by trust service providers (refer to paragraph 182).

- **Element B.2**: Sint Maarten should take steps to ensure that treaty partners are aware of its notification procedures and the possibility to seek exception from prior notification (refer to paragraph 345).

- **Element C.2**: Sint Maarten should continue to conclude EOI agreements with any new relevant partner who would so require (refer to paragraph 372).

- **Element C.3**: Sint Maarten should develop a policy to monitor confidentiality breaches to ensure the protection of exchanged information (refer to paragraph 395).
Annex 2. List of Sint Maarten’s EOI mechanisms

Bilateral international agreements for the exchange of information

<table>
<thead>
<tr>
<th>EOI partner</th>
<th>Type of agreement</th>
<th>Signature</th>
<th>Entry into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Antigua and Barbuda</td>
<td>TIEA</td>
<td>29/10/2009</td>
<td>05/12/2013</td>
</tr>
<tr>
<td>2. Australia</td>
<td>TIEA</td>
<td>01/03/2007</td>
<td>04/04/2008</td>
</tr>
<tr>
<td>5. Canada</td>
<td>TIEA</td>
<td>29/08/2009</td>
<td>01/01/2011</td>
</tr>
<tr>
<td>6. Cayman Islands</td>
<td>TIEA</td>
<td>29/10/2009</td>
<td>01/12/2017</td>
</tr>
<tr>
<td>7. Denmark</td>
<td>TIEA</td>
<td>10/09/2009</td>
<td>01/06/2011</td>
</tr>
<tr>
<td>9. Finland</td>
<td>TIEA</td>
<td>10/09/2009</td>
<td>01/06/2011</td>
</tr>
<tr>
<td>10. France</td>
<td>TIEA</td>
<td>10/09/2010</td>
<td>01/08/2012</td>
</tr>
<tr>
<td>11. Greenland</td>
<td>TIEA</td>
<td>10/09/2009</td>
<td>01/05/2012</td>
</tr>
<tr>
<td>12. Iceland</td>
<td>TIEA</td>
<td>10/09/2009</td>
<td>01/01/2012</td>
</tr>
<tr>
<td>13. Mexico</td>
<td>TIEA</td>
<td>01/09/2009</td>
<td>04/02/2011</td>
</tr>
<tr>
<td>14. The Netherlands</td>
<td>DTC</td>
<td>23/12/2015</td>
<td>01/03/2016</td>
</tr>
<tr>
<td>15. New Zealand</td>
<td>TIEA</td>
<td>01/03/2007</td>
<td>02/10/2008</td>
</tr>
<tr>
<td>18. Saint Lucia</td>
<td>TIEA</td>
<td>29/10/2009</td>
<td>01/10/2013</td>
</tr>
<tr>
<td>20. Spain</td>
<td>TIEA</td>
<td>10/06/2008</td>
<td>27/01/2010</td>
</tr>
<tr>
<td>22. United Kingdom</td>
<td>TIEA</td>
<td>10/09/2010</td>
<td>01/05/2013</td>
</tr>
</tbody>
</table>
Convention on Mutual Administrative Assistance in Tax Matters (as amended)

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

The original 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The Multilateral Convention was opened for signature on 1 June 2011.

The Multilateral Convention with the amended protocol was extended to Sint Maarten by the Kingdom of the Netherlands and entered into force on 1 September 2013 in Sint Maarten. Sint Maarten can exchange information with all other Parties to the Multilateral Convention, except other members of the Kingdom of the Netherlands, i.e. Aruba, Curaçao and the Netherlands.

The Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Armenia, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Benin, Bermuda (extension by the United Kingdom), Bosnia and Herzegovina, Botswana, Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Burkina Faso, Cabo Verde, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus, Czechia, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Eswatini, Faroe Islands.

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

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

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.
(extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Jordan, Kazakhstan, Kenya, Korea, Kuwait, Latvia, Lebanon, Liberia, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), Mauritania, North Macedonia, Malaysia, Maldives, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Montserrat (extension by the United Kingdom), Morocco, Nauru, Namibia, Netherlands, New Zealand, Nigeria, Niue, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Qatar, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Sint Maarten (extension by the United Kingdom), Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Türkiye, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Vanuatu and Viet Nam.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Gabon, Honduras, Madagascar, Philippines and Togo. Finally, the United States is party to the original 1988 Multilateral Convention, which is in force since 1 April 1995 (the amending Protocol was signed on 27 April 2010). Sint Maarten and the United States can exchange information under the original 1988 Convention.

Tax arrangement of the Kingdom of the Netherlands

Tax Arrangement of the Kingdom of the Netherlands (Belastingregeling voor het Koninkrijk, BRK) of 28 October 1964 (in force as of 1 January 1965), which is an agreement concluded among the former parts of the Kingdom – the Netherlands, Aruba, Curaçao and Sint Maarten (i.e. the former Netherlands Antilles) – for the avoidance of double taxation and the prevention of fiscal evasion. Under articles 37 and 38, it includes an EOI provision which generally follows the old wording of Article 26 of the OECD Model Tax Convention, i.e. before the inclusion of paragraphs 4 and 5 in the 2005 update. The BRK currently applies solely to Curaçao and Aruba, as with the Netherlands EOI is now done through a DTC.
Annex 3. Methodology for the review

The reviews are based on the 2016 Terms of Reference and conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as amended in December 2020, and the Schedule of Reviews.

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 24 April 2024, Sint Maarten’s responses to the EOIR questionnaire, inputs from partner jurisdictions, as well as information provided by Sint Maarten’s authorities.

List of laws, regulations and other materials received

- Charter of the Kingdom of the Netherlands
- Civil Code Book 2, Book 3 and some provisions of Book 7
- Code of Criminal Procedures
- Constitution of Sint Maarten and Constitution of the Netherlands
- EOI Manual
- General National Ordinance on National Taxes
- Ministerial Decree 2013/1321 of 8 August 2013 mandating the Head of the Tax Administration to act as the Competent Authority for exchange of information for tax purposes
- National Ordinance Combating ML/TF (AB 2019 No. 25) of July 2019 (AML Law)
- National Ordinance Containing New Rules on the Notarial Profession
- National Ordinance on the Public Notary
- National Ordinance Financial Intelligence Unit
- National Ordinance in Appeal in Tax Matters
National Ordinance on Actualisation and Harmonisation of Supervision Ordinances (Central Bank Law) (A.B. 2018, no. 5)

National Ordinance on Administrative Justice

National Ordinance for Business Licensing

National Ordinance on Income Tax

National Ordinance on Identification of Clients when Rendering Services (N.G. 1996, no. 23)

National Ordinance on Profit Tax

National Ordinance on the Supervision of Banking and Credit Institutions (AB 2013, GT no. 691)

National Ordinance on transitional provisions for legislation and administration

National Ordinance on Material Civil Servants Law

National Trust Ordinance

Penal Code

Policy Guidelines on Dispensation for Trust Service Providers

Policy Memorandum on Specific Regulation for a Segregated Trust Company

Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing for Company (Trust) Service Providers

Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing for Credit Institutions

Tax Arrangement of the Kingdom of the Netherlands (BRK)

Trade Register Decree (AB 2013 CT no. 548) as amended in 2019

Trade Register Ordinance

**Authorities interviewed during on-site visit**

Ministry of Finance and officials involved with treaty negotiations and tax policy

Tax Administration of Sint Maarten and officials in-charge of EOIR

The Chamber of Commerce and Industry
The Financial Intelligence Unit
The Central Bank of Curaçao and Sint Maarten
Representatives of Banks
Representatives of Notaries
Representatives of Trust Service Providers
Representatives of Lawyers and Accountants

Current and previous reviews

The peer review process of Sint Maarten has been undertaken across two reports in Round 1: the October 2012 Phase 1 Report and the August 2015 Phase 2 Report. The assessment of the legal and regulatory framework of Sint Maarten was based on the 2010 Terms of Reference and was prepared using the Global Forum’s 2010 Methodology for Peer Reviews.

The 2012 Phase 1 Report assessed Sint Maarten’s legal and regulatory framework for exchange of information as at July 2012. The 2015 Phase 2 assessment evaluated further developments in the legal and regulatory framework, as well as the application of the framework to the EOI practices of the Sint Maarten’s Competent Authority. Sint Maarten was rated as Partially Compliant overall.

The Round 2 report of Sint Maarten has also taken place in two phases due to the challenges posed by the Covid19 pandemic. Sint Maarten’s Round 2 review was launched in Q2 of 2021 but the on-site could not take place in 2021. Hence, the Phase 1 Report was adopted in August 2022. The Phase 1 Report assigned the determination of “in place” for five elements (B.1, C.1, C.2, C.3 and C.4), and a determination of “in place, but certain aspects of the legal implementation of the element need improvement” for four elements (A.1, A.2, A.3 and B.2). The Phase 2 review was launched in Q1 2023 and the on-site took place from 7 to 11 August 2023 at Philipsburg, Sint Maarten.
## Summary of reviews

<table>
<thead>
<tr>
<th>Review</th>
<th>Assessment team</th>
<th>Period under review</th>
<th>Legal framework as of</th>
<th>Date of adoption by Global Forum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Round 1</td>
<td>Mr Liangmu Wang, China; Mr Anthony Vella Laurenti, Malta; and Ms Laura Hershey from the Global Forum Secretariat</td>
<td>Not applicable</td>
<td>July 2012</td>
<td>September 2012</td>
</tr>
<tr>
<td>Phase 1</td>
<td>Mr Liangmu Wang, China; Mr Anthony Vella Laurenti, Malta; Ms Kathryn Dovey and Mr Radovan Zidek from the Global Forum Secretariat</td>
<td>1 January 2011 to 31 December 2013</td>
<td>May 2015</td>
<td>July 2015</td>
</tr>
<tr>
<td>Round 2</td>
<td>Ms Hoa Nguyen, United States; Mr Juan Daniel Parra, Colombia; Mr Hiroki Ema and Ms Renata Teixeira from the Global Forum Secretariat</td>
<td>Not applicable</td>
<td>29 April 2022</td>
<td>5 August 2022</td>
</tr>
<tr>
<td>Phase 1</td>
<td>Ms Hoa Nguyen, United States; Ms Svenja Köpping, Germany; Mr Puneet Gulati from the Global Forum Secretariat</td>
<td>1 October 2019 to 30 September 2022</td>
<td>24 April 2024</td>
<td>18 July 2024</td>
</tr>
</tbody>
</table>
Annex 4. Sint Maarten’s response to the review report

Sint Maarten would like to express its sincere appreciation to the assessment team for their dedicated work and professionalism throughout the peer review process. We are equally grateful to the members of the Peer Review Group for their valuable inputs and comments on Sint Maarten’s peer review report.

As a small, open economy heavily reliant on tourism, Sint Maarten has consistently received a low number of EOI requests over the years. Nevertheless, we have diligently responded to all incoming requests to the satisfaction of our principal EOI partners, ensuring both timeliness and quality of the information provided.

In addition, Sint Maarten commits to attending more EOIR training sessions and updating and revising the EOIR Manual accordingly.

In 2019, Sint Maarten took decisive steps by abolishing bearer shares and conducting a comprehensive project through the Central Bank of Curaçao and Sint Maarten, which confirmed the absence of bearer shares in our financial institutions, supported by underlying documentation. Additionally, Sint Maarten introduced obligations for legal persons and arrangements (i.e. trusts and private foundations) to register UBO information with the Chamber of Commerce and Industry. Furthermore, financial institutions are mandated to collect UBO information prior to opening accounts, with a requirement to maintain this information updated for high-risk customers.

We are pleased that the report recognizes the progress Sint Maarten has made since the 2015 First Round of Phase 2 Review. Sint Maarten’s overall rating of “largely compliant” against the new, more rigorous terms of reference is a testament to our ongoing efforts. We welcome the constructive recommendations put forth in the report and are committed to further

39. This Annex presents the Jurisdiction’s response to the review report and shall not be deemed to represent the Global Forum’s views.
strengthening our legal and regulatory framework, as well as enhancing the effectiveness of our exchange of information practices.

Sint Maarten looks forward to continuing our collaborative efforts with the Global Forum and our international partners to uphold transparency, combat tax evasion, and promote fair tax practices globally.
The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 160 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum’s work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

This peer review report analyses the practical implementation of the standard of transparency and exchange of information on request (EOIR) in Sint Maarten, as part of the second round of reviews conducted by the Global Forum on Transparency and Exchange of Information for Tax Purposes since 2016.