



# SUPPLEMENTARY PEER REVIEW REPORT

Phase 2

## Legal and Regulatory Framework

SAINT LUCIA





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## About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 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).



## Abbreviations

<b>AML</b>	Anti-Money laundering
<b>CARICOM</b>	Caribbean Community and Common Market
<b>CDD</b>	Customer due diligence
<b>CTF</b>	Counter Terrorism Financing
<b>DTC</b>	Double Tax Conventions
<b>ECCB</b>	East Caribbean Community Bank
<b>EOI</b>	Exchange of information
<b>FIA</b>	Financial Intelligence Authority
<b>FSRA</b>	Financial Services Regulatory Authority
<b>IBC</b>	International Business Company
<b>IRD</b>	Inland Revenue Department
<b>ITC Act</b>	International Tax Cooperation Act
<b>MLPA</b>	Money Laundering (Prevention) Act
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OECS</b>	Organisation of East Caribbean States
<b>TIEA</b>	Tax Information Exchange Agreements



## Executive summary

1. In 2014, the Global Forum evaluated Saint Lucia for its implementation of the standard in practice and in August 2014, the report was adopted with an overall rating of Partially Compliant. This supplementary report evaluates the progress made by Saint Lucia since that time. In light of the various legal and practical amendments made by Saint Lucia since that time, this report concludes that Saint Lucia is now rated overall as “Largely Compliant”.

2. The Phase 2 report concluded that Saint Lucia was Compliant for elements A.3 (Availability of Banking Information), B.2 (Rights and Safeguards), C.1 (EOI Mechanisms), C.2 (Network of EOI Mechanisms) C.3 (Confidentiality), C.4 (Rights and Safeguards) Largely Compliant for elements A.1 (Availability of Ownership and Identity Information) and C.5 (Exchanging Information), Partially Compliant for element B.1 (Access to Information), and Non-Compliant for element A.2 (Availability of Accounting Information).

3. Since the time of the Phase 2 report, the legal and practical implementation of the standard for elements A.3, B.2, C.1, C.2, C.3, C.4 and C.5 have remained unchanged. The rating for these elements (as was the case at the time of the Phase 2 report) is as follows: Compliant for elements A.3, B.2, C.1, C.2, C.3 and C.4. The rating for element C.5, as was the case at the time of the Phase 2 report, is “Largely Compliant”.

4. For element A.1, the Phase 2 report concluded that although Saint Lucia has a solid legal and regulatory framework, due to a lack of regular system of oversight regarding entities compliance with ownership and identity information requirements in practice, Saint Lucia was rated as “Largely Compliant”. In the second half of 2014, the financial regulator of Saint Lucia, being the FSRA, introduced new monitoring measures to address some of the shortcomings identified in the Phase 2 report and has actively monitored licensed entities compliance with ownership requirements since that time. Nevertheless, it remains that the supervisory activities carried on by the FSRA do not cover all relevant entities in Saint Lucia. While the Company and IBC Registrar also commenced monitoring activities over the review

period, these are still at the initial stages and apart from some striking off of entities from the Companies and IBC Registrars, there is no evidence of fines being imposed in practice. Therefore, the rating for element A.1 remains “Largely Compliant”.

5. In respect of element A.2, at the time of the Phase 2 report, Saint Lucia was found not to have the legal requirements in place in order to ensure that all accounting information including underlying documentation in line with that as set out under the standard was being maintained. In August 2015, Saint Lucia introduced amendments to the International Tax Cooperation (ITC) Act, the International Business Companies (IBC) Act, the International Partnerships Act and the International Trusts Act ensuring that legal requirements to maintain accounting information in line with the standard are now in place for all relevant entities. In regards to monitoring of these requirements, authorities from Saint Lucia have reported that the entity responsible for monitoring of these requirements is the FSRA who will monitor the accounting requirements via the obligation to submit a company renewal form and also via its on-site inspection programme. Nevertheless, as these legal changes were only enacted after the review period, as yet a system of monitoring of the accounting requirements has not yet been implemented in Saint Lucia. Therefore, element A.2 is rated “Partially Compliant”.

6. At the time of the Phase 2 review, Saint Lucia was unable to access information in three out of four requests received during the review period due to a domestic tax interest under the Income Tax Act and in those cases, Saint Lucia did not proceed to exercise any of its compulsory powers. Further, the powers to access information for EOI purposes under the ITC Act had not been tested in practice. As such, element B.1 was determined to be “in place” and rated “Partially Compliant”.

7. While Saint Lucia has amended the Income Tax Act to clarify the use of its access powers for the purpose of EOI and as all of the agreements are now scheduled to the ITC Act, Saint Lucia is now in a position to utilise its powers under both of those acts for EOI. While Saint Lucia received one EOI request over the review period, this information was available within its own taxpayer database. Thus the powers under the ITC Act still need to be sufficiently tested through practice. As a result, element B.1 is determined to be “in place” and is upgraded to “Largely Compliant”.

8. With respect to notification requirements and rights and safeguards, Saint Lucian law does not contain a requirement that the taxpayer under examination be notified of a request; however, at the time of Phase 2 report, where a taxpayer or interested person objected to the fulfilment of a request, the information in question was required to be retained until the objection was resolved. Although element B.2 was deemed to be “in place” and rated “Compliant”, the Phase 2 report recommended that Saint Lucia ensure that its

domestic legal provisions are compatible with the timely access and exchange of information. Since the time of the Phase 2 report, Saint Lucia has amended the ITC Act to replace the mandatory extension of the retention period to a discretionary one. Accordingly, element B.2 is determined to be “in place” and rated “Compliant”.

9. Saint Lucia has 23 signed agreements, all of which are in force and 22 of which are to the standard. As one of those agreements is the multilateral CARICOM agreement, this treaty network extends to 32 jurisdictions. All of its EOI agreements contain confidentiality provisions in line with the international standard and also respect the rights and safeguards of taxpayers and third parties. As a result, elements C.1, C.2, C.3 and C.4 are all determined to be “in place” and are rated as “Compliant”. At the time of the Phase 2 report, although Saint Lucia had recently put in place a comprehensive organisational process, including a formal EOI Unit and EOI manual that appear to be adequate for dealing with incoming EOI requests, as Saint Lucia had only processed a small number of requests over the review period, a recommendation was made for Saint Lucia to continue to monitor the practical implementation of their EOI processes. As Saint Lucia only received one request since that time, this recommendation remains and element C5 continues to be rated “Largely Compliant”.

10. As a result of this supplementary assessment, Saint Lucia’s rating for each of the 10 essential elements and its overall rating has been revised. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Saint Lucia’s legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Saint Lucia has been assigned the following ratings: “Compliant” for elements A.3, B.2, C.1, C.2, C.3, C.4, Largely Compliant for elements A.1, B.1 and C.5, and “Partially Compliant” for element A.2. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Saint Lucia has been upgraded to “Largely Compliant”.

11. A follow up report on the steps undertaken by Saint Lucia to answer the recommendations made in this report should be provided in accordance with the follow-up process outlined under the Methodology for the second round of reviews (2016 Methodology).



## Introduction

### Information and methodology used for the peer review of Saint Lucia

12. The assessment of the legal and regulatory framework of Saint Lucia and the practical implementation and effectiveness of this framework were based on the international standards 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*, and was prepared using the Global Forum’s *Methodology for Peer Reviews and Non-Member Reviews*.

13. The assessment was based on information available to the assessment team, including the laws, regulations, and exchange of information arrangements in force or effect as at 13 May 2016, Saint Lucia’s responses to the Phase 2 questionnaire and supplementary questions, information supplied by partner jurisdictions, other relevant sources, as well as information collected during the on-site visit in Castries, Saint Lucia in January 2016. During the on-site visit, the assessment team met with officials and representatives of the relevant Saint Lucian government agencies, including the Ministry of Finance, the Inland Revenue Department, and the registration and Anti-Money laundering authorities. The Phase 2 Supplementary review of Saint Lucia covers a two year review period from 1 July 2013 to 30 June 2015.

14. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses Saint Lucia’s legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects.

15. In respect of each essential element a determination is made regarding Saint Lucia’s legal and regulatory framework 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. In addition, to reflect the Phase 2 component, recommendations are made concerning Saint Lucia's practical application of each of the essential elements and a rating of: (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant is assigned to each element. An overall rating is also assigned to reflect Saint Lucia's overall level of compliance with the standards.

16. The assessments of Saint Lucia by the Global Forum are listed in the table below:

Assessment	Assessors	Peer review period	Date of adoption by the Global Forum
<b>Phase 1 report</b>	Ms. Caroline Malcolm from the Secretariat of the Global Forum Ms. Maria Graça Pires, Tax Officer of the International Relations Department, Ministry of Finance of Portugal; Mr. Graham Hunt Senior Policy Analyst, Inland Revenue Department of New Zealand	N/A	August 2011
<b>Phase 2 report</b>	Ms. Mary O'Leary from the Secretariat of the Global Forum. Ms Maria Graça Pires, from the International Relations Department, Ministry of Finance of Portugal. Ms. Nicola Guffogg, the Head of the Income Tax Division for the Isle of Man.	1 July 2010 to 30 June 2013	August 2014
<b>Phase 2 supplementary report</b>	Ms. Mary O'Leary and Ms. Kathleen Kao from the Secretariat of the Global Forum. Ms Maria Graça Pires, from the International Relations Department, Ministry of Finance of Portugal. Ms. Nicola Guffogg, the Head of the Income Tax Division for the Isle of Man.	1 July 2013 to 30 June 2015	

17. The Phase 2 Supplementary assessment evaluated the updates to (i) the legal and regulatory framework until 13 May 2016 and (ii) the implementation and effectiveness of Saint Lucia's legal and regulatory framework for transparency and exchange of information and its relevant information exchange mechanisms during the peer review period 1 July 2013 to 30 June 2015.

## Overview of Saint Lucia

18. The overview of Saint Lucia’s governance, economic context and legal system is set out at paragraphs 16–36 of the Phase 2 report. The sections below include a brief summary of Phase 2 findings and modifications or updates made to the legal system and regulatory system of Saint Lucia.

### *General information on the taxation system*

19. The tax system in Saint Lucia includes both direct and indirect taxes, with income tax being the most significant tax levied (in terms of amount). Capital gains are not taxed and a value-added tax was introduced in 2012. Stamp duty on property transfers and property taxes are also levied. The Inland Revenue Department within the Ministry of Finance is in charge of the administration and collection of the majority of taxes and duties.

20. The Income Tax Act governs the administration of income tax and defines the scope of persons liable to tax in Saint Lucia. Tax residence for entities and arrangements is defined in section 2 of the Income Tax Act. Companies will be tax resident if they are incorporated in or controlled and managed from Saint Lucia. A partnership is not a taxable entity and partners are taxed on the basis of their tax-residence. Trusts will be tax-resident if they are established in Saint Lucia or are “expressed to be subject to the laws of Saint Lucia”.

21. Saint Lucian law contains a number of exemptions for certain types of entities and arrangements. Under the IBC Act, an IBC can elect to be tax-exempt or pay tax at a rate of 1% to benefit from the provisions of the CARICOM agreement. International trusts and partnerships are also tax exempt, as are any distributions made to non-resident partners or beneficiaries. Even where a person or entity is not liable to tax in Saint Lucia, they may still be subject to obligations in the Income Tax Act to file an annual return and/or keep certain information, including accounting records.

22. Under section 2 of the Income Tax Act, a permanent establishment is defined to mean a “fixed place or premises through which the business of a person is wholly or partly carried on” and includes a place of management, a branch, or an office. A person is defined to include an individual, a trust, the estate of a deceased person, a company, a partnership, and every other juridical person.

### ***Overview of commercial laws and other relevant factors for exchange of information***

23. In Saint Lucia, companies can be formed under the Companies Act or the IBC Act. Partnerships may be formed and registered under the Civil Code or the International Partnerships Act. Trusts can be formed under the common law, which is recognised in the Civil Code, or created as an International Trust and registered under the International Trusts Act.

24. IBCs and international partnerships are not permitted to carry on business with persons resident in Saint Lucia, or to hold any interest (other than the lease of an office) in immovable property situated in Saint Lucia. International trusts may not be settled by a person who is resident of Saint Lucia at the time of creation of the trust, or at any time the settlor contributes further property to the trust.

### ***Overview of financial sector and relevant professions***

25. Saint Lucia's financial sector is regulated by the financial regulator being the FSRA which is a part of the network of Eastern Caribbean regulators within the Eastern Caribbean Currency Union (ECCU). The FSRA will have responsibility for the licensing and supervision of the financial services sector, which includes insurance, international banking, international mutual funds, registered agents, trustees, as well as other money services providers. The commercial banking sector and credit institutions across the ECCU are regulated and supervised on a day-to-day basis by the Eastern Caribbean Central Bank (ECCB).

### ***Anti-money laundering framework***

26. Saint Lucia's AML regime establishes obligations on regulated financial service entities as well as on persons carrying on certain other business activities to retain ownership, identity and accounting information in respect of the persons with whom they do business. The obligations of Saint Lucia's AML regime are regulated and supervised by the Financial Intelligence Authority (FIA), established under the Money Laundering (Prevention) Act (MLPA).

27. The MLPA, the Money Laundering (Prevention) (Guidance Notes) Regulations and the Proceeds of Crime Act form the legal bases for Saint Lucia's AML framework in establishing obligations for AML service providers to keep ownership, identity and accounting information.

28. Persons subject to the AML requirements ("AML Service Providers") are described in Schedule 2 of the MLPA and include:

- All regulated financial service entities, including:
  - International mutual funds,
  - International banks,
  - International and domestic insurance companies,
  - Registered agents (including persons acting as nominee directors, shareholders or company officers),
  - Trustees.
- Company formation and management service providers;
- Custody service entities;
- Securities brokering companies;
- Lawyers; and,
- Accountants.

### *International exchange of information for tax purposes*

29. In Saint Lucia, EOI is governed principally by the terms contained in the TIEAs and DTCs concluded by Saint Lucia with its EOI partners, the legislation that incorporates those agreements into domestic law, and the provisions of the Income Tax Act and the ITC Act.

30. As of May 2016, Saint Lucia has a network of 23 signed agreements, all of which are in force, covering a total of 32 jurisdictions. These agreements include 21 bilateral TIEAs, a DTC with Switzerland, and the multilateral CARICOM agreement (signed together with 10 other CARICOM states). Of the 23 signed agreements, 22 are to the standard, the DTC with Switzerland being the sole exception.

### **Recent developments**

31. Since the time of the Phase 2 review, Saint Lucia has amended a number of its laws to bring them more into line with the standard. Saint Lucia amended its Companies Act in 2015 to require companies, at the time of registration, to file ownership information with the Companies registrar. The same amendment will also require external companies to file annual returns containing ownership information.

32. In August 2015, Saint Lucia also amended the IBC Act, the International Partnerships Act, the International Trusts Act and the ITC Act to introduce requirements for all relevant entities to maintain accounting

information in line with the international standard. At that time, Saint Lucia also amended the IBC Act to require all IBCs to submit annual returns detailing shareholders and directors to their registered agents. In May 2016, Saint Lucia further amended the IBC Act, the International Partnerships Act and the International Trusts Act to institute penalties for failure to comply with record-keeping obligations.

33. Saint Lucia has committed to the implementation of the Common Reporting Standard on Automatic Exchange of Information (AEOI). In this respect, Saint Lucia signed a Multilateral Competent Authority Agreement to automatically exchange information based on Article 6 of the Multilateral Convention at the Global Forum Meeting in 2015, thereby committing itself for the adoption of automatic exchange of bank account information by 2018. Saint Lucia has not yet signed the Convention on Mutual Administrative Assistance in Tax Matters, but as of May 2016 it is undergoing the process to do so.

## Compliance with the Standards

### A. Availability of information

#### Overview

34. 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 the Saint Lucia's legal and regulatory framework on availability of information. It also assesses the implementation and effectiveness of this framework in practice.

35. At the time of the Phase 2 report, Saint Lucia's legal and regulatory framework for maintaining ownership information was found to be in place with a minor gap whereby it was unclear as to whether companies formed under the laws of another CARICOM or OECS member state had to maintain ownership information. This deficiency has since been corrected via an amendment to the Companies Act whereby such companies must now file ownership information at the time of registration with the Companies registrar. Further, all external companies are subject to a requirement to file an annual return with the registrar that will contain ownership information. Therefore, the previous phase 1 recommendation regarding companies formed under the laws of another CARICOM or OECS member state has been deleted and the Phase 1 determination remains as "in place".

36. In regards to the practical implementation of the legal and regulatory framework, at the time of the Phase 2 report, it was found that neither the Registrars nor the regulator in Saint Lucia had a regular system of oversight of compliance of entities' ownership and identity information keeping requirements in place. In addition, neither fines nor sanctions had been imposed in practice. Therefore, element A.1 was rated as "Largely Compliant". Since the Phase 2 review, Saint Lucia has made both legislative and procedural amendments with the aim of ensuring that global standards for EOI are being met. First, the FSRA has implemented a more enhanced system of oversight and has systematically carried out on-site inspections on licensed entities and most notably on the majority of registered agents and trustees. However, even in the case of breach of obligations, fines or other sanctions have not been imposed. In addition, although the Registrars have commenced reviewing entities' compliance with annual return filing obligations and submission of ownership information, this has only been carried out for a small number of all registered entities. Finally, aside from the striking off of entities from the IBC Registrar, over the review period no other fines were imposed by the authorities. Therefore, in light of the continued lack of a comprehensive system of oversight and the enforcement of sanctions, the rating for element A.1 remains "Largely Compliant".

37. At the time of the Phase 2 report, it was found that there were insufficient accounting requirements in place for IBCs, international partnerships and international trusts and as a result, element A.2 was determined to be "not in place". In August 2015, Saint Lucia enacted a series of legal amendments in order to ensure that accounting requirements in line with the international standard are now in place for all entities in Saint Lucia. In regards to the practical implementation of those requirements, as the legal requirements were only enacted in August 2015 and will therefore only apply for accounting year 2016, their practical implementation was unable to be examined by the assessment team. In addition, while some oversight of the accounting record requirements for all other entities (i.e. domestic companies, general and limited partnerships and ordinary trusts) was performed by the Inland Revenue Department, generally oversight of accounting record obligations has not been carried out over the review period. As a result, while the legal and regulatory framework is now sound and element A.2 has been upgraded to "in place", a comprehensive system of oversight of accounting requirements has yet to be implemented in Saint Lucia and therefore element A.2 is rated "Partially Compliant".

38. At the time of the Phase 2 review, it was found that there are comprehensive legal and regulatory requirements in place for banking information to be kept under the AML regime. Further, a comprehensive system of oversight of the obligations to maintain banking information was in place by both the FSRA and the ECCB. As a result, element A.3 was determined to be "in place" and rated "Compliant". There has been no change since the time of the Phase 2 report and therefore, element A.3 remains "in place" and rated "Compliant".

39. Over the review period (July 2013-June 2015), Saint Lucia did not receive any requests for banking or accounting information. Saint Lucia received one request for ownership information and this information was available within the database of the Inland Revenue Department and successfully transmitted to the treaty partner in less than 90 days.

## 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)*

40. A summary of the conclusions from the Phase 2 report are detailed below, as well as a report of any changes to the legal framework and an analysis of the experience in practice since the last review. For a more detailed analysis of the legal requirements for companies in Saint Lucia see the Phase 2 report, paragraphs 64 to 105.

### *Types of companies and legal requirements to maintain information*

41. There are two possible company types in Saint Lucia; domestic and IBCs. As of May 2016, there are 10 776 domestic companies registered with the Domestic Companies Registrar (“Companies Registrar”) and 3 352 IBCs registered with the IBC Registrar. All domestic companies are required to maintain a shareholder register and are subject to the Companies (*Amendment*) Act 2015, ownership information must also be submitted to the Companies Registrar shortly after business registration via a return of allotments. All changes to the ownership information of domestic companies are also required to be submitted to the Registrar within 30 days. Further, all domestic registered companies must file an annual return by 1 April every year which includes a requirement to submit updated ownership information.

42. IBCs are required to maintain a shareholder register at the office of its registered agent. Further all registered agents are required to maintain updated ownership information on all of their clients in order to fulfil the CDD requirements under the MLPA. Therefore at the time of the Phase 2 report, it was found that there was a sufficient legal and regulatory framework in place for all domestic companies and IBCs to maintain ownership information.

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

43. Further, since the time of the Phase 2 report, via the IBC (*Amendment*) Act, No. 8 of 2015 (IBC Amendment Act), Saint Lucia enacted a requirement for each IBC to submit an annual shareholder return to its registered agent at the end of each calendar year (s. 28(6), IBC Act). Any IBC that fails to comply with this requirement shall be subject to a fine of USD 250. Pursuant to this amendment to the IBC Act, the registered agent is also obliged to submit to the IBC Registrar, a declaration for each of the IBCs for which it acts a declaration that the IBC has in fact filed the shareholder register with them. In the event that the IBC has not filed a shareholder register with the registered agent, the registered agent is obliged to report this to the IBC Registrar (s. 28(10), IBC Act) and by 31 March of each year, the IBC Registrar shall then gazette the details of that IBC in order for it to be struck from the IBC Register (s. 28(11), IBC Act). In the event that the IBC is gazetted for striking off and does not rectify this omission, the IBC will be struck from the registry on the first of January of the following year (s. 28(12), IBC Act).

44. At the time of the Phase 2 report, a minor deficiency was identified whereby it was unclear as to whether companies formed under the laws of another CARICOM or OECS member state that are carrying on business in Saint Lucia had to maintain ownership information. Since the time of the Phase 2 report, pursuant to the Companies (Amendment) Act, No. 13 of 2015, the Companies Act has been amended to clarify that even when the company has been formed under the laws of another CARICOM or OECS member state, ownership information must now be submitted at the time of registration with the Companies Registrar and at the time of filing its annual return. As a result, the Phase 1 recommendation regarding the prior deficiency for companies formed under the laws of another CARICOM or OECS member state that are carrying on business in Saint Lucia, has been removed.

45. Therefore, there is a sound legal and regulatory framework in place to ensure that domestic companies and IBCs are maintaining ownership information and as a result element A.1 continues to be determined to be “in place”.

#### *Oversight of the ownership obligations*

46. The entities charged with monitoring the above outlined ownership obligations are the Companies Registrar, the IBC Registrar and the FSRA. An overview of the oversight activities undertaken by these entities is detailed below.

#### *Oversight by the Domestic Companies Registrar*

47. In Saint Lucia, the Companies and Intellectual Property Office maintains the Companies Registrar. It is responsible for maintaining a register of every company that is incorporated or registered under the Companies Act.

This will include domestic companies and external companies, but not IBCs (which have a dedicated IBC register, described below). The Companies Registrar must keep all documents received for a minimum of 6 years from receipt (s515, Companies Act). In practice, the Registrar has reported that all documents are kept indefinitely.

48. As outlined in the Phase 2 report, for incorporation, domestic companies must submit their articles of incorporation, amongst other documents, to the Companies Registrar and within one month of registration, all domestic companies must submit a “return of allotment of shares” containing all shareholder information. The Registrar has also stated that as a certificate of good standing is needed by companies for many transactions with third parties such as opening a bank account, there is strong motivation for domestic and foreign companies to send in the return of allotments containing the shareholder register once they commence doing business. There is a requirement to update the Registrar of changes that take place in the ownership of the company such as share transfers within 30 days of them taking place. Further, all domestic registered companies must file an annual return by 1 April every year which the Registrar then cross checks with the information on file in order to ensure that changes in details such as share transfers have been submitted.

49. Officials from the Companies Registrar have reported that generally, monitoring of entities compliance with return filing obligations was not consistently undertaken over the review period (July 2013 – June 2015) and the rates of compliance with return filing obligations were not maintained but officials estimate the compliance rate to be approximately 50%. Further, of the 10 776 number of domestic companies registered in Saint Lucia, the Registrar is uncertain as to the number of those companies that are still active. Saint Lucian authorities have reported that as of 2016, they began applying fees for the late submission of annual returns both as a monitoring activity and also in order to determine what entities are no longer active.

50. Due to the above uncertainty and also the fact that the deficiency in the system of oversight was highlighted at the time of the Phase 2 report, in 2015 the Registrar implemented a system of oversight whereby officials from the Registrar will now be checking to ensure that entities are complying with the legal requirements under the Companies Act as well as monitoring those entities that fail to submit the annual return. The first step in the implementation of a system of oversight in Saint Lucia has been the commencement of the computerisation of the companies’ database. Through this process, the Companies Registrar has been reviewing the files of domestic companies and is now advancing to the publication of the names of defaulters.

51. At the time of the on-site visit, officials from the Companies Registrar reported that to date this system of oversight has only been implemented for companies that have been newly incorporated since 2012. Officials from the

Registrar have indicated that of those companies already surveyed, there is quite a high level of non-compliance with return filing obligations. For example, of the 350 domestic companies incorporated in Saint Lucia in 2012, at least 200 of those entities were not in compliance with the annual return filing obligation.

52. As outlined above, in the event that an entity does not comply with its annual return filing obligations, the name of that entity is published in the official government gazette for striking off the register. Once published in the official gazette, the company then has 30 days to submit its annual return. As of May 2016, the Companies Registry has published the names of those companies incorporated in 2012 that are in default with respect to income years 2012 to 2014. This list of 76 defaulting domestic companies was published in the August 2015 edition of the gazette. Saint Lucia has reported that it has been gazetting the entities using a phased approach. The names of a further 149 entities have gazetted as at 8 February 2016. This process is ongoing and companies will continue to be gazetted (and eventually struck off) as this process rolls out and is fully implemented.

53. To date the gazetting of non-compliant entities has been undertaken in August 2015 and February 2016 and it is the intention of the Registrar to publish this every three to six months. Further officials from the Companies Registry have reported that it has compiled a list of defaulters with respect to the income year 2012 which has been forwarded to the Official Gazette for publication. It is the intention for subsequent lists to also be gazetted systematically and further action to be taken on companies which fail to comply with requirements by the stipulated period.

54. Officials from the Registrar have reported that of the 76 domestic companies that were published for failure to comply with the annual return filing requirement in August 2015, 10 of those companies have since complied and submitted their annual returns. Pursuant to section 519 of the Companies Act, publication in the gazette is not deemed to be official notice of striking off. Rather, the publications in the gazette acts as an initial reminder and in the event of continued non-compliance, the next step is to write to legal representative of company, inform them of their return filing obligation at which time the company is given 30 days to remedy the defect or they will be struck off the register. Although it was not the policy of the Registrar to strike off entities over the review period, this has since commenced in Saint Lucia and to date 15 companies have been struck off for failure to lodge an annual return.

55. Although monitoring of companies' compliance with annual return filing obligations was not in place over the review period, officials from the Registrar's office have pointed out that companies regularly have to apply for Certificate of Good Standing in order to conduct business transactions. As said certificate is not granted unless a company has filed its annual return, there is motivation for companies to submit annual returns. While officials

from Saint Lucia have reported that Certificates of Good Standing were issued throughout the year and in some cases, several times for the one entity, actual numbers of the total amount of such certificates were not maintained. This is another means by which to ensure that registered entities are in compliance with their on-going filing requirements including the submission of up-to-date ownership information. However, despite this measure, it is noted that compliance rates with the obligation to lodge an annual return have remained quite low over the review period.

56. Apart from the striking off procedure, other sanctions may also be imposed by the Registrar. For example, in the case of late submission of annual returns (pursuant to a 2015 amendment to Companies Act), the Registrar is now enabled to impose late fees. However, as this legal amendment was only enacted in August 2015 and these provisions only to come into effect this year (i.e. can be imposed after 30 April 2016) the effectiveness of these measures over the review period could not be tested in practice by the assessment team. Further, no other fines for non-compliance with legal obligations under the companies act including the registration, annual return filing and the submission of a return of allotments have been imposed.

#### *Oversight by the IBC Registrar*

57. In Saint Lucia, it is the duty of the IBC's registered agent to register the IBC with the IBC Registrar. While shareholder information is not required at the time of registration, All IBCs are subject to a requirement to maintain a register of shareholders, including their names and addresses and the dates on which they became and ceased to be a member.

58. Pursuant to a 2015 amendment to the IBC Act (IBC (*Amendment*) Act, No. 8 of 2015), all IBCs are now required to submit a copy of their shareholder return to their registered agent by 31 December each year (s.28(6), IBC Act). In the case that an IBC fails to submit the shareholder return to the registered agent, the IBC will be subject to a fee of USD 250 (s.28(7), IBC Act) payable by 31 March of the following year to avoid being struck off the register. The penalty of USD 250 is due after 1 April and must accompany the filing of the shareholder return, stating that the company has now complied with this obligation. The registered agent is then required to submit a list to the IBC Registrar of all IBCs that are in default of the obligation to submit an updated shareholder register (s.28(10), IBC Act). In the case that an IBC fails to submit an annual shareholder register to its registered agent, once the list of those IBCs in default of this requirement has been submitted to the IBC Registrar, the Registrar shall then publish the names of those IBCs in the official government gazette with the date for filing of the annual shareholder return with the registered agent and the payment of the fine for late submission. Notices must be published in the Gazette at least 90 days

prior to 31 December and set out that the companies must remedy the default before 31 December after which the companies are struck-off. In the event of continued non-compliance with the shareholder return filing obligation, the IBC will then be struck from the IBC registry in January of the following year. However, as the legal obligation to file a shareholder return only came into force in August 2015 and therefore after the review period (July 2013-June 2015), the effectiveness of this legal measure for retaining IBC shareholder information in Saint Lucia could not be assessed in practice.

59. As of May 2016, there were approximately 3 352 IBCs registered in Saint Lucia. All registered IBCs must file an annual return by the end of January every year along with payment of the renewal fee. While no ownership information on the IBC needs to be provided in the annual return, IBCs can file this information should they so wish. Officials from the IBC Registry have reported that a small proportion opt to do so and to date there are 10 IBCs with ownership information on file at the IBC Registrar.

60. The requirement for IBCs to file annual returns (shareholder and director) was legislated in August 2015. From October 2016 and onwards, the IBC Registrar will publish Gazette notices which will give defaulters a 90 day period to submit the returns. These notices will be published contemporaneously with the notices for failure to pay the annual registration fee. If the IBCs fail to pay the annual registration or fail to submit the required returns (inclusive of applicable penalties) by 31 December 2016 they will be struck from the register as of 1 January 2017.

61. In addition, a late registration penalty, which increases the annual fee by up to 50%, is currently levied on all IBCs which fail to renew registration on time. In the event of continued non-compliance with the requirement to file an annual return, the names of those IBCs are then published in the official gazette as being struck off from the IBC Registry. Since 2001 when IBCs were introduced in Saint Lucia, 2 851 IBCs have been struck from the Register for non-compliance with the requirements, and over the review period out of 379 IBCs that were gazetted, 370 were struck off for non-compliance with legal requirements (for further information on number of entities struck off see section A.1.6 *Enforcement of ownership obligations*).

62. In the event that an IBC requests to be restored to the registry within six months of being struck off, there is a charge of XCD 810 (USD 300). In the event that more than three months has lapsed then a fine of XCD 1 620 (USD 600) will be applied. Officials from the IBC Registrar have reported that in 2015 there were at least 50 IBC restorations. Further, officials from the IBC Registrar also reported that they imposed and collected penalties in the amount of US 40 000 in 2015 in fees relating to IBC restorations.

63. Therefore, it can be concluded that over the review period, the IBC registrar had a system of oversight of the annual renewal obligations of IBCs. In cases where annual renewals have been filed late, they have actively gazetted IBCs and in the case of continued non-compliance IBCs have been struck from the IBC registry. Further, fines have also been imposed, particularly in the case of IBCs wishing to be reinstated. Further, Saint Lucia has also introduced legislative amendments which from 2016 onward will require all IBCs to remit a copy of its shareholder register to the office of its registered agent in Saint Lucia. Further, the registered agent will then be obliged to submit a list of all of those IBCs that have not complied with this requirement to the IBC Registry who shall impose fines on the IBC. In the case of continued non-compliance with this obligation, the IBC will eventually be struck from the IBC registry. However, it is noted that as these legislative amendments to improve oversight were only introduced in August 2015 and became effective in 2016, their effectiveness in practice could not be assessed by the assessment team.

64. Further, as noted above, all IBCs are required to have a registered agent. However in the case that a registered agent notices that an IBC is in breach of its legal duties, it may cease to act as the registered agent for that entity. Officials from the Registrar reported that over the review period, there have been two incidents of the registered agent applying to no longer act for the IBC and in one case the registered agent disclosed that the IBC for whom they were acting was being used for illegal purposes. Therefore, in practice, registered agents are mindful of the compliance with legal obligations by the entities for which they act and in the case of non-compliance the registered agents are prepared to terminate acting for that entity.

#### *Oversight by the Inland Revenue Department*

65. For tax purposes, there are 5 319 companies registered for tax purposes with the Inland Revenue Department in Saint Lucia. All entities registered for tax are generally obliged to file a tax return by 31 March each year or three months after the end of their tax year in the case that they have elected a different tax year end. Authorities from the IRD were unable to provide compliance rates for tax return filing from the review period but reported that they have noticed a decline in compliance with the tax return filing obligation from 2013 to 2014. However, as there is no requirement for companies to provide ownership information in the tax return, the IRD has not been responsible for monitoring or oversight of ownership obligations in Saint Lucia.

#### *Oversight by the Regulator (FSRA)*

66. The Phase 2 report noted that comprehensive AML/CTF requirements are in place in Saint Lucia and are applicable to all relevant service

providers (e.g. registered agents and trustees, notaries, auditors, lawyers, accountants) who are subject to requirement to maintain updated ownership information on all clients for which they act pursuant to CDD requirements. The application of those legal requirements is monitored by the FSRA and FIA, which are the regulatory bodies in charge of supervising the relevant service providers. As of May 2016, there were 18 registered agents and 4 registered trustees regulated by the FSRA.

67. Certain types of entities and arrangements are required to engage an AML Service Provider, namely a registered agent. This includes IBCs, International Partnerships, as well as any entity regulated as an international mutual fund, international bank, or international insurance company under the laws of Saint Lucia. Professional trustees, including all trustees of International Trusts, and also professional nominees are also subject to the AML regime. As at May 2016, there are 18 registered agents and 4 registered trustees operating in Saint Lucia and supervised by the FSRA. Officials from the FSRA have reported that the majority of the service provider and trustee services are conducted via lawyers and accounting practices in Saint Lucia.

68. With the assistance of the Caribbean Regional Technical Assistance Centre, the FSRA has developed a comprehensive monitoring system to oversee licensed entities with a specific focus on the registered agents and trustees that represent international entities (IBCs and international trusts). By reviewing the registered agents and trustees and their arrangements the FSRA is able to review their clients and able to ensure that the requisite information on each client is kept according to the stipulations of the law.

69. There are currently 22 full time employees within the FSRA and the supervision programme is divided amongst all officials. Acting upon the monitoring recommendation from the Phase 2 report, the FSRA implemented a comprehensive on-site inspection programme of all regulated entities and in particular for registered agents and trustees in August 2014. There are two main aspects to the Financial Services Regulatory Authority's oversight programme for Registered Agents and Registered Trustees comprising of both off-site reviews (desktop monitoring) and an on-site inspection programme. Officials from the FSRA have reported that they are also to implement a dedicated on-site inspection team later in 2016.

70. The off-site element of the oversight programme by the FSRA involves the assessment of reporting forms that are submitted by each licensee on an annual basis. These returns allow the FSRA to remain updated information about any significant changes in the operations of registered agents and trustees and to monitor the business of international financial services representation conducted by licensees, while maintaining statistical information about each entity. The Authority's on-site inspection programme was re-designed in 2014 with the aim of having each licensee inspected at

least once every two years. Over the review period on-site inspections were conducted on seven registered agents and one registered trustee, with an additional four licensees scheduled for inspections during the last quarter of 2015. By December 2015, 57% of the licensees in the FSRA registry had been inspected extending in scope to 63% of all IBCs and International Trusts registered in Saint Lucia.

71. Generally, an on-site visit is conducted as follows: First the regulator chooses the regulated entity dependent on factors such as size, business they engage in, other risk factors such as previous breaches relating to their legal and regulatory duties and when they were previously inspected. Generally, the entity then receives two weeks' notice of the inspection which may last from one day up to a week. Dependent on the size of the entity to be inspected, the inspection team from the FSRA can vary from one official to a team of five. In the case of an on-site inspection of a registered agent, the officials from the FSRA randomly select a number of IBC files (usually a sample size of 10-20% of all IBCs that the registered agent represents). In the case of a registered trustee, both the FSRA and the international trustee interviewed on the on-site visit have reported that as there are a lot less international trusts in Saint Lucia (43 as of May 2016) they will generally inspect the majority of the international trust files.

72. Once the files to be examined have been selected, the officers from the FSRA will proceed to examine that the entity has complied with all of its legal and regulatory requirements such as the obligation to carry out due diligence under the MLPA. The officials will inspect documents regarding shareholders and directors, constitutional files and financial statements. After the on-site visit has been concluded the officials from the FSRA draft a report with all of their findings and present this to the entity usually within a fortnight of the on-site inspection. The entity is then allocated four months to remedy defects.

73. Officials from the FSRA have reported that overall compliance with legal and regulatory obligations by the entities that they have inspected (especially by registered agents) has been found to be very high. As of May 2016, all registered agents and trustees had been inspected at least once over a two and a half year period. Further, with the implementation of a full-time inspection team, starting in 2017, it is the intention of the FSRA to perform an on-site inspection on each registered agent per year.

74. Further, the FSRA has been instrumental in implementing an outreach and educational programme with other government agencies regarding regulating entities and the implementation of a comprehensive oversight programme. For example, in the course of its on-site inspection programme, when the FSRA finds an entity that is not in compliance with its legal or regulatory obligations such as the obligation of annual business renewal, it is now the practice of the FSRA to share that information with the IBC registrar.

Further, the FSRA has also implemented a system of communicating all new legislative amendments directly to the regulated entities as another means of ensuring that they will be in compliance with any further requirements. Both registered agents interviewed on the on-site visit reported that the FSRA had communicated the new obligations under the IBC Act (as outlined above) for the IBC to submit a shareholder return to the registered agent to them directly and had also followed up with a call to ensure that the registered agents fully understood the new requirements and how to comply with them.

### *Ownership information held by foreign companies*

75. In addition to domestic companies, certain foreign companies are relevant for the purpose of the ToR where they have a sufficient nexus with Saint Lucia. The Companies Act also provides for the registration of external companies which are carrying on business within Saint Lucia. External companies are defined as “any firm or body of persons, whether incorporated or unincorporated, that is formed under the laws of a country other than Saint Lucia”. The Phase 2 report noted that external companies are required to register with the Registrar of Companies before commencing business in Saint Lucia (s340, Companies Act). The information required to be provided upon registration does not include any shareholder identification information (s344, Companies Act). However, an external company is required to file an annual return (s356, Companies Act). The prescribed form (Form 24, Schedule 3 Companies Act) requires the same information as for the domestic companies’ annual information return: a list of persons holding shares (legal owners) in the company as at 31 December and of persons who have held shares in the company at any time since the date of the last return or (in case of the first return) of the incorporation or continuance of the company, including their names and addresses and an account of the shares so held.

76. As of May 2016, there are 147 external companies registered in Saint Lucia. In regards to monitoring of those legal obligations, similar to that for domestic companies, the supervision of foreign companies’ compliance with these requirements falls within the ambit of the Companies Registrar as outlined above (see section *Oversight by the Registrars*).

### *Ownership information held by nominees*

77. The phase 2 report noted that persons carrying out a business of providing nominee services (that is, professional nominees) are regulated under Saint Lucia’s AML regime and are subject to the obligations described above in respect of relevant transactions. Consequently, a nominee shareholder is required to take reasonable measures to determine the true identity of the persons for whom they act. For a detailed analysis of the legal requirements

for nominees to maintain ownership information see paragraphs 115-120 of the Phase 2 report.

78. In regards to oversight of those obligations, all professional nominees are regulated by the FSRA and are therefore subject to the oversight programme by the regulator as outlined above. Officials from the FSRA have reported that nominee services is not common in Saint Lucia and in those cases where they are offered, it is usually conducted by one of the legal firms.

79. In the case of non-professional nominees, Saint Lucian Authorities have indicated that in practice there will only be exceptional cases whereby a nominee will not be acting for profit or gain and therefore not deemed to be acting in a professional capacity, and hence even if nominees were to be acting in a non-professional capacity, this category represents a very small proportion of all nominees acting in Saint Lucia. In addition, Saint Lucian authorities have reported that they have never come across a nominee acting in a non-professional capacity. Nevertheless, Saint Lucia is recommended to ensure that ownership information can be made available in all cases where a Saint Lucian resident is acting as a nominee in a non-professional capacity.

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

80. The Phase 2 report found that bearer shares are not permitted to be issued by companies in Saint Lucia and all issued shares must be registered shares providing full ownership information. There has been no change since the time of the Phase 2 report in this regard and hence there is no possibility to issue bearer shares in Saint Lucia.

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

81. The Phase 2 report found that the rules regarding the maintenance of ownership information in respect of partnerships in Saint Lucia were in accordance with the standard and were effective in practice.

82. A summary of the conclusions from the Phase 2 report are included here. For a more detailed analysis of the legal and tax requirements for partnerships in Saint Lucia see Phase 2 report, paragraphs 127-137.

### ***Types of Partnerships and Requirements to Maintain Information***

83. There are two types of partnership that can be established in Saint Lucia: domestic and international partnerships. At the time of the Phase 2 report there were 44 domestic partnerships and no international partnerships in Saint Lucia. As of May 2016, there are 29 general partnerships in Saint Lucia and there are still no international partnerships.

84. The Income Tax Act establishes obligations on every partnership, except for International Partnerships, to provide identity information on each partner, and which must be updated on an annual basis via submission of an annual return. For International Limited Partnerships, the International Partnership Act also requires identity information all partners (general and limited) to be kept. The AML regime requires the International Partnerships registered agent to know the identity of all general partners of a partnership (which will include all the partners in an International General Partnership). Therefore, in all instances there is an obligation to ensure that identity information on all partners of relevant partnerships is maintained.

#### *Availability of partnership ownership information in practice*

85. In practice, the identity and ownership information of partnerships is available with the service providers (for international partnerships) and the tax authorities for all general partnerships. As noted above, there are no international partnerships in Saint Lucia. For general partnerships, it is the Inland Revenue Department that is responsible for oversight of the ownership information requirements set out for partnerships in the Income Tax Act.

#### *Oversight by the Inland Revenue Department*

86. For tax purposes, there are 44 partnerships registered with the IRD in Saint Lucia. All entities registered for tax are generally obliged to file a tax return by 31 March or three months after the end of their tax year in the case that they have elected a different tax year end. Authorities from the IRD were unable to provide compliance rates for tax return filing for partnerships from the review period (July 2013-June 2015) as the Income Tax Act requires separate returns for the individual partners. Further, over the review period officials from the Inland Revenue Department have reported that a comprehensive system of oversight of registered entities obligations under the Income Tax Act was not in place.

87. However, since July 2015, there has been a restructuring of the tax authority. There is a Large and Medium Taxpayer section (consisting of 900 entities), and a Small and Micro Taxpayer section. Within each of these sections there is a dedicated compliance team (consisting of three persons) for each unit with responsibility for the supervision of those taxpayers that either file their returns late or not at all.

88. Further, it is the intention of the compliance team within each unit to undertake a review of all years in reverse chronological order. Officials have reported that in the course of this process, in the event that they realise that a tax return is missing, the compliance team will proceed to call the entity and send a without prejudice letter requesting the return. However, as this process of oversight of entities compliance with obligations under the Income

Tax Act has only commenced recently in Saint Lucia (August 2015) and after the cut-off period, this practice could not be assessed by the assessment team. Pursuant to section 132 of the Income Tax Act, an automatic penalty of 5% of the tax liability is levied on all persons who do not comply with the tax filing requirements. Once the tax return is filed by the entity, this fine is automatically added to their tax liability. Aside from this late filing penalty, the Inland Revenue Department has reported that it was not its practice to enforce penalties over the review period and has attributed this to the fact that period its resources were being utilised in educating and enhancing its taxpayer services in order to encourage voluntary compliance.

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

89. The Phase 2 report found that Saint Lucia, being a former British colony of the United Kingdom follows the common law tradition hence has the provision for a common law trust to be established. Further, international trusts are also provided for.

90. A summary of the conclusions from the Phase 2 report are included here. For a more detailed analysis of the legal, tax and AML requirements for common law and international trusts in Saint Lucia please see the Phase 2 report, paragraphs 143-165.

### *Types of Trust and Requirements to Maintain Information*

91. As of May 2016, there were 43 international trusts registered with Registrar of trusts in Saint Lucia and 6 ordinary trusts registered with the Inland Revenue Department. For International Trusts, the International Trust Act and the AML regime establish clear obligations to keep identity information on the settlor, trustee and beneficiaries of the trust. For ordinary trusts, with a professional trustee, the obligations of the AML regime will also apply. Further, for trusts which are tax-resident in Saint Lucia and where there is income distributed to beneficiaries (whether resident in Saint Lucia or otherwise) and the trust does not have a professional trustee, the name and address of the beneficiary in receipt of income must be disclosed in the annual income return.

92. Further, pursuant to the International Trusts (*Amendment*) Act, No. 11 of 2015, all registered trustees of international trusts are now required to maintain a copy of the trust deed which must identify the settlor and the trustees to the trust as well as being obliged to maintain a certificate compile at the end of every year recording all appointed beneficiaries or class of beneficiaries, the property of the trust and any protectors or co-trustees (s. 52(1)(b)(i, ii and iii), International Trusts Act). Further, the act now also requires that the international trust must submit all records or documents to the office of its registered trustee when required to do so in order to comply with any

legal requirements in Saint Lucia including the legal provisions of an international agreement. In the event that an international trust has not filed the trust deed by 31 December of each year with the registered trustee, the registered trustee is required to notify the Registrar of this default within 30 days. The Registrar shall then proceed to cancel the registration of the international trust by 30 June of the following year (s. 52(9), International Trusts Act). In the event that the registered trustee fails to comply with this requirement, they will be considered as having committed an offence and will be liable on summary conviction to a fine of USD 10 000. In addition, the Court may also make an order that the registered trustee cease to act as trustee of the international trust or that the licence of the registered trustee to act for that international trust be suspended (s. 52(10), International Trusts Act).

93. In addition to international trusts, owing to Saint Lucia's common law tradition, there may be a small class of trusts, being ordinary trusts without a professional trustee, for whom an obligation to know the identity of the settlor arises only from the requirements of the common law. Further, in the event that an ordinary trust has taxable income the trustee will have to register for tax purposes and will be subject to the provisions of the Income Tax Act and must file an annual income tax return detailing any distributions made to beneficiaries. The beneficiaries will also have to file a tax return in respect of this income. Further, as a number of ordinary trusts are registered with the Registrar of Deeds and Mortgages, information on the settlor and beneficiaries will also be maintained at the Registrar.

94. Where a trust could be created which has no connection with Saint Lucia other than that the settlor chooses the trust to be governed by Saint Lucia's law, there may be no information about the trust available in Saint Lucia. Saint Lucia maintains that in this event, such trusts are caught by the phrase "established in Saint Lucia" and would be subject to the record keeping requirements in the Income Tax Act and the obligation to file an annual return whereby some ownership and identity information on the parties to the trust would be available. Also, trust information would be available in the jurisdiction where the trustee is located as the relevant records would be situated there.

95. The availability of ownership and identity information in respect of trusts is in place through a combination of common law, AML and other regulatory requirements. In the case of non-professional trustees, the common law fiduciary duties of the trustee should ensure that trustees are complying with their ongoing record keeping requirements. In practice, Saint Lucia has reported that individuals acting in a non-numerated capacity as trustee will occur in a very limited number of ordinary trusts, the majority consisting of probate cases. Further, Saint Lucian authorities report they have never encountered the situation whereby a foreign trust was administered by a non-professional trustee. However, the effectiveness of this enforcement measure

in ensuring the availability of information for EOI purposes in practice should be monitored by Saint Lucia on an ongoing basis.

96. In the three year period under review, Saint Lucia has not received any EOI requests for information relating to the identity of the settlor, trustee or beneficiary of a trust.

## Oversight

97. All international trusts are required to have a registered trustee who will be subject to the requirement to maintain identity information on the international trust under the requirements of the MLPA. These requirements are monitored by the FSRA. As of May 2016, there were four registered trustees operating in Saint Lucia and each of those trustees has had an on-site inspection by the FSRA over the review period. Officials from the FSRA have reported that in the case of registered trustees operating for international trusts they were almost all in full compliance with the requirements under the MPLA.

98. Further, from 2016 onward (i.e. after the review period), all international trusts are now subject to a requirement to have a deed disclosing all parties to the trust available at the office of the international trustee and in the event of non-compliance with this requirement, the registered trustee is legally obliged to inform the Registrar who will proceed to enforce fines and also strike off the international trust. Therefore, this is another means by which the Saint Lucian authorities plan to monitor the international trusts' compliance with their legal requirements. It is noted that as this requirement only became law in August 2015 and will be implemented in 2016, its effectiveness could not be tested in practice. Saint Lucian authorities have reported that as of mid-2016, a report has not yet been received from any registered trustee reporting non-compliance in this regard.

99. In regards to ordinary trusts, as they must be registered for tax purposes, it is the Inland Revenue Department that is the authority responsible for oversight of these obligations. However, as noted above (*Oversight by the Inland Revenue Department*), over the review period a comprehensive system of oversight of registered entities obligations under the Income Tax Act was not in place. Further, the Inland Revenue Department was unable to quantify the compliance rates for the filing of trust tax returns over the review period. Pursuant to section 132 of the Income Tax Act, an automatic penalty of 5% of the tax liability is levied on all persons who do not comply with the tax filing requirements. Once the tax return is filed by the entity, this fine is automatically added to their tax liability. Aside from this late filing penalty, the Inland Revenue Department has reported that it was not its practice to enforce penalties over the review period and has attributed this to the fact that period its resources were being utilised in educating and enhancing its taxpayer services in order to encourage voluntary compliance.

### *Availability of Information in Practice*

100. The practical application of the above legal requirements has not occurred frequently in Saint Lucia as trust arrangements are not common. Saint Lucia has not received any EOI requests concerning trusts during the period under review.

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

101. The Phase 2 report found that the laws of Saint Lucia did not include the concept of a foundation and it is therefore not possible to create a foundation in Saint Lucia.

### ***Other types of relevant entities and arrangements***

#### *Co-operatives*

102. The Phase 2 report found that co-operatives can also be created in Saint Lucia. A summary of the conclusions from the Phase 2 report are included here. For a more detailed analysis of the legal, tax and AML requirements for co-operatives in Saint Lucia please see the Phase 2 report, paragraphs 172-176.

#### *Commercial Law requirements and oversight*

103. All co-operatives must be registered with the Registrar of Cooperatives, who is responsible for registration, and maintenance of adequate and reliable records among others. Further, a co-operative must have at all times a registered office where it is required to maintain the co-operative's records, including registers of members, copies of its by-laws, all minutes of meetings of members and directors and the register of directors.

104. In regards to oversight of the ownership requirements, since January 2014, all financial co-operatives are regulated by the FSRA and all producer co-operatives regulated by the Ministry of Agriculture. As of May 2016, there were 16 financial co-operatives and 24 producer co-operatives registered in Saint Lucia. During the review period, the Registrar of Co-operatives' office has reported that it did not carry out any inspections of producer co-operatives in order to inspect their compliance, including ownership obligations, with the requirements of the Co-operatives Societies Act.

105. Financial co-operatives are now under the supervision of the FSRA and were therefore subject to the system of oversight as in place by the FSRA over the review period (see section *Oversight by the Regulator*).

106. Over the review period, Saint Lucia has not received any EOI requests for information relating to ownership information of a co-operative

and of the EOI partners that provided peer input, none indicated that there were any issues in relation to co-operative ownership information.

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

107. The Phase 2 report found that the enforcement provisions to ensure availability of information on companies, partnerships, trusts and co-operations in Saint Lucia was in accordance with the standard. A detailed analysis of the penalties available for non-compliance with ownership information requirements by the relevant entities is set out at paragraphs 178-200 of the Phase 2 report. A brief analysis of those provisions and their effectiveness in practice is outlined below.

### ***Enforcement provisions in practice***

108. As set out under the Phase 2 report, the Saint Lucian legislation provides for sanctions in situations where the information required by law under the Companies and IBC Act, the Income Tax Act and the AML regime. The fines available under the Acts range from fines, to imprisonment to striking off of the company from the Companies registry. Therefore the authorities responsible for the imposition of sanctions include the Companies and IBC Registrar, the Inland Revenue Department and the FSRA.

### ***Enforcement by the registrar***

109. As outlined above (see section *Oversight by the Registrars*) over the review period, as a system of oversight of filing and annual return filing obligations was generally not in place by the Company Registrar, penalties for failure to comply with the requirements under the Companies Act were not enforced in practice. Given new legislative provisions, entities will be struck off for failure to comply with the requirement to file annual returns, from 2017. The number of IBCs that have been gazetted and that have been were struck from the IBC Registrar over the review period is as follows:

	July-December 2013	2014	January-June 2015
Number of IBCs gazetted to be struck off the IBC Registrar	347	496	379
Number of IBCs struck from the Registrar	-	-	370

### *Enforcement by the Inland Revenue Department*

110. Regarding the practical application of enforcement measures during the peer review period, authorities from the Inland Revenue Department have reported a comprehensive system of oversight was not in place, over the review period. The Inland Revenue Department has attributed this to the fact that over the review period, it was conducting forensic audits of key sectors in order to develop its audit programme which was at the capacity building stage.

### *Enforcement by the regulator*

111. As outlined above, the FSRA implemented an enhanced system of oversight in August 2014 and as of May 2016, has conducted on-site inspections of registered agents and trustees. The number of on-site inspections conducted by the FSRA is set out in the following table:

Tax audits year	July-December		January-June	June-December
	2013	2014	2015	2015
Number of on-site inspections	2	4	2	7

112. Authorities from the FSRA have reported that although a system of monitoring was implemented over the review period, firstly, in the course of this programme, compliance levels with legal and regulatory requirements were found to be very high with compliance levels at 90-100%. Second, in those cases where deficiencies were found, these were found to be minor (such as not updating the internal policy regarding CDD requirements under the AML regime) and hence it was the approach of the FSRA to work with the entity in a communicative manner in order to assist them in rectifying those deficiencies within four months of the on-site visit. Therefore, over the review period, fines and other sanctions were not imposed by the FSRA.

### *Conclusions regarding Element A.1.*

113. At the time of the Phase 2 report, element A.1 was found to be “in place” with a minor deficiency found in those narrow circumstances where companies formed under the laws of a CARICOM or OECS member state and carrying on business in Saint Lucia, where the obligations for ownership information to be maintained were unclear. Since that time, the Companies Act has been amended to ensure that all such companies must now provide ownership information at the time of company registration and are also subject to a requirement to provide an annual return with updated ownership information. Therefore, the Phase 1 recommendation has been deleted and the determination for element A1 remains “in place”.

114. In regards to the practice, the Phase 2 report noted that a system of monitoring and enforcement of penalties was not in place in Saint Lucia, a recommendation to implement a comprehensive system of monitoring was made and element A.1 was rated as “Largely Compliant”. Since that time, the FSRA as the financial regulator responsible for oversight of all regulated entities and notably the registered agents and trustees had implemented a comprehensive system of monitoring including desktop audits and on-site inspections of regulated entities. Since this system was implemented the FSRA in August 2014, it has performed an on-site inspection of 67% of all licensed entities. As the entities inspected mainly cover registered agents and trustees who must be engaged by all IBCs and international trusts in Saint Lucia, these inspections extend to 89% of all IBCs and International Trusts registered in Saint Lucia. Both due to the high levels of compliance with legal obligations found in the course of the on-site inspection programme and the fact that the approach of the FSRA to date has been able to work with the regulated entities in assisting them to amend any deficiencies, penalties for failure to comply with legal obligations have generally not been imposed.

115. In regards to all other relevant entities in Saint Lucia (i.e. local and foreign companies, partnerships and ordinary trusts), over the review period, the Companies Registrar was the authority responsible for overseeing entities compliance with their legal requirements under the entity acts. While some work has been commenced by the Companies Registrar in reviewing files for compliance with annual return filing submissions for example and gazetting the list of defaulters, it is noted that this process is still at the initial stages and therefore was not comprehensive enough to ensure that all relevant entities were in compliance with requirements to maintain ownership information. Further, although the Companies Registrar has commenced a system of monitoring, over the review period, no entities were struck off for default and other penalties were not imposed.

116. The Inland Revenue Department is responsible for oversight with the ownership obligations set out under the Income Tax Act. However, it is noted that monitoring of the filing of returns and entities compliance with ownership activities was not strictly carried out.

117. Therefore, it is noted that Saint Lucia has made great strides to enhance its system of monitoring, namely through efforts from the FSRA and the commencement of a review of entities compliance with return filing obligations by the Domestic Companies and IBC Registrars. However, in the case of oversight by the Registrars, it is noted that the monitoring activities are in the initial stages and only commenced towards the end of the review period. Therefore, while the progress made by Saint Lucia in this area since the time of the Phase 2 report is recognised, Saint Lucia is nevertheless recommended to continue to implement its system of monitoring to ensure that there is a

regular system of oversight of the legal obligations for all relevant entities put in place and that its enforcement powers are sufficiently exercised in practice to ensure the availability of ownership and identity information in all cases.

### Determination and factors underlying recommendations

Phase 1 determination	
<b>The element is in place.</b>	
The obligation for a company formed under the laws of another CARICOM or OECS member state, but carrying on business in Saint Lucia, to ensure the availability of ownership information is not clear.	Saint Lucia should ensure that for companies formed under the laws of a CARICOM or OECS member state and carrying on business in Saint Lucia, there are clear obligations for ownership information to be maintained.

Phase 2 rating	
<b>Largely Compliant</b>	
Factors underlying recommendations	Recommendations
The Registrars nor the tax in Saint Lucia did not have a regular system of oversight of compliance of entities' ownership and identity information keeping requirements during the review period. <u>A comprehensive system of oversight was implemented by both the regulator and the Company Registrars over the review period. However as both of these processes have been recently implemented, they could not be sufficiently tested in practice by the assessment team over the review period. Additionally, for tax purposes, the IRD did not have a comprehensive system of oversight in place. Furthermore, penalties for failure to comply with ownership information and tax filing requirements have not been imposed in practice.</u>	Saint Lucia should <u>continue to monitor its recently implemented</u> ensure that there is a regular system of oversight of the legal obligations <u>to maintain ownership information put in place</u> and should ensure that its enforcement powers are sufficiently exercised in practice to ensure the availability of ownership and identity information in all cases.

## 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) and 5-year retention standard (ToR A.2.3)***

118. At the time of the Phase 2 report it was found that, pursuant to the requirements of the Income Tax Act, accounting records in line with the international standard are required to be maintained by all domestic companies, ordinary and limited partnerships, and ordinary trusts carrying on business in Saint Lucia. The term “carrying on business” is not defined for the purposes of the Income Tax Act. However, “business” is defined as “any profession, trade, venture, or undertaking and includes the provision of personal services or technical and managerial skills and any adventure or concern in the nature of trade but does not include any employment”. Therefore, the obligations will cover all persons chargeable to tax under the Income Tax Act.

119. Further, there are also requirements set out under the Companies Act for domestic companies, and under the Commercial Code for ordinary and limited partnerships to maintain accounting information. All trustees of ordinary trusts will be subject to the common law fiduciary obligations to maintain accounting information. In addition, all licensed entities will be subject to the accounting record requirements set out under the AML regime. For a detailed analysis of the accounting requirements under the various acts, please see paragraphs 205-228 of the Phase 2 report.

120. However, as was noted at the time of the Phase 2 report, these requirements exclude IBCs unless they have elected to pay tax which is less than 15% of all IBCs formed in Saint Lucia. Further, international partnerships and international trusts are also not subject to the requirements of the Income Tax Act. While some obligations exist under the IBC Act, International Partnerships Act and International Trusts Act, these requirements were not found to be in line with the international standard. As a result, the Phase 1 Report concluded that the general accounting requirements were not consistent with the international standards, as they did not ensure that the records could correctly explain all transactions, enable the financial position of the entity or arrangement be determined with reasonable accuracy at any time and allow financial statements to be prepared. Three recommendations were issued in regards to each of these three entities to ensure that reliable accounting information would be kept in all instances in line with the international standard. As a result, at the time of the Phase 2 report, element A.2 was determined to be “not in place” and rated “Non-Compliant”.

### *Overview of 2015 legal amendments to maintain accounting information*

121. In August 2015 and May 2016, Saint Lucia passed a series of amendments to the IBC Act, the International Partnerships Act, the International Trusts Act and the ITC Act to introduce comprehensive requirements for all entities to have accounting information in line with the international standard. The newly introduced legal amendments are set out below.

#### *Accounting information by IBCs*

122. Previously, the IBC Act provided for IBCs to keep at their registered office such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the IBC (s66, IBC Act). The IBC Act also provided that:

“Notwithstanding any enactment to the contrary, an international business company may keep such books, records, and financial statements as it thinks fit.

123. Therefore, IBCs were not required to keep the records that are otherwise required to be kept by all persons carrying on business, whether pursuant to the Income Tax Act or otherwise imposed by Saint Lucia’s laws.

124. In August 2015, Saint Lucia enacted the IBC Amendment Act 2015, which introduced comprehensive accounting record requirements for IBCs. It subsequently further clarified those requirements in the IBC (*Amendment*) Act 2016 (IBC Amendment Act 2016). Section 2 of the IBC Act was amended to include a definition of “records” as:

“Any underlying documentation, accounting record, ownership information, accounts, books and documents kept and maintained to prepare tax returns and financial statements, including a general or subsidiary ledger, a sales receipt or an invoice.”

125. Section 111(1) of the IBC act now prescribes that an IBC shall keep and maintain records for a period of six years from the date of the transaction or from the date of date of termination of the business relationship. Section 111(2) sets out that records kept by IBCs shall:

- a. show and correctly explain a transaction;
- b. enable the preparation of financial statements; and
- c. enable the financial position of the international business company to be determined, with reasonable accuracy, at any point in time.”

126. As set out above, Section 2 of the IBC Act now sets out a definition of “records” which includes underlying documentation. Section 2 of the IBC Act was also amended to introduce a definition of “underlying documentation” to mean

“Any medium by which information is recorded in relation to a transaction or other business relation and includes an invoice or contract.”

127. Section 111(3) prescribes that the underlying documentation must be retained in order to show the details of all sums of money received and expended in relation to expenditure, all sales and purchases and other transactions, and the assets and liabilities of the IBC.

128. Section 111(4) of the IBC Act now compels an IBC to submit such records to its registered office when required to do so by any law in force in Saint Lucia or agreement for tax purposes or mutual legal assistance. In cases where a request for accounting information has been received by Saint Lucia, the IBC is required to deliver any requested accounting information to the office of its registered agent within 21 days of receipt of the notice for the information from the competent authority (s. 111(4), IBC Act). Where the IBC fails to deliver such accounting information, it is liable to a fine of USD 1000 for every month in default (s. 111 (5), IBC Act).

129. Pursuant to the IBC Amendment Act 2016, section 111(9) of the IBC Act now requires all IBCs to submit unaudited financial statements, at the office of its registered agent, within three months of the end of the financial year of the international business company and the financial statements must be accompanied by the prescribed declaration made by the IBC. An IBC that fails to submit the unaudited financial statements and the declaration to its registered agent is liable to pay a penalty of USD 100 for every month or part of the month that the IBC fails to submit the unaudited financial statements and declaration. By 31 December each year, the registered agent of the IBC is then required to send a list to the IBC Registrar of all IBCs that have not complied with the requirement to submit its financial statements and declaration to the registered agent. IBCs in default will be gazetted and subsequently struck off the registry for continued non-compliance.

130. A registered agent that fails to comply with the requirement to submit this information to the IBC Registrar or provides false information will commits an offence and is liable to a fine of up to USD 3 000.

131. The IBC Registrar shall then proceed to publish the names of all IBCs in default in the official gazette by 31 March of the following year along with the applicable fees for default. In the case that the IBC continues to be in default it shall be struck from the registry (s. 111(8), IBC Act). However, it is noted that as these legal requirements were introduced only in 2016, the

actions they stipulate in respect of the monitoring of accounting requirements will only commence in 2017.

### *International Partnerships*

132. At the time of the Phase 2 report, partners of international partnerships were only bound to render “true accounts and full information” of all things affecting the partnership to any other partner and all partners must account to the partnership for any benefit derived from any transaction concerning the partnership, or any use by the partner of the partnership’s property, name or business connections (ss47-48, Commercial Code). Therefore, the requirements for international partnerships to maintain accounting records were found to be insufficient and not in line with the international standard.

133. In August 2015, Saint Lucia enacted the International Partnership (*Amendment*) Act 2015 (IP Amendment Act 2015) prescribing comprehensive requirements for all international partnership to now be maintained. In May 2016, it also enacted the International Partnership (*Amendment*) Act 2016 (IP Amendment Act 2016) to clarify further the accounting obligations. Section 2 of the International Partnership Act was amended to include a definition of “records” to read

“Any underlying documentation, accounting record, ownership information, accounts, books and documents kept and maintained to prepare tax returns and financial statements, including a general or subsidiary ledger, a sales receipt or an invoice.”

134. Section 86(1) of the International Partnership Act now prescribes that all international partnerships shall keep and maintain records to show the financial position of the international partnership. The records that are kept must:

- a. show and correctly explain a transaction;
- b. enable the preparation of financial statements; and
- c. enable the financial position of the international partnership to be determined, with reasonable accuracy, at any point in time.

135. Pursuant to section 86(4) of the International Partnership Act, underlying documentation must be maintained in order to show the sums of money received and expended in relation to expenditure, all sales and purchases, and the assets and liabilities of the international partnership.

136. Pursuant to the IP Amendment Act 2015, section 86(2) of the International Partnership Act now prescribes that an international partnership shall keep records for a period of six years from the date of the transaction or from the date of date of termination of the business relationship.

137. Section 86(5) of the International Partnership Act now compels an international partnership to submit such records to its registered office when required to do so by any law in force in Saint Lucia or agreement for tax purposes or mutual legal assistance.

138. In cases where the international partnership has been requested to provide accounting information under a request from an EOI agreement, the international partnership is required to deliver any requested accounting information to the office of its registered agent within 21 days of receipt of the notice for the information from the competent authority (s. 86(5), International Partnership Act). Where the international partnership fails to deliver such accounting information, it is liable to a fine of USD 1000 for every month in default (s. 86 (6), International Partnership Act).

139. Pursuant to the IP Amendment Act 2016, section 86(10) of the International Partnership Act now requires all international partnerships to submit unaudited financial statements, at the office of its registered agent, within three months of the end of the financial year of the international business company and the financial statements must be accompanied by the prescribed declaration made by the international partnership. An international partnership that fails to submit the unaudited financial statements and the declaration to its registered agent is liable to pay a penalty of USD 100 for every month or part of the month that it fails to submit the unaudited financial statements and declaration. By 31 December of that year, the registered agent of the international partnership is then required to send a list to the IBC Registrar of all international partnerships that have not complied with the requirement to submit its financial statements and declaration to the registered agent.

140. A registered agent that fails to comply with the requirement to submit this information to the IBC Registrar or provides false information will have committed an offence and may be liable to a fine of up to USD 3 000. The IBC Registrar shall then proceed to publish the names of all IBCs in default in the official gazette by 31 March of the following year along with the applicable fees for default. In the case that the international partnership continues to be in default it shall be struck from the IBC registry (s. 111(8), IBC Act).

### *International Trusts*

141. At the time of the Phase 2 report, the registered trustee of an international trust was only obliged to keep documents necessary to show the “true financial position of the trust” (s52(1)(c), International Trust Act). Further, the International Trust Act did not establish an obligation for the trustee to keep all reliable accounting records, including underlying documentation for

a 5 year minimum period. Therefore, the obligations for international trustees did not meet the international standard.

142. In August 2015, Saint Lucia enacted the International Trust (*Amendment*) Act 2015 (International Trust Amendment Act) prescribing comprehensive requirements for all international trusts to now be maintained. It subsequently further clarified those requirements in the International Trust (*Amendment*) Act 2016 (International Trust Amendment Act 2016). Section 2 of the International Trust Act was amended to include a definition of “records” to include

“Any underlying documentation, accounting record, ownership information, accounts, books and documents kept and maintained to prepare tax returns and financial statements, including a general or subsidiary ledger, a sales receipt or an invoice.”

143. Section 52(2) of the International Trust Act now prescribes that the registered trustee of an international trust shall keep and maintain records for a period of six years from the date of the transaction or from the date of date of termination of the business relationship. Section 52(3) of the International Trust Act sets out that records kept pursuant to section 52(1) must:

- a. show and correctly explain a transaction;
- b. enable the preparation of financial statements; and
- c. enable the financial position of the international trust to be determined, with reasonable accuracy, at any point in time.

144. Section 53(5) of the International Trust Act now compels an international trust to submit such records to its registered office when required to do so by any law in force in Saint Lucia or agreement for tax purposes or mutual legal assistance. Further, in the case that the international trust fails to comply with the accounting record requirements, pursuant to section 53(5A), this shall be deemed an offence and the trustee shall be liable to a fine of USD 1 000 for every month in default. In addition the Court may also may an order that the registered agent ceases to act as trustee of the international trust or that their licence to act as trustee of the international trust be suspended (s. 53(10)(b), International Trust Act).

### ***Oversight of accounting requirements***

145. At the time of the Phase 2 report, in addition to an insufficient legal framework for accounting records to be maintained, it was found that an oversight programme of the accounting record requirements was not in place in Saint Lucia.

146. As outlined above, Saint Lucia has now amended the IBC Act, International Partnership Act and International Trust Act to ensure that accounting record requirements in line with international standards are in place for all entities. In regards to monitoring of those requirements, Saint Lucia has reported that the Companies, IBC and Cooperatives Registrars are the entities responsible for monitoring all entities' compliance with the accounting record requirements that are set out under the various entity acts. Whilst all registered entities must submit an annual return to the Registrars of Companies and IBCs, there is no requirement for accounting information to be included. In regards to monitoring of the accounting record obligations under the entities' Acts, the Registrars (Companies and IBCs) have indicated that there is currently no system in place to ensure that accounting records are being maintained and enforcement of these obligations by the Registrars will therefore not occur in practice. However, all co-operative societies are required to submit accounting information to the Registrar of Cooperatives on an annual basis.

147. In regards to oversight of accounting obligations under the Income tax Act (which will be applicable to all entities registered for tax purposes but this will generally exclude tax exempt IBCs, international partnerships and international trusts), while the Inland Revenue Department implemented a more detailed oversight inspection programme in July 2015, this is outside the review period (July 2013 – June 2015). Therefore over the review period, oversight of accounting obligations was limited to audit reviews in keeping with relevant tax Acts. As such accounting records requested during the audit review would be verified.

148. In accordance with the newly introduced accounting record requirements for IBCs, section 111(4) of the IBC Act compels an IBC to submit accounting records to its registered office when required to do so by the any law in force in Saint Lucia or agreement for tax purposes or mutual legal assistance. Nevertheless IBCs are compelled to submit unaudited financial statements at the office of the registered agent. However, in most cases the underlying documentation and records will be maintained offshore at the head office of the IBC.

149. In the case of international partnerships, it is also the case that there is no requirement for the records to be maintained at the office of the registered agent and will therefore be maintained offshore. In the case of international trusts, the obligation to maintain accounting records lies with the trustee and therefore accounting records will be maintained in Saint Lucia.

150. All IBCs, International Partnerships and International Trusts must have a registered agent or trustee (in the case of international trusts) in Saint Lucia. The registered agent or trustee will be subject to the oversight programme of the FSRA (for more information on the oversight activities

carried out by the FSRA over the review period, see section A1.1 *Oversight of service providers*). As the legal requirements for IBCs, international partnerships and international trusts to maintain compulsory accounting records were only enacted in August 2015 and are only applicable for the accounting year commencing January 2016, as yet there has been no oversight of the accounting obligations undertaken by the FSRA except for regulated financial institutions.

151. In the case of international trusts, the FSRA has a plan in place to include the inspection of accounting information to be held by the registered trustee in the course of its on-site inspection programme. However, it remains that IBCs and International Partnerships are not required to maintain accounting information in Saint Lucia. Therefore it is not clear as to how compliance with those accounting record requirements will be complied with in practice.

### *Oversight by the Inland Revenue Department*

152. For tax purposes, there are 5 319 companies registered for tax purposes with the Inland Revenue Department in Saint Lucia. All entities registered for tax are generally obliged to file a tax return by 31 March or three months after the end of their tax year in the case that they have elected a different tax year end. Authorities from the Inland Revenue Department were unable to provide compliance rates for tax return filing from the review period but reported that they have noticed a decline in compliance with the tax return filing obligation from 2013 to 2014.

153. Since July 2015, the tax authority has been restructured into a Large and Medium taxpayer section (900 entities), and a Small and Micro taxpayer section. With these units there is a dedicated team (consisting of three persons) for each unit for late non-filers. Officials from the Inland Revenue Department have reported that generally, a system of monitoring of compliance prior with tax filing obligations prior to 2015 was not in place. However, officials from the Inland Revenue Department have reported that they are going to do a review of all tax filing years in reverse chronological order to review entities compliance with tax return filing obligations. However, over the review period, oversight of entities compliance with accounting information was not undertaken except when a request was made for accounting information in conducting an audit.

### ***Conclusions on Element A.2.***

154. Since the Phase 2 report, Saint Lucia has introduced comprehensive requirements for all entities to maintain accounting information in line with the international standard. In regards to the practical implementation of accounting record requirements in Saint Lucia, over the review period, there was no system

of oversight in place. The Inland Revenue Department has introduced a more detailed system of monitoring whereby compliance with accounting record requirements will be verified in the course of its on-site inspection programme. However this structured system of oversight was only implemented in July 2015, after the review period. Further as the legal requirements in line with the international standard for IBCs, international partnerships and international trusts, which are non-financial entities, were only introduced after the review period, the practical implementation of those accounting requirements could not be tested by the assessment team. Over the review period, Saint Lucia has not received any requests for accounting information.

155. In light of the above, accounting records, Saint Lucia should monitor the practical implementation of the newly introduced accounting requirements for IBCs, international partnerships and international trusts to ensure that all relevant entities keep accounting records and underlying documentation and that all types of information are being maintained in line with the international standard. Further, Saint Lucia should put in place an oversight programme to monitor the compliance of the obligations to maintain accounting records by all relevant entities. Element A.2 is determined to be “in place” and is rated “Partially Compliant”.

#### Determination and factors underlying recommendations

Phase 1 determination	
The element is <b>not</b> in place.	
Factors underlying recommendations	Recommendations
International Business Companies are exempt from the record-keeping obligations of the Income Tax Act, and otherwise are only required to keep such accounting records as their directors think fit. Pursuant to the AML regime, some relevant accounting records for transactions conducted by the IBC through their registered agent or other AML Service Provider will be required to be kept. However this will not ensure all relevant accounting records are maintained.	Saint Lucia should introduce requirements to ensure that IBCs are in all instances subject to requirements to keep relevant accounting records, including underlying documentation, for a minimum five year period.

<b>Phase 1 determination</b>	
<b>The element is not in place.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
<p>International Partnerships are exempt from the record-keeping requirements of the Income Tax Act. They will only be subject to the accounting record obligations established by the Commercial Code which requires partners to render “true accounts and full information” of all things affecting the partnership. There is no express requirement to keep such records for any minimum period of time. Pursuant to the AML regime, some relevant accounting records will be required to be kept in respect of the transactions conducted by the International Partnership through its registered agent or other AML Service Provider. However this will not ensure all relevant accounting records are maintained.</p>	<p>Saint Lucia should ensure that International Partnerships are subject to a requirement to keep reliable accounting information, including underlying documentation for a minimum period of five years.</p>
<p>Trusts will be subject to the common law obligations to keep records relating to the trust, although the scope of those accounting record obligations were not ascertainable. Further, certain ordinary trusts will also be subject to the Income Tax record-keeping obligations. Trusts which engage an AML Service Provider will be required to keep some relevant accounting records, however these obligations will not ensure that all relevant accounting information is kept in respect of trusts created under the laws of Saint Lucia, or which are administered from or have a trustee resident in Saint Lucia.</p>	<p>Saint Lucia should ensure that trusts which are established under its laws, administered from, or with a trustee resident in Saint Lucia, are subject to requirements in all instances to keep reliable accounting information, including underlying documentation for a minimum period of 5 years.</p>

Phase 2 rating	
Non-Partially-Compliant	
Factors underlying recommendations	Recommendations
<u>In August 2015 and May 2016, Saint Lucia enacted new laws to ensure the keeping of accounting information and underlying documentation by all relevant entities in line with the international standard. Although an oversight programme to monitor compliance with accounting record requirements has been implemented by the Regulator and the Internal Revenue Department, as these amendments are recent and were enacted after the review period, they have not been tested in practice.</u>	<u>Saint Lucia should monitor its newly implemented system of oversight to ensure that all entities are maintaining accounting information in line with the international standard and that its enforcement powers are sufficiently exercised in practice.</u>

### A.3 Banking information

Banking information should be available for all account-holders.

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

156. The Phase 2 report found that the legal requirements to maintain banking information as well as the monitoring in practice are in line with the international standard. A summary of the conclusions from the Phase 2 report is included here and an analysis of the experience in practice since the last review. For a more detailed analysis of the legal requirements under the AML regime for maintaining banking information, see Phase 2 report, paragraphs 237-244.

157. Pursuant to Saint Lucia’s AML regime (MLPA), all financial entities are required to maintain client identity information as well as all financial and transactional information relating to account holders. Pursuant to Schedule 2 of the MLPA a “financial institution” will include:

- a bank licensed under the Banking Act;
- a building society or credit society registered under the relevant Acts;
- a company performing international financial services under the international financial services legislation in force in Saint Lucia;

- a trust company, finance company or deposit taking company, declared by the Minister to be a financial institution; and
- exchange bureaus and cash remitting services.

158. The AML Guidelines describe the transaction records to be kept, including information on all transactions carried out on behalf of or with a customer in the course of relevant business. This extends to transaction records in support of entries in the accounts, in whatever form they are used, e.g. memoranda of sale and purchase, custody of title documentation *etc.*, should be maintained in a readily retrievable form from which a satisfactory audit trail may be compiled where necessary, and which may establish a financial profile of any suspect account or customer. These should include underlying documents, which would be necessary to compile any audit trail. Once a business relationship is established, the AML Guidelines recommends the AML Service Provider keep all relevant identity and transaction records for a minimum seven-year period (paragraph 170).

159. In sum, there are sufficient legal obligations in place requiring financial institutions to establish and maintain all relevant records pertaining to accounts, as well as to related financial and transactional information.

#### *Availability of banking information in practice*

160. Saint Lucia's banking sector is made up of 5 domestic commercial banks, 6 domestic credit institutions, and 15 international banks (captive and non-captive) that all have physical presence on the islands. At May 2016, both domestic banks and international banks together held approximately USD 3 035 million in assets.

161. The oversight and ongoing monitoring of the banking information maintenance obligations under the MLPA are supervised by the financial regulators, being the FSRA, FIA, and ECCB. Over the review period, the supervision programme of the FSRA consisted of both desktop monitoring and on-site visits. During this time, the FSRA conducted 4 on-site visits of non-captive banks. Officials from the FSRA have reported that of those banks inspected that compliance all legal and regulatory requirements, including that of the AML regime to maintain updated client ownership as well as all transactional information was very high. A comprehensive analysis of the oversight programme undertaken by the FSRA is set out at paragraphs 245-248 of the Phase 2 report.

162. Further, officials from the FIA have also reported that in their supervisory role as ensuring that entities comply with the provisions of the MLPA, they generally carry out lot of on-site inspections on financial institutions and banks. In the course of the on-site visits as conducted by the FIA, officials

have reported that amongst other information, they will always request beneficiary ownership information and compliance tends to be between 90% and 100%.

163. The ECCB acts as the regulator for commercial banks and credit institutions in Saint Lucia and is responsible for the supervision of all licensed financial entities. In this manner the ECCB has reported that its inspection programme combines both on-site examination and offsite surveillance adopting a risk based approach to supervision. Further, since the time of the Phase 2 review, Banking Act No. 3 of 2015 has been enacted in Saint Lucia which now vests all licensing procedures with the ECCB. The most recent on-site inspection visit undertaken by the ECCB in Saint Lucia took place in August 2014. A comprehensive analysis of the oversight programme undertaken by the ECCB is set out at paragraphs 249-253 of the Phase 2 report.

164. The phase 2 report determined that Saint Lucia has put in place a system whereby the availability of information is ensured from a legal and a practical perspective.

### ***Conclusions on Element A.3.***

165. Saint Lucia has strong regulatory and monitoring mechanisms in place to ensure the availability of banking information. As was the case at the time of the Phase 2 reports, element A.3 is determined “in place” and is rated “compliant”.

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>Compliant</b>



## B. Access to information

### Overview

166. A variety of information may be needed for the administration and enforcement of relevant tax laws and jurisdictions should have the authority to access all such information. Relevant information includes that which is 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. This section of the report assesses Saint Lucia's legal and regulatory framework gives to the authorities access powers that cover the right types of persons and information, the effectiveness of its practices and whether the rights and safeguards that are in place would be compatible with effective exchange of information.

167. Access to ownership and accounting information, as well as any other type of information, is ensured on the basis of powers granted under the ITC Act, as well as the Income Tax Act. When gathering information for an EOI request, the ITC Act takes precedence over the Income Tax Act (as a possible domestic tax interest was identified under the Income Tax Act in the Phase 1 report). Saint Lucia's competent authority is the Minister of Finance who has delegated this power to the Comptroller of the Inland Revenue Department. The Comptroller of the Inland Revenue Department thus has broad powers under the ITC Act to obtain relevant information from any person within the jurisdiction who has the information in his possession or custody, or under his control. The competent authority also has the power to search premises and seize information where there is a reasonable certainty that the information is endangered. For Saint Lucia to use its powers under the ITC Act to access information, the relevant agreement must be scheduled to the ITC Act. As of May 2016, all of its signed agreements have been scheduled to the ITC Act.

168. At the time of the Phase 2 review, the access powers under the ITC Act could not be assessed. The ITC Act was enacted in August 2012 and not all of Saint Lucia's agreements were immediately scheduled to it. Therefore,

the access powers under the ITC Act could not be used to gather information during the Phase 2 review period. At the time of the Phase 2 review, Saint Lucia unsuccessfully sought to obtain the requested information under the Income Tax Act in three of four requests received during the review period. Neither did Saint Lucia exercise any of its compulsory powers. As such, element B.1 was determined to be “in place” and rated “Partially Compliant”.

169. For the current review period, Saint Lucia is able to use its access powers under both the Income Tax Act and the ITC Act to obtain and share information that is the subject of an EOI request. In January 2014, the Income Tax Act was amended to clarify the use of its powers to access information for the purpose of EOI. Additionally, all of Saint Lucia’s agreements are now scheduled to the ITC Act. Over the review period, Saint Lucia received one EOI request, but was able to access the requested information within its own Inland Revenue database. Thus the powers under the ITC Act still need to be sufficiently tested through practice. As a result, element B.1 is determined to be “in place” and is upgraded to “Largely Compliant”.

170. With respect to notification requirements and rights and safeguards, Saint Lucian law does not contain a requirement that the taxpayer under examination be notified of a request; however, at the time of Phase 2, where a taxpayer or interested person objected to the fulfilment of a request, the information in question was required to be retained until the objection was resolved. Although element B.2 was deemed to be “in place” and rated “Compliant”, the Phase 2 report recommended that Saint Lucia ensure that its domestic legal provisions are compatible with the timely access and exchange of information. Since the time of the Phase 2 report, Saint Lucia has amended the ITC Act to replace the mandatory extension of the retention period to a discretionary one. Accordingly, element B.2 is determined to be “in place” and rated “Compliant”.

171. Saint Lucia’s legislative and institutional frameworks appear sufficient to provide a range of information. Although yet untested in practice, Saint Lucia’s powers to compel the provision of information also appear to be adequate. Saint Lucia’s ability to obtain and share all necessary information will be further demonstrated as practice develops.

## 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).

172. The Phase 2 report found Saint Lucia’s legal framework establishing the competent authority’s ability to obtain and provide information to be largely in accordance with the standard, although requiring improvement. A summary of the conclusions from the Phase 2 report, as well as a description of developments and an analysis of the experience in practice since the last review, are included in this section.

173. Saint Lucia’s competent authority is the Minister of Finance. Under the International Tax Cooperation Act (ITC Act), the Comptroller of the Inland Revenue Department is the authorised representative of the Minister of Finance for EOI purposes (s.5(1), ITC Act). Similarly, in practice, the powers to gather information under the ITC Act also have been delegated to the Comptroller of the Inland Revenue Department.

### ***Ownership and identity information (ToR B.1.1) and accounting records (ToR B.1.2)***

174. The access powers for Saint Lucia’s competent authority are defined in the Income Tax Act and the ITC Act. As described in the Phase 2 report, both the Income Tax Act and the ITC Act grant the Comptroller broad access powers covering all types of information that may be the subject of an EOI request as well as specific access powers with respect to banking information. The Comptroller is authorised to obtain relevant information from any person within the jurisdiction who has the information in his possession or custody, or under his control. Such access powers may require a person or entity to provide documentation, testimony or access to premises for the Comptroller to examine business records. All of this information may be exchanged with treaty partners. In order for the Comptroller to access information under the ITC Act, the relevant agreement must be first scheduled to the ITC Act via an order published in the official gazette. During the Phase 2 review, Saint Lucia advised that the ITC Act would take precedence over the Income Tax Act for EOI purposes. As the access powers under the ITC Act had not been used during the Phase 2 review, Saint Lucia received a recommendation to monitor its access powers to make sure that they were effective in all cases.

*Access on Ownership and Accounting Information in Practice*

175. At the time of the Phase 2 review, Saint Lucia had not yet exercised its access powers under the ITC Act because not all of its agreements were scheduled to the ITC Act. Consequently, Saint Lucia continued to rely upon its powers under the Income Tax Act to respond to requests received during the Phase 2 review period. However, in three of the four EOI requests received at the time of the Phase 2 report, Saint Lucia failed to obtain the requested information due, in part, to uncertainty over whether the powers under the Income Tax Act could be used to obtain information for an EOI request (although this was subsequently clarified by an amendment to the Income Tax Act in January 2014).

176. Further, during the Phase 2 review period, the practice of the competent authority was to serve notice of a request for information on the registered agent only, and not on the entity in question, regardless of whether the registered agent was obliged to keep the information sought. Consequently, in the three instances mentioned above, when faced with the refusal of the registered agent to provide the information, the competent authority was unable to fulfil the request. However, Saint Lucia advised the Phase 2 assessment team that as of the enactment of the ITC Act in August 2012, it revisited all of its EOI practices and established a formal EOI unit with clear guidelines as to EOI procedure. Under the new EOI procedure, all notices concerning a request for information are now to be served on the both the relevant entity and its registered agent. As the new procedure under the ITC Act was yet untested at the time of the Phase 2 review, Saint Lucia was recommended to monitor the practical implementation of the ITC Act to ensure that it would allow for access to all information included in an EOI request.

177. During the current review period, Saint Lucia received one request for ownership information. Saint Lucia advised that it did not need to exercise its access powers under the ITC Act to obtain the information sought as the competent authority was able to procure the information through its own internal channels. As such, Saint Lucia's access powers under the ITC Act remain untested in practice.

*Developments relating to access powers*

178. As of May 2016, all of Saint Lucia's signed EOI agreements have been scheduled to the ITC Act and officials from Saint Lucia have reported that future agreements will be scheduled to the ITC Act as soon as possible after ratification. Accordingly, the competent authority may now gather information for EOI purposes under both the amended Income Tax Act and the ITC Act.

179. With respect to the one request received during the review period, as the competent authority was already in possession of the information, it did not need to go through the formal EOI channels to obtain the information sought so the new EOI procedure remains untested in practice. As such, the recommendation for Saint Lucia to monitor its access powers remains in place.

***Bank information (ToR B.1.1)***

180. The Phase 2 report found that the rules regarding access to banking information were identical to those applicable to other types of information, as set out above. No issues were identified specifically with respect to access to banking information. No changes to the rules applicable to banking information have taken place since the Phase 2 review. To date, Saint Lucia has not received any requests pertaining to bank information, but in the event that Saint Lucia did receive a request for banking information, they should be able to fully access this information under the ITC Act.

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

181. The Phase 2 report determined that authorities in Saint Lucia were no longer restricted in their information gathering abilities by a domestic tax interest. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. The Phase 1 report of Saint Lucia identified a possible domestic tax interest requirement under the Income Tax Act. Indeed, in three out of four requests received during the Phase 2 review period, the registered agent to whom the request was sent refused to provide the information on the basis that the entity in question was tax exempt. Subsequently, in January 2014 this issue was resolved with an amendment clarifying that the powers under the Income Tax Act could be used equally for domestic tax purposes as well as for accessing and exchanging all types of information for EOI purposes. The ITC Act also allows the competent authority to access all types of information for all entities for the purpose of fulfilling an EOI request. No incoming requests have been declined by Saint Lucia for the period under review on the basis of a domestic tax interest.

***Enforcement provisions to compel production and access to information (ToR B.1.4)***

182. The Phase 2 report determined that enforcement provisions to compel production and access to information were in place in Saint Lucia. Pursuant to sections 7 and 8 of the ITC Act, where there are “reasonable

grounds to suspect that an offence against the ITC Act is being, or about to be, committed”, the Comptroller may obtain a search warrant to enter premises and seize any article, document or information which he or she has cause to believe may be relevant to a request. Nevertheless, in three of the four requests received in the Phase 2 review period, the competent authority did not apply any of the applicable enforcement powers to compel production of the information or seek other means by which to access the information when the registered agent refused to comply with the notice. The competent authority’s compulsory powers thus remain untested in practice.

183. At the time of the Phase 2 review, the Income Tax Act contained penalties for failure to provide information, but no such penalties existed under the ITC Act. Further, with respect to the three requests during the Phase 2 review period for which Saint Lucia failed to obtain the information sought, the competent authority did not impose any penalties on the registered agents who refused to comply with the requests. Accordingly, Saint Lucia was recommended to amend the provisions of the ITC Act to ensure that effective penalties were in place for failure to supply information requested in an EOI request. Saint Lucia was also recommended to ensure that the access powers of its competent authority are used effectively to obtain all information included in an EOI request and also to monitor the access powers under the ITC Act.

#### *Developments relating to enforcement provisions*

184. Since the Phase 2 review, Saint Lucia has enacted the ITC (*Amendment*) Act, No. 18 of 2014, which institutes penalties for failing to comply with a notice to deliver information to the competent authority. Under the new section 7(7)(c) of the ITC Act, a person who contravenes such an order is liable, upon conviction, to a fine not exceeding XCD 50 000 (USD 18 518) and/or to imprisonment for a term not exceeding 6 years. Further, Saint Lucia advised that, under the new EOI procedure, notices requesting information now state the powers of the competent authority, the legal obligation of the taxpayer or third party to comply and the penalties for non-compliance. As a result, the recommendation to implement penalty provisions for failure to supply information has been removed. In practice, as Saint Lucia only received one request over the review period and this information was gathered from their own database, Saint Lucian authorities have not yet had the need to impose penalties on any entities for failure to comply with an EOI request.

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

185. The Phase 2 report concluded that although under Saint Lucia’s domestic legal framework, a number of secrecy provisions exist, such provisions did not interfere with Saint Lucia’s ability to exchange information with

treaty partners. In the context of fulfilling an EOI request, the competent authority's access powers override all confidentiality obligations of international mutual funds, international insurance companies, banks and other financial institutions, and trusts. No changes to any of the aforementioned secrecy provisions have taken place since the Phase 2 review.

### *Bank secrecy*

186. The Banking Act imposes obligations on persons not to disclose the identity of assets, liabilities, transactions or other information in respect of a depositor or customer of a financial institution, but such obligations are subject to exemptions where the information is to be accessed for EOI purposes. The International Banking Act does not contain any express obligation to maintain the confidentiality of customer or transaction information.

### *Professional secrecy rules*

187. The Phase 2 report determined that secrecy provisions applicable to various professions did not prevent the effective exchange of information by the Saint Lucian competent authority. In practice, no person has ever invoked legal privilege, or made a secrecy claim, to refuse the production of information for EOI purposes. Likewise, no issues have been raised by peers in this regard nor have any changes to the privilege rules taken place.

## ***Conclusions regarding Element B.1***

188. The Comptroller of the Inland Revenue Department has broad powers under both the ITC Act and the Income Tax Act to access all types of information for EOI purposes. With the amendment to the Income Tax Act explicitly clarifying its application to EOI requests and the scheduling of all agreements to the ITC Act, the competent authority now has information gathering capabilities under both acts and is no longer restricted by a domestic tax interest. Further, the ITC Act has been amended to include penalties for failure to comply with a request for information notice. As a result, the recommendation to implement effective penalties for failure to supply the information requested in a notice under the ITC Act has been removed. The determination of element B.1 remains “in place”.

189. As the only request received during the review period did not require the competent authority to obtain the requested information through formal channels or use any compulsory powers, the competent authority's abilities to access information under the ITC Act remain untested in practice. Accordingly, the recommendation for Saint Lucia to monitor its access powers remains. However, as Saint Lucia now serves the notice to produce

information on both the relevant entity and its registered agent, the recommendation to ensure that access powers are used effectively to obtain all information included in an EOI request is removed. Considering the foregoing, the rating for element B.1 has been upgraded to “Largely Compliant” Nevertheless, It is recommended that Saint Lucia monitors its access powers to information for EOI purposes to make sure that they are effective in all cases.

**Determination and factors underlying recommendations**

Phase 1 determination	
The element is in place.	
Phase 2 rating	
Partially-compliant Largely Compliant	
Factors underlying recommendation	Recommendation
Although there are clear penalties in place for failure to provide information requested under the Income Tax Act, there is no penalty in place under the International Tax Cooperation Act for failure to provide information requested in a notice pursuant to an EOI request.	Saint Lucia should amend the provisions of the International Tax Cooperation Act to ensure that there are effective penalties in place for failure to supply the information requested in a notice issued under the International Tax Cooperation Act pursuant to an EOI request.
<u>The competent authority has not yet used its access powers under the ITC Act to gather information. Over the period, only one request was received by the competent authority and the request was able to be satisfied using information already in the possession of the competent authority. Therefore, the access powers granted to the competent authority under the ITC Act have not been tested in practice over the review period.</u>	It is recommended that Saint Lucia monitors its access powers to gather information for EOI purposes to make sure that they are effective in all cases.

Phase 2 rating	
Partially-compliant Largely Compliant	
Factors underlying recommendation	Recommendation
Over the three-year review period, it was the practice of Saint Lucia's competent authority to serve a notice to produce on the registered agent only. In cases where the registered agent refused to produce information, the access powers at the disposal of Saint Lucia were insufficient to compel the production of this information. This resulted in Saint Lucia not obtaining all of the information requested in a number of cases.	Saint Lucia should ensure that the access powers of its competent authority are used effectively to obtain all information included in an EOI request.

## 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.

190. The applicable rights and safeguards in a jurisdiction should not impede or delay effective exchange of information (e.g. where prior notification is likely to undermine the chance of successfully obtaining the requested information or where the information is required urgently).

191. The Phase 2 report found the rules in Saint Lucia governing the procedure for prior notification to be in accordance with the standard although it did identify one area of deficiency relating to the holding period for information when an objection to a request is made. A summary of the conclusions from the Phase 2 report, as well as a description of developments and an analysis of the experience in practice since the last review, are included in this section.

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

192. Saint Lucia's domestic legislation contains no requirement that a taxpayer under investigation or examination be notified of a request. In fact, section 5 of the newly revised EOI manual (entitled Notification to Taxpayer or Third Party of a Request) explicitly states that the ITC Act "lays no obligation to notify a taxpayer of any request for information made by a treaty partner relating to the arrears of or any information pertaining to that taxpayer".

193. Under the newly formalised EOI procedure, the notice to the taxpayer and registered agent contains a minimum amount of information (enough to identify the relevant transaction or taxpayer). Saint Lucian authorities explain that, if possible, they will attempt to obtain the information without naming the taxpayer in question. Where a request specifies the name or contact information of an individual said to be in possession or control of the requested information, neither the taxpayer nor any other person may be notified of the request.

194. Although Saint Lucian law does not require notification of the taxpayer, at the time of the Phase 2 review, it contained a mandatory retention period that could potentially interfere with exchange of information. At the time of the Phase 2 report, the situation was such that once the competent authority received information pursuant to a notice or a search warrant, they were obliged to retain that information for 20 days prior to sending it to the requesting jurisdiction. Further, pursuant to section 9(c) in the event a taxpayer or interested person objected to the provision of the requested assistance and sought legal recourse, the Competent Authority was obliged to extend the 20 day holding period. The Phase 2 report noted that the ITC Act did not set clear parameters as to the length of the retention period in such situations, which means in practice, the retention period would be extended until the objection was resolved. As such, Saint Lucia received a recommendation to ensure that its domestic law provisions are compatible with the timely access and exchange of information.

#### *Developments relating to notification requirements*

195. Following the Phase 2 review, Saint Lucia amended the ITC Act to allow the competent authority to exercise discretion in extending the retention period where an objection is raised and legal recourse is sought. The new section 9(c) of the ITC Act reads, “Where the [competent authority] obtains an article, document or information under section 7 or 8, he or she *may* [emphasis added] not disclose or reveal to any person, the contents or import of the document or information, for 20 days or such extended time period ... if a taxpayer or interested person has objected to the [competent authority] providing the assistance requested and has sought judicial review ... or other lawful recourse”. Saint Lucian authorities have reported that in exercising this discretion, the competent authority will first discuss the matter with the requesting jurisdiction and will take into account factors such as the nature and urgency of the request the grounds of the objection and the possible time-frame for the objection to be resolved.

#### ***Conclusions regarding Element B.2***

196. The Phase 2 report considered the mandatory extension of the holding period to allow for the resolution of an objection to an EOI request to be

a potential impediment to the effective exchange of information. Therefore, although the element was deemed to be “in place”, a recommendation was issued to Saint Lucia to ensure that its domestic law provisions are compatible with the timely access and exchange of information. Following the Phase 2 review, Saint Lucia amended its legislation to give its competent authority discretion in extending the holding period, so the recommendation has been removed. However, Saint Lucia is recommended to monitor the manner in which the competent authority exercises this discretion to ensure that the holding period does not pose an impediment to effective EOI in practice.

**Determination and factors underlying recommendations**

Phase 1 determination	
<b>The element is in place.</b>	
Factors underlying recommendation	Recommendation
<del>In the case of information exchange, under the International Tax Cooperation Act, the competent authority is required to extend the 20 day holding period where a taxpayer or interested person has sought judicial review or other legal recourse.</del>	<del>Saint Lucia should ensure that its domestic law provisions are compatible with the timely access and exchange of information.</del>

Phase 2 rating	
<b>Compliant</b>	
Saint Lucia has amended the ITC Act to allow the competent authority to exercise discretion in extending the retention period where an objection is raised and legal recourse is sought. In exercising this discretion, the competent authority should first discuss the matter with the requesting jurisdiction and take into account factors such as the nature and urgency of the request. The amendment should further enhance the effectiveness of Saint Lucia's ability to exchange information in a timely manner, but has not yet been tested in practice.	Saint Lucia is recommended to monitor the manner in which the competent authority exercises this discretion to ensure that the holding period does not pose an impediment to effective EOI in practice.



## C. Exchanging information

### Overview

197. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Saint Lucia, the legal authority to exchange information is derived from double tax conventions (DTCs) and tax information exchange agreements (TIEAs) once they become part of Saint Lucia’s domestic law. This section of the report examines whether Saint Lucia has a network of information exchange agreements that would allow it to achieve effective exchange of information in practice.

198. The Phase 2 report found Saint Lucia’s EOI arrangements and framework for exchanging information to be generally adequate. Saint Lucia has a broad network of EOI agreements, covering 32 EOI partners, 31 of which are in line with the international standard. The Phase 2 report also concluded that confidentiality of information exchanged under those agreements was adequately protected by physical security measures and policies governing the transmission of electronic and hard mail. Finally, the scope of attorney-client privilege in Saint Lucia was also deemed to be in line with the standard. Thus elements C.1, C.2, C.3 and C.4 were all found to be “in place” and rated “Compliant”.

199. Regarding element C.5, the Phase 2 report found that Saint Lucia had in place an efficient system of responses to incoming requests. There are no legal restrictions on the competent authority’s ability to respond to EOI requests within 90 days of receipt either by providing the requested information or by sending a status update. However, at the time of the Phase 2 report, due to organisation issues in processing requests, at times not all information was provided and where provided there were delays in its provision. Therefore, at that time element C5 was rated “Largely Compliant”. Although there were no issues in processing the one request received over the current review period, as Saint Lucia has only received one request (for which the competent authority was not required to exercise its access powers), pending further practice, element C.5 is still rated “Largely Compliant”.

## C.1 Exchange of information mechanisms

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

200. Saint Lucia has a broad network of EOI arrangements covering 32 jurisdictions and comprised of 21 signed TIEAs, a DTC with Switzerland, and the CARICOM tax treaty with 10 other members of the Caribbean Community. All of Saint Lucia’s EOI agreements are in force. The status or substance of Saint Lucia’s EOI arrangements has not changed since the time of the Phase 2 report.

201. The following table indicates under which of its EOI agreements, Saint Lucia is able to exchange all types of information, including banking information. A table listing all of Saint Lucia’s agreements is also included in Annex 2 to this report:

Categories of EOI agreements	
Number of signed agreements	23
Number of DTCs/TIEAs to the standard	22
Number of DTCs/TIEAs to the standard that are in force	22
Number of EOI relationships (DTCs, TIEAs and the Caricom) to the standard)	31
Number of EOI relationships to the standard that are in force	31
Total number of EOI relationships	32

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

202. The Phase 2 report indicated that Saint Lucia’s interpretation of “foreseeable relevance” was in conformity with the standard and that each of the TIEAs signed by Saint Lucia, as well as the CARICOM tax treaty, meets the standard articulated in the Commentary to Article 1 of the OECD Model TIEA. However, Saint Lucia’s DTC with Switzerland still provides only for exchange of information for the purpose of “carrying out the provisions of the present Convention in relation to the taxes which are the subject of the Convention. Therefore, Saint Lucia should take steps to bring its DTC with Switzerland in line with the standard to permit exchange of information that is foreseeably relevant to the administration and enforcement of the relevant domestic tax laws of both jurisdictions.

203. The peers have not raised any concerns regarding Saint Lucia’s interpretation of foreseeable relevance during the peer review period although the low number of requests received by Saint Lucia should be noted. In practice, Saint Lucia has not asked for clarification in respect of the one request it received over the review period.

***In respect of all persons (ToR C.1.2)***

204. For exchange of information to be effective, it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standards for exchange of information for tax purposes envisages that exchange of information (EOI) mechanisms will provide for exchange of information in respect of all persons.

205. None of the treaties signed by Saint Lucia since its commitment to the international standards are restricted, for EOI purposes, by the persons covered by the agreement. In practice, no difficulties have arisen with respect to this issue, relating to agreements which meet the international standards.

***Exchange of all types of information (ToR C.1.3)***

206. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the *OECD Model Tax Convention* and the *OECD Model TIEA*, which are the authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

207. Saint Lucia is able to exchange banking information under the majority of its EOI agreements. The Phase 2 report noted that Saint Lucia could exchange all types of information under its TIEAs and that the rules applicable to banking information were identical to those governing other types of information for EOI purposes. The Phase 2 report noted, however, that under the CARICOM Double Taxation Agreement, Saint Lucia could exchange banking information with only six of the signatories. It was unclear whether the deficiencies in the domestic legislation of the remaining CARICOM treaty partners would impede effective information exchange of all types of information. However, as the other members of CARICOM are increasingly being evaluated under the Global Forum peer review process and Saint Lucia has exchanged information under the CARICOM agreement, there does not appear to be any impediment to exchanging information under the CARICOM agreement.

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

208. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. EOI partners must be able to use their information gathering measures even when invoked solely to obtain and provide information to the requesting jurisdiction.

209. The Phase 2 report found that none of Saint Lucia’s TIEAs implicated a “domestic tax interest”. All of Saint Lucia’s TIEAs explicitly require the parties to use all relevant information gathering measures to provide the requested information whether or not a domestic tax interest exists. A domestic tax interest requirement might exist in some of the CARICOM partner jurisdictions, however, and the Phase 2 report noted that such requirements could pose an obstacle to effective exchange of information. Although no recommendation specifically on this point was issued, Saint Lucia was recommended to work with those CARICOM partners to ensure that exchange of information to the standard could occur. However, as outlined above, the other members of CARICOM are increasingly being evaluated under the Global Forum peer review process and Saint Lucia has exchanged information under the CARICOM agreement, so there does not appear to be any issues with domestic tax interest under this agreement.

210. As discussed above, the Phase 2 report questioned whether a possible domestic tax interest under the Income Tax Act would hinder Saint Lucia’s information gathering abilities. However, since the Phase 2 review, Saint Lucia has amended the Income Tax Act to allow the Comptroller to request information from any person for the enforcement of the Act or to comply with a request for information. Further, with the enactment of the ITC Act, Saint Lucia is now able to access all relevant information pertaining to a request arising under an EOI agreement, regardless of whether it is needed for domestic tax purposes.

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

211. The Phase 2 report indicated that none of Saint Lucia DTCs or TIEAs specifically includes a dual criminality principle to restrict exchange of information. Saint Lucia does not have any domestic legislation resulting in application of such a principle.

212. None of Saint Lucia’s TIEAs or the CARICOM treaty applies the dual criminality principle to restrict the exchange of information. During the peer review period, none of the peers made any adverse comment in this regard.

***Exchange of information in both civil and criminal tax matters (ToR C.1.6)***

213. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as “civil tax matters”).

214. All of the TIEAs signed by Saint Lucia and the CARICOM tax treaty provide for the exchange of information in both civil and criminal tax matters. During the Phase 2 review, Saint Lucia indicated that the procedures for exchanging information for civil tax matters is the same as exchanging information for criminal tax matters. The one request received during the review period related to a criminal tax matter. In practice, no difficulties have arisen with respect to this issue.

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

215. According to the Phase 2 report, there are no impediments under Saint Lucian domestic law and tax treaties that would prevent Saint Lucia from providing information in the specific form requested. According to the comments received from Saint Lucia’s treaty partners, there were no instances where Saint Lucia was not in a position to provide the information in the specific form requested or under an acceptable format.

***In force (ToR C.1.8)***

216. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. The international standard requires jurisdictions to take all steps necessary to bring signed exchange of information arrangements into force expeditiously.

217. Currently, all of the EOI agreements signed by Saint Lucia are in force. As of May 2016, the number of agreements that are in force stands at 22.

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

218. For information exchange to be effective, the parties to an EOI agreement must enact any legislation necessary to comply with the terms of the agreement.

219. The Phase 2 report found that in general, Saint Lucia had enacted all the legislation necessary to comply with the terms of its agreements, but some potential legislative deficiencies existed prior to the enactment of the ITC Act

and the amendment of the Income Tax Act. At the time of the Phase 1 review, the Income Tax Act contained a possible domestic tax interest. Although this issue was subsequently resolved by an amendment in January 2014, in three out of the four requests received during the Phase 2 review period, the competent authority could not obtain the requested accounting information because the registered agents, on whom the notices were served, refused to provide records for tax exempt entities. Further, the ITC Act was in effect at the time of the Phase 2 review, but not all of Saint Lucia’s agreements had been scheduled to the Act, which meant that it could not yet be used to gather information for EOI purposes. Accordingly, Saint Lucia was recommended to ensure that all of its EOI agreements were scheduled to the ITC Act to give full effect to all of its agreements under domestic law.

220. Since the time of the Phase 2 review, Saint Lucia has now scheduled all of its EOI agreements to the ITC Act. Further, with the amendments providing explicit provisions for accessing information pursuant to an EOI request set out under the Income Tax Act, both acts may now be used by the competent authority to access information. Saint Lucian authorities have reported that for all aspects related to EOI, including access to information, the provisions of the ITC Act will now take precedence over those under the Income Tax Act.

### ***Conclusion regarding Element C.1.***

221. All of Saint Lucia’s 23 signed agreements are in force and of those 23, 22 are to the standard, Switzerland DTC’s being the exception. With one of those 23 agreements being the CARICOM double taxation agreement, the treaty network extends to 32 EOI partners. At the time of Phase 2, element C.1 was deemed to be “in place” and rated “Compliant” with one recommendation as Saint Lucia’s agreements did not provide for exchange of information to the standard in all cases due to impediments in the domestic laws of some CARICOM signatories. Given the ongoing work of the Global Forum peer review process, many of those jurisdictions have amended their laws and no issues exchanging information under the CARICOM treaty have since arisen. The recommendation thus has been deleted; as at the time of the Phase 2 report, element C.1 remains “in place” and “Compliant”.

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>Compliant</b>

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

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

222. The standards require that jurisdictions exchange information with all relevant partners (i.e. those partners that are interested in entering into an information exchange arrangement). Agreements cannot be concluded only with counterparties without economic significance. A jurisdiction's refusal or reluctance to enter into agreements or negotiations with partners – particularly those that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce their tax laws – may indicate a lack of commitment to implement the standard.

223. Saint Lucia has 32 signed agreements, all of which have entered into force. Saint Lucia's network of EOI arrangements includes 29 Global Forum members and 16 OECD members. As of May 2016, Saint Lucia has initialled another five agreements with Global Forum members. A complete list of such agreements, including their dates of signature and entry into force, may be found in Annex 2.

224. During the review period, no peers advised that Saint Lucia had refused to negotiate or conclude an EOI agreement. Further, officials advised that Saint Lucia is currently undergoing the process to join the multilateral Convention on Mutual Administrative Cooperation in Tax Matters ("Multilateral Convention").

### *Conclusions regarding Element C.2.*

225. The Phase 2 report found that Saint Lucia's EOI network extended to all relevant partners and noted Saint Lucia's willingness to negotiate and conclude agreements when approached. Accordingly, element C.2 was found to be "in place" and rated "Compliant", although Saint Lucia was recommended to continue developing its EOI network with relevant partners. The determination and rating remain the same.

### **Determination and factors underlying recommendations**

Phase 1 determination	
<b>The element is in place.</b>	
Factors underlying recommendations	Recommendations
	Saint Lucia should continue to develop its EOI network to the standard with all relevant partners.

Phase 2 rating
Compliant

### C.3 Confidentiality

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

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

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

#### *Ensuring confidentiality in practice*

227. The Phase 2 report concluded that all of Saint Lucia's EOI arrangements contained provisions to protect the confidentiality of information exchanged pursuant to those agreements that were in line with the standard.

228. The Phase 2 report also found that secrecy of information exchanged is protected by confidentiality provisions under the Income Tax Act. Section 6 of the Income Tax Act imposes a duty on all officials involved in the EOI process to keep the information confidential. Any person who contravenes such duty commits an offence and is liable to a fine of XCD 1 000 (approximately EUR 340) or imprisonment of one year (§139(b), Income Tax Act). Section 12 of the ITC Act imposes a similar duty of confidentiality, the breach of which is punishable upon conviction by a fine not to exceed XCD 10 000 (approximately EUR 3 400) or a term of imprisonment of up to two years.

229. The Inland Revenue Department also has enhanced its security measures, both in terms of physical security and in terms of procedures relating to staff movement and conduct. In terms of physical security, Saint Lucia has advised that all staff must now use key cards in the main office. Further, all files gathered for EOI purposes are now required to be stamped "confidential" and kept in separate and locked filing cabinets, which can be accessed only by members of the EOI unit. Newly formalised policies

concerning staff movement and conduct include a “clean desk policy”, departure policy, and an unauthorised access policy, which imposes a monetary penalty of XCD 1 000 or a term of imprisonment not exceeding 1 year on anyone who attempts to access records without proper authorisation (ITC (*Amendment*) Act, No. 10 of 2015).

230. Saint Lucia has also formalised its EOI procedure under an EOI manual, which sets out how requests should be processed. Confidentiality in the procedures to gather information is ensured in the following ways:

- Requests are no longer processed through the general mail received by the Department, but rather are directed to the Comptroller, or his/her designated representative.
- Requests, once received, are now logged with reference numbers and descriptions of actions that need to be taken. Only the Comptroller, Deputy Comptroller and Tax Compliance Officer have access to the request log. Requests will be marked as confidential and stored separately in secure filing cabinets.
- After the validity and completeness of requests are verified, the competent authority will send a notice pursuant to section 12 of the ITC Act to the taxpayer/entity and its registered agent. The notice will contain a minimum amount of information (enough to identify the relevant taxpayer or transaction) and not the requesting jurisdiction. The relevant taxpayer will not be named unless absolutely necessary. Notices will be delivered by hand to the entity and are also logged.
- The entity’s response must be marked “confidential”. The Comptroller is the sole person authorised to open confidential mail for the Inland Revenue Department and in his/her absence, the Deputy Comptroller/Officer in Charge.
- All materials pertaining to an EOI request are kept in separate, locked filing cabinets to which only the Comptroller, Deputy Comptroller and Tax Compliance Officer have access.

***All other information exchanged (ToR C.3.2)***

231. The Phase 2 report found that the confidentiality provisions in Saint Lucia’s exchange of information agreements do not draw a distinction between information received in response to requests and information forming a part of a request. The provisions apply equally to information received and provided under an EOI agreement, including background documents and records of communications.

### ***Conclusions regarding Element C.3.***

232. The time of the Phase 2 report determined that Saint Lucia has sufficient provisions both in its EOI arrangements and in its domestic laws to ensure the confidentiality of all information exchanged with treaty partners. In practice, the new EOI manual sets out a number of measures to ensure the confidentiality of information when processing EOI requests. As such, the element C.3 was determined to be “in place” and rated “Compliant” in Phase 2 and the determination and rating remain the same.

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>Compliant</b>

## **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.

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

233. The international standard allows requested parties not to supply information in response to a request in certain identified situations. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries.

234. All of Saint Lucia’s TIEAs and its DTC with Switzerland contain provisions that the requested state is not obliged to provide information considered professional or trade secrets, or information the disclosure of which would be contrary to public policy. The Phase 2 report deemed that these provisions were in line with the international standard described in Article 7(2) of the OECD Model TIEA and Article 26(3)(c) of the OECD Model Tax Convention. The CARICOM Double taxation agreement contains similar provisions that are even more restrictive than that contemplated by the international standard.

235. The Phase 2 report also found the scope of attorney-client privilege in Saint Lucia to be in line with the standard. No issues relating to attorney-client privilege have occurred in practice or been raised by peers.

236. No issues relating to the rights and safeguards of taxpayers and third parties have been encountered in practice, nor have they been raised by any of Saint Lucia’s exchange of information partners. Element C.4 is therefore determined to be “in place” and rated “Compliant”.

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>Compliant</b>

### **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)***

237. In order for exchange of information to be effective, the information needs to be provided in a timeframe which allows tax authorities to apply it to the relevant cases. If a response is provided after a significant lapse of time, the information may no longer be of use to the requesting authorities. Timeliness is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request and may be subject to statutory timelines.

238. The Phase 2 report did not find any specific legal or regulatory requirements in Saint Lucia that might prevent Saint Lucia from responding to a request for information or providing a status update within 90 days of receipt of the request.

#### ***Timeliness during the peer review period***

239. Over period under review, Saint Lucia received one request for ownership information. The competent authority was able to obtain the requested information through internal channels. And the requested information was

obtained from the database of the Inland Revenue Department. Therefore, the information was provided to the treaty partner within 90 days.

### ***Organisational process and resources (ToR C.5.2)***

240. Although the Phase 2 report noted that Saint Lucia had begun exchanging information only in 2010 and was still familiarising itself with EOI procedures, it recognised that Saint Lucia had made considerable progress in enhancing its EOI capabilities and in processing EOI requests. Input from peers similarly acknowledged Saint Lucia's co-operation and efforts.

241. Since the Phase 2 review, Saint Lucia has taken additional steps to improve its organisational structure and procedures. The Inland Revenue Department has dedicated additional resources to developing its EOI capability. Its EOI unit now consists of the Comptroller and Deputy Comptroller, a tax compliance officer, a legal officer, and an Information Technology officer. Saint Lucia also reported on the formalisation of security and EOI procedures to facilitate the exchange of information with treaty partners. All of the timelines for the management of EOI processes are set out in the EOI manual and remain the same as at the time of the Phase 2 report.

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

242. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. Apart from the issues described earlier in the report, the Phase 2 report identified no other factors that could hinder effective EOI.

### ***Conclusions regarding Element C.5***

243. The Phase 2 report found Saint Lucia's EOI unit to be well-organised and adequately resourced. The Phase 2 report also considered the processes and procedures in place (as codified in the EOI manual) to be sound. However, during the Phase 2 review period, Saint Lucia's competent authority did not undertake all measures to compel the provision of IBC ownership and accounting information where necessary to satisfy a request. As a result, Saint Lucia was unable to provide the requested information in all instances. Thus element C.5 was rated "Largely Compliant" and Saint Lucia was recommended to continue monitoring the practical implementation of the EOI unit's organisational processes.

244. Although Saint Lucia clearly prioritises EOI and has shown a commitment to improving its procedures and processes, in the absence of sufficient EOI practice (Saint Lucia only received one request in the current period and

was not required to exercise its access powers to obtain the requested information), the rating of “Largely Compliant” and the recommendation remain.

### Determination and factors underlying recommendations

Phase 1 determination	
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.	
Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	Recommendations
In January 2013, Saint Lucia put in place a comprehensive organisational process, including a formal EOI unit and EOI manual that appear to be adequate for dealing with incoming EOI requests. However, <u>as of May 2016</u> , the new procedures of the EOI unit still have not been sufficiently tested in practice.	Saint Lucia should continue to monitor the practical implementation of the organisational processes of the EOI unit to ensure that they are sufficient for effective and timely EOI in practice.



## Summary of determinations and factors underlying recommendations

<u>Overall Rating</u>		
<b>LARGELY COMPLIANT</b>		
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>Phase 1 determination: The element is in place.</b>	The obligation for a company formed under the laws of another CARICOM or OECS member state, but carrying on business in Saint Lucia, to ensure the availability of ownership information is not clear.	<del>Saint Lucia should ensure that for companies formed under the laws of a CARICOM or OECS member state and carrying on business in Saint Lucia, there are clear obligations for ownership information to be maintained.</del>
<b>Phase 2 rating: Largely compliant</b>	<del>The Registrars or the regulator in Saint Lucia did not have a regular system of oversight of compliance of entities' ownership and identity information keeping requirements during the review period.</del>	Saint Lucia should <u>continue to monitor its recently implemented</u> ensure that there is a regular system of oversight of the legal obligations <u>to maintain ownership information put in place</u> and <u>should ensure</u> that its enforcement powers are sufficiently exercised in practice to ensure the availability of ownership and identity information in all cases.

Determination	Factors underlying recommendations	Recommendations
<p><b>Phase 2 rating: Largely compliant</b> (continued)</p>	<p><u>A comprehensive system of oversight was implemented by both the regulator and by the Company Registrars over the review period. However as both of these processes have been recently implemented, they could not be sufficiently tested in practice by the assessment team over the review period. Additionally, for tax purposes, the IRD did not have a comprehensive system of oversight in place. Furthermore, penalties for failure to comply with ownership information requirements and tax filing requirements have not been imposed in practice.</u></p>	
<p>Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)</p>		
<p><b>Phase 1 determination: The element is not in place.</b></p>	<p><del>International Business Companies are exempt from the record-keeping obligations of the Income Tax Act, and otherwise are only required to keep such accounting records as their directors think fit. Pursuant to the AML regime, some relevant accounting records for transactions conducted by the IBC through their registered agent or other AML Service Provider will be required to be kept. However this will not ensure all relevant accounting records are maintained.</del></p>	<p>Saint Lucia should introduce requirements to ensure that IBCs are in all instances subject to requirements to keep relevant accounting records, including underlying documentation, for a minimum five year period.</p>

Determination	Factors underlying recommendations	Recommendations
<p><b>Phase 1 determination: The element is not in Place.</b> (continued)</p>	<p>International Partnerships are exempt from the record-keeping requirements of the Income Tax Act. They will only be subject to the accounting record obligations established by the Commercial Code which requires partners to render “true accounts and full information” of all things affecting the partnership. There is no express requirement to keep such records for any minimum period of time. Pursuant to the AML regime, some relevant accounting records will be required to be kept in respect of the transactions conducted by the International Partnership through its registered agent or other AML Service Provider. However this will not ensure all relevant accounting records are maintained.</p>	<p>Saint Lucia should ensure that International Partnerships are subject to a requirement to keep reliable accounting information, including underlying documentation for a minimum period of five years.</p>
	<p>Trusts will be subject to the common law obligations to keep records relating to the trust, although the scope of those accounting record obligations were not ascertainable. Further, certain ordinary trusts will also be subject to the Income Tax record-keeping obligations. Trusts which engage an AML Service Provider will be required to keep some relevant accounting records, however these obligations will not ensure that all relevant accounting information is kept in respect of trusts created under the laws of Saint Lucia, or which are administered from or have a trustee resident in Saint Lucia.</p>	<p>Saint Lucia should ensure that trusts which are established under its laws, administered from, or with a trustee resident in Saint Lucia, are subject to requirements in all instances to keep reliable accounting information, including underlying documentation for a minimum period of 5 years.</p>

Determination	Factors underlying recommendations	Recommendations
<p><b>Phase 2 rating:</b> <b>Non-Compliant</b> <b><u>Partially Compliant</u></b></p>	<p>In cases where accounting records are required to be maintained such as for the purposes of the Income Tax Act, Saint Lucia has no system of oversight of compliance with the accounting record requirements or enforcement experience to ensure the availability of accounting information.</p> <p><u>In August 2015 and May 2016, Saint Lucia enacted new laws to ensure the keeping of accounting information and underlying documentation by all relevant entities in line with the international standard. Although an oversight program to monitor compliance with accounting record requirements has been implemented by the Regulator and the Internal Revenue Department, as these amendments are recent and were enacted after the review period, they have not been tested in practice.</u></p>	<p>In cases where accounting records are required to be maintained such as for the purposes of the Income Tax Act, Saint Lucia has no system of oversight of compliance with the accounting record requirements or enforcement experience to ensure the availability of accounting information.</p> <p><u>Saint Lucia should monitor its newly implemented system of oversight to ensure that all entities are maintaining accounting information in line with the international standard and that its enforcement powers are sufficiently exercised in practice.</u></p>
Banking information should be available for all account-holders ( <i>ToR A.3</i> )		
<p><b>Phase 1 determination:</b> <b>The element is in place.</b></p>		
<p><b>Phase 2 rating:</b> <b>Compliant</b></p>		

Determination	Factors underlying recommendations	Recommendations
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> )		
<p><b>Phase 1 determination:</b> The element is in place.</p>	<p>Although there are clear penalties in place for failure to provide information requested under the Income Tax Act, there is no penalty in place under the International Tax Cooperation Act for failure to provide information requested in a notice pursuant to an EOI request.</p>	<p>Saint Lucia should amend the provisions of the International Tax Cooperation Act to ensure that there are effective penalties in place for failure to supply the information requested in a notice issued under the International Tax Cooperation Act pursuant to an EOI request.</p>
<p><b>Phase 2 rating:</b> <b>Partially-compliant</b> <b>Largely Compliant</b></p>	<p><u>The competent authority has not yet used its access powers under the ITC Act to gather information. Over the period, only one request was received by the competent authority and the request was able to be satisfied using information already in the possession of the competent authority. Therefore, the access powers granted to the competent authority under the ITC Act have not been tested in practice over the review period.</u></p> <p><del>Over the three-year review period, it was the practice of Saint Lucia's competent authority to serve a notice to produce on the registered agent only. In cases where the registered agent refused to produce information, the access powers at the disposal of Saint Lucia were insufficient to compel the production of this information. This resulted in Saint Lucia not obtaining all of the information requested in a number of cases.</del></p>	<p>It is recommended that Saint Lucia monitors its access powers to gather information for EOI purposes to make sure that they are effective in all cases.</p> <p><del>Over the three-year review period, it was the practice of Saint Lucia's competent authority to serve a notice to produce on the registered agent only. In cases where the registered agent refused to produce information, the access powers at the disposal of Saint Lucia were insufficient to compel the production of this information. This resulted in Saint Lucia not obtaining all of the information requested in a number of cases.</del></p>

Determination	Factors underlying recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information ( <i>ToR B.2</i> )		
<b>Phase 1 determination:</b> The element is in place.	In the case of information exchange, under the International Tax Cooperation Act, the competent authority is required to extend the 20-day holding period where a taxpayer or interested person has sought judicial review or other legal recourse.	Saint Lucia should ensure that its domestic law provisions are compatible with the timely access and exchange of information.
<b>Phase 2 rating:</b> <b>Compliant</b>	Saint Lucia has amended the ITC Act to allow the competent authority to exercise discretion in extending the retention period where an objection is raised and legal recourse is sought. In exercising this discretion, the competent authority should first discuss the matter with the requesting jurisdiction and take into account factors such as the nature and urgency of the request. The amendment should further enhance the effectiveness of Saint Lucia's ability to exchange information in a timely manner, but has not yet been tested in practice.	Saint Lucia is recommended to monitor the manner in which the competent authority exercises this discretion to ensure that the holding period does not pose an impediment to effective EOI in practice.
Exchange of information mechanisms should allow for effective exchange of information ( <i>ToR C.1</i> )		
<b>Phase 1 determination:</b> The element is in place.		
<b>Phase 2 rating:</b> <b>Compliant</b>		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners ( <i>ToR C.2</i> )		
<b>Phase 1 determination:</b> The element is in place.		Saint Lucia should continue to develop its exchange of information network with all relevant partners.

Determination	Factors underlying recommendations	Recommendations
<b>Phase 2 rating: Compliant</b>		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received ( <i>ToR C.3</i> )		
<b>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: Compliant</b>		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties ( <i>ToR C.4</i> )		
<b>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: Compliant</b>		
The jurisdiction should provide information under its network of agreements in a timely manner ( <i>ToR C.5</i> )		
<b>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 dealt within the Phase 2 review.</b>		
<b>Phase 2 rating: Largely Compliant</b>	In January 2013, Saint Lucia put in place a comprehensive organisational process, including a formal EOI Unit and EOI manual that appear to be adequate for dealing with incoming EOI requests. However, as of May 2016, the new procedures of the EOI unit still have not been sufficiently tested in practice.	Saint Lucia should continue to monitor the practical implementation of the organisational processes of the EOI unit to ensure that they are sufficient for effective and timely EOI in practice.



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

Saint Lucia applauds the commitment, hard work and cooperative spirit of our assessment team in the conduct of our Phase II Supplementary Review. Sincere thanks to the colleagues of the Peer Review Group and our exchange of information partners for the invaluable contribution to the compilation of the report. Additionally, we are encouraged by the dedication of our legislative team who so diligently compiled the suite of legislative amendments for addressing the deficiencies of our Phase II review; particularly in respect of Elements A2 and B1.

Saint Lucia is firm in its commitment to the principles of transparency and exchange of information for tax purposes, and the effective implementation of the standards in practice. In that regard we are pursuing vigorously our effort to the implementation of the Common Reporting Standard and being signatory to the multilateral Convention on Mutual Administrative Assistance in Tax Matters.

We have studied the report carefully and note the recommendations contained therein. We concur with the findings and look forward to full compliance with the standard.

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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.

## Annex 2: List of all exchange-of-information mechanisms in effect

No.	Jurisdiction	Type of EOI agreement	Date signed	Date In force
1	Antigua and Barbuda	CARICOM tax treaty	July 1994*	Nov 1994
2	Aruba	TIEA	May 2010	Oct 2011
3	Australia	TIEA	March 2010	Feb 2011
4	Barbados	CARICOM tax treaty	July 1995*	Nov 1994
5	Belgium	TIEA	Dec 2009	Nov 2011
6	Belize	CARICOM tax treaty	July 1994*	Nov 1994
7	Canada	TIEA	June 2010	May 2011
8	Curaçao	TIEA	Oct 2009	Oct 2011
9	Denmark	TIEA	Dec 2010	Oct 2011
10	Dominica	CARICOM tax treaty	July 1994*	Nov 1994
11	Faroe Islands	TIEA	May 2010	Oct 2011
12	Finland	TIEA	May 2010	Oct 2011
13	France	TIEA	April 2010	Jan 2011
14	Germany	TIEA	June 2010	Jan 2011
15	Greenland	TIEA	May 2010	Oct 2011
16	Grenada	CARICOM tax treaty	July 1994*	Nov 1994
17	Guyana	CARICOM tax treaty	July 1994*	Nov 1994
18	Iceland	TIEA	May 2010	Oct 2011
19	Ireland	TIEA	Dec 2009	Jan 2011
20	Jamaica	CARICOM tax treaty	Dec 2009	Jan 2011
21	Mexico	TIEA	July 2013	Feb 2014
22	Netherlands	TIEA	Dec 2009	Jan 2011
23	Norway	TIEA	May 2010	Oct 2011
24	Portugal	TIEA	July 2010	Oct 2011

No.	Jurisdiction	Type of EOI agreement	Date signed	Date In force
25	Saint Kitts and Nevis	CARICOM tax treaty	July 1994*	November 1994
26	Saint Vincent and the Grenadines	CARICOM tax treaty	July 1994*	November 1994
27	Sint Martin	TIEA	Oct 2009	Oct 2011
28	Sweden	TIEA	May 2010	Oct 2011
29	Switzerland	DTC	Aug 1963	Jan 1961
30	Trinidad and Tobago	CARICOM tax treaty	July 1995*	November 1994
31	UK	TIEA	Jan 2010	Jan 2011
32	USA	TIEA	Jan 1987	<u>May 2014</u>

\*The later of the dates the CARICOM tax treaty was signed by Saint Lucia or the partner jurisdiction.

\*\* Date of exchange of notes, extending DTC signed in 1954 between UK and Switzerland, to Saint Lucia.

The IBFD also notes that EOI agreements with India and New Zealand are currently under negotiation. An EOI Agreement with Spain has been initialled.

## Summary of agreements per category

The table below provides for the list of jurisdiction with which Saint Lucia has concluded an EOI agreement with a division per category:

Categories of EOI agreements	Total
Number of DTCs/TIEAs that provide exchange of all types of information including banking information	22
Number of DTCs/TIEAs to the standard	22
Number of DTCs/TIEAs to the standard that are in force	22
Number of EOI relationships (DTCs, TIEAs and the CARICOM treaty) to the standard	31
Number of EOI relationships to the standard that are in force	31

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

### **Tax laws**

ITC (*Amendment*) Act, No. 18 of 2014

ITC (*Amendment*) Act No. 10 of 2015

### **Company Laws**

Banking Act No. 3 of 2015

Companies (Amendment) Act, No. 13 of 2015 and No. of 2016

IBC (Amendment) Act, No. 8 of 2015

International Business Companies (*Amendment*) Act, No. of 2016

International Partnership (*Amendment*) Act No. 9 of 2015

International Partnership (Amendment) Act, No. of 2016

International Trusts (*Amendment*) Act No. 11 of 2015

International Trusts (Amendment) Act, No. of 2016

### **Guidelines**

Procedures Manual on Exchange of Information version 2.0 (January 2016)

## **Annex 4: People interviewed during on-site visit**

Officials from the Inland Revenue Department

Registrar of Companies and Intellectual Property

Registrar of International Business Companies

Officials from the Financial services Regulatory Authority (Financial Sector Supervision Unit)

Officials from the Financial Intelligence Authority

Officials from the East Caribbean Community Bank (Bank Supervision Department)

Representatives from the private sector (registered corporate service providers)



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)