



# SUPPLEMENTARY PEER REVIEW REPORT

Phase 1

## Legal and Regulatory Framework

LIBERIA





## *Table of Contents*

<b>About the Global Forum</b> .....	5
<b>Executive summary</b> .....	7
<b>Introduction</b> .....	11
Information and methodology used for the peer review of Liberia .....	11
<b>Compliance with the Standards</b> .....	13
<b>A. Availability of information</b> .....	13
Overview .....	13
A.1. Ownership and identity information .....	14
A.2. Accounting records .....	20
A.3. Banking information .....	24
<b>B. Access to information</b> .....	25
Overview .....	25
B.1. Competent Authority’s ability to obtain and provide information .....	25
B.2. Notification requirements and rights and safeguards .....	26
<b>C. Exchanging information</b> .....	27
Overview .....	27
C.1. Exchange of information mechanisms .....	27
C.2. Exchange-of-information mechanisms with all relevant partners .....	28
C.3. Confidentiality .....	29
C.4. Rights and safeguards of taxpayers and third parties .....	29
C.5. Timeliness of responses to requests for information .....	30
<b>Summary of determinations and factors underlying recommendations</b> .....	31

<b>Annex 1: Jurisdiction’s response to the review report . . . . .</b>	<b>35</b>
<b>Annex 2: List of Liberia’s exchange-of-information mechanisms. . . . .</b>	<b>37</b>
<b>Annex 3: List of laws, regulations and other relevant material. . . . .</b>	<b>38</b>

## About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 130 jurisdictions, which participate in the Global Forum on an equal footing.

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

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

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

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

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency) and [www.eoi-tax.org](http://www.eoi-tax.org).



## Executive summary

1. This is a supplementary report on the legal and regulatory framework for transparency and exchange of information in Liberia. It complements the Phase 1 peer review report on Liberia which was adopted and published by the Global Forum in June 2012 (“2012 Report”).

2. The 2012 Report determined that two of the essential elements were not in place. These were ownership and identity information (Element A.1), and accounting records (Element A.2). The rest of the essential elements were determined to be in place. Liberia was blocked from moving to Phase 2 Review until it has acted on the recommendations in the 2012 Report.

3. In response to the letter from the Chair of the Global Forum on 28 November 2014 inviting all jurisdictions that were previously prevented from moving to Phase 2 to request a supplementary review, Liberia asked for a supplementary peer review report pursuant to paragraphs 58 and 60 of the Revised Methodology for Peer Reviews and Non-member Reviews. This supplementary report reviews the progress made by Liberia in improving its legal and regulatory framework and the exchange of information agreements signed by Liberia since April 2012 (the date at which the legal and regulatory framework was previously assessed) to address a number of the recommendations made in the 2012 Report.

4. The 2012 Report identified deficiencies under element A.1 in respect of the availability of ownership information regarding bearer shares, nominees, Limited Liability Companies (LLCs) that are not doing business in Liberia and Foreign Maritime Entities (FMEs), as well as the lack of sanctions in respect of information on corporations, LLCs, Registered Business Companies (RBCs) and partnerships. As a result, element A.1 was found to be not in place. Since the 2012 Report, Liberia has enacted amendments to the Associations Law (the amending legislation), which now requires that ownership information be available in respect of all entities including LLCs that are not doing business in Liberia. The amending legislation repealed all the provisions relating to incorporation and regulation of RBCs. Sanctions on corporations, LLCs, partnerships, limited partnerships and private foundations for failure to maintain ownership information have also been introduced.

5. On account of the revocation of all provisions related to RBCs by the amending legislation, share warrants to bearer cannot be issued in Liberia. However, no changes have been made since the 2012 Report to ensure that ownership information is available with respect to bearer shares that could be issued by other corporations, or with respect to nominee holdings of shares. Consequently, the recommendations in the 2012 Report have been retained with the exception of recommendation on share warrants to bearer. On that basis, Element A.1 remains “not in place”.

6. The 2012 Report also identified deficiencies under element A.2 and this element was also determined to be not in place. The determination was on account of the fact that there were insufficient legal obligations to ensure all relevant entities and arrangements maintain accounting records, including underlying documentation, for at least five years. The amending legislation now ensures that accounting records and underlying documentation must be available and retained for at least five years, in respect of domestic and foreign corporations, domestic and foreign LLCs, partnerships, limited partnerships and private foundations. The amending legislation also ensures that appropriate sanctions apply for a breach of these accounting records obligations. However, no accounting record obligations have been introduced in respect of trusts having no tax liability in Liberia. Considering the substantial changes made to improve availability of accounting information in line with the international standard, Element A.2 is determined to be in place.

7. The 2012 Report encouraged Liberia to continue to develop its network of exchange of information agreements. Since then, Liberia signed a Tax Information Exchange Agreement (TIEA) and has commenced negotiation discussions with a number of jurisdictions and is currently reviewing a draft agreement that is expected to be signed shortly. Therefore, element C.2 remains in place.

8. There were no changes since the 2012 Report that affect elements A.3, B.1, B.2, C.1, C.3 and C.4 and the determination of “in place” for each of these elements remains the same.

9. Since the 2012 report, Liberia has also enacted the Liberia Revenue Authority Act, 2013. This law establishes the new Liberia Revenue Authority to administer the Liberia Revenue Code. Previously, the relevant authority was housed in the Ministry of Finance, Department of Revenue.

10. The progress made by Liberia in addressing the gaps identified in its 2012 Report is commendable in light of the particular challenges of the Ebola virus which has afflicted Liberia in recent times. In light of the actions undertaken by Liberia to address the recommendations made in the 2012 Report, Liberia is in a position to move to the next round of peer review, which is scheduled to commence in the second half of 2018 for Liberia, in

accordance with the PRG schedule of reviews for the next round. Any further developments in the legal and regulatory framework, as well as the application of the framework and practices in exchange of information (EOI) in Liberia will be reviewed in detail in the next round of review. Meanwhile, a follow-up report on the measures taken by Liberia to respond to the recommendations made in the present report will be provided to the Peer Review Group in June 2017 in accordance with the 2016 Methodology for the second round of peer reviews.



## Introduction

### Information and methodology used for the peer review of Liberia

11. The assessment of Liberia’s legal and regulatory framework made through this supplementary peer review report was prepared pursuant to paragraph 60 of the Global Forum’s *Methodology for Peer Reviews and Non-member Reviews*, and considers recent changes to the legal and regulatory framework of Liberia based on the International Standard for transparency and exchange of information as described in the Global Forum’s *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes*. This supplementary report is based on information available to the assessment team including the laws, regulations, and exchange of information arrangements signed or in force as at 16 May 2016 and information supplied by Liberia. It follows the Phase 1 peer review report on Liberia which was adopted and published by the Global Forum in June 2012 (“the 2012 Report”).

12. The *Terms of Reference* breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses Liberia’s legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that: (i) the element is in place; (ii) the element is in place, but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant.

13. The assessment was conducted by an assessment team, which consisted of two expert assessors and representatives of the Global Forum Secretariat: La Toya James of the British Virgin Islands; Emre Ergin of Turkey; and Melissa Dejong and Sivasankaran Pattanam from the Global Forum Secretariat. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Liberia.

14. An updated summary of determinations and factors underlying recommendations in respect of the 10 essential elements of the Terms of Reference, which takes into account the conclusions of this supplementary report, can be found in the table at the end of the report.

## Compliance with the Standards

### A. Availability of information

#### Overview

15. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as accounting information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report assesses the adequacy of Liberia's legal and regulatory framework on availability of information.

16. The 2012 Report concluded that there were several deficiencies under element A.1 (ownership and identity information), which led to the determination of element A.1 to be not in place. The deficiencies identified in the 2012 Report pertain to insufficient obligations to ensure availability of ownership information on bearer shares and share warrants to bearer, nominees, LLCs that are not doing business in Liberia and FMEs, as well as the lack of sanctions for failure to maintain ownership information on corporations, LLCs, RBCs and partnerships.

17. The Associations Law has since been amended. The amended Associations Law requires that updated ownership information must be maintained by all entities and arrangements in Liberia including LLCs that are not doing business in Liberia. Sanctions now apply with regard to failure

by corporations, LLCs, partnerships, limited partnerships and private foundations to maintain ownership information. Further, the recommendations of the 2012 Report made in respect to FMEs have been removed, following submission of additional information from Liberia.

18. The 2012 Report also identified serious deficiencies in the legal framework with respect to the availability of accounting information, including underlying documentation, and the lack of requirement that such records be maintained for at least five years. With the new amendments to the Associations Law, accounting record obligations in Liberia are in line with the standard in respect of domestic and foreign corporations, domestic and foreign LLCs, partnerships, limited partnerships and private foundations.

19. At the time of the 2012 Report, element A.3 (banking information) was determined to be “in place” without any recommendations. There have been no changes since the 2012 report and the determination for element A.3 remain as “in place”.

### A.1. Ownership and identity information

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

#### *Companies (ToR<sup>1</sup> A.1.1)*

20. The 2012 Report concluded that the legal framework in Liberia requires that ownership and identity information be available with respect to domestic corporations, foreign corporations that are carrying on business in Liberia, and domestic and foreign LLCs doing business in Liberia. However, there were not adequate legal requirements to ensure that updated ownership information is available with respect to LLCs that are not doing business in Liberia. Nor do Liberia’s laws impose obligations on corporations to know the identity of the owners of bearer shares. Similarly, neither corporations nor nominees are required to know the identity of the actual owners on whose behalf the shares are held.

21. The Business Corporations Act (Part I of Title 5 of the Associations Law), which deals with business corporations and LLCs, was amended with effect from 6 May 2016. This amended Business Corporation Act (BCA) now requires that every domestic corporation should keep up-to-date records containing the names and addresses of all registered shareholders, the number

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

and class of shares held by each and the dates of ownership thereof (*BCA*, s. 8.1.3). The *BCA* as amended also requires corporations to retain this information for a minimum period of five years (*BCA*, s. 8.1.5). The same applies in respect of foreign corporations authorised to do business in Liberia (*BCA*, s. 12.12).

22. The amending legislation also made changes to the provisions of the *BCA* Act in relation to LLCs (Chapter 14, Part I of Title 5 of the Associations Law). All domestic LLCs, irrespective of whether or not doing business in Liberia, and foreign LLCs authorised to do business in Liberia are now required to keep an up-to-date record containing the names and addresses of all members (*BCA*, s. 14.3.5 (1c)). These records must be retained for a minimum period of five years (*BCA*, s. 14.3.5 (1e)). These obligations are equally applicable to foreign LLCs authorised to do business in Liberia. These amendments became effective on 6 May 2016. Since the recent amendments address the gap in respect of ownership information on LLCs that are not doing business in Liberia, the recommendation in this regard is removed.

23. The Liberian authorities state that the new legal requirements for LLCs to keep updated identity information of all their members will indirectly require LLCs to obtain information about actual ownership of members regardless of whether they are held directly or through nominees. However, no legal changes have been made with regard to nominee shareholding since the 2012 report and the amended *BCA* Act does not introduce new obligations on entities or the nominee shareholders/members to know the identity of the owners of the shares that are held on a fiduciary capacity. As such, the recommendations made in the 2012 report have been retained.

### ***Bearer shares (ToR A.1.2)***

24. Bearer shares and share warrants to bearer can be issued by domestic corporations and RBCs respectively. Similarly, bearer shares issued by foreign corporations authorised to do business in Liberia are recognised by the *BCA* Act. The 2012 report determined that there were insufficient legal obligations to ensure that information was available to identify the owners of bearer shares and share warrants to bearer.

25. Chapter 70 of the Associations Law, which governs the incorporation of RBCs, their conduct of business, including liquidation and all matters incidental thereto, has been repealed with effect from 6 May 2016. The Liberian authorities state that not a single RBC has been incorporated since the introduction of this law in 2002. With the repeal of the law relating to RBCs in its entirety, the legal basis allowing for creation of share warrants does not exist as at 6 May 2016. As there are no RBCs in existence, there is no possibility of legacy share warrants to bearer in Liberia. However, bearer shares can be

created by corporations under the Section 5.8 of the BCA. No legal changes have been made since the 2012 Report with respect to bearer shares and thus render the possibility of corporations issuing bearer shares in Liberia without identifying the owners or holders of these shares. Therefore, the recommendation made in the 2012 Report to the extent applicable to bearer shares has been retained. The recommendation relating to share warrants to bearer has been deleted.

### ***Partnerships (ToR A.1.3)***

26. The 2012 Report concluded that the legal framework ensured the availability of ownership and identity information with respect to partnerships and limited partnerships.

27. The Partnership Act has been amended and explicitly requires every domestic partnership to keep an up-to-date record containing the names and addresses of all partners (*Partnership Act*, s.30.21 (1c). These records must be retained for a minimum of five years (*Partnership Act*, s.30.21 (1e)). These amendments became effective on 6 May 2016. Foreign partnerships (partnerships formed under a non-Liberian law) doing business in Liberia are required to maintain and report updated identity and ownership information to the Ministry of Commerce and Industry under the Business Registration Act (BRA). Similarly, if a foreign partnership has Liberian sourced income for tax purposes, it is required to file an income tax return, which captures updated ownership information.

28. The amended Partnership Act also requires every domestic limited partnership to keep an up-to-date record containing the names and addresses of all partners (*Partnership Act*, s.31.38 (1c). These records must be retained for a minimum of five years (*Partnership Act*, s.31.38 (1e)). These amendments became effective on 6 May 2016.

### ***Trusts (ToR A.1.4)***

29. The 2012 Report concluded that the legal framework ensured the availability of ownership and identity information with respect to trusts. Where a foreign law trust has a trustee who is resident of Liberia, the trust will be treated as a resident of Liberia for tax purposes. Accordingly, worldwide income of the trust will be taxable in Liberia (Revenue Code, s. 801 (a)) and the tax return filing obligations will ensure that the necessary identity information of beneficiaries and trustees is reported to the tax authorities. Even if the foreign law trust has no worldwide income but has some commercial activity in Liberia, identity information would be available in Liberia by virtue of legal obligations under the BRA. Therefore, in most circumstances, identity information on trusts is required to be available in Liberia. However,

the obligations of Liberian trustees of foreign law trusts that have no worldwide income and no commercial activity in Liberia is unclear. Therefore, Liberia was recommended to ensure the availability of information on the settlor or beneficiary of a foreign law trust in all circumstances where the trustee is a resident in Liberia.

### ***Foundations (ToR A.1.5)***

30. The 2012 Report concluded that the legal framework ensured the availability of ownership and identity information with respect to private foundations formed in Liberia.

### ***Foreign maritime entities***

31. A corporation created under the laws of a foreign jurisdiction can apply to the Registrar to obtain authorisation for the sole and limited purpose of owning and/or operating a Liberia-flagged maritime vessel (section 13.1, *Associations Law*). If the authorisation is obtained, the entity is licensed as a Foreign Maritime Entity (FME). An FME may have an office in Liberia for the purposes of doing all things necessary to the conduct of the business of ownership and operation of Liberia-flagged vessels, but may not conduct any other business activity in Liberia without being registered under the Business Registration Act (BCA) as a Foreign Corporation (BCA – Chapter 12).

32. The 2012 Report included FMEs as a relevant entity for the purposes of the peer review. For the purposes of the Terms of Reference, a jurisdiction is expected to ensure that ownership information is available with respect to a foreign company if the foreign company has a sufficient nexus with the jurisdiction. A sufficient nexus is stated in the Terms of Reference to include being resident for tax purposes. The Terms of Reference give an example of tax residence arising where the place of effective management of the company is located in a jurisdiction. Where tax residence is not a relevant concept in a particular jurisdiction, the peer review reports to date have accepted that a sufficient nexus may arise if the foreign company has located its headquarters in the jurisdiction. A permanent establishment has not been considered to be sufficient nexus on its own.

33. Liberia does have an income tax. Resident persons are liable to tax on a worldwide basis, and non-resident persons are subject to tax on Liberia-source income. A legal person is resident in Liberia for tax purposes if it is incorporated in Liberia and either has its management and control in Liberia or undertakes a majority of its operations in Liberia (*Revenue Code*, s. 801 (a)). A corporation, LLC, foundation, trust, limited partnership, or similar arrangement will also be resident in Liberia for tax purposes if that undertakes some business activity in Liberia and has a majority (by vote or value)

of direct or indirect shareholders, members, beneficiaries or unit holders resident in Liberia (*Revenue Code*, s. 801(a)). However, a legal person is not resident in Liberia for tax purposes if it conducts solely the activities of securing or maintaining registry in Liberia of a ship (not including registration services); owning a Liberia flag vessel; or conducting activities in Liberia solely related to the operation, chartering or disposition of a ship other than for transportation exclusively within Liberia (*Revenue Code*, s. 801 (b)). As such, FMEs are not resident for tax purposes in Liberia.

34. An enterprise applying for FME status will, at the time of the application, have its principal place of business outside Liberia. The only requirement of an FME in terms of its presence in the Liberia is to have a registered agent in Liberia. The registered agent for an FME must be a domestic bank or trust company which is authorised by the Legislature and licensed by the Minister of Foreign Affairs to act as registered agent for FMEs (*Associations Law*, s. 3.1.1). It would be possible for an FME to subsequently relocate its principal place of business to Liberia. In order to do this, the entity would have to either register as a foreign corporation (BCA – Chapter 12) or redomicile to Liberia from its current jurisdiction. Either choice would require registration with the Assistant Minister of Commerce and Industry under the Business Registration Act. As analysed in the 2012 Report, registration of a foreign entity to do business in Liberia requires the provision of comprehensive ownership information as well as notification of changes to ownership to the Business Registry within 30 days.

35. The Liberian authorities state that business operations of FMEs are conducted outside Liberia. No FMEs currently have, or have ever had, an office conducting any activities in Liberia. For all FMEs to date, the only presence in Liberia is the registered agent. The registry personnel undertaking the registration process for FMEs are not located in Liberia, but in several offices around the world (reflecting the location of the companies that are operating Liberia-flagged vessels). Currently there are approximately 1 100 FMEs registered in Liberia, and 4 032 Liberia-flagged ships, and is the second largest open register in the world. Most of the vessels registered under the Liberia flag do not call at ports in the physical territory of Liberia as they are ships operating internationally.

36. In conclusion, FMEs are neither tax resident nor have their headquarters in Liberia, and no FME has ever had an office in Liberia. However, it is possible that FMEs could relocate their principal place of business to Liberia and could in turn have sufficient nexus with Liberia. In those cases, they would have to either redomicile to Liberia or register as a foreign corporation. In either case, ownership information as per the Standard would be available owing to the other legal obligations in Liberia. The recommendations of the 2012 Report made in respect to FMEs are therefore removed.

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

37. The 2012 Report concluded that there were insufficient sanctions with respect to failure of corporations, LLCs, RBCs and partnerships to maintain ownership and identity information. The Associations Law has since been amended. In respect of domestic corporations, foreign corporations doing business in Liberia, domestic LLCs, foreign LLCs doing business in Liberia, domestic partnerships, domestic limited partnerships and private foundations, any person who knowingly fails to maintain ownership and identity records as required by the law shall be liable to a fine not less than USD 3000 and not exceeding USD 5 000 or cancellation of the formation of the entity, or both (*BCA*, ss.8.1(6) and 12.12; s. 14.3.5 (1f); *Partnership Act*, s. 30.21 (1f) and s. 31.38 (1f); and *the Private Foundation Law*, s.60.42.4).

38. In addition to the above, for failure to maintain ownership and identity records, corporations (domestic and foreign) will also face dissolution or revocation of their certificate to do business or combination of any of the penalties prescribed under section 8.1.6 of *BCA*. The amended Associations Law empowers the Registrar, who is authorised to register and regulate legal entities in Liberia, to seek ownership and identity information from any domestic corporation, foreign corporation, domestic LLC, foreign LLC, domestic partnership, domestic limited partnership and Liberian private foundation. If any of these entities refuse to provide such information, the Registrar will impose a penalty which is a fine of not less than USD 1 000. A continued failure to provide such records are subject to cancellation of the certificate of formation of such defaulting entity or its dissolution, as the case may be (*BCA*, ss.8.1.7 and 12.12; s. 14.3.5.7; *Partnership Act*, s. 30.21.3 and s. 31.38.2; and *the Private Foundation Law*, s. 60.42.4).

39. There are some additional sanctions on private foundations under the amended Associations Law. An officer, member of the supervisory board, other supervisory person or an auditor of a private foundation, who knowingly falsifies any document delivered to the Registrar; falsifies any documents to be prepared or kept in respect of the foundation; or fails to provide records to the registrar upon request is guilty of a felony of a second degree under the New Penal law (*Private Foundation Law*, s. 60.64).

40. Chapter 70 of the Associations Law that governs the incorporation and regulation of RBCs has been repealed with effect from 6 May 2016. The Liberian authorities state that no RBC has been incorporated since the introduction of this legislation in 2002. With the repeal of the law relating to RBCs in its entirety, the issue of lack of sanctions on RBCs became infructuous. Thus, the recommendation relating to RBCs has been removed. All these amendments became effective on 6 May 2016. In view of the introduction of adequate sanctions for failure of corporations, LLCs and partnerships to

maintain ownership and identity information, the recommendations given in the 2012 Report in this regard has been removed.

**Determination and factors underlying recommendations**

Phase 1 Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
Identity information on the owners of bearer shares <del>and share warrants to bearer</del> may not be available in relation to corporations <del>and RBCs</del> .	Liberia should take necessary measures to ensure that robust mechanisms are in place to identify the owners of bearer shares <del>and share warrants to bearer</del> in relation to corporations <del>and RBCs</del> .
<del>There are no penalties for failure to maintain ownership information for corporations, LLCs, RBCs, or partnerships.</del>	<del>Liberia should introduce sanctions to ensure ownership information is introduced and maintained in relation to corporations, LLCs, RBCs or partnerships.</del>
<del>Ownership information on LLCs that are not doing business in Liberia and foreign maritime entities may not be available in all instances.</del>	<del>Liberia should introduce appropriate mechanisms to ensure ownership information on LLCs and foreign maritime entities is maintained and updated.</del>
Nominees that are not financial services institutions are not required to maintain ownership and identity information in respect of all persons for whom they act as legal owners.	An obligation should be established for all nominees to maintain relevant ownership information where they act as the legal owners on behalf of any other person.

**A.2. Accounting records**

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

***General requirements (ToR A.2.1), Underlying documentation (ToR A.2.2), the 5-year retention standard (ToR A.2.3)***

41. The 2012 Report found that although there were legal obligations in Liberia under the Revenue Code to ensure that taxpayers maintain accounting records, including underlying documentation, for at least five years, this

was not sufficient to ensure that all relevant entities and arrangements were subject to accounting record keeping obligations in line with the standard.

42. Section 8.1.1 of the BCA has been amended to require that domestic corporations keep reliable and complete accounting records. Section 8.1.1. of the BCA further states that accounting records must be sufficient to correctly explain all transactions, enable the financial position of the corporation to be determined with reasonable accuracy at any time, and allow financial statements to be prepared. Additionally, every domestic corporation is required to keep underlying documentation, such as invoices and contracts, which shall reflect all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; all sales, purchases, and other transactions; and the assets and liabilities of the corporation.

43. Section 8.1.5 of the amended BCA requires that domestic corporations must keep all accounting records and underlying documentation for at least five years. The resident domestic corporations, which are incorporated or formed under the BCA and doing business in Liberia, are required to keep these records in Liberia. In addition, BCA (section 8.1.6.) provides that any person who knowingly fails to maintain accounting records and underlying documentation for at least five years is liable to a fine not less than USD 3000 and not exceeding USD 5 000, revocation of the corporation's articles of incorporation or dissolution, or any combination of these penalties. The provisions that apply to domestic corporations under section 8.1 of the BCA are extended to foreign corporations doing business in Liberia (*BCA*, s. 12.12). This amendment became effective on 6 May 2016.

44. Section 14.3.5 (1a) of the BCA that relates to LLCs has been amended in a similar manner. The amended provision of the BCA now requires that every domestic LLC and foreign LLC doing business in Liberia keep reliable and complete accounting records. It states that accounting records must be sufficient to correctly explain all transactions, enable the financial position of the limited liability company to be determined with reasonable accuracy at any time, and allow financial statements to be prepared. Additionally, underlying documentation must be maintained for accounting records, such as invoices and contracts, which shall reflect all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; all sales, purchases, and other transactions; and the assets and liabilities of the limited liability company. All accounting records and underlying documentation must be retained by the limited liability company for at least five years (s. 14.3.5 (1e)). Section 14.3.5 (1f) provides that any person who knowingly fails to maintain accounting records as required under section 14.3.5. of the BCA shall be liable to a fine not less than USD 3000 and exceeding USD 5 000, cancellation of the certificate of formation, or both. This amendment became effective on 6 may 2016.

45. Section 30.21 (1a) of the Partnership Act has also been amended. It now requires that every domestic partnership shall keep reliable and complete accounting records. It provides that accounting records must be sufficient to correctly explain all transactions, enable the financial position of the partnership to be determined with reasonable accuracy at any time, and allow financial statements to be prepared. Additionally, every domestic partnership is required to keep underlying documentation for accounting records, such as invoices and contracts, which shall reflect all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; all sales, purchases, and other transactions; and the assets and liabilities of the partnership. These records must be retained for at least five years (s. 30.21 (1e)). Section 30.21 (1f) provides that any person who knowingly fails to keep, retain, and maintain accounting records as required shall be liable to a fine not less than USD 3000 and not exceeding USD 5 000, cancellation of the certificate of partnership, or both. This amendment became effective on 6 May 2016.

46. Section 31.38 (1a) of the Partnership Act has similarly been amended. It now requires every domestic limited partnership to keep reliable and complete accounting records. The new accounting record obligations are in line with the international standard and are exactly similar to those provisions in the amended Partnership Act, described in the preceding paragraph. These accounting records and underlying documentation must be retained for at least five years (s. 31.38 (1e)). Section 31.38 (1f) provides for sanctions for failure to maintain information. These sanctions are similar to those apply to domestic partnerships. The amendments in this regard became effective on 6 May 2016.

47. The 2012 Report identified that accounting record keeping obligations under the Revenue Code would apply in respect of domestic trusts and foreign trusts where these trusts have tax liability in Liberia. Common law obligations of trustees would apply to all domestic trusts regardless of tax liability status, but the accounting record requirements under the common law are not specific enough to meet the standard. The accounting record keeping obligations under the Revenue Code do not apply if a trust has no tax liability in Liberia. No legal changes have been made since the 2012 report. As such, the recommendations made in the 2012 report have been retained.

48. The Private Foundations Law has also been amended. Section 60.42.1 now requires that every private foundation shall keep reliable and complete accounting records. It further states that accounting records must be sufficient to correctly explain all transactions, enable the financial position of the foundation to be determined with reasonable accuracy at any time, and allow financial statements to be prepared. Additionally, every private foundation shall keep underlying documentation for accounting records, such as invoices

and contracts, which shall reflect all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; all sales, purchases, and other transactions; and the assets and liabilities of the foundation. These accounting records and underlying documentation must be retained for at least five years (s. 60.42.2). Section 60.42.4 provides that an officer of a private foundation, who fails to take all reasonable steps to secure compliance by the foundation with the requirements of this section, or has by his own wilful act been the cause of any default by the foundation thereunder, is himself in default and shall be liable to a fine not exceeding USD 5 000. Criminal punishments apply for serious offences for falsification of accounts or documents of a private foundation (s. 60.64). The amendments to the Private Foundations Law became effective on 6 May 2016.

49. As discussed in element A.1, FMEs are not tax residents in Liberia and do not have their headquarters in Liberia. As such, no FME has met the nexus requirement. However, if an FME were to relocate its business operations to Liberia, it would be subject to accounting record keeping obligations under the amended BCA and the Revenue Code. Failure to comply with accounting record keeping obligations would subject the relocated FMEs to sanctions as applicable to foreign corporations (see paragraph 43 above).

50. To conclude, sufficient accounting record keeping obligations, in accordance with the international standard, are now in place in respect of all relevant entities and arrangements, other than trusts with no tax liability in Liberia. The Liberian authorities state trusts with no tax liability in Liberia will be very rare if they exist at all because of the fact that the worldwide income of trusts is taxable in Liberia and in such case, the Revenue Code requires accounting information in line with the Standard be maintained by those trusts. In view of limited materiality of the gap in accounting information obligations, the element A-2 is determined to be in place. However, it is recommended that Liberia ensure that trusts are required to maintain all accounting records, including underlying documentation, for at least five years, irrespective of whether tax liability exists or not.

**Determination and factors underlying recommendations**

Phase 1 determination	
<b>The element is not in place.</b>	
Factors underlying recommendations	Recommendations
Requirements for trusts/entities to maintain accounting records, including underlying documentation, for at least five years, are not in place where the trusts have no tax liability in Liberia, consistent with the international standard.	Liberia should ensure that trusts are required to maintain all relevant entities and arrangements keep all accounting records, including underlying documentation, for at least five years, irrespective of whether tax liability exists or not, that correctly explain all transactions, enable the financial position of the entity to be determined with reasonable accuracy at any time and allow financial statements to be prepared.
Requirements to maintain underlying documents to the standard are not in place for entities without Liberian tax liability.	Liberia should require all relevant entities and arrangements to keep underlying documentation in respect of all transactions.
Requirements to maintain accounting records for a minimum of five years are not in place for entities without Liberian tax liability.	Liberia should impose clear requirements for all relevant entities and arrangements to keep records for a minimum of five years.

**A.3. Banking information**

Banking information should be available for all account-holders.

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

51. The 2012 Report found that Liberia has a legal framework in place to ensure the availability of information on transactions and customers of banks. No relevant legislative changes have been made since the 2012 Report. Therefore the determination of element A.3 remains as “in place” without any recommendations.

**Determination and factors underlying recommendations**

Phase 1 determination
<b>The element is in place.</b>

## B. Access to information

### Overview

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

53. The 2012 report found that the legal framework for ensuring access to information was in place. No changes have been made since the 2012 report.

### 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).

***Bank, ownership and identity information (ToR B.1.1), Accounting records (ToR B.1.2.), Use of information gathering measures absent domestic tax interest (ToR B.1.3), Compulsory powers (ToR B.1.4) and Secrecy provisions (ToR B.1.5)***

54. The 2012 Report concluded that the tax authorities have power to access information, have adequate compulsory powers, and are not constrained by a domestic tax interest or secrecy provisions.

55. No legal changes have been made since the 2012 report, and each of these elements remains in place.

**Determination and factors underlying recommendations**

<b>Phase 1 Determination</b>
<b>The element is in place</b>

**B.2. Notification requirements and rights and safeguards**

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

56. The 2012 Report found that rights and safeguards were compatible with effective exchange of information. No legal changes have been made since the 2012 report, and each of these elements remains in place.

**Determination and factors underlying recommendations**

<b>Phase 1 Determination</b>
<b>The element is in place</b>

## C. Exchanging information

### Overview

57. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. This section of the report examines whether Liberia has a network of agreements that would allow it to achieve effective exchange of information in practice.

58. In the 2012 Report, elements C.1, C.2, C.3 and C.4 were determined to be in place. No legal changes have been made since the 2012 report.

59. It is noted that since the 2012 Report, Liberia signed a TIEA with Poland in 2013 and has continued discussions with several potential treaty partners. It is expecting to sign a TIEA with Canada in the near future.

60. The 2012 Report did not identify any issues relating to Liberia's ability to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request or any restrictive conditions on exchange of information. Similar to the 2012 Report, this supplementary report does not address element C.5, as this involves issues of practice that will be examined in the next review of Liberia.

### C.1. Exchange of information mechanisms

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

61. Liberia's EOI network is currently based on 16 TIEAs and one DTC. Out of four Agreements yet to come into force, the Liberian authorities stated that in the case of TIEAs with 2 jurisdictions, Liberia completed the ratification process in March 2012 and informed those jurisdictions accordingly but is awaiting similar confirmation from the other sides. With another jurisdiction, since the TIEA signed is a regional multilateral Agreement, it is going through the legislative process for ratification. A listing of the EOI partner jurisdictions of Liberia is at Annex 2.

***Foreseeably relevant standard (ToR C.1.1), In respect of all persons (ToR C.1.2), Obligation to exchange all types of information (ToR C.1.3), Absence of domestic tax interest (ToR C.1.4), Absence of dual criminality principles (ToR C.1.5), Exchange of information in both civil and criminal tax matters (ToR C.1.6), Provide information in specific form requested (ToR C.1.7), In force (ToR C.1.8) and Be given effect through domestic law (ToR C.1.9)***

62. The 2012 report found that all aspects of element C.1 were in place. No legal changes have been made.

#### Determination and factors underlying recommendations

Phase 1 Determination
The element is in place

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

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

63. The 2012 Report concluded that Liberia has a network of EOI arrangements with relevant partners. Since the Phase 1 report, Liberia has had discussions with a number of jurisdictions in regard to the conclusion of an EOI agreement. The TIEA with Poland was signed on 7 August 2013. Liberia is currently reviewing a draft TIEA proposed by Canada and expects to sign this in the near future. During the course of this supplementary review, peer input was sought from all Global Forum members, and no jurisdiction indicated that Liberia had refused to enter into an EOI agreement.

#### Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place	
Factors underlying recommendations	Recommendations
	Liberia should continue to develop its EOI network with all relevant partners.

### C.3. Confidentiality

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

***Information received: disclosure, use and safeguards (ToR C.3.1) and All other information exchanged (ToR C.3.2)***

64. The 2012 Report identified that Liberia's domestic law and EOI agreements had adequate provisions to ensure the confidentiality of the information received in the process of receiving an EOI request from its treaty partners. No legal changes have since been made. Therefore, the determination of element C.3 remains "in place."

**Determination and factors underlying recommendations**

Phase 1 Determination
The element is in place

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

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

65. The 2012 Report found that the rights and safeguards applicable in Liberia did not unduly prevent or delay effective exchange of information. All arrangements signed by Liberia, also contain wording consistent with Article 26 and Article 7 of the OECD Model Tax Convention, Model TIEA and their commentaries. No legal changes have since been made, and element C.4 remains in place.

**Determination and factors underlying recommendations**

Phase 1 Determination
The element is in place

## C.5. Timeliness of responses to requests for information

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

### *Responses within 90 days (ToR C.5.1), Organisational process and resources (ToR C.5.2), Absence of restrictive conditions on exchange of information (ToR C.5.3)*

66. The 2012 Report did not identify any issues relating to Liberia’s ability to respond to EOI requests within 90 days, organisational processes and resources, or any restrictive conditions on the exchange of information. All arrangements signed by Liberia adopt wording foreshadowing the timeframes in Article 5(6) of the Model TIEA regarding request acknowledgements, status updates and provision of the requested information. No issues have been identified in the preparation of this supplementary report. With regards to the actual timeliness for responses to requests for information, the assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are not dealt with in the Phase 1 review. A review of Liberia’s organisational processes and resources will also be conducted in the context of its next peer review.

#### Determination and factors underlying recommendations

##### Phase 1 determination

**The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are not dealt with in the Phase 1 review.**

## Summary of determinations and factors underlying recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities ( <i>ToR A.1</i> )		
<b>The element is not in place</b>	Identity information on the owners of bearer shares <del>and share warrants to bearer</del> may not be available in relation to corporations <del>and RBCs</del> .	Liberia should take necessary measures to ensure that robust mechanisms are in place to identify the owners of bearer shares <del>and share warrants to bearer</del> in relation to corporations <del>and RBCs</del> .
	<del>There are no penalties for failure to maintain ownership information for corporations, LLCs, RBCs, or partnerships.</del>	<del>Liberia should introduce sanctions to ensure ownership information is introduced and maintained in relation to corporations, LLCs, RBCs or partnerships.</del>
	<del>Ownership information on LLCs that are not doing business in Liberia and foreign maritime entities may not be available in all instances.</del>	<del>Liberia should introduce appropriate mechanisms to ensure ownership information on LLCs and foreign maritime entities is maintained and updated.</del>
	Nominees that are not financial services institutions are not required to maintain ownership and identity information in respect of all persons for whom they act as legal owners.	An obligation should be established for all nominees to maintain relevant ownership information where they act as the legal owners on behalf of any other person.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements ( <i>ToR A.2</i> )		
<b>The element is <del>not</del> in place</b>	Requirements for trusts/entities to maintain accounting records, <u>including underlying documentation, for at least five years</u> , are not in place where the trusts have no tax liability in Liberia, consistent with the international standard.	Liberia should ensure that <u>trusts are required to maintain all relevant entities and arrangements keep all accounting records, including underlying documentation, for at least five years, irrespective of whether tax liability exists or not</u> , that correctly explain all transactions, enable the financial position of the entity to be determined with reasonable accuracy at any time and allow financial statements to be prepared.
	Requirements to maintain underlying documents to the standard are not in place for entities without Liberian tax liability.	Liberia should require all relevant entities and arrangements to keep underlying documentation in respect of all transactions.
	Requirements to maintain accounting records for a minimum of five years are not in place for entities without Liberian tax liability.	Liberia should impose clear requirements for all relevant entities and arrangements to keep records for a minimum of five years.
Banking information should be available for all account-holders ( <i>ToR A.3</i> )		
<b>The element is in place</b>		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) ( <i>ToR B.1</i> )		
<b>The element is in place</b>		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information ( <i>ToR B.2</i> )		
<b>The element is in place</b>		

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information ( <i>ToR C.1</i> )		
<b>The element is in place.</b>		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners ( <i>ToR C.2</i> )		
<b>The element is in place.</b>		Liberia should continue to develop its EOI network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received ( <i>ToR C.3</i> )		
<b>The element is in place.</b>		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties ( <i>ToR C.4</i> )		
<b>The element is in place.</b>		
The jurisdiction should provide information under its network of agreements in a timely manner ( <i>ToR C.5</i> )		
<b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are not dealt with in the Phase 1 review.</b>		



## Annex 1: Jurisdiction’s response to the review report<sup>2</sup>

Since the 2012 Peer Review, Liberia has made significant strides in addressing the outstanding issues identified in the initial Phase I Peer Review Report. Before and following the Ebola Pandemic that ravaged our Country in 2014, Liberia enacted the Liberia Revenue Authority Act of September 2013, as well as the Anti-Money Laundering Law.

In response to the initial Phase I Peer Review Report vis-à-vis deficiencies under element A.1 in respect of (i) the availability of ownership information regarding bearer shares, nominees, Limited Liability Companies (LLCs) that are not doing business in Liberia and Foreign Maritime Entities, and (ii) the lack of sanctions in respect of information on corporations, LLCs, Registered Business companies (RBCs), Liberia has enacted the Business Corporation Act 6 May 2016 (BCA 2016). The BCA 2016 makes it a requirement that ownership information is available in relation to all entities, including LLCs that are not doing business in Liberia. Additionally, the amendments of 2016 provides for the maintenance of accounting and financial records as well as all other underlying documentations in keeping with international standards. It imposes appropriate sanctions inclusive of fines, and in instances removal from the registry for non-compliance. The legislation also repealed in its entirety all of the provisions in relation to the incorporation and regulation of RBCs in the Country. This represents a significant effort in difficult circumstances and demonstrates Liberia’s commitment to satisfy the Phase I requirements.

The Government of Liberia fully understands the need to address the issue of bearer shares and nominee ownership. Consequently, it has embarked on a project that involves the total review of the BCA with the aim of addressing these and other issues. The project is expected to be completed prior to our 2018 Phase II Peer Review. The Government has needed time to examine the use of bearer shares and nominees in Liberia and develop a law reform to

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

achieve best practices for dealing with these issues, which had not been in the scope of the BCA 2016 amendment.

Liberia is expanding its network of tax information and exchange agreements with other jurisdictions. We have approached many jurisdictions with the possibility of entering into TIEAs. Some have consented, while others have not seen the necessity to do so. We will continue to seek bilateral TIEAs as appropriate. In connection with possible future adherence to the multilateral convention on administrative assistance, the Liberia Revenue Authority is working to develop its administrative and institutional capacities to ensure the effective exchange of information between ourselves and other jurisdictions. We thank the Secretariat for its continuous assistance to Liberia with respect to technical and logistical issues.

We wish to thank you again for your support and encouragement to deal with the myriad of issues in the midst of dealing with a people and an economy still trying to recover from the devastation of Ebola following our tremendous efforts with much success to surmount the devastation dealt by many years of civil war. We want to further assure the Forum that Liberia is committed to meeting its standards, and that we are working with all stakeholders across every facet of Government to ensure that these standards are met. Meeting the standards and other triggers are a plus for the government and people of Liberia, as it will further enhance our commitment to transparency and accountability, and boost investors' confidence.

## Annex 2: List of Liberia’s exchange-of-information mechanisms

The table below contains the list of Tax Information Exchange Agreements signed by Liberia as of 16 May 2016.

	Jurisdiction	Type of EOI arrangement	Date signed	Date entered into force
1	Australia	TIEA	11-08-2011	23-05-2012
2	Denmark	TIEA	11-10-2010	05-18-2012
3	Faroe Islands	TIEA	11-10-2010	05-23-2012
4	Finland	TIEA	11-10-2010	12-06-2012
5	France	TIEA	10-12-2010	12-30-2011
6	Germany	DTC	11-25-1970	04-24-1975
7	Ghana	TIEA	02-24-2011	Not yet in force
8	Greenland	TIEA	11-10-2010	Not yet in force
9	Iceland	TIEA	11-10-2010	30-12-2012
10	India	TIEA	10-03-2011	30-03-2012
11	Netherlands	TIEA	05-27-2010	05-17-2012
12	United Kingdom	TIEA	10-26-2010	30-03-2012
13	Norway	TIEA	11-10-2010	05-17-2012
14	Sweden	TIEA	11-10-2010	04-05-2012
15	South Africa	TIEA	02-07-2012	07-07-2013
16	Poland	TIEA	07-08-2013	Not yet in force
17	Portugal	TIEA	01-14-2011	Not yet in force

## **Annex 3: List of laws, regulations and other relevant material**

### **Civil and commercial laws**

General Business law

Title 5, Associations Law (Business Corporation Act, BCA) as amended on 5 May 2016

Chapter 50, Associations Law, Registered Trusts

Chapter 60, Associations Law, Private Foundations

Chapter 70, Associations Law, Registered Business Companies (repealed on 5 May 2016)

Commercial Code as amended

Uniform Trust Code, 2005

### **Taxation laws**

Revenue Code of Liberia Act of 2000, as amended

Liberia Revenue Act of 2013

### **Banking laws**

Central Bank of Liberia Act

New Financial Institutions Act

### **Anti-money laundering**

Prevention of Money Laundering Law

### **Forms**

Liberia Business Registry Enterprise Application Form for Registration (RF-001)

Certificate of Annual Return of a Registered Business Company

For more information  
**Global Forum on Transparency and  
Exchange of Information for Tax Purposes**  
[www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency)  
[www.eoi-tax.org](http://www.eoi-tax.org)  
Email: [gftaxcooperation@oecd.org](mailto:gftaxcooperation@oecd.org)