GLOBAL FORUM ON
TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

10 YEARS

Peer Review Report on the Exchange of Information on Request

GIBRALTAR

2020 (Second Round)

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Gibraltar 2020 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

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Table of contents

Reader's guide 5

Abbreviations and acronyms 9

Executive summary 11

Summary of determinations, ratings and recommendations 15

Overview of Gibraltar 25

Legal system. 25
Tax system 26
Financial and professional services sector 27
AML Framework 29
Recent developments 30

Part A: Availability of information 31

A.1. Legal and beneficial ownership and identity information 31
A.2. Accounting records 61
A.3. Banking information 72

Part B: Access to information 83

B.1. Competent authority's ability to obtain and provide information 83
B.2. Notification requirements, rights and safeguards 90

Part C: Exchanging information 93

C.1. Exchange of information mechanisms 93
C.2. Exchange of information mechanisms with all relevant partners 98
C.3. Confidentiality 99
C.4. Rights and safeguards of taxpayers and third parties. 101
C.5. Requesting and providing information in an effective manner 102

Annex 1: List of in-text recommendations 113
Annex 2: List of Gibraltar's EOI mechanisms 115
Annex 3: Methodology for the review 119
Annex 4: Gibraltar's response to the review report 122

Reader's guide

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

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

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

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

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. The implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. The implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

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

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

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

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

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

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

More information

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

Abbreviations and acronyms

2010 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum in 2010
2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015
2016 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
CDD	Customer Due Diligence
CIV	Collective Investment Vehicle
CRS	Common Reporting Standard
DTC	Double Tax Convention
EOIR	Exchange Of Information on Request
EU	European Union
FCD	Finance Centre Director
FATF	Financial Action Task Force
FSC	Financial Services Commission
FSA	Financial Services Act 2020
GBP	Great Britain Pound

Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
ICA	International Co-Operation (Tax Information) Act 2009
ITA	Income Tax Act, 2010
Multilateral Convention (MAAC)	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
POCA	Proceeds of Crime Act, 2015
ROC	Registrar of Companies
RUBO	Central Register of Ultimate Beneficial Ownership information
SBPR	Supervisory Bodies (Powers etc.) Regulations 2017
TCSP	Trust and Company Service Provider
TIEA	Tax Information Exchange Agreement
TMAA	Taxation (Mutual Administrative Assistance Act) 2014

Executive summary

1. This report analyses the implementation of the international standard of transparency and exchange of information on request in Gibraltar on the second round of reviews conducted by the Global Forum against the 2016 Terms of Reference. It assesses both the legal and regulatory framework as at 30 April 2020 and the practical implementation of this framework, in particular in respect of EOI requests received and sent during the review period from 1 January 2016 to 31 December 2018. This report concludes that Gibraltar continues to be rated overall **Largely Compliant** with the international standard. In 2014, the Global Forum evaluated Gibraltar against the 2010 Terms of Reference for the EOIR standard. That report of that evaluation (the 2014 Report) concluded that Gibraltar was rated Largely Compliant overall.

Comparison of ratings for First Round Report and Second Round Report

Element		First Round Report (2014)	Second Round EOIR Report (2020)
A.1	Availability of ownership and identity information	C	PC
A.2	Availability of accounting information	LC	LC
A.3	Availability of banking information	C	PC
B.1	Access to information	C	LC
B.2	Rights and Safeguards	C	C
C.1	EOIR Mechanisms	C	C
C.2	Network of EOIR Mechanisms	C	C
C.3	Confidentiality	LC	LC
C.4	Rights and safeguards	C	C
C.5	Quality and timeliness of responses	LC	LC
	OVERALL RATING	**LC**	**LC**

C = Compliant; **LC** = Largely Compliant; **PC** = Partially Compliant; **NC** = Non-Compliant

Progress made since previous review

2. Gibraltar made progress in compliance with the standard by addressing the recommendations in the 2014 Report, with introducing sanctions against non-maintenance of accounting records by partnerships and trusts. Gibraltar has also improved its compliance in the area of balancing access powers with taxpayer rights by providing exceptions from notifying the taxpayer in cases of urgency or possibilities for undermining the investigation in the requesting jurisdiction. Gibraltar has also continued to increase its network of relationships by having a new Tax Information Exchange agreement (TIEA) with Isle of Man and a Double Tax Convention (DTC) with the United Kingdom. Some other recommendations remain to be addressed.

Key recommendations

3. Key recommendations relate primarily to a new requirement under the standard introduced in 2016 on the availability of beneficial ownership information. Gibraltar is recommended to ensure the availability of this information for all relevant entities and arrangements by addressing the shortcomings in the legal framework (Proceeds Of Crime Act, Anti-Money Laundering Guidance) and by designing and implementing effective supervision for accuracy of beneficial ownership information. Similarly, Gibraltar is also recommended to ensure that the Banks in Gibraltar are in possession of accurate and up-to-date beneficial ownership information of all account holders at all times. Gibraltar is also recommended to ensure the retention of ownership information in respect of stricken-off companies.

4. The other key recommendations are in respect of ensuring effective supervision for availability of reliable accounting records and underlying documents including in respect of ceased entities and arrangements, enforcing the access powers to collect information and not disclosing to third parties details that are not needed to obtain the information requested. Gibraltar is further recommended to augment its staffing resources and ensure effective exchange of information by applying the foreseeable relevance criterion in an appropriate manner and by providing status updates and responses in a timely manner.

Overall rating

5. Gibraltar has made improvements in the areas of network of EOI relationships and balancing access powers with exceptions to notifying the taxpayers. However, changes in its legal framework are required to comply with the standard as strengthened in 2016 in respect of beneficial ownership information. Supervision for ensuring availability of reliable accounting information also needs to be improved.

6. In terms of EOI practice, Gibraltar has processed 209 requests and ensured reasonably good co-operation with partners. However, staffing needs to be enhanced and timeliness needs to be improved.

7. As a result, two elements on the availability of information are rated as Partially Compliant (A.1, A.3), while four elements are rated as Largely Compliant (A.2, B.1, C.3 and C.5), and four elements are rated as Compliant with the standard (B.2, C.1, C.2 and C.4). On balance, Gibraltar is rated as overall Largely Compliant with the standard of transparency and exchange of information on request.

8. This report was approved at the Peer Review Group of the Global Forum on 3 July 2020 and was adopted by the Global Forum on 18 August 2020. A follow up report on the steps undertaken by Gibraltar to address the recommendations made in this report should be provided to the Peer Review Group no later than 30 June 2021 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place but needs improvement	In respect of the companies that are struck off for not providing annual returns for three years, latest ownership information before strike-off is not available with the Registrar. Further, the reinstatement process also does not compensate this loss of ownership information before strike-off. Taken together, this may present a gap in availability of latest ownership information in respect of struck-off companies before the actual strike-off.	Gibraltar is recommended to ensure that legal and beneficial ownership information is up to date and accurate and is available in respect of all struck off companies.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The legal and regulatory framework is in place but needs improvement *(continued)*	There are no clear guidelines in respect of the new Central Register of Ultimate Beneficial Ownership Regulations regarding disclosure of nominator information by nominees, to assist the company or Registrar to accurately determine the beneficial ownership of legal entities. The AML-guidance is silent with respect to situations of individual professional nominees acting by way of business and how beneficial ownership should be determined in such cases.	Gibraltar is recommended to ensure availability of accurate beneficial ownership information of legal entities having nominee shareholdings.
	There is no clear guidance (under RUBO or in the AML) on determining the beneficial ownership in respect of protected cell companies, which may act as collective investment vehicles.	Gibraltar is recommended to ensure that beneficial ownership information in line with the standard is available for all companies, including protected cell companies/ collective investment vehicles.
	The Central Register of Ultimate Beneficial Ownership Regulations do not cover general partnerships, and the forms to capture beneficial ownership of limited partnerships and limited liability partnerships do not allow for look-through in case a limited or a general partner is a legal entity. The AML-guidance is also not in line with the standard to identify beneficial owners of partnerships.	Gibraltar is recommended to ensure availability of accurate beneficial ownership information of partnerships in Gibraltar.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The legal and regulatory framework is in place but needs improvement *(continued)*	The Central Register of Ultimate Beneficial Ownership forms to capture beneficial ownership of trusts having tax consequences in Gibraltar (Form UBO2) do not allow for look-through in case trustee/ settlor/protector/beneficiary are legal entities. In respect of express trusts that have no tax consequences in Gibraltar, it is not mandatory that such trusts engage an AML-obliged party in Gibraltar.	Gibraltar is recommended to ensure that accurate and up-to-date beneficial ownership information of trusts having nexus to Gibraltar is available at all times in Gibraltar.
	The form that is meant to capture beneficial ownership information of foundations in the Central Register of Ultimate Beneficial Ownership has deficiencies, including no look through in line with the standard for corporate founders/councillors/ guardians/beneficiaries. It is not obligatory that foundations in Gibraltar engage an AML-obligated party.	Gibraltar is recommended to ensure that accurate and up-to-date beneficial ownership information of foundations having nexus to Gibraltar is available at all times in Gibraltar.
Partially Compliant	The AML-guidance was recently amended to clarify that corporate nominee shareholders pose higher risk and the ultimate beneficial owner ought to be identified in line with the CDD procedures for legal entities.	Gibraltar is recommended to monitor the implementation of the recent amendments to AML-guidance in respect of determining beneficial ownership where corporate nominees are involved.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Partially Compliant (*continued)*	The AML-guidance has been recently updated to clarify the identification of beneficial ownership of foundations and to ensure look through provisions for corporate parties of foundations, corporate parties of trusts as well as to remove the 25% threshold for beneficiaries to be identified as beneficial owners of trusts.	Gibraltar is recommended to ensure effective supervision of the implementation of new provisions in respect of beneficial ownership of foundations and trusts.
	The Central Register of Ultimate Beneficial Ownership information is yet to be fully populated as about 1 400 companies have not yet provided their beneficial ownership information and no sanctions have been applied on them. The Registrar is yet to design and implement an appropriate supervisory programme for ensuring the accuracy of beneficial ownership information.	Gibraltar is recommended to design and implement an appropriate supervisory mechanism to ensure that accurate and up-to-date beneficial ownership information of all companies, limited partnerships, trusts and foundations is available at all times in the Central Register of Ultimate Beneficial Ownership information.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place but needs improvement	Currently, there are no specific legal requirements that ensure the mandatory retention of accounting records of ceased entities and arrangements in the possession or control of a person resident in Gibraltar for at least five years after the cessation of entity/arrangement.	Gibraltar should ensure that accounting records of all relevant entities and arrangements are retained for at least five years after their cessation arrangements in the possession or control of a person resident in Gibraltar.
Largely Compliant	Partnerships are not subject to systematic oversight of compliance with their accounting obligations.	Gibraltar should ensure that a regular system of oversight and monitoring of partnerships' obligations to maintain accounting records, is in place.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
	Not all trusts, particularly foreign trusts having Gibraltar trustees, and trusts managed by non-professional trustees may be under the oversight of FSC or Tax Authorities. Out of 40 trusts voluntarily registered under the Trustees Act only 12 have filed returns. There is scope for improvement in oversight of trusts for availability of accounting records.	Gibraltar should ensure that a regular system of oversight and monitoring of all trustees' obligations to maintain accounting records is in place.
	There is scope for improvement in oversight, given the 57% tax filing rate of companies, and 88% of active companies exempted from auditing requirements, and no foundations registered in the tax database, Further, there was a case where a partner's request for accounting information could not be responded to since the TCSP would not provide the information	Gibraltar is recommended to strengthen overall supervision to ensure availability of reliable and accurate accounting records of all relevant entities and arrangements.
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place but needs improvement	The recently amended AML guidance refers to higher risk posed by corporate nominees in determination of beneficial ownership and clarifies that the natural person who ultimately owns or controls the legal entity ought to be identified in such situations. However, the AML-guidance is silent with respect to situations of individual professional nominees acting by way of business and how beneficial ownership should be determined in such cases.	Gibraltar is recommended to ensure availability of accurate beneficial ownership information of legal entities having nominee shareholdings by individual professionals.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The legal and regulatory framework is in place but needs improvement *(continued)*	There is also no clear guidance on determining the beneficial ownership in respect of protected cell companies, which may act as collective investment vehicles. Gibraltar is recommended to ensure that beneficial ownership information of all collective investment vehicles is accurately determined and available in Gibraltar.	Gibraltar is recommended to ensure that beneficial ownership information in line with the standard is available for all companies, including Protected Cell Companies/ Collective Investment Vehicles.
	In the AML-guidance applicable for banks, in respect of partnerships, it is sufficient to identify any two partners in respect of partnerships. Further, there is no clear guidance in respect of identifying the beneficial owner when a partner is not a natural person.	Gibraltar is recommended to ensure that accurate and up-to-date beneficial ownership information for accounts held by partnerships, in line with the standard is available with Banks at all times.
	The AML-guidance allows exceptions to identify and verify the identity of beneficial owners by the Gibraltar banks for account holders coming from a very wide set of jurisdictions.	It is recommended that Gibraltar ensure that beneficial ownership information of all investment vehicles coming from "equivalent jurisdictions" is available in Gibraltar in all cases at all times.
	The AML-guidance exempts verification of customers in "exceptional circumstances", when applicants for business will not be able to provide appropriate documentary evidence of their identity and where independent address verification is impossible. In such cases, Banks might agree that a senior manager may authorise the business if he/she is satisfied as to the applicant's acceptability. The standard does not provide for such an exemption.	It is recommended that Gibraltar ensure that beneficial ownership information is available in Gibraltar in all cases at all times.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The legal and regulatory framework is in place but needs improvement *(continued)*	When Intermediaries/EU solicitors or accountants, open bank accounts, with funds from their client accounts, verification of the identity of the underlying clients related to these transactions will not be undertaken by banks in Gibraltar, in view of the protection under legal privilege, which precludes banks from securing any information about the underlying clients. It will therefore not be possible for a bank in Gibraltar to establish the identity of the person(s) for whom an intermediary, solicitor, or accountant is acting.	It is recommended that Gibraltar ensure that beneficial ownership information is available in Gibraltar in all cases at all times in respect of bank accounts held by intermediaries/EU solicitors or accountants.
Partially Compliant	The AML-guidance was recently amended to clarify that corporate nominee shareholders pose higher risk and the ultimate beneficial owner ought to be identified in line with the CDD procedures for legal entities i.e. the natural person who ultimately owns or controls the legal entity.	Gibraltar is recommended to monitor the implementation of the recent amendments to AML-guidance in respect of determining beneficial ownership where corporate nominees are involved.
	The AML-guidance was recently updated to clarify the identification of beneficial ownership of trusts and foundations in line with the standard. The guidance has also been amended to ensure look through provisions for corporate parties of trusts foundations and to remove the 25% threshold for beneficiaries to be identified as beneficial owners of trusts.	Gibraltar is recommended to ensure effective supervision of the implementation of new provisions in respect of beneficial ownership of trusts and foundations.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Partially Compliant *(continued)*	With gaps in guidance to identify beneficial ownership and no sanctions applied in the review period for inaccurate identification of beneficial ownership information, there is scope for improvement in depth of verification of availability of accurate beneficial ownership information in line with the standard.	Gibraltar should deepen the supervision to ensure availability of accurate beneficial ownership information for all relevant entities and arrangements.
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is in place		
Largely Compliant	There was one case where a partner's request for accounting information could not be responded since the TCSP would not provide the information. The reasons for this failure could not be ascertained and no enforcement measures were applied nor was any penal action taken in this case against the TCSP to ensure compliance with the obligations to provide the accounting information. There were three other cases where the TCSP would not provide information and enforcement actions were not taken. In another case, a request under TIEA for search and seizure was declined by Gibraltar.	Gibraltar should ensure that effective enforcement measures are taken and sanctions are applied in the case of information holders failing to provide information to ensure effective exchange of information with partners.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place		
Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place		
Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place		
Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place		
Largely Compliant	The disclosure to third parties of the information specified in the EOI request, including in cases where this is not necessary for gathering the requested information, is not in accordance with the standard.	Gibraltar should not disclose to third parties information that is not necessary to obtain the information requested.
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place		
Compliant		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework:	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	
Largely Compliant	Peer inputs in the review period indicate that 90-day status updates were not sent systematically.	Gibraltar should ensure that 90-day status-updates are sent in all cases where a response cannot be provided within that time.
	Peer inputs indicate that in certain cases delays have been experienced in obtaining responses. Gibraltar authorities have cited staffing constraints in the Competent authority's (Commissioner of Income Tax) offices dealing with multiple and simultaneous work streams resulting in longer response times.	Gibraltar should ensure timely responses in all cases by increasing the staffing along with a possible review and reorganisation of the administrative processes for handling EOIR work.
	Peer inputs have indicated challenges posed by TCSPs on interpretation of foreseeable relevance, which are not in line with the standard.	Gibraltar should ensure that the criterion of foreseeable relevance is not narrowly interpreted and information is provided to partners where the competent authority of the requesting jurisdiction is able to establish foreseeable relevance to the satisfaction of the Gibraltar Competent Authority.

Overview of Gibraltar

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

Legal system

10. Gibraltar is a British Overseas Territory located on the southern end of the Iberian Peninsula at the entrance of the Mediterranean Sea. Its economy is based primarily on tourism, financial services, port operations and online gaming. Its main trading partners are Spain and the United Kingdom (UK). Gibraltar's legislative branch is represented by the 18-member Gibraltar Parliament comprising 17 elected members and 1 speaker. Representatives serve four-year terms. The head of government is the Chief Minister, who is the leader of the majority party with ten seats in parliament. A Council of Ministers appointed from the elected members of Parliament forms the Cabinet. The head of state is Queen Elizabeth II who is represented by a Governor she appointed.

11. Gibraltar's statute law consists of Acts passed by the Gibraltar Parliament. The laws also include statute law and case law as decided by the courts. The hierarchy of laws in Gibraltar is based on the UK model and acts of Parliament take precedence over subsidiary legislation made thereunder. Statutory instruments include Regulations, Rules, Notices and Orders. The EOI mechanisms (MAAC, DTCs and TIEAs) override the domestic law wherever there is a conflict.

12. The judiciary comprises the Court of First Instance, Coroner's Court and the Magistrates' Court for minor offences and the Supreme Court for major offences and appeals from the lower courts. Appeals on the decision of the Supreme Court of Gibraltar could be made to the Court of Appeal for Gibraltar, which in turn may grant leave to appeal to the Privy Council in the United Kingdom. Gibraltar is a common law jurisdiction that applies the principles of equity. All the courts mentioned above (except the Coroner's Court) may have jurisdiction on taxation matters (including EOIR) depending on the particular facts and circumstances. The Magistrates' Court generally

has jurisdiction on criminal tax matters, offences and compliance of procedural requirements specified in the Income Tax Act (ITA) 2010 and the International Co-Operation (Tax Information) Act 2009 (ICA). The Income Tax Tribunal is an independent appellate body in relation to appeals brought against assessments to tax made under the ITA 2010 (with a further right of appeal to the Supreme Court of Gibraltar on point of law). The Supreme Court of Gibraltar has jurisdiction over specified criminal tax matters, offences and compliance with procedural requirements as prescribed in the ITA 2010 and the ICA 2009. The recovery of civil tax debts due under the ITA 2010 also fall within the ambit of the jurisdiction of the Supreme Court in accordance with civil procedural rules of court (including enforcement of judgment debts and company liquidations).

13. During the review period and until the end of the transition period following the United Kingdom and Gibraltar's departure from the European Union on 31 January 2020 i.e. until 31 December 2020, the EU Treaties comprising both the Treaty on the European Union and the Treaty on the Functioning of the European Union applied to Gibraltar as a European territory for whose external relations a former Member State is responsible until the end of the transition period following the United Kingdom and Gibraltar's departure from the European Union during the review period.[1] EU legislation is applicable to Gibraltar with certain exceptions.

Tax system

14. Gibraltar has full autonomy with respect to domestic tax matters. In Gibraltar, companies and individuals are subject to income tax, levied under the ITA 2010. Income tax is levied predominantly on a territorial basis, except where otherwise expressly stated. The Income Tax Office under the Ministry of Finance administers the income tax regime.

15. The standard rate of corporation tax is 10% and a higher rate of 20% applies to utilities and companies that abuse a dominant position in the market by preventing effective competition (Sch.6: ITA 2010). Gibraltar determines the residence of companies using the control and management test. A company is resident in Gibraltar if (a) the management and control of its business is exercised in Gibraltar; or (b) it carries on business in Gibraltar and the management and control of the business is exercised outside Gibraltar by persons ordinarily resident in Gibraltar (S.74: ITA 2010). A person is ordinarily resident in Gibraltar if he/she is in Gibraltar for at least 183 days in a tax year, or for more than 300 days over 3 consecutive tax years (S.74: ITA 2010).

1. Article 355(3) of the Consolidated Version of the Treaty on the Functioning of the European Union.

16. In the case of ordinarily resident individuals, worldwide income is taxable if this income is remitted to Gibraltar. Individuals may choose between the lower of an allowance-based system, where they are taxed according to income bands and at tax rates of 14% to 39%; and a gross income based system where they are taxed based on gross income bands and tax rates ranging from 6% to 28%, with minimal allowances or relief entitlement. The maximum effective rate under this system is 25%.

17. Some classes of income are not chargeable to tax under the ITA 2010. Examples include bank interest and savings income (other than in instances where the income constitutes a trading receipt), intercompany loan interest below EUR 114 197 (GBP 100 000). Dividends are not chargeable when paid or payable by a company to another company, to a person who is not ordinarily resident, by a company the shares of which are listed on a Recognised Stock Exchange[2] and when the dividends are paid from profits that have not been subject to tax in accordance with the provisions of the ITA 2010.

18. Royalties and intercompany interest income in excess of EUR 114 197 (GBP 100 000) received or receivable is deemed to accrue and derive in Gibraltar where the company receiving them is registered in Gibraltar (Class 1A and Class 3A of Table C of Sch.1: ITA 2010).

19. Non-trading rental income arising from a movable property located outside of Gibraltar received or receivable is deemed to accrue and derive in Gibraltar where the company in receipt of that income is registered in Gibraltar (Class 3B of Table C of Sch.1: ITA 2010). There is no capital gains, wealth or inheritance tax under the ITA 2010.

Financial and professional services sector

20. Financial services accounts for approximately 20% of GDP and there are about 544 individuals employed in the banking sector in Gibraltar. The principal types of financial services include banking, insurance, asset management, fund management, distributed ledger technology providers as well as trust and company management services. As at 31 December 2018, the total value of bank assets in Gibraltar was EUR 9.1 billion (GBP 8.05 billion), the total amount of funds under management for banks was approximately EUR 11.1 billion (GBP 9.8 billion) and the total funds under management in relation to investment firms, was EUR 1.2 billion (GBP 1.10 billion).

2. A stock exchange, regulated market or equivalent body, designated as "Recognised Stock Exchange" by the Commissioner of Income Tax by way of a notice in the Gazette (Class 1 of Table C of Sch.1: ITA 2010).

21. Gibraltar's financial sector consists primarily of branches or subsidiaries of international firms. Out of the 11 authorised credit institutions in Gibraltar, 8 are branches or subsidiaries of international banks, 2 are locally-incorporated banks and 1 is a branch of a UK building society. There are also five e-money institutions. The building society branch and one of the e-money institutions are in the process of surrendering their licences, having closed down their operations. In addition, there were 58 insurance companies (including those in liquidation and run-off), 39 insurance intermediaries (life and general insurance) and 6 insurance managers as of the end of December 2018.

22. There are approximately 244 barristers and solicitors holding practising certificates that are registered with the Supreme Court of Gibraltar. Disciplinary matters as well as ordinary admission petitions are considered by the Admissions and Disciplinary Committee established by the Barristers and Solicitors Rules and chaired by the Attorney General with two other senior lawyers appointed by the Chief Justice. These Rules are made under the Supreme Court Act. Complaints in relation to registered barristers and solicitors should be filed with the Registrar of the Supreme Court.

23. The Gibraltar Bar Council is the governing body of the legal profession in Gibraltar and is collaborating with the Government of Gibraltar to review and implement a system of regulation for the legal profession. This resulted in the establishment of a Legal Services Regulatory Authority in 2019, which is charged with the registration requirements and regulation of the legal profession, development and management of relevant policy, guidance and codes of practice, and the preliminary investigation of complaints. The Legal Services Regulatory Authority was established under the provisions of Gibraltar's Legal Services Act 2017, most of the provisions of which came into force on 1 July 2019.

24. There are 12 Public Notaries registered under the provisions of the Commissioners for Oaths and Public Notaries Act. The notaries are also AML-obliged parties in Gibraltar.

25. There are 45 statutory auditors and 14 audit firms approved under the Financial Services (Auditors) Act 2009, supervised and regulated by the Financial Services Commission. As of the end of December 2018, there were a total of 58 company managers and 34 professional trustee groups.

26. The provision of investment services is an important function conducted by the banks in Gibraltar. The banks provide various related services for wealth/asset management. Business may be directed to the banks through independent asset managers either located in Gibraltar or overseas, or through the parent offices, or acquired through Gibraltar-based marketing efforts. Fiduciary deposits from parent banks are also common.

27. Gibraltar law provides for the creation of domestic companies, partnerships and trusts. The registration of these entities comes under the supervision of the Registrar of Companies. The administration and management of the Companies Registry is outsourced to a private company that carries out the relevant duties and responsibilities in respect of companies, trusts, limited partnerships and business names under the respective Acts. The Companies Registry is managed by Companies House (Gibraltar) Limited, located in Gibraltar. Companies House is bound by strict confidentiality provisions. Companies House only deals with publicly-available information. Gibraltar companies can be listed on any stock exchange, subject to the respective countries' requirements. For example, a handful of Gibraltar companies are listed on the London Stock Exchange. Gibraltar has had its own stock exchange since November 2014.

28. The Financial Services Commission (FSC), an independent statutory body established by the Gibraltar Parliament, is the unified regulatory and supervisory authority for financial services in Gibraltar. The FSC is responsible for the authorisation and supervision of a wide range of service providers, including banks, investment businesses, insurance companies, investment services, company management, professional trusteeship, insurance management, insurance mediation, Distributed Ledger Technology providers, money transmitters, bureaux de change, mortgage credit providers, occupational pensions schemes, pension advisers, pension controllers, auditors, insolvency practitioners and collective investment schemes. The FSC was established under the Financial Services Commission Act of 1989, which was replaced by the Financial Services Commission Act 2007, and, most recently, by the Financial Services Act 2019.

AML Framework

29. The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) is a monitoring body of the Council of Europe entrusted with the task of assessing compliance with the FATF standard. Gibraltar was subject to an evaluation in April 2019.

30. The report was published by Moneyval on 12 February 2020.[3] The report detailed significant areas where Gibraltar was rated compliant or largely compliant, particularly in terms of its legislative framework and standard practices. The rating issued to Recommendations 24 and 25 was Partially Compliant, in view of the shortcomings in ensuring beneficial ownership in

3. The report is available at www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/Moneyval-Mutual-Evaluation-Report-Gibraltar.pdf.

the central register for beneficial ownership in respect of legal entities and legal arrangements.

Recent developments

31. The main developments since last review are changes to the legal framework to ensure availability of beneficial ownership. Gibraltar has established a central Beneficial Ownership Register (RUBO) to capture the beneficial ownership of local companies and trusts, foundations with tax nexus to Gibraltar. The Register of Ultimate Beneficial Ownership was made public on 13 March 2020 via an electronic portal https://ubosearch.egov.gi that requires pre-registration and a small fee of GBP 2.50 (EUR 2.85) per search, as permitted by the Directive.

32. Gibraltar also transposed, by means of the Proceeds of Crime Act 2015 (Amendment) Regulations 2020 (POCA), key elements of the European Union 5th Anti-Money Laundering Directive (5th AMLD) including lower limits to customer due diligence requirements on pre-paid instruments, specific and enhanced due diligence requirements in relation to high-risk third countries and a centralised private register of bank account information which will be administered by law enforcement authorities in Gibraltar.

Part A: Availability of information

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

A.1. Legal and beneficial ownership and identity information

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

34. The 2014 Report found that legal ownership information of all relevant entities and arrangements is generally available in Gibraltar. The legal framework to capture legal ownership continues from the previous review period.

35. The standard was strengthened in 2016 and requires the availability of beneficial ownership information in addition to legal ownership. The main sources of beneficial ownership information in Gibraltar are the central register of ultimate beneficial ownership information (RUBO) created in 2017 and AML-obliged persons.

36. While there is no legal or practical requirement for all legal entities and legal arrangements to engage an AML-obliged person, the RUBO covers all local companies, express trusts (with tax consequences in Gibraltar), limited partnerships and foundations of Gibraltar. However, partnerships without legal personality (general partnerships) and trusts that may hold assets outside of Gibraltar (those without any tax consequences in Gibraltar but may be managed by trustees of Gibraltar) are not required to report beneficial ownership information to RUBO.

37. The RUBO forms that are meant to capture beneficial ownership information have deficiencies in respect of trusts and foundations (including no look through in line with the standard for corporate settlors/trustees/protectors/beneficiaries or corporate founders/councillors/guardians/beneficiaries) that need to be addressed to ensure the availability of beneficial ownership information in line with the standard. Further, there is no clear guidance on determining the beneficial ownership in respect of protected

cell companies, which may act as collective investment vehicles. There are also no guidelines for companies to be able to determine beneficial ownership information in respect of nominee situations and report to RUBO.

38. With respect to supervision of the new RUBO regulations, neither are any penalties/sanctions imposed for delay in filing the information with RUBO nor is there any supervision in place to verify the accuracy of the beneficial ownership information in the RUBO.

39. The AML-guidance was recently amended to provide for definition of beneficial ownership of foundations, look through of corporate parties to trusts and foundations, removal of the 25% threshold on beneficiaries of trusts to identify them as beneficial owners of trusts and a clarification on the higher risk posed by corporate nominee situations. These recent changes with effect from 25 November 2019, which were brought in as a follow-up to the onsite visit, are yet to be tested in practice and therefore need to be supervised for effectiveness in implementation. However, certain deviations in respect of determining beneficial ownership of partnerships remain in the AML-guidance, which needs to be suitably amended to be in line with the standard.

40. In view of the legal gaps and scope for improvement in supervision, Gibraltar is recommended to take necessary measures to ensure the availability of accurate and up-to-date beneficial ownership information at all times in respect of all relevant legal entities and legal arrangements. Gibraltar is further recommended to ensure the retention of ownership information in respect of stricken-off companies.

41. During the review period, Gibraltar received and responded to 83 requests for ownership information wherein a large majority of them were for beneficial ownership information.

42. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified	In respect of the companies that are struck off for not providing annual returns for three years, latest ownership information before strike-off is not available with the Registrar. Further, the reinstatement process also does not compensate this loss of ownership information before strike-off. Taken together, this may present a gap in availability of latest ownership information in respect of struck-off companies before the actual strike-off.	Gibraltar is recommended to ensure that legal and beneficial ownership information is up to date and accurate and is available in respect of all struck off companies.

	There are no clear guidelines in respect of the new Central Register of Ultimate Beneficial Ownership Regulations regarding disclosure of nominator information by nominees, to assist the company or Registrar to accurately determine the beneficial ownership of legal entities. The AML-guidance is silent with respect to situations of individual professional nominees acting by way of business and how beneficial ownership should be determined in such cases.	Gibraltar is recommended to ensure availability of accurate beneficial ownership information of legal entities having nominee shareholdings.
	There is no clear guidance (under RUBO or in the AML) on determining the beneficial ownership in respect of protected cell companies, which may act as collective investment vehicles.	Gibraltar is recommended to ensure that beneficial ownership information in line with the standard is available for all companies, including protected cell companies/collective investment vehicles.
	The Central Register of Ultimate Beneficial Ownership Regulations do not cover general partnerships, and the forms to capture beneficial ownership of limited partnerships and limited liability partnerships do not allow for look-through in case a limited or a general partner is a legal entity. The AML-guidance is also not in line with the standard to identify beneficial owners of partnerships	Gibraltar is recommended to ensure availability of accurate beneficial ownership information of partnerships in Gibraltar.
	The Central Register of Ultimate Beneficial Ownership forms to capture beneficial ownership of trusts having tax consequences in Gibraltar (Form UBO2) do not allow for look-through in case trustee/settlor/protector/beneficiary are legal entities. In respect of express trusts that have no tax consequences in Gibraltar, it is not mandatory that such trusts engage an AML-obliged party in Gibraltar.	Gibraltar is recommended to ensure that accurate and up-to-date beneficial ownership information of trusts having nexus to Gibraltar is available at all times in Gibraltar.

	The form that is meant to capture beneficial ownership information of foundations in the Central Register of Ultimate Beneficial Ownership has deficiencies, including no look through in line with the standard for corporate founders/councillors/guardians/beneficiaries. It is not obligatory that foundations in Gibraltar engage an AML-obligated party.	Gibraltar is recommended to ensure that accurate and up-to-date beneficial ownership information of foundations having nexus to Gibraltar is available at all times in Gibraltar.
Determination The element is in place, but certain aspects of the legal implementation of the element need improvement		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	The Central Register of Ultimate Beneficial Ownership information is yet to be fully populated as about 1 400 companies have not yet provided their beneficial ownership information and no sanctions have been applied on them. The Registrar is yet to design and implement an appropriate supervisory programme for ensuring the accuracy of beneficial ownership information.	Gibraltar is recommended to design and implement an appropriate supervisory mechanism to ensure that accurate and up-to-date beneficial ownership information of all companies, limited partnerships, trusts and foundations is available at all times in the Central Register of Ultimate Beneficial Ownership information.
	The AML-guidance was recently amended to clarify that corporate nominee shareholders pose higher risk and the ultimate beneficial owner ought to be identified in line with the CDD procedures for legal entities.	Gibraltar is recommended to monitor the implementation of the recent amendments to AML-guidance in respect of determining beneficial ownership where corporate nominees are involved.
	The AML-guidance has been recently updated to clarify the identification of beneficial ownership of foundations and to ensure look through provisions for corporate parties of foundations, corporate parties of trusts as well as to remove the 25% threshold for beneficiaries to be identified as beneficial owners of trusts.	Gibraltar is recommended to ensure effective supervision of the implementation of new provisions in respect of beneficial ownership of foundations and trusts.
Rating: Partially Compliant		

A.1.1. Availability of legal and beneficial ownership information for companies

43. The Companies Act (CA 2014) provides for the incorporation of domestic companies whose liability shares or guarantee, may be limited or unlimited. Companies may be formed for any lawful purpose, and may choose to be public or private companies.

44. A private company is a company that is limited by shares or guarantee, and whose articles restrict the rights to transfer its shares and prohibit any invitation to the public to subscribe for any shares or debentures of the company (S.19: CA 2014). There were 16 638 private companies as at 31 December 2018.

45. A public company is a company whose articles do not include all the restrictions applicable to private companies and whose certificate of incorporation states that it is a public company. It cannot have less than two directors and a secretary who has the requisite knowledge and experience to discharge his/her functions.[4] The amount of share capital stated in the memorandum of a public company must not be less than GBP 20 500 (EUR 22 906) (S.135: CA 2014). There were 50 public companies registered at the end of the review period.

46. The Protected Cell Companies Act (PCCA) 2001 provides for the incorporation of protected cell companies – companies whose assets, equity and liabilities may be segregated into individual cells. Protected cell companies may only be used by insurers, collective investment schemes and special purpose vehicles and may only be incorporated with the written consent of the Financial Services Commission (FSC)(S.11: PCCA 2001). The regulations applicable to domestic companies under the Companies Act generally apply similarly to protected cell companies (S.3(3): PCCA 2001). There were 69 protected cell companies registered at the end of the review period.

47. European companies are regulated by Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (Soceitas Europaea – "SE") (See 2014 Report for details). There were no European companies registered at the end of the review period.

4. i.e. for at least three out of the preceding five years he/she has held the appointment of secretary to a company other than a private company; or that he/she is a person who by reason of his/her previous appointments appears to the directors to be capable of discharging the functions of secretary; or that he/she is a barrister or a member of a recognised accounting body or of the Institute of Chartered Secretaries and Administrators.

Legal ownership and identity information requirements

48. As described in the 2014 Report, legal ownership and identity requirements for companies are mainly found in the Companies Act, and they also may be available sometimes under Tax Law and AML Law (see 2014 Report, paras. 44-85). The following table shows a summary of the legal requirements to maintain legal ownership information in respect of companies:

Legislation regulating legal ownership of companies

Type	Company law	Tax law	AML law
Private company	All	None	Some
Unlimited company	All	None	Some
Investment company	All	None	Some
Foreign companies (tax resident as well as branches)	All	None	Some

Note: The table shows each type of entity and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All" means that every entity of this type created is required to maintain ownership information for all its owners (including where bearer shares are issued) and that there are sanctions and appropriate retention periods. "Some" means that an entity will be required to maintain information if certain conditions are met.

Companies Law requirements

49. All companies in Gibraltar must register by filing an application and providing their memorandum and articles of association to the Registrar of Companies at the time of their incorporation. The application, memorandum and articles of incorporation must include general information on the company such as name, objects, amount of share capital and details of the initial shareholding (for companies limited by shares) or members (for companies limited by guarantee) (Ss.7, 8 and 34: CA 2014). Legal ownership information is also provided to the Registrar on an annual basis.

50. The Companies Act 2014 provides that every company that is incorporated in Gibraltar, or which is incorporated outside Gibraltar but registered therein, must keep a register of its members/shareholders, and include the following particulars: "the names and addresses, and occupations of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number and of the amount paid or agreed to be considered as paid on the shares of each member; the date at which each person was entered in the register as a member; and the date at which any person ceased to be a member" (S.182: CA 2014). The register of members/shareholders is provided to the Company

Registrar in the form of an annual return and this is made available for public inspection (only for companies with a share capital).[5]

51. This obligation to keep the register is imposed on the company itself. The register must be kept at the registered office of the company (which must be in Gibraltar) and must be made available for public inspection (Ss.178 and 183: CA 2014). A company and every officer that is in default of the requirement to maintain a register of members are guilty of offences and are liable on summary conviction to default fines up to EUR 11 219/GBP 10 000 (S.182: CA 2014 together with S.189 and Sch.9 of the Criminal Procedure and Evidence Act). If a company fails to submit an annual return that complies with the requirements of the Companies Act, the company and every officer of the company who is in default are guilty of offences and are liable on summary conviction to a fine of GBP 500 (EUR 558) and a further fine of GBP 150 (EUR 167) for each day the default continues (S.191: CA 2014).

52. On the other hand, the documents and information kept by the Registrar (please see paragraph 49 above) are open for public inspection. The originals of documents delivered to the Registrar in printed form must be kept for a minimum of ten years, although in practice they are kept indefinitely (S.425: CA 2014). The Registrar keeps information in printed form and all information is available online and can be accessed by members of the public.

53. All up-to-date information concerning a company is available online in the form of a profile. The profile includes information such as the incorporation number of the company, the former names of the company, the date of the name change, the type of company, the status of the company, the date the last annual return was filed, the date the last accounts were filed, the number of shares, the name, address, occupation and nationality of the shareholders, directors and secretaries. Any interested person or competent authority can register with the Registrar online and a small fee of GBP 10 (EUR 11) is payable for each document downloaded.

54. While there were 16 638 companies at the end of 2018, the Registrar has confirmed that out of which 14 788 companies filed the 2016 annual return (about 88%), 13 907 filed the 2017 annual return (about 83%) and 11 664 filed the 2018 annual return (about 70%).

5. The information to be contained in an annual return differs according to whether the company has share capital, and includes the following: address of registered office; name, address and occupation of all directors and secretaries; Name, address and occupation of all shareholders at the date of return (only for companies with share capital) (Ss.182, 222 and 223: CA 2014).

Tax law requirements

55. Companies that are registered in Gibraltar or are in receipt of assessable income in Gibraltar are required to file annual tax returns to the Gibraltar tax authorities. The tax returns do not include information on the owners of the company since this is not relevant for the purposes of domestic taxation. Should ownership information be necessary for domestic tax purposes, such information can be obtained from the company or a service provide through a statutory notice (S.6 ITA 2010, see section B.1 below).

Anti-money laundering requirements

56. Gibraltar authorities advise that a vast majority of legal persons and arrangements conducting business from or in Gibraltar will have some involvement with a licensed service provider or financial institution through either a one-off transaction or an ongoing business relationship. It is through these activities that the relevant regulatory requirements under the AML guidelines are triggered and ownership information of relevant entities is made available. An AML-obligated service provider/financial institution (regulated firm) is required to maintain records for a minimum of 5 years from the termination of a business relationship or the date of an occasional transaction. This is in line with Section 25 of POCA.

57. As of 31 December 2018, approximately 17 175 companies (13 200 active companies out of a total 16 638 companies of Gibraltar and 3 975 companies abroad) have a corporate and trust service provider based in Gibraltar who is responsible for the whole life cycle of the company, which includes the maintaining of the share register, along with other statutory compliances. Any licensed service provider (including licensed professional trustees and licensed nominee shareholders) that does not conduct the relevant customer due diligence measures as required under POCA, might be subject to various enforcement powers provided for under the Supervisory Bodies (Powers etc.) Regulations 2017 (SBPR) including the imposition of penalties, the suspension/withdrawal of a licence, the temporary ban of managerial positions and directions. It is liable upon summary conviction, to a fine not exceeding GBP 10 000 (EUR 11 173) (R.18(2): SBPR). Any service provider that is in the business of a "regulated activity" under the FSA without a licence (and who is not exempted under the FSA) is liable on conviction on indictment, to imprisonment for a term not exceeding seven years or to a non-limited fine or to both; or on summary conviction, to a fine not exceeding GBP 25 000 (EUR 27 934) (S. 9: FSA).

Foreign companies

58. All companies that are incorporated outside of Gibraltar but carrying on a business in Gibraltar must within one month of establishing a place of business therein, register with the Registrar of Companies. In order to be registered, a foreign company must file certain information with the Registrar, which includes the following: a certified copy of the charter, statutes or memorandum and articles of the company; a list of the directors of the company; and the names and addresses of one or more persons, resident in Gibraltar, authorised to accept on behalf of the company service of process and any notices required to be served on the company (S.432: CA 2014).

59. Any changes to the above information must be advised to the Registrar (S.433: CA 2014). The Act does not prescribe a time limit for delivery of notice of such changes. Gibraltar authorities indicate that it is expected that the changes be delivered with all convenient speed and as often as the prescribed occasion arises. Failure to do so may result in the company, and every officer or agent of the company, being found guilty of an offence and being liable on summary conviction to a fine of GBP 400/EUR 450,[6] or, in the case of a continuing offence, of one tenth of that amount for every day during which the default continues.

60. Different requirements apply to companies that are incorporated outside of the United Kingdom and Gibraltar and which carry on a business in Gibraltar through a branch. They must register with the Registrar of Companies within one month of having opened the branch. The information that must be provided at the point of registration includes the following: corporate name; if registered in the country of incorporation, the identity of the register and its registration number; a list of the company directors and secretary(ies), specifying their name, address and occupation, or in the case where a director or secretary is a corporation, its corporate name and the address of its registered or principal office; address of the branch; a list of the names and addresses of all persons resident in Gibraltar authorised to accept on the company's behalf service of process in respect of the business of the branch; and a list of the names and usual residential addresses of all persons authorised to represent the company as permanent representatives of the company for the business of the branch (Ss.443 to 447: CA 2014).

61. Notification of any change to the information filed with the Registrar in respect of a branch registration must be delivered to the Registrar within

6. This corresponds to Level 2 on the standard scale of fines. Levels on the standard scale of fines for offences as specified in Schedule 9 of Criminal Procedure and Evidence Act are GBP 200/EUR 224 (Level 1), GBP 400/EUR 448.8 (Level 2), GBP 1 000/ EUR 1 122 (Level 3), GBP 4 000/EUR 4 487 (Level 4) GBP 10 000/ EUR 11 219 (Level 5).

21 days from the date of the change (S.451 CA 2014). Late filing penalties apply in the event of default. Further penalties for non-compliance may also be applied (S.459 CA 2014).

62. All foreign companies registered in Gibraltar have to update their statutory information annually, including shareholding information, via the filing of an annual return like domestic companies (Ss. 188 and 190: CA 2014). The Company Registrar checks all information filed both electronically and manually upon submission. This intelligent electronic system is set up to detect anomalies and discrepancies comparing content and consistency with previous year submissions and to highlight excluded data by reporting non-compliance of other required submissions. In these cases, the information is checked and the necessary steps are taken to confirm and verify that the correct information is provided. All directors are given a Unique Identification number (UID) which allows searches to be conducted electronically. In accordance with Council Directive 2012/17/EU Gibraltar has systems in place enabling users to file documents electronically and to interconnect with central, commercial and companies registers across the EU. As at 31 December 2018, 136 foreign companies were registered in Gibraltar.

Legal ownership information – Enforcement measures and oversight

63. In the cases where companies have not fulfilled their annual filing obligations, they are automatically not in "good standing" with the Registrar and may be classified as inactive. Accordingly, those companies will be subject to the striking off procedure conducted by the Registrar. Where the Company Registrar receives applications for late filing of annual returns, these are subject to penalties and in 2016, 4 196 penalties were applied, in 2017, 3 466 penalties were applied and in 2018, 2 871 penalties were applied. Additionally, the Company Registrar has confirmed that private companies are struck off the register after failure to fulfil their filing obligations for three years (ss. 411 and 412: CA 2014). In 2016, 2 267 companies were struck off, 995 were struck off in 2017 and 714 were struck off in 2018. Striking off a company triggers its dissolution (s. 411(3): CA 2014). A company may be restored to the register under the provisions of sections 414 (if dissolved for under 10 years) or 415 (restoration by the Court, where an application to restore made to the Registrar has been referred to the Court, or where a period of 10 years has expired since the date of strike-off). Companies House maintains ownership information in hard copy form for 10 years and electronically indefinitely because it is public information. Nevertheless, in respect of the companies that are struck off for not providing annual returns for three years, latest ownership information is not available with the Registrar. There is also no legal requirement that stricken-off companies maintain their share registers for access by Competent Authorities until they

are restored before or after 10 years have elapsed since the strike-off. Further, the reinstatement process also does not compensate this loss of ownership information during non-filing of annual returns before strike-off. Taken together, this may present a gap in availability of latest ownership information in respect of struck-off companies before the actual strike-off. Gibraltar is recommended to ensure that up to date and accurate ownership information is available in respect of all struck off companies. During the review period, 349 companies were restored by ROC and 16 companies were restored by order of the Court.

64. The FSC, which is the regulator for licensed service providers, indicated that more often than not companies in Gibraltar will be registered with a licensed service provider and that they had 17 175 companies under the management of a licensed service provider in Gibraltar, of which 12 930 (77%) were Gibraltar companies.

65. The FSC requires company managers to submit a trusts and companies under management return and a financial crime return on an annual basis, which allows them to monitor the trends concerning the type and number of services the company managers are managing and the movement of any funds. This also allows for full transparency of information held on all the firm's clients.

66. Where the FSC, in their capacity as regulator for licensed entities, identified deficiencies with requirements on ownership and identity information, these are highlighted to the licensee, who is given the opportunity to address any statement of fact made, following which a final letter will be issued in which the intended outcome of mitigation is outlined. The licensee will be required to report on progress usually on a monthly or quarterly basis. Following this, the FSC usually carries out further focused and onsite visits.

67. In addition to the application of penalties, the FSC confirmed that it may also impose conditions on the licence of the licensee for example prohibiting them from taking on new clients until the FSC is satisfied that the deficiencies have been identified.

68. The FSC confirms that in 2016 there were 62 licensed trust and company service provider-groups, 59 in 2017 and 58 in 2018. These entities are supervised by the AML/CFT Supervision team, which comprises five people. The FSC has confirmed that they receive a minimum of 174 returns on an annual basis, comprising of audited financial statements, the financial crime return and the return of trusts and companies under management.

69. The FSC has confirmed that it has conducted three full risk assessments in 2016, all of which included a supervisory onsite visit. In 2017, it conducted 22 full risk assessments, all of which included a supervisory onsite visit. In 2018, it conducted 32 full risk assessments, which comprised

six supervisory onsite visits and 26 desk based reviews. With regards to the findings resulting from the full risk assessments carried out in 2016, provided by Gibraltar authorities, no material findings were identified in the case of one firm while the findings on other firms forming part of the same group included failings in client monies relative to mixed payments and AML/CFT issues, where procedures were not being adhered to and clients were not being adequately monitored on an ongoing basis. The causes were identified and the Group was placed in intensive supervision where further action was taken including the appointment of a skilled person in senior management, following a stringent remediation plan.

70. Following a full risk assessment, as explained above, a supervisory action plan is implemented to address the risks posed. In circumstances where the FSC deems there to be a significant risk, this is addressed using various supervisory measures and the FSC may consider any type of remediation action, which is proportionate to the risks posed. The firm is issued a final feedback letter where the intended outcome of mitigation is outlined. The firm will be required to report on its progress usually on a monthly or quarterly basis.

71. Following this, the FSC usually carries out further focused and onsite visits. Three main areas must be verified during each onsite inspection: these are corporate governance, client monies and AML/CFT obligations. The onsite inspection is conducted by taking a sample, which includes a subset of the clients of the firm, and these files are inspected.

72. The FSC recently also conducted an AML/CFT Thematic Review of the trust and company service provider sector. The thematic review consisted of 26 onsite inspections and 31 desk-based reviews. Gibraltar authorities further advise that each individual TCSP was subject to a full risk assessment under the thematic review. This included the review and verification of transparency of information held on the customers and the ultimate beneficial owners behind the corporate customers. The Thematic Review report with suggestion for best practice and findings on the current practices were issued in June 2018.[7] The findings indicate similar gaps in CDD practices, as discussed below in para102. The AML/CFT legislative requirements for all other AML-obliged parties (including for lawyers, auditors) are same as for those that fall under POCA and they are all considered a relevant financial business. Where these may differ is in the supervisory approach taken by the Regulator or requirements/expectations under their Guidance Notes, if applicable. For example, apart from FSC coverage under POCA, lawyers are also specifically supervised by the Legal services Regulatory Authority for their

7. https://www.fsc.gi/uploads/TCSP%20Thematic%20Review%20Report%20(1).pdf.

professional conduct and duties. The FSC has a range of enforcement powers available to it which extend from Skilled Persons Reports, issuing conditions and directions, penalty fees ranging up to EUR 5 million or 10% of the firm's annual turnover, removal of officials and suspension or revocation of licences.[8] Although, no specific statistics on lawyers are available, on an average 25 inspections related to anti-money laundering matters were conducted by the FSC from 2017 to 2019.

73. Taken together, the supervisory role of Registrar and FSC are generally satisfactory to ensure the availability of legal ownership information in Gibraltar.

Availability of beneficial ownership information

74. The EOIR standard was strengthened in 2016 with a new requirement that beneficial ownership information on companies should be available. In Gibraltar, this aspect of the standard is met through AML Law. Company law and tax law do not require the keeping of beneficial ownership information.

Legislation regulating beneficial ownership information of companies

Type	Company law	Tax law	AML law	RUBO regulations
Private company	None	None	Some	All
Unlimited company	None	None	Some	All
Investment company	None	None	Some	All
Foreign companies (tax resident)	None	None	Some	None

Scope of anti-money laundering requirements

75. The main AML law in Gibraltar is POCA. Recently, the POCA has transposed the EU 4th AML Directive (EU Directive 2015/849).

76. The requirements of EU Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing have been transposed into Gibraltar statute through the Register of Ultimate Beneficial Owners Regulations 2017 (RUBO 2017) under the regulation making powers contained in POCA. RUBO 2017 came into operation in Gibraltar on 26 June 2017.

8. An example of where the FSC has taken enforcement action against a licensed entity and the individuals involved can be found here: https://www.fsc.gi/news/regulatory-settlement-agreement-between-the-gibraltar-financial-services-commission-gfsc-mr-keith-lawrence-and-mr-roudon-zarb-236.

77. Under these regulations, corporate or legal entities (companies, limited partnerships and foundations) are required to disclose the identity of their ultimate beneficial owners.

78. A corporate or legal entity incorporated in Gibraltar must obtain and hold adequate, accurate and current information of the beneficial ownership of the entity (R.6(1) RUBO 2017). However, there are no legal obligations or binding guidelines on whether the information to be maintained by the company needs to be in possession and control of a person resident in Gibraltar or whether it can be inspected by law enforcement authorities of Gibraltar.

79. Entities incorporated prior to the commencement of RUBO 2017 were required to supply the necessary information (please see paragraph 83) to the Registrar by June 2017. By end of March 2020, the filing rate was 90% (i.e. 1 400 companies (approx.) were yet to comply) and the RUBO is open for public access. Entities incorporated after the commencement of RUBO 2017 are required to supply the same necessary information within 30 days of incorporation (R.8(3) RUBO 2017). Subsequent changes or identified inaccuracies must be reported to the Registrar within 30 days of change or of an inaccuracy being discovered (R.8(2) and R.8(4) RUBO 2017).

80. Article 13 of RUBO casts the duty to keep information up to date on the express trust, corporate or legal entity incorporated in Gibraltar by giving notice to the ultimate beneficial owner, if the corporate or legal entity knows or has reasonable cause to believe that a relevant change has occurred. The notice is not issued with any periodicity like (e.g. once a year) to update the information on beneficial ownership. The notice has to be issued, as soon as reasonably practicable after it learns of the change or first has reasonable cause to believe that the change has occurred (a) to confirm whether or not the change has occurred; and (b) if so, (i) to state the date of the change; and (ii) to confirm or correct the particulars included in the notice, and supply any that are missing from the notice. The notice under this regulation must state that the addressee is to comply with the notice by no later than the end of the period of one month beginning with the date of the notice. A corporate or legal entity incorporated in Gibraltar is not required to give notice under this regulation if (a) the corporate or legal entity has already been informed of the relevant change; and (b) in the case of an ultimate beneficial owner, that information was provided either by the person concerned or with his/her knowledge.

81. For foreign companies, which are not covered by the requirements of RUBO, beneficial ownership may be available with the AML obligated parties whenever the foreign company engages them.

Definition of beneficial owners

82. Beneficial ownership for companies is defined in RUBO Regulations as well as POCA as follows: "beneficial owner" means either or both a natural person who ultimately owns or controls the customer and a natural person on whose behalf a transaction or activity is being conducted and includes at least – (a) in the case of corporate or legal entities – (i) the natural person who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with European Union law or subject to equivalent international standards which ensure adequate transparency of ownership information; (ii) if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under subparagraph (i) is identified, or if there is any doubt that the person identified is the beneficial owner, the natural persons who hold the positions of senior managing officials.

83. Under the RUBO Regulations, the following information must be provided to Registrar in relation to each of the beneficial owners of corporate or legal entities (R.6(4): RUBO 2017), identified according to the definition mentioned above:

- full name; previous names or alias
- date of birth; gender; place of birth
- nationality
- country or state of usual residence; usual residential address; a service address
- occupation
- date on which the beneficial owner acquired the beneficial interest
- details of the beneficial interest and how it is held, including percentage of holding.

84. While most companies in Gibraltar are managed by TCSPs, there is no guidance on how companies are required to validate the beneficial ownership information before submitting it to RUBO.

85. The definition to identify beneficial owners of a company is generally in line with the standard. However, there is no guidance issued to interpret and implement the identification of beneficial owners under the new RUBO regulations. Also, there are no cross-references to existing AML-guidance in the RUBO regulations or vice-versa, in respect of identifying beneficial ownership of companies (or other entities/arrangements).

86. There is also no clear guidance in RUBO or AML-guidance on applying the aforementioned definition of beneficial ownership in respect of protected cell companies,[9] which may act as collective investment vehicles. Gibraltar is recommended to ensure that beneficial ownership information of all CIVs is accurately determined and available in Gibraltar.

Nominees

87. Licensed nominee shareholders are required under POCA to retain a copy of the evidence of the customer's identity for at least five years from the date the business relationship ends (S.25: POCA). Therefore, licensed nominee shareholders are expected to keep legal and beneficial ownership information on the clients on whose behalf they act.

88. Under the new RUBO regulations, there is no guidance that clarifies that in the determination of ultimate beneficial owner for companies having nominee shareholdings, the nominator (or the beneficial owner of the nominator when the nominator is not a natural person) ought to be identified as the beneficial owner and not the nominee (who can be a natural person like lawyer or a corporate nominee). The RUBO regulations also do not mandate the availability of trust documents between nominator and nominee to be made available to the company.

89. This lack of information, with the company, on a nominee status of a legal owner leads to (a) risk of identifying the natural person who acts as a nominee and having 25% or more of shareholdings as the beneficial owner or (b) identifying the beneficial owner of the corporate nominee itself as the beneficial owner of shares, instead of the natural person who is the nominator, who ought to be identified as the real beneficial owner. There is also no legal requirement for nominees to disclose their nominee status or provide the nominator information to the company itself or the Registrar of companies.

90. Subsequent to the onsite visit, the AML-guidance was updated with effect from 25 November 2019, which states that corporate nominee shareholders may pose a greater risk and AML-obligated parties should ensure that in these cases the (nominator) ultimate beneficial owner is always identified and verified i.e. the natural person who ultimately owns or controls the legal entity. This new guidance should be effectively supervised for availability of accurate beneficial ownership information with AML-obligated parties,

9. A PCC is a single legal entity with separate and distinct cells of assets/liabilities within it. Assets and liabilities in a cell of a PCC are, by law, segregated from those of other cells and those assets are not available to creditors of other cells in insolvency. A cell of a PCC, although has most of the features of a company, is legally not a company and cannot contract in its own name.

in practice. However, there is no clear guidance in respect of identifying beneficial owner when natural person (professional or non-professional) acts as a nominee shareholder. Further, it is not mandatory for all companies in Gibraltar to engage an AML-obligated party. Therefore, taken together, although RUBO covers all companies in Gibraltar it is deficient in addressing the situation of nominee shareholdings, while the AML-guidance addresses the situation of corporate nominees, it does not necessarily cover all the companies. Gibraltar is recommended to ensure availability of accurate beneficial ownership information of legal entities having nominee shareholdings.

91. Further, nominee shareholders that are not acting by way of business are not regulated and have no obligation to disclose their quality of nominee or keep records on the identity of the persons on whose behalf they act. The Gibraltar authorities have advised that such nominees comprise primarily persons performing services gratuitously or in the course of a purely private non-business relationship and are not expected to be significant in terms of number or the assets they hold. The Gibraltar authorities have established this through consultation with representatives of the finance centre industry including law firms, fiduciary firms, accountants and auditors and the Company Registrar in Gibraltar. Gibraltar authorities further advise that any person offering nominee services in any significant manner would most likely be considered as conducting a business and accordingly will be caught under Gibraltar's AML/CFT laws.

92. The Enforcement team of the FSC constantly monitors whether activities, which require a licence, are being carried out in Gibraltar without such a licence. This is done via open and closed source internet searches and news feeds, market intelligence and also information provided to the FSC by licensees. The FSC has investigated and processed at least 17 unauthorised activity cases in the review period.

93. Nevertheless, Gibraltar should ensure the availability of ownership information held by non-professional nominees also (see Annex 1).

Beneficial ownership information – Enforcement measures and oversight

94. The Finance Centre Director is designated as the Registrar of Ultimate Beneficial Owners for the purposes of RUBO 2017. The administration in charge of the enforcement and oversight of the record-keeping requirements in relation to the Register of Ultimate Beneficial Owners is the Registrar and his/her appointed delegates.

95. RUBO 2017 allows for warning and restriction notices to be issued by the Registrar imposing the necessary restrictions on the beneficial interest, including its transfer or disposal (Regulations 38 and 39: RUBO 2017).

96. The Registrar also has the power to impose civil penalties up to an amount not exceeding EUR 11 486 (GBP 10 000). Such penalties may be imposed for failure by any express trust, corporate or legal entity to comply with the requirements to hold, maintain, supply, disclose or update information required by the Registrar (R.42: RUBO 2017). False statements made to the Registrar constitutes an offence. Any person guilty of such an offence of false statement, on conviction shall be liable to imprisonment for a term not exceeding two years or a fine, or to both. Any person guilty of such an offence on summary conviction shall be liable to a term not exceeding 6 months or to a fine not exceeding the statutory maximum (level 5 – EUR 11 219), or to both (R.44: RUBO 2017). These sanctions apply to the entities subject to the obligation of reporting their beneficial ownership information, but not to persons who would refuse to provide or provide false information to them.

97. A corporate or legal entity incorporated in Gibraltar failing to comply with the requirements to hold, maintain, supply, disclose or update information required by the Registrar, despite relevant guidance issued by the Registrar, and any persons making false statements to the Registrar, shall be liable to criminal penalties. Any person guilty of such offences of false statement or non-compliance with requirements, on conviction shall be liable to imprisonment for a term not exceeding two years or a fine, or to both. Any person guilty of such offences on summary conviction shall be liable to a fine not exceeding EUR 11 219/GBP 10 000 (R.45: RUBO 2017, and scale of fines, see footnote 7).

98. Criminal offences can be prosecuted against any officer of the company or person in a legal entity, holding an equivalent position to an officer of the company, when shown that the offence was committed with the consent or connivance of such an individual or to be attributable to negligence on their part (R.47(1): RUBO 2017).

99. In practice, there were neither any penalties/sanctions applied for delay in filing the information with RUBO nor was there any supervision programme in place to verify the accuracy of the beneficial ownership information in the RUBO. It is noteworthy that the RUBO form (UBO1 – Part D) allows for reporting difficulties in identifying the ultimate beneficial owner. Gibraltar authorities advise that the option was used 25 times and yet the information on ultimate beneficial owner was provided. It is not clear whether any investigation was carried out to ascertain the accuracy of the information submitted.

100. In view of the legal gaps and scope for improvement in supervision, Gibraltar is recommended to take necessary measures to ensure the availability of accurate and up-to-date beneficial ownership information at all times in respect of all relevant legal entities and legal arrangements.

101. At the onsite interactions with private sector, TCSPs mentioned that mostly the business is introduced by intermediaries (e.g. a law firm or accounting firm from United Kingdom introduces a known vetted, filtered the client). TCSPs explained that historically the business in Gibraltar is Asset Protection Vehicles, which continues to date. However, more companies are being established, to run businesses from Gibraltar and their passive character is coming down, in the wake of exit of the United Kingdom from European Union.

102. Although the TCSPs demonstrated a generally good understanding of their CDD responsibilities, there are some issues in practice. Firstly, there was no strong indication of verifying for beneficial ownership by means other than 25% ownership. Further, there was no clarity on how beneficial ownership for PCCs/CIVs would be determined. Finally, it was not clear on how beneficial ownership of corporate settlor/trustee/beneficiary is determined in respect of trusts, which may be part of the ownership chain of companies.

103. There are a few issues with the supervision by FSC to ensure accurate determination of beneficial ownership. It was explained that FSC at their onsite visits would be verifying if the TCSP has internal audit and they ask for evidence of beneficial ownership information. However, no concrete example of remediation of beneficial ownership upon FSC verifications could be shared by the TCSPs or the FSC. It appears that FSC should place more emphasis on verifying the determination of accurate beneficial ownership information going beyond the ownership thresholds.

104. With gaps in guidance to identify beneficial ownership for companies, partnerships, trusts and foundations, and no sanctions applied in the review period for inaccurate identification of beneficial ownership information, there is scope for improvement in depth of verification of availability of accurate beneficial ownership information in line with the standard. Gibraltar should deepen the supervision to ensure availability of accurate beneficial ownership information for all relevant entities and arrangements.

Retention requirements

105. The authorities that hold identity and legal ownership information consist of the Company Registrar and the tax authorities. The obligation on the Company Registrar, in its capacity as national database for such information, is to retain originals of documents delivered to it for a period of ten years (S.425: CA 2014). Gibraltar further confirms that this is the case for liquidated/dissolved entities (voluntarily or by Court procedure) from the date of liquidation/dissolution. In respect of retention of beneficial ownership information with RUBO (including for the dissolved entities), it is for an indefinite period given that it is in electronic form. Gibraltar authorities further advise that a majority of entities and arrangements use the services of a TCSP or

other regulated entity and, where a company, is a client of a regulated entity (TCSP, Bank, Investment firm, etc.), then the regulated entity would be required to maintain records for 5 years from the termination of the business relationship, in line with Section 25 of POCA. Furthermore, where an entity is liquidated using an insolvency practitioner, then the insolvency practitioner is required to maintain records in the same manner. Some of those regulated entities keep records for much longer, for instance as part of the requirements of professional indemnity insurance. Nevertheless, it remains that not every company needs to engage a TCSP and that too from Gibraltar. A gap may therefore remain in respect of accuracy of the legal and beneficial ownership information retained by the Companies House/RUBO in respect of struck-off companies. Gibraltar is recommended to ensure that up to date and accurate legal and beneficial ownership information is available in respect of all struck off companies (see also paragraph 63).

Availability of beneficial ownership information in EOI Practice

106. During the current review period, Gibraltar was expressly asked to provide beneficial ownership information to at least eight of its EOI partners, who were satisfied with the quality of the information received in general. However, a peer indicated having not received the requested information (see Elements B.1, C.1 andC.5 for more details as the issue does not relate to the availability of the information).

A.1.2. Bearer shares

107. Companies are not allowed to issue "bearer shares" since 21 March 2013 (section 121 of the Companies Act). Further, on 19 August 2014, the Company Registrar in Gibraltar struck off the last three companies that had share warrants to bearer in issue. Gibraltar authorities advise that therefore, there are no bearer shares in circulation. Gibraltar authorities further clarify that these three companies continue to be in the state of strike-off and they would not be reinstated unless the shares are converted to registered form.

108. In the current review period, there were no requests received by Gibraltar, which sought information on bearer shares or bearer share warrants.

A.1.3. Partnerships

109. The laws of Gibraltar allow for the creation of general partnerships (GPs), limited partnerships (LPs) and Limited Liability Partnerships (LLPs). Any foreign partnership willing to do business in Gibraltar has to register like a domestic partnership and is subject to similar requirements for the purposes of disclosing information on partners and beneficial ownership. There were no foreign partnerships registered at the end of 2019.

General partnerships

110. General Partnerships (GPs) are governed by the Partnership Act (PA). A GP arises when two or more persons carry on a business in common with a view of profit. The PA provides that unless the partnership agreement states otherwise, every partner is an agent of the firm and his/her other partners for purposes of the partnership business, and the action of every partner who does any act for carrying on the business binds the firm and his/her partners. Every partner is liable jointly with the other partners for all the debts and obligations of the firm incurred while he/she is a partner; and every partner is liable jointly with his/her co-partners and also severally for everything for which the firm becomes liable for in respect of wrongful acts or omissions (Ss.7, 11 and 14).

111. Every partnership that carries on a business in Gibraltar and whose business name does not consist of (a) the true surnames of all partners who are individuals; and (b) the corporate names of all partners who are corporations, are required to register with the Registrar of Business Names under the Business Names Registration Act (BNRA). At the point of registration, the partnership must provide, amongst other information, the following details: the business name; the general nature of the business; the principal place of business; and the first name and surname, the nationality, the usual residence, and the other business occupation (if any) of each of the individuals who are partners, and the corporate name and registered or principal office of every corporation which is a partner (S.5: BNRA).There is no information on the level of participation of each partner reported to BNRA. Gibraltar authorities clarified that about 36% of general partnerships had at least one corporate partner. The information provided to BNRA is kept indefinitely.

112. Any changes in the above details must be advised to the Registrar within 14 days of the change happening (S.8: BNRA). In addition, every registered partnership must renew its registration annually by submitting an annual declaration to the Registrar stating that the information supplied at the time of the application for registration remains true, or in the event of a change in any of that information, a declaration containing details of the changes. Gibraltar authorities advise that the information provided to BNRA retained indefinitely even after the termination/dissolution of the general partnership.

113. According to information available to the Registrar of Business Names, there were 114 General Partnerships registered as at 31 December 2018. This figure does not include all GPs that may operate under the name of their partners and thereby not registered with the Registrar. There is no means to monitor them but the identity of the partners is their name itself.

Limited partnerships

114. Limited Partnerships (LPs) are governed by the Limited Partnership Act (LPA). They are also governed by the PA insofar as it is not inconsistent with the express provisions of the LPA. An LP must consist of one or more general partners, who are liable for all debts and obligations of the firm, and one or more limited partners, who at the time of entering into an LP contribute capital, and are not liable for the debts or obligations of the firm beyond the amount contributed (S.3: LPA). It may not consist of more than 20 persons.

115. The registration requirements of GP under the BNRA apply similarly to LPs. in addition, all LPs, including those that have registered under the BNRA, must register themselves with the Registrar of Limited Partnerships and at the point of registration provide particulars of the LP, stipulating: the firm name; the general nature of the firm's business; the principal place of business; the full name of each of the partners; the term, if any, for which the LP is entered into, and the date of commencement; a statement that the partnership is limited and an indication of which are the partners with limited liability; and the sum contributed by each limited partner (S.7: LPA). The information provided to BNRA is kept indefinitely.

116. Any changes in the partners must be advised to the Registrar within seven days of the change (S.8: LPA). The Registrar is required to keep a register and an index of all limited partnerships registered and all of the statements registered in relation to such partnerships (S.12: LPA). Gibraltar authorities advise that the information provided to BNRA is retained indefinitely even after the termination/dissolution of the limited partnership.

117. As of 31 December 2018, there were 117 LPs registered in Gibraltar.

Limited Liability Partnerships

118. The Limited Liability Partnerships Act 2009 provides for the creation of limited liability partnerships (LLPs). LLPs are registered with the Registrar of Companies pursuant to section 4 of the Limited Liability Partnerships Act 2009. The Registrar issues proof of incorporation in accordance with section 5 of the Limited Liability Partnerships Act 2009 with a duplicate original of this kept on the public record. Limited liability is granted to all of the members of a LLP, all of whom may participate in the management of the partnership. The partnership becomes a body corporate with unlimited capacity. An LLP is a legal person in its own right, with separate legal personality from that of its members. The information provided to ROC is kept indefinitely.

119. The provisions of section 182 of the CA 2014 in respect of the requirement to keep a register of members extends to LLPs by virtue of regulation 6 of the Limited Liability Partnerships (Application of Companies Act 2014 and Insolvency Act 2011) Regulations 2016.

120. On incorporation, the members are the persons who subscribed their names to the incorporation document (section 6.(1) of the Limited Liability Partnerships Act 2009). Notice of subsequent changes must be delivered to the Registrar within 14 days, where a person becomes or ceases to be a member or designated member (section 11.(1)(a) of the Limited Liability Partnerships Act 2009). The information provided to the Registrar is retained indefinitely even after dissolution/termination of the LLP.

121. In the event that the requirement to give notice to the Registrar of any change affecting the members is not complied with, every designated member shall be guilty of an offence (section 11.(4) of the Limited Liability Partnerships Act 2009) and liable on summary conviction to a fine not exceeding GBP 10 000/EUR 11 219 (section 11.(6) of the Limited Liability Partnerships Act 2009; see footnote 7on the scale of fines).

122. All documents held by the Registrar on LLPs are available for public inspection. As at the 31 December 2018 there were, 14 LLPs registered in Gibraltar.

Beneficial ownership under POCA and RUBO

123. The Central Register of Ultimate Beneficial Ownership Regulations do not cover general partnerships. For LPs and LLPs, the forms to capture beneficial ownership do not allow for look-through in case a limited or general partner is a legal entity.

124. The AML-guidance states that, in the case of partnerships the identity of at least two partners or equivalent should be verified in line with the requirements for personal customers. Since the limited partnership and limited liability partnership of Gibraltar are legal persons, this guidance is clearly not in line with the standard to identify beneficial owners of partnerships, particularly when one or more of the partners are not natural persons. In addition, this guidance does not ensure the identification of all beneficial owners of partnerships in Gibraltar. Finally, it is not obligatory that general partnerships in Gibraltar engage an AML-obligated party.

125. Neither the RUBO nor the AML framework allow for full identification of all beneficial owners of partnerships. Gibraltar is recommended to ensure availability of accurate beneficial ownership information of partnerships in Gibraltar.

Oversight and enforcement

126. The obligations placed on partnerships are monitored by the Registrar of Business Names and the tax obligations of partners is monitored by the Income Tax Office. The Registrar checks all information filed electronically

through a system designed to detect anomalies. Unlike companies, the majority of partnerships do not necessarily engage a trust and company services providers and so do not attract the oversight of the FSC. Therefore, apart from this electronic check by the Registrar, there is no active monitoring or oversight programme in place. If the partnership has Gibraltar sourced income, then the partners will be subject to tax in Gibraltar. In these cases, the Income Tax Office checks information filed with them against information in their data records. As mentioned above, since the RUBO implementation is recent, supervision of partnerships for availability of beneficial ownership information is necessary.

Availability of partnership information in EOI practice

127. In the current review period, two requests were received in relation to partnerships, and Gibraltar was able to respond to them in a timely manner. There were no adverse peer inputs in this respect.

A.1.4. Trusts

128. Common law principles of trust law are all applicable in Gibraltar. The case laws of the United Kingdom are applicable in Gibraltar in this regard. Gibraltar is a signatory to the Hague Convention on the Law Applicable to trusts and on their Recognition. In addition to the common law obligation, Gibraltar amended its Trustees Act in 2013 requiring all trustees[10] (whether or not they are licensed, as advised by Gibraltar authorities) to record in writing information as to the identity of the settlors, trustees, protectors and beneficiaries of the trust and maintain such information for five years. Gibraltar authorities clarified that this requirement also applies in the case of terminated/dissolved trusts. There are specific penalties in the Trustees Act for failure to comply with these obligations. In addition, all professional trustees in Gibraltar are subject to licensing and general oversight by the FSC (see below).

129. There is no obligation for express trusts to be registered under the Registered Trust Act (RTA) in Gibraltar. However, trusts whose trust deeds mandate a registration may choose to have their trust deed registered under the RTA. Under the RTA the Registrar must keep an index of the names of all registered trusts, and include therein details of the name of the trust; the date of its creation; the amount of the initial settlement; the date of its registration; the name(s) of the trustee(s); and the address for service in Gibraltar (S.4: RTA).

10. The Trustees Act does not define a trustee or qualifications thereof to be one. Further, there is no reference to the POCA or FSA or licensing requirements to be met before enjoining someone to become a trustee.

130. The Purpose Trusts Act 2015, which commenced on 17 September 2015, provides for the creation and enforcement of trusts whereby the trustees hold assets on trust to carry out a specific purpose which is not of a charitable nature. The identification obligation of settlors and trustees is the same as for express trusts under the Trustees Act.

131. Gibraltar also allows for creation of Private Trust Companies (PTC). A PTC is a company that is set up for the purpose of undertaking Connected Trust Business from or within Gibraltar. Connected Trust Business means the administration of a Trust solely for the benefit of the Settlor and/or for those persons who are known as Designated Individuals and for those persons connected by family ties to the Designated Individual. The law governing Gibraltar PTCs is the Private Trust Companies Act 2015; however, these companies must also comply with the provisions of the Companies Act 2014. This includes the requirement to maintain at their registered office: i) a list of directors and managers (s. 222 of the Companies Act 2014); ii) a register of members (or shareholders). The lists of directors and members must be kept at the registered office of the company, which must be in Gibraltar.

132. All trusts that have income assessable to tax in Gibraltar must file an annual income tax return with the Commissioner of Income Tax (S.28 ITA 2010). This return must provide identity information on the trust beneficiaries for the proper assessment to tax (S.12A ITA 2010). In addition, all beneficiaries who are ordinarily resident in Gibraltar and who are in receipt of income from a trust must declare that income in their tax return (S.28 ITA 2010). As Gibraltar operates a territorial system of taxation, this would relate to income from trusts deriving Gibraltar-sourced income, under which beneficiaries in receipt of income from trusts are identifiable. However, no tax filing obligations apply where the income from a trust is accrued or derived from outside Gibraltar.

133. Licensed professional trustees (including PTCs when they act as trustees) are required to comply with Gibraltar's AML/CFT laws (S.9(1)(j): POCA). The FSAA and POCA require them to maintain the following information with regard to the trusts for which they act as trustees:

- full name of the trust
- nature and purpose of the trust (e.g. discretionary, testamentary, bare)
- country of establishment
- identity of the settlor or grantor
- identity of all trustees
- identity of any protector

- where the beneficiaries have already been determined, the identity of the natural person(s) who is the beneficial owner of the property; Where the individuals that benefit from the legal arrangement have yet to be determined, the class of persons in whose main interest the arrangement is set up (R86 of the AML/CFT Guidance Notes and S.7(1A)-(1C): POCA).

134. Further statutory requirements to keep ownership and identity information apply to professional trustees that act by way of business. The provision of corporate and trust services in Gibraltar is a "regulated activity" under the FSA. Gibraltar authorities further clarify that the exempted professional trustees (auditors, lawyers who need not be licensed) under Paragraph 133, Part 14, Schedule 2 of FSA are in turn covered by the requirements under POCA (s. 9) as relevant financial businesses.

135. In addition, it is also conceivable that a local trust or a foreign trust may be administered by a non-professional trustee. In this case, the trustee would be subject to common law trust duties set out above and may take on such duties if they personally knew the identity of the settlor and beneficiaries. Nevertheless, Gibraltar should ensure the availability of identity information, in respect of foreign trusts (with or without tax consequences in Gibraltar) managed by a non-professional trustee in Gibraltar (see Annex 1).

Beneficial ownership of express trusts under the register of ultimate beneficial owners regulations

136. Beneficial ownership information on express trusts will be captured under the Register of Ultimate Beneficial Owners Regulations (RUBO). Under the Register of Ultimate Beneficial Owners Regulations 2017 (RUBO 2017), express trusts are required to disclose the identity of their ultimate beneficial owners. An "express trust" means one governed by Gibraltar law, which generates tax consequences in Gibraltar.

137. The RUBO defines "beneficial owner" as either or both a natural person who ultimately owns or controls the customer and a natural person on whose behalf a transaction or activity is being conducted and includes at least, in the case of trusts (i) the settlor; (ii) the trustee; (iii) the protector, if any; (iv) the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates; (v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

138. Each trustee of an express trust must obtain and hold adequate, accurate and up-to-date information on the beneficial ownership of the express trust, including the full name, date and place of birth and gender (R.9(1)

RUBO 2017). The information required by the Registrar includes the identity of the settlor, the trustee or trustees; the protector (if any); the beneficiaries or class of beneficiaries; and any other natural person exercising effective control over the express trust.

139. The following items of information is required for each of the aforementioned persons (R.9(4) RUBO 2017): full name; date and place of birth; gender; nationality; country or state of usual residence; usual residential address; a service address; occupation; date on which the beneficial owner acquired the beneficial interest; and details of the beneficial interest and how it is held, including percentage of holding.

140. An express trust created prior to the commencement of RUBO 2017 is required to supply the necessary information to the Registrar. Any changes to the information supplied initially must be updated within 30 days of the change (R.11(2) RUBO 2017).

141. Express trusts created after the commencement of RUBO 2017 are required to supply the necessary information within 30 days of incorporation (R.11(3) RUBO 2017). Subsequent changes or identified inaccuracies must be reported to the Registrar within 30 days of the change or the inaccuracy being discovered (R.11(4) RUBO 2017).

142. However, the RUBO forms that are meant to capture beneficial ownership information have deficiencies, including no look through in line with the standard for corporate settlors/trustees/protectors/beneficiaries. This needs to be addressed to ensure the availability of accurate beneficial ownership information on trusts covered by RUBO, in line with the standard.

143. Recently, in November 2019, a similar gap in look through provisions in the AML-guidance to determine the beneficial ownership of trusts having corporate settlor/trustee/protector/beneficiary, has been remediated (R86 of AML-guidance).

144. Nevertheless, it is not necessary that express trusts (and other types of trusts) having nexus to Gibraltar (with or without tax consequences in Gibraltar) engage an AML-obligated party in Gibraltar. Therefore, AML cannot become a mitigating source of beneficial ownership information and the amended AML-guidance cannot be applicable in the case of all trusts having nexus to Gibraltar.

145. Therefore, taken together, this presents a gap in coverage of all trusts with nexus to Gibraltar under RUBO and POCA (AML framework) for the purposes of availability of beneficial ownership in line with the standard.

146. Gibraltar is recommended to ensure that accurate beneficial ownership of all the trusts having nexus to Gibraltar is available in Gibraltar at all times, including in the cases of trusts with corporate settlors/trustees/protectors/beneficiaries.

Oversight and enforcement

147. While there are comprehensive requirements to keep identity and beneficial ownership information in relation to all trusts, the monitoring of their implementation by FSC, however, only extends to professional trustees. In Gibraltar, there are currently 34 licensed professional trustee groups. During the period under review, the FSC conducted 33 full risk assessments of which 18 were supervisory onsite visits and 15 were desk-based reviews. The FSC also conducts desk-based reviews through the scrutiny of various returns submitted by firms (audited financial statements, financial crime return, and the return of trusts and companies under management). No penalties were issued under the Trustees Act, by the FSC within the review period given that findings were not deemed to be a significant breach of the law and the level of penalties that could have been imposed were not deemed a proportional response. Those firms, which the FSC observed had minor deficiencies, were placed on an agreed remediation plan and have continued to be monitored by the FSC accordingly.

148. In respect of oversight of the RUBO for accuracy of beneficial ownership information, as discussed above in A.1.1, the Registrar is yet to design and implement an appropriate supervisory programme.

149. Further, in view of the recent amendments to R86 of the AML-guidance, which now provides for look-through in case trustee/settlor/protector/beneficiary are legal entities and which also removed the restriction of the identification of beneficiaries to those having more than 25% share, Gibraltar is recommended to ensure supervision of its effective implementation to ensure that accurate and up-to-date beneficial ownership information of all trusts having nexus to Gibraltar is available at all times.

Availability of trust information in EOI practice

150. In the current review period, three requests were received in relation to trusts, and Gibraltar was able to respond to them in a timely manner. There were no adverse peer inputs in this respect.

A.1.5. Foundations

151. The Private Foundations Act, 2015 (PFA), permits the establishment of private foundations in Gibraltar (S.5: PFA) provided that any one or more persons, in their capacity as founders, endow the Foundation with its initial assets, subscribe their name to a Foundation Charter and register the Foundation in the Register (S.13: PFA).

152. Registration accords legal status (S.3: PFA) to the Foundation including being able to hold and deal with property in its own name as an absolute

legal owner and to sue and be sued in its own name. A foundation may be established for any purposes which are capable of fulfilment and which are not unlawful, immoral or contrary to public policy in Gibraltar (S.4: PFA).

153. The permitted purposes and objects of a Foundation cannot include the carrying on of a commercial or trading activity unless that activity is incidental to the attainment of its purpose or objects or the carrying on in or from Gibraltar of any activity in respect of which a licence under any other Act is required in the absence of that licence having been granted to the Foundation.

154. The Foundation does not need to be either charitable or philanthropic. At the end of the review period, there were seven foundations registered in Gibraltar and in the current review period there were no requests related to Foundations.

Registrar of foundations

155. The Registrar of Foundations ("the Registrar"), is held by the Registrar of Companies appointed under section 420(1) of the Companies Act (S.11: PFA).

156. The Registrar has and maintains a Register of Foundations ("the Register"). The Register shall contain a record of all Foundations registered under section 13 and shall contain: the name and registered number of the Foundation; the date of registration; the name and address of the councillors; the name and address of the Guardian, if any, appointed in accordance with section 28; the details of the registered office; and any and all other documents filed with the Registrar under or for the purposes of this Act.

157. A beneficiary of a foundation must be identified in the Constitutional Documents of that foundation either by name or by reference to a class or a relationship to another person (S.32: PFA), where the Constitutional Documents of a foundation comprise the Foundation Charter and where applicable the Foundation Rules (S.7: PFA).

158. A Foundation Charter must state the manner in which the beneficiaries of that foundation (if any) are to be designated (S.8: PFA). The Foundation Charter must be filed with the Registrar in order to complete the registration process of a foundation (S.13: PFA). The Registrar of Foundations maintains a register containing the following information (S.:12 PFA):

- the name and registered number of the foundation
- the date of registration
- the name and address of the appointed councillors and guardian
- the details of the registered office
- all other documents filed under or for the purposes of the Act.

159. The records of the Registrar are public records. The names of the founder, the councillors and the guardian are public records. However, unless the beneficiaries' names are in the Charter, their names will not be part of the public records. However, the Councillor(s) will always be in possession of the identity information of beneficiaries. The information provided to the Registrar is retained for five years after the termination/dissolution of the foundation.

Beneficial ownership under RUBO

160. There are similar obligations applicable to foundations or any legal arrangement made in Gibraltar that has a structure or functions in a similar manner as a trust and has tax consequences in Gibraltar. For the application of these regulations, references to terms of an express trust are to be interpreted as being the nearest equivalent to the foundation or legal arrangement referred to (R.11A RUBO 2017).

161. The RUBO form that is meant to capture beneficial ownership information of foundations (Form UBO2) has deficiencies, including no look through in line with the standard for corporate founders/councillors/guardians/beneficiaries. Gibraltar is recommended to ensure that accurate and up-to-date beneficial ownership information of foundations having nexus to Gibraltar is available at all times in Gibraltar.

162. The AML-guidance was recently updated to clarify the identification of beneficial ownership of foundations in line with the standard. The guidance has also been amended to ensure look through provisions for corporate parties of foundations. Gibraltar is recommended to ensure effective supervision of the implementation of new provisions in respect of beneficial ownership of foundations.

Oversight and enforcement

163. Every Foundation shall deliver to the Registrar, successive annual returns each of which is made up to a date not later than the anniversary of the Foundation's registration. An annual return shall be in the form prescribed by the Registrar from time to time and shall state: (a) the address of the registered office of the Foundation; and (b) such particulars with respect to the persons who at the date of the return are the councillors and the Guardians of the Foundation as are required by PFA to be contained with respect to councillors and Guardians. An annual return shall be delivered to the Registrar within 28 days after the date to which it is made up. Gibraltar authorities advise that the seven foundations filed their annual returns with Registrar.

164. All foundations that have income assessable to tax in Gibraltar must file an annual income tax return with the Commissioner of Income Tax (S.28 ITA 2010). This return must provide identity information on the foundation beneficiaries for their proper assessment to tax (S.12A ITA 2010). No tax filing obligations apply where the income from a foundation is accrued or derived from outside Gibraltar, and the Registrar of Foundations or the Councillors would be the source of ownership and beneficiary information in such cases. In the review period, there were no foundations registered in the tax database, and thereby were not subject to any oversight by the tax authorities.

165. Gibraltar authorities advise that the seven foundations filed their BO information with RUBO. However, as discussed above, in respect of oversight of the RUBO for accuracy of beneficial ownership information, as discussed above in A.1.1, the Registrar is yet to design and implement an appropriate supervisory programme. In view of the above, Gibraltar is recommended to ensure that the beneficial ownership information of foundations in line with ToR A.1.5 is available.

A.2. Accounting records

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

166. The 2014 Report concluded that all companies and partnerships are required to maintain accounting records and underlying documentation for at least five years in accordance with the standard. In respect of trusts, common law requirements in general and requirements under Income Tax Act were found sufficient in general to meet the standard. However, as no penalties apply for the non-compliance with these obligations in the case of partnerships that are not subject to tax, it was recommended to make the necessary changes to the legal framework and monitor the implementation thereof.

167. Gibraltar's Partnership Act was amended with effect from 1 December 2016 to meet this recommendation. The new subsection 29A(3) provides that a partner who fails to comply with the obligation to maintain full accounting records, including underlying documents, commits an offence and is liable on summary conviction to a fine up to GBP 10 000 (EUR 11 792). Therefore, the previous recommendation with respect to lack of penalties against defaulting partnerships stands deleted. However the recommendation to monitor its implementation continues, in view of the lack of any specific measures taken to implement the new penalties brought into the law.

168. Not all trusts, particularly foreign trusts having Gibraltar trustees, and trusts managed by non-professional trustees may be under the oversight of FSC or Tax Authorities. There is scope for improvement in oversight of trusts

for availability of accounting records. Gibraltar is recommended to ensure that a regular system of oversight and monitoring of all trustees' obligations to maintain accounting records is in place. Gibraltar is also recommended to ensure availability of reliable accounting records and underlying documents including in respect of ceased entities and arrangements.

169. In terms of overall supervision for availability of reliable and accurate accounting records in Gibraltar, with 57% tax filing rate of companies, 88% of active companies exempted from auditing requirements, and no foundations registered in the tax database, there is scope for improvement in oversight.

170. During the current review period, Gibraltar received 64 requests for accounting information and most of them were answered in a timely manner, except for a case where the TCSP supposed to be in possession of the accounting information could not provide it and in another case where the foreseeable relevance is challenged by the TCSP.

171. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified	Currently, there are no specific legal requirements that ensure the mandatory retention of accounting records of ceased entities and arrangements in the possession or control of a person resident in Gibraltar for at least five years after the cessation of entity/arrangement.	Gibraltar should ensure that accounting records of all relevant entities and arrangements are retained for at least five years after their cessation arrangements in the possession or control of a person resident in Gibraltar.
Determination: The element is in place but needs improvement		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	Partnerships are not subject to systematic oversight of compliance with their accounting obligations.	Gibraltar should ensure that a regular system of oversight and monitoring of partnerships' obligations to maintain accounting records, is in place.

	Not all trusts, particularly foreign trusts having Gibraltar trustees, and trusts managed by non-professional trustees may be under the oversight of FSC or Tax Authorities. Out of 40 trusts voluntarily registered under the Trustees Act only 12 have filed returns. There is scope for improvement in oversight of trusts for availability of accounting records.	Gibraltar should ensure that a regular system of oversight and monitoring of all trustees' obligations to maintain accounting records is in place.
	There is scope for improvement in oversight, given the 57% tax filing rate of companies, and 88% of active companies exempted from auditing requirements, and no foundations registered in the tax database. Further, there was a case where a partner's request for accounting information could not be responded to since the TCSP would not provide the information.	Gibraltar is recommended to strengthen overall supervision to ensure availability of reliable and accurate accounting records of all relevant entities and arrangements.
Rating: Largely Compliant		

A.2.1. General requirements andA.2.2 Underlying documentation

172. As discussed in the 2014 Report, the Standard is generally met by a combination of company law, partnerships act, income tax act, common law principles and Trusts Act requirements. The various legal regimes are analysed below.

Company law

173. Every company that is incorporated under the Companies Act (CA) 2014 or is a foreign-incorporated company that is registered under the CA 2014 is required to keep "proper books of account" with respect to: all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place; all sales and purchases of goods by the company; and the assets and liabilities of the company (S.239: CA 2014).

174. CA 2014 contains a comprehensive definition of the term "proper books of account". "Proper books of account" are defined as such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company and includes books containing entries from day to day of all cash received and cash paid and any contracts, invoices or other underlying documentation significant to the trade or business of the company (S.2: CA 2014). Furthermore, these proper books

of account to be kept for 5 years regarding all sums of money received and expended by the company, all sales and purchases of goods and services by the company and the assets and liabilities of the company.

175. Except for a case where a private company has by special resolution dispensed with the holding of annual general meetings, the directors of every company are required to prepare the following accounts at least once every calendar year for the purpose of the company's general meeting: a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account; and a balance sheet as at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made up (S.240: CA 2014).

176. All companies must deliver in respect of each financial year a copy of the company's annual accounts accompanied by an auditor's report to the Registrar of Companies. The annual accounts generally comprise a balance sheet as at the last day of the financial year and a profit and loss account, with variations in the level of details. The extent of documents that must be filed as part of the annual accounts differs according to the size of the company as determined by the size of its turnover, balance sheet and number of employees. In general, the reporting requirements of smaller companies are less comprehensive in terms of the details required.

177. Small companies are exempted from the above requirements to appoint auditors and to have their accounts audited (S.259: CA 2914). Such companies are defined as private companies that meet at least two of the following conditions in the relevant financial year(s): the amount of the company's net turnover did not exceed GBP 10.2 million (EUR 11.4 million); its balance sheet total did not exceed GBP 5.1 million (EUR 5.7 million); or the average number of persons employed by the company did not exceed 50. A profile of these small companies is provided below.

178. Out of the total 13 761 local active companies, 12 020 are small and micro in size classification. Out of the total of 12 020 local small and micro companies, approximately 25% are holding non-trading companies with a further 24% holding private residences and other personal assets.

179. Out of the 106 active foreign companies, 77 small companies do business in Gibraltar. Out of them approximately 30% are holding non-trading companies with a further 11% in gambling and betting activities, 7% in other service activities and 7% holding private residences and other personal assets.

180. Under the Income Tax Act, companies with assessable income of less than GBP 1 250 000 (EUR 1 472 625) can file financial statements that are not audited but need to be accompanied by an independent accountant's report (S.30(1)(bb) ITA 2010). Presently, the compilation of this report is based on the International Standard on Related Services 4410 "Engagements

to Compile Financial Statements" within the framework of the International Federation of Accountants. Therefore, although the financial statements are not subject to audit, Gibraltar authorities explain that given that these are compiled in accordance with a recognised internationally accepted and recognised accounting standard, ethical principles covering professional responsibilities including integrity, objectivity, professional competence and due care, confidentiality, professional behaviour and technical standard are enshrined therein.

181. Nevertheless, given the profile of small companies (12 097 in total constituting 88% of all active companies) with a significant proportion of them being asset holding vehicles (approximately 50% of local small companies and 30% of foreign small companies) that need not file audited accounts with the Registrar and in combination with the exemption under Income Tax Act to not have their accounts audited when the assessable income is less than GBP 1 250 000 (EUR 1 472 625), such companies may pose a risk to effective supervision in ensuring the availability of accurate accounting records. Gibraltar is recommended to ensure adequate supervision to ensure availability of reliable and accurate accounting information in respect of these small companies.

Retention requirements

182. All documents filed with the Registrar must be kept for a minimum of ten years by the Registrar and this includes annual accounts (S.425: Companies Act 2014). In practice, the documents are kept indefinitely. This requirement also applies to ceased entities and re-domiciled companies. The Registrar keeps all information in both printed form and electronically and is available online. Any interested person or competent authority can now register with the Company Registrar online and a fee of GBP 10 (EUR 11) is charged for each document downloaded payable electronically. As discussed above, the reporting requirements in respect of small companies are less comprehensive. To be fully in line with the standard, Gibraltar should ensure that all accounting books, records and underlying documents are also retained for five years in the possession or control of a person resident in Gibraltar. Currently, there are no specific legal requirements that ensure the mandatory retention of accounting records of ceased entities and arrangements in the possession or control of a person resident in Gibraltar for at least five years after the cessation of entity/arrangement. While the service providers may retain the records of their transactions with the client entities/arrangements for five year (under POCA), it is not legally required that they maintain their client's own accounting records with them after the cessation. Gibraltar is accordingly recommended to ensure that accounting records of all relevant entities and arrangements are retained for at least five years after cessation.

Partnerships and trusts

Partnerships

183. All partners of a partnership must render "true accounts and full information of all things affecting the partnership to any partner or his/her legal representative" (S.30: Partnership Act). Additionally, all partners must maintain proper books of account in respect to (a) all sums of money received and expended by the partnership and the matters in respect of which the receipt and expenditure takes place; (b) all sales and purchases of goods by the partnership; and (c) the assets and liabilities of the partnership, for a period of five years (S.29A: PA). "Proper books of account" are defined as such books or accounts as are necessary to exhibit and explain the transaction and financial position of the trade or business of the partnership and includes books containing entries from day to day of all cash received and cash paid, statement of annual stocktaking, all goods sold and purchased, showing sufficient detail to enable those goods, buyers and sellers to be identified, and any contracts, invoices or other underlying documentation significant to the trade or business of the partnership.

184. Gibraltar's Partnership Act was amended with effect from 1 December 2016 to sanction a partner who fails to comply with the obligation to maintain full accounting records, including underlying documents. Under this legislative provision an offence is committed which is liable on summary conviction to a fine up to GBP 10 000/EUR 11 219 (see footnote 7on the scale of fines). However, no such penalties were applied in the review period and there is no information on oversight activities undertaken in the review period to administer these new penalties in defaulting partnerships, apart from the regular tax oversight, which may audit some partners and thus not the availability of the full and reliable accounting records relevant to the activity of whole partnership. Therefore, the previous recommendation to ensure the supervision of partnerships to maintain adequate accounting information is maintained.

185. Partnerships are tax transparent entities in Gibraltar and partners are taxed individually on their share of their partnership profits (S.18: ITA 2010). All partners of a partnership that derives Gibraltar-sourced income must file tax returns stating their income including, where applicable, the share of the partnership income for the year (S.28 or 29: ITA 2010). The return may be supported with a copy of the partnership accounts demonstrating the attributable profit share. The accounting record keeping requirements under the ITA 2010 also apply to partnerships (S.63: ITA 2010). Please see paragraph 202 for more details.

Trusts

186. Under common law, all trustees resident in Gibraltar are subject to a fiduciary duty to keep accounts of the trusts and to allow the beneficiaries to inspect them as requested (Pearse v. Green (1819) 1 Jac & W 135). Further, trustees should obtain "good receipt" from beneficiaries when they distribute trust property (Evans v. Hickson (1861) 30 Beav 136 and Re Hulkes (1886) 33 Ch D 552).

187. Trustees of trusts that are subject to tax in Gibraltar must file an annual tax return, and are subject to the accounting record keeping requirements of the ITA 2010 (S.63: ITA 2010).

188. AML obligations apply to all professional trustees. These AML obligations require maintenance of transaction records, and these transaction records must be sufficient for reconstruction of the transactions. The AML/CFT Guidance Notes also provide some guidance on the nature of the underlying documents to be kept for these transaction records. These records must be retained for at least five years after the business relationship or one-off transaction, as the case may be, ends.

189. With respect to the trust assets, Gibraltar's authorities advise that the majority of trusts in Gibraltar have their assets held by a holding company (or companies). This practice exists for a number of reasons. A trustee is afforded more protection from a liability point of view if assets are distanced from him or herself via a corporate vehicle. Gibraltar authorities further explain that financial institutions are not comfortable with accepting trust assets if they are not held via a holding company due to their Customer Due Diligence (CDD) obligations (Ss.10 and 11: POCA).

190. Further, Gibraltar amended the Trustees Act in 2013 to require a trustee to maintain "proper books of account" with respect to (a) all sums of money received and expended by the trust and the matters in respect of which the receipt and expenditure takes place; (b) all sales and purchases of goods by the trust; and (c) the assets and liabilities of the trust, for five years. "Proper books of account" are also defined as such books or accounts as are necessary to exhibit and explain the transaction and financial position of the trade or business of the trust and includes books containing entries from day to day of all cash received and cash paid, statement of annual stocktaking, all goods sold and purchased, showing sufficient detail to enable those goods, buyers and sellers to be identified, and any contracts, invoices or other underlying documentation significant to the trade or business of the trust.

191. Specific penalties in the Trustees Act were introduced from 1 December 2016, for failure to comply with these obligations. Not all trusts, particularly foreign trusts having Gibraltar trustees, and trusts managed by non-professional trustees may be under the oversight of FSC or Tax Authorities. In

fact, only 40 trusts are registered under the Trustees Act and out of them only 12 have filed returns. In practice, the FSC has indicated that during its desk based reviews and on-site visits a check is done to ensure that proper accounting records and underlying documents are kept. It has confirmed that during the three-year period under review there were no deficiencies identified with the keeping of these records. Although, all professional trustees in Gibraltar are subject to licensing and oversight by the FSC, it does not verify the accounting and/or regulatory compliance of the clients of licensed trust and company service providers. During onsite visits, a general check is carried out. This check includes the verification of documents that are kept on file relating to registrations including share certificates and memorandum of understanding as well as those documents relating to ongoing reporting requirements such as tax returns.

192. Therefore Gibraltar is recommended to ensure adequate supervision on all trusts having nexus to Gibraltar, so that reliable and accurate accounting information is maintained at all times.

Foundations

193. Foundations are required to keep proper books[11] in accordance to international accounting standard for at least five years in regards to all funds received, expended, along with receipts of expenditures (Art. 37(1) of PFA). The records will provide current accounting of all assets and liabilities. All records will be kept at the registered office. Councillors will have the right to inspect all records at any time (Art. 25(3) of PFA).

194. All foundations that have income assessable to tax in Gibraltar must file an annual income tax return with the Commissioner of Income Tax (S.28 ITA 2010). This return must provide identity information on the foundation beneficiaries for their proper assessment to tax (S.12A ITA 2010). No tax filing obligations apply where the income from a foundation is accrued or derived from outside Gibraltar. However, out of the seven registered foundations, none was registered in the tax database and there were no returns filed or audits conducted. Therefore, Gibraltar is recommended to ensure adequate supervision on all foundations having nexus to Gibraltar, so that reliable and accurate accounting information is maintained at all times.

11. means such books or accounts as are necessary to exhibit and explain the transactions and financial position of the administration, trade or business of the Foundation and includes books containing entries from day to day of all cash received and cash paid, statements of annual stocktaking, all goods sold and purchased showing sufficient detail to enable those goods, buyers and sellers to be identified, and any contracts, invoices or other underlying documentation significant to the trade, business or administration of the Foundation;.

Oversight and enforcement of requirements to maintain accounting records

195. Supervision on relevant entities and arrangements to maintain reliable accounts is largely ensured by the tax audit programme while the ROC has a limited coverage (majority of the companies are small and need not file annual audited accounts with the ROC).

196. The ROC is a depository and does not have any specific risk-based offsite or onsite programme to verify the compliance of companies with respect to maintenance of proper books of account. While there is a requirement, under the Companies (Accounts) Act, on companies to file audited annual accounts along with the annual return, the ROC's reliance on veracity of the accounting information submitted with the annual returns is based on the work done by accountants or auditors of the companies. The ROC also does not have access to underlying documents. The only checking performed by ROC is whether the Directors have changed along with the matching of names of companies. Sometimes, anomaly in the financial year is also detected.

197. At the onsite interactions, the ROC reported an average filing rate of 80%, and expected higher compliance with an intention to increase imposition of penalties. The details of penalties applied in the review period are as follows:

	No.of penalties 1 November 2015 to 31 October 2016	Amount of penalties collected	No.of penalties 1 November 2016 to 31 October 2017	Amount of penalties collected	No.of penalties 1 November 2017 to 31 October 2018	Amount of penalties collected
Penalties for late filing of annual returns	4 116	EUR 5 60 639	3 730	EUR 5 21 700	2 899	EUR 4 53 504
Penalties for late filing of annual accounts	4 285	EUR 5 80 058	4 769	EUR 4 90 479	3 886	EUR 4 61 958

Source: Companies House.

Note: the Companies Act 2014 entered into force on 1 November 2014 so figures are compiled from 1 November to 31 October each year.

198. Companies House has advised that from 1 January 2019 to 24 September 2019, 561 companies were struck off by the Registrar for failure to file annual returns (under section 411 of the Companies Act 2014), 650 companies were struck off because the Registrar believed they were no longer carrying on business or in operation (under section 412 of the Companies Act 2014) and 688 companies were struck off following a request from the company (under

section 413 of the Companies Act 2014). The total number of companies struck off from 1 January 2019 to 24 September 2019 was 1899.

199. Additionally, as at the date of the onsite review, 75 companies were in the process of being struck off under section 411 for failing to file annual returns, 242 companies were in the process of being struck off under section 412 and 275 companies were in the process of being struck off under the provisions of section 413 (i.e. strike-off requested by the company) of the Companies Act 2014. Companies House had also written to 226 companies with a view to striking them off the register pursuant to section 412 of the Companies Act 2014, bringing the total number of companies that were in the process of being struck off as at the date of the onsite review to 818.

200. A further 150 companies were liquidated and 43 companies were re-domiciled out of Gibraltar and ceased to be registered in Gibraltar during the period 1 January 2019 to 24 September 2019.

201. Strike-off leads to dissolution of the company and the assets vest in the Crown. However, any struck-off company may be restored within ten years by applying to the Registrar. Please see paragraph 182 for analysis on retention of accounting records of stricken-off/ceased entities.

202. Under the tax law, accounting records should be maintained and preserved for the purposes of submitting a full and complete return (S.63 ITA 2010). Section 63 of the Income Tax Act provides that if a person fails or refuses to keep accounting records, books or accounts, which in the opinion of the Commissioner of Income Tax are adequate for the purposes of taxation, the Commissioner may (by notice in writing) require him/her to do so. Failure of a company to comply with such a notice within one month of its issue may result in a summary conviction punishable by fine of GBP 1 000 (EUR 1 260). There is no guidance as to what would constitute records "adequate for the purposes of taxation".

203. The failure to comply with this record keeping requirement triggers a penalty of up EUR 11 463 (GBP 10 000). The Income Tax Office adopts a risk-based approach in reviewing accounts submitted accompanying tax returns. This information is analytically reviewed using trend and ratio analyses combined with a general understanding of the business environment and economic climate.

204. The Income Tax Office operates compliance safeguards including the automatic detection of incomplete returns and late submissions. On identification of either of these, penalties to the affected companies are automatically generated and issued. Penalties are applied to all companies for identified instances of non-compliance with filing obligations. Penalties issued under the ITA 2010 in relation to the non-compliance with obligations relating to the submission of tax returns follows a rigid structure. A EUR 57 (GBP 50)

penalty applies on immediate default, a EUR 335 (GBP 300) penalty is imposed after 3 months of default and a final penalty of EUR 570 (GBP 500) is imposed after 6 months of default (S.65: ITA 2010).

205. The Income Tax Office periodically highlight defaulters regarding tax filing compliance and have applied penalties during the years 2016, 2017 and 2018 as follows:

206. The Income Tax Office has issued 13 351 penalties of GBP 50 (EUR 56) for immediate default (2016: 589, 2017: 2 993 and 2018: 9 769) in the period under review to 10 245 companies. The Income Tax Office has issued 7 079 penalties of GBP 300 (EUR 335) for 3 months of default (2016: 555, 2017: 297 and 2018: 6 227) in the period under review to 4 807 companies. The Income Tax Office has issued 3 095 penalties of GBP 500 (EUR 556) for 6 months of default (2016: nil, 2017: 1 and 2018: 3 094) in the period under review to 2 934 companies. Since May 2018, the Income Tax Office generates monthly penalty runs during the first week of each month in order to allow returns to be duly processed. This allows the monitoring of compliance on a monthly basis through trend analysis with consideration of critical dates in the year. The Income Tax Office further confirms that the variable penalty of up to 150% of the estimated tax payable has not been applied in the review period. However, given the large number of penalties that had to be applied to ensure timely return filing, Gibraltar should ensure that the sanctions are proportionate and dissuasive (see Annex 1).

207. The following table presents an overview of the tax audit programme and the supervision to verify the accounting records in Gibraltar.

Type of entity or arrangement	Average number registered in ROC (in review period)	Average number registered in Tax Database (in review period)	Average number of returns and % filed in review period	Average number of cases selected for review in the review period	Average yield per year (EUR)
Companies	16 893	17 531	9 983 (57%)	2 652	1 51 724 470
Trusts	40	20	12 (62%)	20	50 000
Partnerships (fiscally transparent)	114	N/A	N/A	N/A	N/A
Foundations	7	0	0	0	0

208. With an average filing rate of 57% for companies, there is scope for improvement. Further, tax oversight does not cover legal entities and legal arrangements while having nexus to Gibraltar, which may not have any income arising in Gibraltar, and therefore would not be subject to any supervision on their obligation to maintain reliable and accurate accounting information.

Gibraltar is therefore recommended to strengthen and broaden its supervision on all relevant legal entities and arrangements to ensure availability of reliable and accurate accounting information.

Availability of accounting information in EOIR practice

209. In the current review period, there were 64 requests (out of 209, representing 31%) for accounting information and Gibraltar answered most of them in a timely manner.

210. However, there is one case where a TCSP's objection (and intent to challenge foreseeable relevance in court) has impeded the response on accounting information (on which Gibraltar and the partner are working) and there was another case where a partner's request for accounting information could not be responded since the TCSP would not provide the information. The reasons for this failure could not be ascertained. In view of the above failure and as discussed above, it is recommended that Gibraltar should ensure that effective supervision to ensure availability of reliable accounting information.

A.3. Banking information

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

211. The 2014 Report concluded that element A.3 was fully compliant with the standard.

212. The EOIR standard was strengthened in 2016 and now requires that beneficial ownership information (in addition to legal ownership) in respect of accountholders be available. The AML-guidance that is legally binding on the banks has a few gaps in identifying the beneficial owners in line with the standard in respect of companies and partnerships. Further, the simplified due diligence allows for exemption from identification and verification of beneficial ownership information in respect of customers from a wide set of jurisdictions. Gibraltar is recommended to ensure availability of beneficial ownership information for all account holders in Gibraltar.

213. During the previous review period, Gibraltar had no issues in respect of the availability of bank information. During the current review period, Gibraltar received 115 requests for banking information. Gibraltar was able to provide the information in a timely manner in general, except in a few cases (Please see C.5 for further discussion).

214. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified	The recently amended AML guidance refers to higher risk posed by corporate nominees in determination of beneficial ownership and clarifies that the natural person who ultimately owns or controls the legal entity ought to be identified in such situations. However, the AML-guidance is silent with respect to situations of individual professional nominees acting by way of business and how beneficial ownership should be determined in such cases.	Gibraltar is recommended to ensure availability of accurate beneficial ownership information of legal entities having nominee shareholdings by individual professionals.
	There is also no clear guidance on determining the beneficial ownership in respect of protected cell companies, which may act as collective investment vehicles. Gibraltar is recommended to ensure that beneficial ownership information of all collective investment vehicles is accurately determined and available in Gibraltar.	Gibraltar is recommended to ensure that beneficial ownership information in line with the standard is available for all companies, including Protected Cell Companies/Collective Investment Vehicles.
	In the AML-guidance applicable for banks, in respect of partnerships, it is sufficient to identify any two partners in respect of partnerships. Further, there is no clear guidance in respect of identifying the beneficial owner when a partner is not a natural person.	Gibraltar is recommended to ensure that accurate and up-to-date beneficial ownership information for accounts held by partnerships, in line with the standard is available with Banks at all times.
	The AML-guidance allows exceptions to identify and verify the identity of beneficial owners by the Gibraltar banks for account holders coming from a very wide set of jurisdictions.	It is recommended that Gibraltar ensure that beneficial ownership information of all investment vehicles coming from “equivalent jurisdictions” is available in Gibraltar in all cases at all times.

	The AML-guidance exempts verification of customers in "exceptional circumstances", when applicants for business will not be able to provide appropriate documentary evidence of their identity and where independent address verification is impossible. In such cases, Banks might agree that a senior manager may authorise the business if he/she is satisfied as to the applicant's acceptability. The standard does not provide for such an exemption.	It is recommended that Gibraltar ensure that beneficial ownership information is available in Gibraltar in all cases at all times.
	When Intermediaries/EU solicitors or accountants, open bank accounts, with funds from their client accounts, verification of the identity of the underlying clients related to these transactions will not be undertaken by banks in Gibraltar, in view of the protection under legal privilege, which precludes banks from securing any information about the underlying clients. It will therefore not be possible for a bank in Gibraltar to establish the identity of the person(s) for whom an intermediary, solicitor, or accountant is acting.	It is recommended that Gibraltar ensure that beneficial ownership information is available in Gibraltar in all cases at all times in respect of bank accounts held by intermediaries/EU solicitors or accountants.
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	The AML-guidance was recently amended to clarify that corporate nominee shareholders pose higher risk and the ultimate beneficial owner ought to be identified in line with the CDD procedures for legal entities i.e. the natural person who ultimately owns or controls the legal entity.	Gibraltar is recommended to monitor the implementation of the recent amendments to AML-guidance in respect of determining beneficial ownership where corporate nominees are involved.
	The AML-guidance was recently updated to clarify the identification of beneficial ownership of trusts and foundations in line with the standard. The guidance has also been amended to ensure look through provisions for corporate parties of trusts and foundations and to remove the 25% threshold for beneficiaries to be identified as beneficial owners of trusts.	Gibraltar is recommended to ensure effective supervision of the implementation of new provisions in respect of beneficial ownership of trusts and foundations.

	With gaps in guidance to identify beneficial ownership and no sanctions applied in the review period for inaccurate identification of beneficial ownership information, there is scope for improvement in depth of verification of availability of accurate beneficial ownership information in line with the standard.	Gibraltar should deepen the supervision to ensure availability of accurate beneficial ownership information for all relevant entities and arrangements.
Rating: Partially Compliant		

A.3.1. Record-keeping requirements

Availability of banking information

215. All "credit institutions" and "financial institutions" that carry on business from or within Gibraltar are subject to Gibraltar's AML/CFT legislative and regulatory requirements. A credit institution means an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account. The scope of businesses covered by the term "financial institutions" covers lending, financial leasing, payment services, portfolio management and advice (S.7(1): POCA).

216. Credit institutions are prohibited from setting up an anonymous account or an anonymous passbook for any new or existing customer (S.22(3): POCA).

217. Credit and financial institutions must retain a copy of the evidence of the customer's identity and of any transactions undertaken for a minimum of five years. These records must be maintained for five years from the date on which the business relationship ends, or if they relate to a particular transaction, five years from the date on which the transaction is completed (S.25: POCA). For each transaction, banks are expected to retain as a minimum, a record of: the name and address of its customer; the name and address (or identification code) of its counterparty; what the transaction was used for, including price and size; whether the transaction was a purchase or a sale; the form of instruction or authority; the account details from which the funds were paid (including, in the case of cheques, sort code, account number and name); the form and destination of payment made by the business to the customer; and whether the investments, etc. were held in safe custody by the business or sent to the customer or to his/her order and, if so, to what name and address (R.108: AML/CFT Guidance Notes).

218. Out of the 11 authorised credit institutions in Gibraltar, 8 are branches or subsidiaries of international banks, 2 are locally-incorporated banks and 1 is a branch of a UK building society. There are also five e-money

institutions. The UK building society branch and one of the e-money institutions are in the process of surrendering their licence, having closed down their operations. The FSC has oversight of all banks within Gibraltar. Banks established in Gibraltar, generally part of a larger banking group, have group support towards implementing and understanding the requirements and obligations of AML/CFT.

Beneficial ownership information on account holders

219. The standard was strengthened in 2016 and now specifically requires that beneficial ownership information be available in respect of all account holders. This requirement is largely met through CDD measures by Banks. The required CDD measures include (S.10: POCA): identifying the customer and verifying the customer's identity on the basis of documents, data or other information obtained from a reliable and independent source; identifying the beneficial owner and taking reasonable measures, on a risk-sensitive basis, to verify that person's identity so that the relevant financial business is satisfied that it knows who the beneficial owner is, including, in the case of a legal person, trust, company, foundation or similar legal arrangement, taking reasonable measures to understand the ownership and control structure of the customer; and assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship.

220. However, as discussed in Element A.1, the gaps in AML-guidance with respect to accurately identifying beneficial ownership in line with the standard apply in Element A.3. For companies, there is no default treatment of senior managing officials as beneficial owners (R.86) and there is no clear guidance in respect of professional nominee shareholdings in identification of beneficial ownership, there is no AML-guidance in respect of determining beneficial ownership of special cases like PCCs/CIVs, while it is sufficient to identify any two partners in respect of partnerships (R82)).

221. Further, there is a requirement to supervise the implementation of recent AML-guidance (in section 6.2.1.2) on determining beneficial ownership in cases of corporate nominees, identification of beneficial ownership of foundations and removal of restrictive 25% threshold for beneficiaries in determining beneficial ownership of trusts. Gibraltar is recommended to ensure that accurate and up-to-date beneficial ownership information for accounts held by companies, partnerships, trusts and foundations, in line with the standard is available with banks at all times.

Introduced business

222. The FSC indicated that where business is introduced, the AML/CFT obligations must still be undertaken by the firm in Gibraltar and where

reliance is placed on the introducer, the firm continues to be ultimately responsible for compliance with all the relevant requirements. Once the relationship has terminated the information must be kept for five years (S.25 POCA). None of the provisions for dealing with introducers exempt institutions from the requirement to have copies of all documentation in their possession, or to have ready access to the original documentation (R46 AML-guidance).

Reduced Due Diligence (RDD)

223. Reduced due diligence means allowing an exception to identification and verification requirements of the beneficial owners in the case of some customers/account holders of Banks perceived to present a low-risk from a money laundering perspective. R79 of AML-guidance says that certificate of incorporations, address, audited accounts and board resolution to open the relationship are sufficient for RDD purposes in case of companies. Schedule 6 of POCA allows RDD in cases of customers from (a) EU Member States; (b) third countries having effective AML/CFT systems; (c) third countries identified by credible sources as having a low level of corruption or other criminal activity; (d) third countries which, on the basis of credible sources such as mutual evaluations, detailed assessment reports or published follow-up reports, have requirements to combat money laundering and terrorist financing consistent with the revised FATF Recommendations and effectively implement those requirements. However, these exceptions lead to lack of availability of accurate and up-to-date beneficial ownership information with the Gibraltar Banks for account holders coming from a very wide set of jurisdictions, mentioned above. This is not in line with the requirements of ToR A.3. It is recommended that Gibraltar should ensure that beneficial ownership information of all customers coming from equivalent jurisdictions is available in Gibraltar in all cases at all times.

Exemption from CDD in exceptional circumstances

224. The AML-guidance (7.2.2.) also exempts verification of customers in "exceptional circumstances", when applicants for business will not be able to provide appropriate documentary evidence of their identity and where independent address verification is impossible. In such cases, Banks might agree that a senior manager may authorise the business if he/she is satisfied as to the applicant's acceptability. This may present a legal gap in compliance with ToR A.3, in terms of availability of accurate beneficial ownership information. It is recommended that Gibraltar should ensure that beneficial ownership information is available in Gibraltar in all cases at all times.

Treating intermediary as the client

225. The AML-guidance (6.2.3.4) notes that, generally, when the account holder is an intermediary from (a) Gibraltar or EU financial institution (b) regulated firm of EU solicitors or accountants (c) a regulated financial institution from a country that is outside the EU but has an effective AML/CFT regime, and the intermediary can demonstrate that the underlying identification documentation can be made available immediately, upon request, there is no requirement to look behind the intermediary to identify and verify the underlying clients of the intermediary.

226. Particularly, the AML-guidance notes that, when the intermediary is itself a firm of EU solicitors or accountants, client accounts held by Banks for solicitors and accountants will generally be pooled or omnibus accounts, and verification of the identity of the underlying clients related to these transactions will not be undertaken, in view of the protection under legal privilege which precludes Banks from securing any information about the underlying clients. Similarly, an accountant's professional code of conduct will generally preclude the firm from divulging information to Banks concerning their underlying clients. It will therefore not be possible for a Bank to establish the identity of the person(s) for whom a solicitor or accountant is acting.

227. This presents a legal gap in compliance with ToR A.3, in terms of availability of beneficial ownership information. It is recommended that Gibraltar ensure that beneficial ownership information is available in Gibraltar in all cases at all times.

228. A recent amendment was made to the AML-guidance which enjoins the intermediary-financial institution from any one of a large set of countries (with effective AML/CFT regime) to verify, on a risk basis, its own client along with having the evidence of client's identity. This does not address the legal gap mentioned above, as Banks in Gibraltar by themselves do not either identify or verify the ultimate clients of the introducer financial institution and rather treat the intermediary as the Client of the Gibraltar Bank.

Updating of CDD

229. There is no explicit requirement or guidance to undertake reviews on a periodic basis (e.g. five years for low risk, three years for medium risk and one year for high-risk) of existing records to ensure that documents, data or information collected under CDD process is kept up to date and relevant. Gibraltar should ensure that accurate beneficial ownership information is kept up to date for all account holders in all cases (see Annex 1).

Oversight and enforcement

230. The Banking and Investment Services Division of FSC, made of two persons, is responsible for the prudential oversight of banks in Gibraltar. The total assets of banks in Gibraltar were GBP 8.05 billion (EUR 9.5 billion) and approximately 544 persons were employed with the banks as at December 2018. The majority of banks in Gibraltar are a part of larger banking groups based elsewhere. The oversight is conducted through a desk-based review of financial data, which is normally submitted on a quarterly basis (some information is submitted on monthly basis).

231. Banks are required to submit returns on a quarterly basis that include information on the level of own funds, supervisory ratios, balance sheet including breakdown of assets and liabilities, and profit and loss. Further data regarding staff numbers, level of deposits, provisions for bad debts, loans and mortgages, and funds under management is also required.

232. As with companies, a risk assessment methodology, which includes a desk-based review, is conducted and is then followed by a self-assessment questionnaire. After the self-assessment questionnaire is submitted, a risk assessment is done, which is followed by an on-site visit. Off-site assessments are done in order for the FSC to arrive at a final risk profile. This risk profile will determine the supervisory mitigation plan, which specifies the deficiencies identified and the time scales provided to correct or address these deficiencies, among other things. This is done for all obligations placed on the banks. In the last three years, the banks have all been assessed and the maximum cycle that a bank can be on is three years.

233. In order to rectify deficiencies when found, the banks are required to produce an action plan and the FSC determines if it is satisfactory or not. Some penalties can be applied in the form of fees. In addition to these monetary sanctions, there are cases where the FSC can ultimately decide to withdraw the licence of the bank or to impose conditions on its licence.

234. In the FSC, the AML/CFT Supervision team is responsible for monitoring banks' compliance with their AML/CFT obligations. Following the implementation of an enhanced supervisory approach to financial crime risks, the FSC applies a risk-based methodology specific to the consideration of ML/TF risks. This aims to ensure that resources can be focused to managing the most material areas of risk in a consistent manner. This approach ensures that licensees, who pose the highest financial crime risk to the financial stability of the jurisdiction, its reputation, or to consumers, receive an appropriate level of regulatory support, guidance and supervision. Trigger events will cause the firm's risk profile to be revisited more frequently. There were no instances where the FSC had to apply penalties in the form of monetary sanctions on a bank, nor did the FSC have to withdraw the licence of a

bank. There were also no instances where the FSC decided to impose a condition on the licence of a bank. The specific financial crime risks considered are Customer, Product, and Country and Interface risks.

235. As a part of its risk assessment methodology, a firm is required to provide an indication of how it will mitigate or address any deficiencies or areas noted for improvement as part of its supervisory plan. During the three-year review period, full risk assessments were carried out on eight banks (out of a total of 11 banks). Respectively for each year, the banks provided actions plans as required and these have been monitored going forward. In all of these cases, the FSC considered the submitted action plans to be satisfactory. There were no breaches on CDD that were identified. A bank that fails to meet its obligations under the POCA may be subject to various enforcement powers provided for under the SBPR, including the imposition of penalties, the suspension/withdrawal of a licence, the temporary ban of managerial positions and directions. It is liable on summary conviction, to a fine not exceeding GBP 10 000 (EUR 11 173) or 10% of the bank's total annual turnover according to the latest approved accounts (Regulation 18(2): SBPR).

236. At the onsite, representatives of the private sector demonstrated a generally good understanding of their CDD responsibilities and the significance of identifying and maintaining beneficial ownership information including the tax residency. However, there was no strong indication of verifying for beneficial ownership by means other than 25% ownership. Further, there was no clarity on how beneficial ownership for Protected Cell Companies (PCCs)/Collective Investment Vehicles (CIVs) would be determined.

237. The Banks indicated a reasonably active supervision from FSC indicating that the Financial Crime Return submitted by Banks elicits questions and serves as an oversight mechanism apart from onsite visits. It appears that FSC should place more emphasis on verifying the determination of accurate beneficial ownership information going beyond the ownership thresholds. With gaps in guidance to identify beneficial ownership for companies, partnerships, trusts and foundations, and no sanctions applied in the review period for inaccurate identification of beneficial ownership information, there is scope for improvement in depth of verification of availability of accurate beneficial ownership information in line with the standard. Gibraltar should deepen the supervision to ensure availability of accurate beneficial ownership information for all relevant entities and arrangements.

Availability of bank information in EOI practice

238. During the review period, there were 115 requests for banking information. Most of them were replied in a timely manner and without any difficulty. However, a few peers have indicated that there were pending Banking Requests and they were taking longer in spite of sending the necessary clarifications sought by Gibraltar. Gibraltar authorities advise that the delays are due to staffing constraints and they are in constant communication with the partners to respond effectively. Gibraltar has by April 2020, addressed these outstanding requests providing a comprehensive response on the foreseeably relevant information sought by the requesting party.

Part B: Access to information

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

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

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

240. The 2014 Report found that the Gibraltar competent authority's powers to obtain information for EOI purposes met the requirements of the international standard.

241. Since the 2014 Report, no changes were made to the legal framework. In the current review period, Gibraltar received 124 requests under TIEA/MAAC and 85 requests under the EU/2011 directive.

242. There was one case where a partner's request for accounting information could not be responded to, since the TCSP would not provide the information. The reasons for this failure could not be ascertained and no enforcement measures were applied nor was any penal action taken in this case against the TCSP to ensure compliance with the obligations to provide the accounting information. In view of the above, it is recommended that Gibraltar ensure that effective enforcement measures are taken and sanctions are applied in the case of information holders failing to provide information to ensure effective exchange of information with partners.

243. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	There was one case where a partner's request for accounting information could not be responded since the TCSP would not provide the information. The reasons for this failure could not be ascertained and no enforcement measures were applied nor was any penal action taken in this case against the TCSP to ensure compliance with the obligations to provide the accounting information. There were three other cases where the TCSP would not provide information and enforcement actions were not taken. In another case, a request under TIEA for search and seizure was declined by Gibraltar.	Gibraltar should ensure that effective enforcement measures are taken and sanctions are applied in the case of information holders failing to provide information to ensure effective exchange of information with partners.
Rating: Largely Compliant		

B.1.1. Ownership, identity and bank information and B.1.2. Accounting records

244. The 2014 Report analysed the procedures applied in the case of obtaining information generally and more specific rules for obtaining bank information. Generally, the same rules continue to apply.

245. In Gibraltar, two different authorities have the function of competent authority for EOI purposes. First, the Minister with responsibility for the International Exchange of Information or the person(s) as may be designated by the Minister is named as the competent authority for exchange of information under agreements scheduled pursuant to the International Co-Operation (Tax Information) Act 2009 (ICA). Under section 4(2) of the ICA the Minister, by notice in the Gazette on 3 February 2011, designated the Finance Centre Director (FCD) to be the competent authority for TIEAs and DTCs.

246. Second, the Commissioner of Income Tax (the Commissioner) is the competent authority for exchange of information under EU Directive 2011/16/EU in accordance with the Income Tax Act and for exchange of information under the MAAC in accordance with section 4 of the Taxation (Mutual Administrative Assistance Act) 2014 (TMAA).

247. The FCD's powers to access and exchange information pursuant to its EOI agreements are found in the ICA. Under the ICA, the FCD has powers to access information by: (a) directly issuing notices to the holders of information to produce the information; (b) compelling testimony from relevant persons; (c) applying to the court for a production order; and (d) using search and seizure warrants (s. 8-11 of ICA).

248. Under the Income Tax Act, the Commissioner has powers to access information by: (a) making administrative enquiries; (b) directly issuing notices to the holders of information to produce the information; and (c) entry with a warrant to obtain documents.

249. Under the TMAA, the Commissioner has powers to access information by: (a) directly issuing notices to the holders of information to produce the information; (b) compel witnesses or for production of evidence under oath; (c) using search and seizure warrants; and (d) applying to the court for a production order.[12]

250. The competent authorities' powers to obtain relevant information to respond to an EOI request are applicable regardless of the type of information sought (i.e. whether it is ownership, bank or accounting information or beneficial ownership information) or the person from whom the information is sought (e.g. bank, company, individual). These powers may also be exercised independently of where the information is held, as long as it is in the possession or control of a person within Gibraltar's territorial jurisdiction.

251. The ICA, the TMAA and the Income Tax Act grant the competent authorities compulsory powers to obtain information necessary to comply with a valid EOI request.

252. In practice, both competent authorities have made use of the public information available via Companies House and information available in the Income Tax Office. Ownership information is usually requested from the service provider or the entity itself. The competent authorities have also accessed information from the banks and where necessary the FSC.

253. The notices calling for information specify the timeframe and manner in which the information must be delivered. They must include certain prescribed details, including among other items: the identity of the

12. Sections 11, 12, 13 and 14 of the TMAA.

requesting party; the tax matter to which the request relates (i.e. whether it is a criminal or civil tax matter); the person or persons subject to such taxes or taxation matters (see element C.3).

254. Gibraltar's authorities have confirmed that the prescribed details relating to the "person or persons subject to such taxes or taxation matters" does not need to include the name of the person(s); this condition can be satisfied as long as there is a unique identifying characteristic such as a credit card or account number or similar in respect of banking information. Gibraltar authorities advise that this was done in practice in a couple of requests, in the review period.

255. The notices issued by the two competent authorities indicate a deadline to produce the information, which is generally three weeks in the case of the FCD and 30 days in the case of the Commissioner (under the Income Tax Act). The person may ask for an extension with valid reason and this has been done by FCD in practice. In the case of the FCD, the extension is given depending on the time needed by the holder to provide the information; in the case of the Commissioner, the extension is never granted longer than the initial 30-day period. In no case during the three-year review period have these extensions caused information to be exchanged to a requesting jurisdiction beyond 180 days.

256. A notice recipient may also either seek a review of the notice directly with the competent authority or through a judicial process (see Part B.2 of this report for the relevant procedures). Otherwise, the recipient of the notice must provide the requested information by the date specified in the notice, or where he/she has made a written submission to the FCD, provide the requested information or any variation thereof within 10 days of receiving the competent authority's decision.

257. In the review period, 104 requests were received under TIEAs, 20 requests were received under MAAC and 85 requests were received under the EU/2011 Directive. The FCD and the Commissioner have issued notices in relation to all of the requests except the very few that were declined for legitimate reasons. The information has always been provided and peers have not cited any problems except in one case (see paragraph 265).

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

258. The 2014 Report did not identify any issues with domestic tax interest and no issues arose in practice. The position continues in the current review period. In fact, most of the requests received and responded to in the current review period do not have any domestic tax interest for Gibraltar.

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

259. If a person refuses to comply with a request from a Competent Authority in relation to an EOI request, the following penalties apply on non-compliance.

260. The ICA 2009 establishes offences where a person having been required to produce any information which is in his/her possession or under his/her control fails to do so. Offenders are liable, upon summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding GBP 10 000 (EUR 11 173) or both; and on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding GBP 10 000 (EUR 11 173) (S.22: ICA 2009 7 S.189 and Sch. 6: Criminal Procedure Act).

261. The Income Tax Act also establishes offences where a person having been required to produce any information, which is in his/her possession or under his/her control, fails to do so. A person will be liable to a penalty of GBP 200 (EUR 223) on the day the failure occurs. The Commissioner will impose such penalty automatically and without the need of determination of the penalty in a separate proceeding. The person will also be subject to a further penalty of GBP 1 000 (EUR 1 117) if after a month there is still a failure to deliver the information requested (S.65A: ITA 2010). If the failure to comply continues, that person is guilty of an offence (S.65B: ITA 2010) and is liable: on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding GBP 10 000/EUR 11 173 (see footnote 7on the scale of fines) or to both; and on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

262. Although there are no specific penalties or sanctions provided in the TMAA for failure to comply with a notice, the Commissioner may reinforce the notice by applying to the court for a production order for which there are relevant penalties and sanctions that will be applied by the court for failure to comply with it. Gibraltar has confirmed that when a notice has been issued and the person in receipt of the notice gives no response, the Commissioner will apply to the court for a production order. However, Gibraltar has never so far had the experience of having to request for a production order from court.

263. The FCD or an authorised officer may apply to the Court[13] for a search and seizure warrant to enforce a notice or subpoena. Similarly, under the TMAA the Commissioner may apply to the Court for a search and seizure

13. Under Section 2 of the ICA, "Court" refers to the Magistrates Court or any other court or tribunal as the Minister may designate.

warrant. However, there were no such occasions in the past or present review periods, where the Gibraltar authorities resorted to search operations.

264. In the review period, there was one request under a TIEA, which requested Gibraltar to search a private residence and seize the documents. Gibraltar declined this request since it viewed this request to be beyond the scope of TIEA. However, it is expected under the TIEA that a requested Party must take "all relevant information gathering measures" to provide the applicant Party with the information requested. The term "information gathering measures" is defined in Article 4(1)(1) as laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information. An information gathering measure is "relevant" if it is capable of obtaining the information requested by the applicant Party. In addition, the ICA specifically provides for the use of search and seizure warrants (s. 8-11) for EOI cases. The reason for declining the request therefore is not appropriate.

265. In one case, a partner's request for accounting information could not be responded to, since the TCSP would not provide the information. The reasons for this failure could not be ascertained and no enforcement measures were applied nor was any penal action taken in this case against the TCSP to ensure compliance with the obligation to provide the accounting information. Further, there were three cases where in the TCSP applied a narrow interpretation of foreseeable relevance and the Gibraltar Competent Authority has not used the enforcement powers to obtain the information sought by the two partners. (Please see discussion in Element C.5: paragraphs 337, 338 and 339)

266. In view of the above, it is recommended that Gibraltar ensure that effective enforcement measures are taken and sanctions are applied in the case of information holders failing to provide information to ensure effective exchange of information with partners.

B.1.5. Secrecy provisions

Bank secrecy

267. There is no statutory banking secrecy in Gibraltar. Banking confidentiality is governed by the general common law applicable in the United Kingdom, where a bank owes a legal duty of confidentiality to its client arising from a contract. The duty is not absolute and is qualified by overriding duties, one of which is the duty of a bank to comply with the law.

268. This common law of confidentiality is specifically overridden by section 12(3) of the ICA 2009 and section 15(3) of the TMMA, which state that the obligation of persons to provide testimony and information under those Acts shall have effect notwithstanding any obligation as to confidentiality

or other restriction upon the disclosure of information contained in any enactment or the common law or in any other relationship. There is no similar provision in the ITA 2010 for EOI purposes under the Directive. The Commissioner relies on the banks' duty to comply with their legal obligation. However, there have been no adverse peer inputs or difficulties in practice in the review period and it appears that there would be no difficulty in continuing to obtain banking information under the Directive.

269. In relation to banking information, the competent authorities send the notices directly to the bank. There have been no cases in the period under review where bank secrecy was an impediment to obtaining the information for EOI purposes.

Professional secrecy

270. The ICA 2009 does not allow exchange of information subject to legal professional privilege. The definition of information subject to legal professional privilege under the ICA 2009 is strictly limited to communication made in connection with the giving of legal advice to the client or with legal proceedings. The definition appears to include not only information enclosed within a communication between an attorney/admitted legal representative and client but also within a communication between a client and any other person in connection with those proceedings, which is beyond the exemption for legal professional privilege under the international standard. However, Gibraltar authorities have confirmed that communication between a client and other persons would not be covered by the scope of legal privilege under the domestic law.

271. The ICA 2009 also provides that should any EOI agreement contain different provisions in respect of legal or other privilege, the provisions in the EOI agreement would override the definition provided for under the ICA 2009. This means that the issue of an overly wide definition of legal professional privilege is limited to the EOI agreements that do not define either legal professional privilege, or whose definitions do not conform to the international standard. Out of Gibraltar's 28 TIEAs, only the TIEAs with Belgium, France, Germany, Ireland and Portugal do not define the scope of privileged information. Nevertheless, since all the aforementioned are parties to MAAC wherein the scope of legal privilege is in line with the standard the gap ceases to exist whenever requests are made under the MAAC. The remaining TIEAs adopt the definition of legal privilege under the international standard.

272. The TMMA does not allow exchange of information subject to legal professional privilege. However, there is no definition contained in the

TMMA for the term "legal privilege" and therefore the applicable definition would be that contained in the EOI relevant instrument.

273. In practice, no requests have been sent directly to those persons who will be able to invoke legal privilege.

B.2. Notification requirements, rights and safeguards

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

274. The 2014 Report found that there were generally no major issues regarding notification requirements or appeal rights, except for the limitation that there were no exceptions to prior notification even in the cases of urgency or possibility of notification undermining the success of investigation. In response to the recommendation, Gibraltar has amended section 17 of the International Co-Operation (Tax Information) Act 2009 (ICA) to allow for exceptions to prior notification in line with the standard. Therefore, the previous recommendation now stands deleted.

275. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information

Exceptions to prior notification

276. Whenever the FCD issues a notice to a holder of information pursuant to an EOI request, he/she is obliged to send a copy of the same notice to the taxpayer concerned if he/she is aware of the taxpayer's address and that the taxpayer resides in Gibraltar. This requirement is only lifted where the EOI request relates to a criminal tax matter or an alleged criminal tax matter.[14] There were no other exceptions to the prior notification process. The 2014 Report found that there were generally no issues regarding notification requirements except for the limitation that there were no exceptions to

14. Section 17 of the ICA.

prior notification even in the cases of urgency or possibility of notification undermining the success of investigation, and the element was determined to be in place but needs improvement. In response to the recommendation, Gibraltar has amended section 17 of the ICA[15] (in December 2016) to allow for the exceptions to prior notification in line with the standard. Therefore, the previous recommendation now stands deleted. There were no cases in the review period since the amendment in 2016, which sought for an exception from prior notification which could test the new provisions, Gibraltar should monitor the implementation of the new provisions (see Annex 1).

Post notification

277. The requirement to have an exception to time-specific, post-exchange notification was newly introduced to the standard in 2016. In Gibraltar, there are no requirements for post-notification.

Other rights and safeguards

278. A recipient of a notice may within 10 days of the receipt, make a written submission to the FCD specifying any grounds which he/she wishes the FCD to consider in making a final determination as to whether the request is in compliance with the relevant EOI agreement or the ICA. The FCD must consider any such written submission and make a decision whether to confirm, vary or withdraw the notice. There is no timeframe specified for the competent authority to reach such a decision (S.8: ICA 2009). Gibraltar authorities advise that there were few such cases in the review period. The time taken to issue decisions on average in such cases could not be ascertained and the process did not appear to have hindered EOI in practice.

279. The recipient may also seek a review of the notice through a judicial process. Any person issued a notice by the FCD to produce information, or who is the subject of a subpoena to give evidence or produce information may appeal to the Court on the following grounds (S.14: ICA 2009): the notice issued is not in conformity with the ICA requirements (e.g. it does not

15. "a person who is the subject of a request for information solely in relation to a matter which is not a criminal tax matter or an alleged criminal tax matter, shall, if the Authority is aware that he/she resides in Gibraltar and of his/her address, be served by the Authority with a copy of a notice issued by the Authority…") "(a) is likely to undermine an investigation conducted by the requesting Party; or (b) would unduly delay the execution of an urgent request; the Authority is not required to comply with that sub-section until it is content that paragraphs (a) or (b) of this sub-section no longer apply" (i.e. no longer likely to undermine an investigation or unduly delay the execution of an urgent request).

contain the prescribed details of the request); the information to which the notice or subpoena relates is not in the possession or control or accessible to a person who is in Gibraltar; the notice or subpoena includes or relates to items subject to legal professional privilege (provided that if and to the extent that this ground is relied upon, the appeal may relate only to such items, and the notice or subpoena remains extant, valid and binding on that person in every other respect); or the request manifestly falls outside the scope of the EOI agreement under which the request was made.

280. A recipient of a production order from the Court or the concerned taxpayer may also file an appeal against the production order; the circumstances under which he/she may do so are not spelled out under the ICA 2009 and will depend on the Rules of Court applicable to the relevant court. These appeals (both to the FCD and through the judicial process) suspend the EOI process relating to the portion of the EOI request that is being appealed. The aforementioned processes continue from the previous review period where it was determined that they do not pose any hindrance to an effective exchange of information, and have not been put to test in the review period. Further, Gibraltar authorities advise that in case the appeal applies to part of the information requested, assistance would be suspended to that extent, while the uncontested part of the request would continue to be serviced.

281. Under the Income Tax Act, the recipient of a notice from the Commissioner may object, within 30 days of the date of issue of the notice, to that notice on the ground that it would be onerous for him/her to comply with it. If the matter is not resolved by agreement, it is referred to the Income Tax Tribunal, which may confirm, vary or cancel that notice. This situation has not happened to date but the Gibraltar authorities advise that necessary amendments to the notice would be done to pursue with a renewed notice, or the Commissioner may appeal to the Supreme Court, to ensure administrative assistance to the partner.

282. Similarly, under the TMAA a person served with a notice may within 10 days from the date of service of the notice, make written submissions to the Commissioner specifying any grounds which he/she wishes the Commissioner to consider in making a final determination as to whether or not the request is in compliance with the provision of the TMAA. Additionally, a recipient of a notice issued by the Commissioner may appeal such notice through the judicial review process, against the Commissioner's actions to obtain information for EOI purposes.

283. Although there have been no actual cases of appeal or review in response to notices, issued by FCD or Commissioner, in a judicial process, by a taxpayer, there have been two peer inputs which indicated that TCSPs refused to provide the information and conveyed intentions to challenge the administrative assistance. Please see Elements B.1.4, C.1 and C.5 for further discussion.

Part C: Exchanging information

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

C.1. Exchange of information mechanisms

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

285. The 2014 Report concluded that Gibraltar's network of EOI mechanisms is in line with the standard and provides for effective exchange of information.

286. The Multilateral Convention was extended to Gibraltar with effect from 1 March 2014. As Gibraltar cannot exchange information with the United Kingdom or other overseas territories or Crown dependencies of the United Kingdom through the Multilateral Convention, Gibraltar has signed Tax information exchange agreements (TIEAs) with the United Kingdom, Guernsey and Isle of Man. To date, Gibraltar has EOI relationships to the standard with 128 jurisdictions. Gibraltar's network of EOI instruments covers all of its relevant partners and other major OECD/G20 jurisdictions.

287. The EOIR standard now includes a reference to group requests in line with paragraph 5.2 of the Commentary. In addition, the foreseeable relevance of a group request should be sufficiently demonstrated, and that the requested information would assist in determining compliance by the taxpayers in the group. Gibraltar was able to process 14 group requests over the review period, in consultation with the requesting partner to their full satisfaction.

288. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

Other forms of exchange of information

289. Gibraltar also spontaneously and automatically exchanges under the Council Directive 2011/16/EU on Administrative Co-operation in the Field of Taxation with all EU Member States. Gibraltar also exchanges automatically financial account information since September 2017 with all of the Global Forum members that have signed the Common Reporting Standard (CRS) Multilateral Competent Authority Agreement (MCAA), and brought the CRS into force in their domestic legislation and whose confidentiality and data safeguards framework has been approved by an OECD Global Forum Expert Panel.

C.1.1. Foreseeably relevant standard

290. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. The 2014 Report found that Gibraltar's network of TIEAs follow the 2002 Model Agreement on Exchange of Information on Tax Matters and are applied consistent with the Commentaries on foreseeable relevance.

291. Gibraltar continues to interpret and apply its EOI instruments consistently with these principles. Both the new EOI arrangements, which Gibraltar has signed since the 2014 Report, include the term "foreseeably relevant" in their EOI Article.

Clarifications and foreseeable relevance in practice

292. Gibraltar requires that the requesting jurisdiction provide sufficient information to demonstrate the foreseeable relevance of a request. In the review period, three requests were declined for lack of foreseeable relevance (valid reasons – Please see discussion in Element C.5 paragraph 335) and the requesting jurisdictions were satisfied (and no adverse peer input was provided in these cases). However, in three other cases reported in peer inputs by two peers, clarifications have been sought by Gibraltar in respect of foreseeable relevance based on objections raised by TCSP and one of these cases is

still pending while two of them have been unilaterally closed by the requesting partner after having provided requisite clarifications on foreseeable relevance, which did not satisfy the high threshold set by the TCSP in all the three cases as discussed below (see discussion for two cases in paragraph 293, for one more case in paragraph 294). These three problematic cases are also discussed in Element C.5 (see paragraphs 337, 338, 339 and 340)

293. In the two closed cases, the peer input indicated that the foreseeable relevance was challenged by the TCSP given that the taxpayer under investigation was not a client of the TCSP in one case and that the taxpayer was a client but not the beneficial owner of the Gibraltar structure in another case. This sets a high threshold of foreseeable relevance. The standard provides that "where the requested State becomes aware of facts that call into question whether part of the information requested is foreseeably relevant, the competent authorities should consult and the requested State may ask the requesting jurisdiction to clarify foreseeable relevance in the light of those facts". While the peer acknowledged the co-operation of Gibraltar to perfect the requests, the peer maintained its request and the standard also acknowledges that "a request may not be declined in cases where a definite assessment of the pertinence of the information to an on-going investigation can only be made following the receipt of the information".[16] As long as the nexus between the taxpayer under investigation in the requested State and a Gibraltar structure can be reasonably established, to the satisfaction of Gibraltar Competent Authority, the threshold of foreseeable relevance is met. Beneficial ownership information of the Gibraltar structure ought to be provided, as it may allow the requested State to verify the presence/absence of any connection between the taxpayer under investigation and the beneficial owner recorded in the files of the Gibraltar TCSP.

294. In another case, the TCSP challenged the foreseeable relevance in terms of tax residency of the taxpayer under investigation. While the requesting jurisdiction has provided necessary details to establish residency and legal basis to seek information for tax investigations, Gibraltar has not issued a formal notice to the TCSP, given the risk of TCSP initiating a court procedure to challenge the foreseeable relevance and its potential adverse implications in case the TCSP prevails at the Court of Law. Although, Gibraltar has tried to find more ways to address the concerns of foreseeable relevance raised by the TCSP, the requesting jurisdiction has already provided the necessary information to justify the foreseeable relevance of the information requested and no further details could be provided by the requesting jurisdiction as at April 2020. Gibraltar has not declined the request citing lack of foreseeable relevance but the request continues to be delayed

16. See Commentary 4 to the Model TIEA and commentary 5 to the Model DTC, which are primary authoritative sources of the standard.

owing to Gibraltar's restrictive approach to foreseeable relevance. For further discussion, please see Element C.5). Gibraltar should ensure that the criterion of foreseeable relevance is not narrowly interpreted and information is provided to partners where the competent authority of the requesting jurisdiction is able to establish foreseeable relevance to the satisfaction of the Gibraltar Competent Authority (See Annex 1).

Group requests

295. Gibraltar's procedures to deal with group requests are very similar to those used for dealing with an individual request (see element C.5 for details). The main difference relates to the information that must be included in the request as per paragraph 5.2 of the Commentary to Article 26 of the OECD Model Convention, which includes the following information that the requesting jurisdiction should provide: (i) a detailed description of the group, (ii) the specific facts and circumstances that have led to the request; (iii) an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law supported by a clear factual basis; and (iv) a showing that the requested information would assist in determining compliance by the taxpayers in the group. During the review period, Gibraltar answered 14 group requests to the satisfaction of the requesting authority.

C.1.2. Provide for exchange of information in respect of all persons

296. None of Gibraltar's EOI agreements restricts the jurisdictional scope of the exchange of information provisions to certain persons, for example those considered resident in one of the contracting parties. No issues arose in the current review period in this regard, except for the one discussed above in paragraph 294.

C.1.3. Obligation to exchange all types of information

297. Gibraltar's network of agreements permits all types of information to be exchanged and in practice, in the current review period, Gibraltar successfully exchanged all types of information. There have been no adverse peer inputs also in this regard.

C.1.4. Absence of domestic tax interest

298. A contracting state may not decline to supply information solely because it has no interest in obtaining the information for its own tax purposes.

299. Gibraltar's network of agreements does not impose a domestic tax interest. In practice, most of the requests received in the current review period do not have any domestic tax interest for Gibraltar and this has not caused any issue. Peers have not raised any issues in practice during the current review period.

C.1.5 and C.1.6. Exchange information relating to both civil and criminal tax matters

300. Gibraltar's network of agreements provide for exchange in both civil and criminal matters. In practice, Gibraltar has provided information in both civil and criminal tax matters in the review period.

C.1.7. Provide information in specific form requested

301. Gibraltar applies its EOI mechanisms consistent with the OECD Model and so is prepared to provide information in the specific form requested to the extent such form is known or permitted under Gibraltar's law or administrative practice. There have been no adverse peer inputs in this regard.

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

302. The 2014 Report noted that Gibraltar has efficient procedures in place for ratifying EOI agreements. The practice continues in the current review period. There was only one TIEA with Greece signed in 2013 that remains to enter into force but Gibraltar has ratified it. However, Greece is already a party to MAAC and hence EOIR relationship is in place. A summary of the EOI mechanisms of Gibraltar shows that out of the 29 bilateral EOI mechanisms of Gibraltar 26 are complemented by the Multilateral Convention. DTC and TIEA with United Kingdom as well as TIEAs with Guernsey and the Isle of Man are the only bilateral EOI mechanisms not complemented by MAAC.

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	**128**
In force	116
In line with the standard	116
Not in line with the standard	0
Signed but not in force	12
In line with the standard	12
Not in line with the standard	0

Total bilateral EOI relationships not supplemented by multilateral or regional mechanisms	**3**
In force	3 [Guernsey, Isle of Man, UK]
In line with the standard	3
Not in line with the standard	0
Signed but not in force	0
In line with the standard	0
Not in line with the standard	0

303. Gibraltar has in place the legal and regulatory framework to give effect to its EOI mechanisms. No issues arose in practice.

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

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

304. The 2014 Report found that element C.2 was in place and rated as Compliant. Gibraltar was recommended to continue to develop its EOI network with all relevant partners.

305. The United Kingdom has extended the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC), as amended by the 2010 protocol, with effect from 1 March 2014 for Gibraltar. The EOIR network of Gibraltar now covers 128 partners.

306. Since the 2014 Report, there were also no adverse peer inputs on delay or lack of co-operation on the part of Gibraltar for bilateral TIEAs or DTCs negotiations. Gibraltar therefore has a wide treaty network covering all relevant partners and in consonance with the requirements of ToR C.2. Accordingly the past in-box recommendation is now deleted. However, Gibraltar should continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

307. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The element is in place
Practical Implementation of the standard
Rating: Compliant

C.3. Confidentiality

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

308. The 2014 Report concluded that the treaty provisions and statutory rules that apply to officials with access to treaty information and the practice in Gibraltar regarding confidentiality were in accordance with the standard, except for the disclosure of the details of taxpayer under investigation, whenever a notice was issued by the FCD under the provisions of ICA.

309. Since the 2014 Report, there has been no change in the legal provisions of ICA in this regard. Gibraltar maintains that there have been no practical cases of unwarranted disclosure of additional details that are confidential and are not necessary to obtain the information requested by the treaty partner. However, as discussed in Element C.1 (see paragraph 293, 294) and Element C.5 (see paragraph 337, 338 and 339) information not required to obtain the response has been provided to TCSPs in practice. The previous recommendation is continued with a minor amendment to ensure that Gibraltar does not disclose to third parties information that is not needed to obtain the information requested.

310. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
Determination: The element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	The disclosure to third parties of the information specified in the EOI request, including in cases where this is not necessary for gathering the requested information, is not in accordance with the standard.	Gibraltar should not disclose to third parties information that is not needed to obtain the information requested.
Rating: Largely Compliant		

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

311. The 2014 Report concluded that all of Gibraltar's EOI agreements have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the agreements. All the new instruments after 2014 entered into by Gibraltar are in line with the confidentiality standard.

312. In the offices of FCD and Commissioner of Income Tax, the same practices continue, as discussed in the 2014 Report (see paras 261 – 272). There are separate secured storage locations for EOIR files with controlled access only to the officers dealing with EOIR matters.

313. The 2016 Terms of Reference clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI agreement provides for the authority supplying the information to authorise the use of information for purposes other than tax purposes and where tax information may be used for other purposes in accordance with their respective laws. In the period under review, Gibraltar reported that there were no requests wherein the requesting partner sought Gibraltar's consent to utilise the information for non-tax purposes and similarly Gibraltar did not request its partners to use information received for non-tax purposes.

C.3.2. Confidentiality of other information

314. All of Gibraltar's EOI agreements contain confidentiality provisions similar to Article 8 of the OECD Model TIEA, which specify that the confidentiality rules spelt out in the EOI agreement apply to all information received under the agreement.

Confidentiality in practice

315. The 2014 Report raised an issue with regard to confidentiality in practice regarding the disclosure of the details of the taxpayer under investigation, whenever a notice was issued by the FCD under the provisions of ICA or by the Commissioner under TMAA. During the current review period, while there were no adverse input from peers in this regard, the legal position in ICA continues to be the same. The following details are provided in a notice calling for information (Article 8(2), Schedule 2 of ICA):

- the identity of the requesting party
- the civil or criminal nature of the tax matter to which the request relates
- the date and number of the legal notice in which the text of the relevant scheduled Agreement was published; the date on which the relevant scheduled Agreement came into operation; and a statement that in the opinion of the FCD the request conforms to the relevant scheduled Agreement
- the person or persons subject to such taxes or taxation matters
- details, sufficient to enable the person served with the notice to identify the information requested by the notice

- the reason for believing that the information requested is in the possession or control of the person served with the notice or is obtainable by that person. In practice, Gibraltar has confirmed that this may simply consist of the address of the registered office of the company, which usually coincides with that of the licensed company manager
- the form and manner in which the information must be provided
- details of the time, date and place where such information that must be provided and the manner in which it must be verified are authenticated
- details of any access required by the FCD or Commissioner to the original of any record or document, or to any electronic data storing device, such as to enable the FCD or Commissioner to verify the authenticity of any document or record provided or the accuracy or completeness of any information provided.

316. Since the 2014 Report, Gibraltar maintains that there have been no cases of unwarranted disclosure of details that are confidential and are not necessary to obtain the information requested by the treaty partner. Gibraltar also introduced anti-tipping off provisions, with criminal sanctions, by amending Article 19(3) of the ICA with effect from 1 December 2016. A similar provision applies under the TMAA together with the ITA 2010.[17] This measure may limit the disclosure of confidential information.

317. Nevertheless, Gibraltar should ensure that, in the first place, it does not disclose to third parties information that is not needed (e.g. the civil or criminal nature of the tax matters to which the request relates; the person or persons subject to such taxes or taxation matters) to obtain the information requested, to be in line with the international standard.

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

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

318. The 2014 Report concluded that Gibraltar's exchange of information mechanisms are fully in line with Article 26 of the Model Convention and Article 7 of the Model TIEA and ensure that no information is exchanged

17. Section 23 of the TMAA extends the provisions of the ITA 2010 to information received by the Competent Authority in accordance with Article 22 of the MAAC. Section 23 provides that any person who communicates such information is guilty of an offence and liable on conviction to a fine at level 3 on the standard scale (GBP 1 000/ EUR 1 122).

that is to be protected as a trade, industrial or commercial secret or which is subject to attorney client privilege or which would be contrary to public policy (*ordre public*).

319. The position continues with the current treaty network as well. The new EOI mechanisms entered into by Gibraltar contain the same provisions. In practice, during the current review period, the authorities of Gibraltar confirmed that they did not experience any practical difficulties in responding to EOI requests due to the application of rights and safeguards in Gibraltar.

320. The table of determination and rating therefore is as follows:

Legal and Regulatory Framework
Determination add in colour: The element is in place
Practical Implementation of the standard
Rating: Compliant

C.5. Requesting and providing information in an effective manner

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

321. The 2014 Report concluded that in general the EOIR organisational processes and resources were adequate in Gibraltar, which enabled it to maintain reasonably good response times. However, it also made recommendations in respect of ensuring to provide regular status updates to its EOI partners on the handling of requests, the need for improving communication with a partner and to monitor the application of protocol to process the requests in the Office of Commissioner of Income Tax.

322. Gibraltar has addressed the recommendations in respect of improving the communication with the particular partner identified in the 2014 Report and further ensured the compliance of practice with the protocol to process the requests in the Office of Commissioner of Income Tax. Therefore, these recommendations stand deleted.

323. However, there have been peer inputs in the current review period (1 January 2016-31 December 2018), which indicate that 90-day status updates were not received at all times and there were delays in responses of important cases. There was a failure in respect of one accounting information request and a reported difficulty with a TCSP/record keeper in providing ultimate beneficial ownership information in two cases for the reason that the taxpayer under investigation was neither an ultimate beneficial owner of Gibraltar structure nor a client of the TCSP. In another case, the TCSP has intended to challenge the request in Court, because the taxpayer under

investigation was not a tax resident of the requesting country. However, Gibraltar authorities indicate that the tax residency was the sole basis for the TCSP to invoke an issue with the foreseeable relevance in that case.

324. In view of the above adverse peer input, Gibraltar should ensure that status-updates are sent in all cases and ensure timely responses in all cases by increasing the staffing for handling EOIR work as well as by not interpreting the foreseeable relevance narrowly.

325. In all other respects, Gibraltar continues to perform to the standard in terms of responding to requests, which totalled 209 during the period under review across those under TIEAs/MAAC/DAC.

326. The table of recommendations and rating is as follows:

Legal and Regulatory Framework		
This element involves issues of practice. Accordingly, no determination has been made.		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice	Peer inputs in the review period indicate that 90-day status updates were not sent systematically.	Gibraltar should ensure that 90-day status-updates are sent in all cases where a response cannot be provided within that time.
	Peer inputs indicate that in certain cases delays have been experienced in obtaining responses. Gibraltar authorities have cited staffing constraints in the Competent authority's (Commissioner of Income Tax) office dealing with multiple and simultaneous work streams resulting in longer response times.	Gibraltar should ensure timely responses in all cases by increasing the staffing along with a possible review and reorganisation of the administrative processes for handling EOIR work.
	Peer inputs have indicated challenges posed by TCSPs on interpretation of foreseeable relevance, which are not in line with the standard.	Gibraltar should ensure that the criterion of foreseeable relevance is not narrowly interpreted and information is provided to partners where the competent authority of the requesting jurisdiction is able to establish foreseeable relevance to the satisfaction of the Gibraltar Competent Authority.
Rating: Largely Compliant		

C.5.1. Timeliness of responses to requests for information

327. Over the period under review (2016-18), Gibraltar received 209 requests for information. The information in these requests[18] related to (i) ownership information (83 cases), (ii) accounting information (64 cases), (iii) banking information (115 cases) and (iv) other type of information (101 cases).

328. Under the TIEAs, a relatively small number of requests targeted only bank, trust or tax information regarding individuals, but the overwhelming majority of requests were in respect of companies. Two requests were received regarding a Gibraltar Limited Partnership and no requests were received in respect of foundations.

329. Under the Multilateral Convention and the Directive, the majority of the requests related to individuals and a combination of individuals and companies. Most requests included the wish to receive banking information.

330. Gibraltar's most significant EOI partners for the period under review (by virtue of the number of exchanges with them) are Spain, Sweden, France and the United Kingdom. The following table relates to the requests received during the period under review and gives an overview of response times of Gibraltar in providing a final response to these requests, together with a summary of other relevant factors influencing the effectiveness of Gibraltar's exchange of information practice during the reviewed period.

Statistics on response time

		2016		2017		2018		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	[A+B+C+D+E]	69	33	55	26	85	41	209	100
Full response: ≤ 90 days		36	52	40	73	52	61	128	61
≤ 180 days (cumulative)		48	70	49	89	60	71	157	75
≤ 1 year (cumulative)	[A]	52	75	49	89	62	73	163	78
> 1 year	[B]	9	13	3		2	2	14	7
Declined for valid reasons		2	3	2	4	3	4	7	3
Outstanding cases after 90 days		33	48	15	27	33	39	81	39
Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided > 90 days)		25	75	11	73	9	27	45	55
Requests withdrawn by requesting jurisdiction	[C]	0	0	0	0	1	1	1	0.5
Failure to obtain and provide information requested	[D]	0	0	0	0	1	1	1	0.5
Requests still pending at date of review	[E]	6	9	1	2	16	20	23	11

18. Please note that some requests entailed more than one information category.

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

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

331. Gibraltar explained that requests that are not fully dealt within 90 or 180 days do not typically relate to any particular type of information.

Pending cases

332. Peer inputs received indicated that 55 requests were pending from Gibraltar. Notably, one peer reported that no response in important cases was received in spite of a quick clarification provided by the peer, while another peer reported 36 pending requests: with seven from the first two years of review period.

333. Subsequent to the onsite visit, the Gibraltar Competent Authorities commenced expediting their processing of pending requests liaising with their counterparts to reduce the number of pending requests. As at 23 September 2019, 23 requests (in respect of 45 taxpayers/subjects) were outstanding. Gibraltar authorities have explained that resource constraint was the principal contributing factor to these delays. On 3 June 2020, 13 requests are under process but partial responses with the information available will be sent out by mid-June 2020 given COVID-19 restrictions.

Clarifications

334. In the period under review, there were frequent requests for clarification by Gibraltar to the requesting jurisdictions. Gibraltar explained that practically all of these requests for clarification resulted from the fact that requesting jurisdictions are not aware of the dates of entry into force of the bilateral TIEAs and consequently request information for tax periods preceding the date of entry into force in civil tax matters, which is outside the scope of a bilateral TIEA. These requests then necessarily had to be adjusted in order to fall within the parameters of the TIEA (dates of entry into force of bilateral agreements are publicly available on the OECD's online portal).

Requests declined for valid reasons

335. There were seven requests in the review period that were declined by Gibraltar for valid reasons. Two requests under TIEAs were declined as

they pertained to civil investigations (not criminal) and sought information from periods prior to the respective TIEA coming into force. Three requests were declined for lack of justification and nexus to Gibraltar. One request was declined in view of the specific requirement to search a private residence and seize documents, which is not covered by the provisions of TIEA in the view of Gibraltar authorities. However, it is not clear whether it was explored with the partner to provide any/part of the information by means other than search/seizure under the TIEA. Gibraltar authorities advised that this case was then pursued by the requesting jurisdiction via the alternate channel of mutual legal assistance, resulting in convictions for tax evasion in the courts of the requesting country. Another request was a duplicate, the response to which was provided earlier by Gibraltar to the partner and the partner was referred to the same.

Status updates and communication with partners

336. There have been peer inputs in the current review period, which indicate that 90-day status updates were not received at all times and there were delays in responses of important cases. Status updates were provided only in 55% of the cases.

337. Peer inputs also indicate that there was a failure in respect of one accounting information request and a reported difficulty with a TCSP/record keeper in providing ultimate beneficial ownership and accounting information in two cases for the reason that the taxpayer under investigation was not an ultimate beneficial owner of Gibraltar structure (although being a client) in one case and not a client of the TCSP in another case. However, Gibraltar did not assert that this is a fishing expedition either and did not decline the request citing valid reasons for lack of foreseeable relevance. The requesting jurisdiction had to eventually close the two requests, as a result of the insistence that the beneficial owner of a Gibraltar entity ought to be precisely known beforehand by the requesting jurisdiction in order to request for it. This is a narrow interpretation of foreseeable relevance, in practice, by Gibraltar.

338. Further, in one more case, the TCSP challenged the foreseeable relevance in terms of tax residency of the taxpayer under investigation. While the requesting jurisdiction has provided necessary details to establish residency and legal basis to seek information for tax investigations, Gibraltar has not issued a formal notice to the TCSP, given the risk of TCSP initiating a court procedure to challenge the foreseeable relevance and its potential adverse implications in case the TCSP prevails at the Court of Law. Although, Gibraltar has tried to find more ways to address the concerns of foreseeable relevance raised by the TCSP, the requesting jurisdiction has already provided the necessary information to justify foreseeable relevance and no further details could be provided as at February 2020.

339. However, Gibraltar has not declined the request citing lack of foreseeable relevance and the request continues to be delayed owing to Gibraltar's stricter approach to foreseeable relevance. Under the international standard, once both Competent Authorities agree to the threshold of foreseeable relevance of a request, it should be followed by measures to ensure effective exchange of information; otherwise the request ought to be declined for valid reasons. While additional facts that may call into question the foreseeable relevance can always be considered by the requested State, the standard expects that both the competent authorities consult once again in such situation, resulting in either an issuance of notice to obtain the requested information or declining the request for valid reasons citing lack of foreseeable relevance. In all the aforementioned three cases, neither the request was satisfied nor were they rejected for lack of foreseeable relevance, citing reasons thereof, if it were so in the opinion of Gibraltar. It resulted in one peer having to close two requests and another having to continue to wait for action/response from Gibraltar after exhausting all additional materials, clarifications to justify the foreseeable relevance. This practice is not in line with the standard which requires effective exchange of information in practice.

340. In view of the above peer inputs, Gibraltar should ensure that status-updates are sent in all cases and also ensure timely responses in all cases by for instance reviewing and reorganising administrative processes and/or increasing the staffing for handling EOIR work as well as by not interpreting the foreseeable relevance narrowly.

341. However, there were no adverse inputs with respect to the ease of communication and overall co-operation of Gibraltar Competent Authorities and except for the issues discussed above, in general, peers reported a satisfactory EOI relation with Gibraltar.

C.5.2. Organisational processes and resources

A dual organisation of the competent authority

342. In Gibraltar, the exchange of information functions under TIEAs, the Multilateral Convention and the DAC and under a DTC with the United Kingdom. The Competent Authority for requests under TIEAs is the Finance Centre Director (FCD); for requests under Multilateral Convention and exchanges under Directive 2011/16/EU, it is the Commissioner of Income Tax. The contact details of both the competent authorities are set out in a dedicated secure website of the Global Forum, which is accessible, by other treaty partners and jurisdictions. In the review period, FCD received 104 requests while the Commissioner of Income Tax received 105 requests.

343. There are four senior individuals within the tax administration in Gibraltar involved in EOIR. The competent authorities are currently undertaking a review of the EOI administrative structure and corresponding resources. The collective experience of the EOI team has enabled the competent authorities to process EOI requests without much difficulty.

344. The EOI requests received are handled by two designated EOI officers and therefore, given the relatively small number of requests as a quantum, no complex performance measures or indicators are used nor detailed processes, procedures or manuals are considered necessary, other than an administrative protocol checklist. Competent authorities have the final responsibility to oversee the validity of requests as necessary. Regular communication is maintained with treaty partners and Gibraltar authorities confirm that partners would be contacted for clarification or additional information if necessary. Gibraltar authorities also have regular contact with EOI partners, including telephone calls and meetings.

Processing of incoming requests by the Finance Centre Director (FCD)

345. The current organisational process of the FCD is found in the EOI practice manual updated in March 2014. This practice manual was originally created after Gibraltar signed its first EOI agreement and is updated from time to time, as deemed necessary. The FCD does not use templates and checklists in processing requests and providing information. This practice manual is a tool, which outlines the process to be used from the time of a request up to the time of the delivery of the information to the requesting partner.

346. When a request is received for information, the authorised officer within the FCD is responsible for acknowledging receipt of the request. The request is then scanned and saved on the separate server of the FCD, which is accessible only by the officers responsible for EOI within the FCD. The FCD as the designated competent authority signs all notices sent out.

347. Before issuing a notice, the FCD and the authorised officer meet to discuss the request and decide on the content of the notice. If there are any concerns as to the validity of the request or where information is missing from the request, the FCD requests clarification from the requesting jurisdiction. This is usually done by email. The authorised officer will then determine what other information is required to be sent to the requesting jurisdiction and also determines who the notice should be issued to in order for the information to be gathered.

348. The notices are hand-delivered by an officer within the FCD. The officer receives a signed receipt of delivery. The person or entity served with a notice is generally given 10 days to comply with the notice. If an extension

is requested, the Finance Centre Director will give it depending on the circumstances and the time the person or entity needs to provide the information according to the notice. In practice, an extension has been given for three weeks, the reason being the person who held the information was not in Gibraltar at the time. However, the Gibraltar competent authority was still able to provide the requested information within 90 days.

349. When the requested information is delivered to the FCD, the authorised officer is required to check all information thoroughly to ensure that it responds to the questions asked. If required, the authorised officer may ask the person who sent the information for clarification e.g. where a bank may have inadvertently missed out certain years of statements requested. After ensuring that the information obtained meets the requirement of the request, a cover letter is prepared and the information is sent via courier or by WinZip encrypted email (depending on the type and volume of information).

350. In the case that the request seeks public information accessible directly from the website of Companies House, it is obtained by the Gibraltar Competent Authority on behalf of the requesting jurisdiction and sent to the requesting partner, e.g. a corporate profile, together with other relevant information such as balance sheets for the last three years. After this information is sent, the details of the request are logged in the Register, including the date received and the details of the public information sent to the requesting jurisdiction. To monitor the progress and timeliness, the authorised officer uses a diary where the information is logged, tracked manually on a daily basis.

351. All staff are required to adhere to the guidelines contained in the "Keeping it Safe – Joint OECD/Global Forum Guide on the Protection of Confidentiality of Information Exchange for Tax Purposes" and the International Standards on Data Safeguards and Infrastructure.

352. As the FCD only received 104 requests during the three-year period under review and there is one authorised officer who manages EOI, the workload was manageable, although the FCD draws on two other officers as and when required. This method may not be as effective if the number of incoming requests increases.

Processing of incoming requests by the Commissioner of Income Tax

353. The current organisational process of the Commissioner concerning EOI under the EU Directive is found in a Protocol last amended in March 2014. The Commissioner does not use templates and checklists in processing requests and providing information, except for the template notice created. The Protocol outlines the process to be used from the time of the receipt of a request to the time of delivery of the information to the requesting partner.

354. When the Commissioner receives a request under MAAC or DTC, it is reviewed and accepted and acknowledgement of receipt is signed and dated. The Commissioner also confirms receipt directly with the requesting authority electronically. Every request that is received is scanned and saved on the separate server of the Commissioner, which is only accessible by members of the Income Tax Office's senior management team and the case officers and advisors dealing with the request for information. Scanned requests are then filed. In the review period, the Commissioner of Income Tax received 105 requests.

355. To process an incoming request, a consultation process is done by the Income Tax Office as to the validity of the request for information, including an assessment of additional information required, line of enquiry to be undertaken and any issues identified. This consultation process is done based on the response prepared by the case officer. The case officer then commences gathering information under the request. They first identify whether the information is held in the Income Tax Office; if the information is on the files of the Income Tax Office, this information is collated and used as the basis for preparing a response. If the information is not held on the files of the Income Tax Office, an administrative enquiry under section 5 of the Income Tax Act is carried out. Information received is reviewed and authorised by the Commissioner of Income Tax. Copies of the responses are also filed.

356. Group requests go through the same internal processes as described above. During the review period, Gibraltar received 14 group requests, which were responded to within 30 days, and in all the cases, the requesting partners consulted Gibraltar before sending the requests. Peer inputs do not indicate anything adverse in respect of Gibraltar's response to group requests.

Resources and training

357. Peer inputs also indicate that in certain cases delays have been experienced in obtaining responses. Gibraltar authorities have cited staffing constraints in CA offices dealing with multiple and simultaneous work streams resulting in longer response times. The distribution and varying response times throughout the review period is due to the extensive redeployment of the EOI case officer to work as a part of a team on matters of international work regarding an independent assessment and enquiry evaluation of both the taxation system in Gibraltar and the corresponding procedures applicable therein. This process ran parallel to most of the period within the scope of this review. Gibraltar advised that the possibility of enhancing the resources within the Competent Authority is being reviewed as a matter of urgency.

358. Gibraltar should ensure timely responses in all cases by increasing the staffing along with a possible review and reorganisation of the administrative processes for handling EOIR work.

359. No specific training programmes related to EOIR have been provided to the staff handling EOIR in Gibraltar. Training in FCD currently mainly takes the form of on-the-job training. The FCD and the Senior EOI officer have regular internal meetings with support staff when necessary, to ensure that obligations are being met and that the level of efficiency of responding to requests is sufficient, as well as ensuring confidentiality obligations such as email encryption, security of filing etc. are being followed. However, the competent authorities are currently undertaking a review of the EOI team's administrative structure and corresponding resources, including recruitment and training needs.

Practical difficulties Gibraltar experienced in obtaining the requested information

360. In response to clarifications sought at the onsite visit, at the end of September 2019, Gibraltar authorities advised that, 23 requests (in respect of 45 taxpayers/subjects) were outstanding. Gibraltar authorities have explained that resource constraint was the principal contributing factor to these delays. The latest position on 3 June 2020 is that 13 requests are under process but partial responses with the information available will be sent out by mid-June 2020 given COVID-19 restrictions.

Outgoing requests

361. There were no outgoing requests sent by Gibraltar in the past or in the current review period. Gibraltar authorities clarify that if necessary they would issue an outgoing request using the OECD model template that is available online and is used by most requesting jurisdictions. In the event that such an outgoing request should be issued it would be handled by the Commissioner of Income Tax as the tax authority under the MAC or DAC 1, using the existing processes in place at the Income Tax Office. The FCD would only handle outgoing requests to the two jurisdictions with which Gibraltar only has bilateral TIEAs, namely Guernsey and the Isle of Man.

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

362. Apart from the issues discussed above, there are no factors or issues identified that could unreasonably, disproportionately or unduly restrict effective EOI in Gibraltar.

Annex 1: List of in-text recommendations

Issues may have arisen that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. However, in order to ensure that the Global Forum does not lose sight of these "in text" recommendations, they should be listed in an annex to the EOIR report for ease of reference.

- **Element A.1:** Non-professional trustees administering foreign trustees and Non-professional nominees should be adequately supervised to ensure the availability of beneficial ownership information (paras. 93, 135).
- **Element A.2:** Given the large number of penalties that had to be applied to ensure timely return filing, Gibraltar should ensure that the sanctions are proportionate and dissuasive (para. 206).
- **Element A.3:** There is no explicit requirement or guidance to undertake reviews on a periodic basis (e.g. 5 years for low risk, 3 years for medium risk and 1 year for high-risk) of existing records to ensure that documents, data or information collected under CDD process is kept up-to date and relevant. Gibraltar should ensure that accurate beneficial ownership information is kept up to date for all account holders in all cases (para. 229).
- **Element B.2:** Gibraltar has amended section 17 of the ICA to allow for the exceptions to prior notification in line with the standard. Therefore, the previous recommendation now stands deleted, and while there were no cases in the review period which could test the new provisions, Gibraltar should monitor the implementation of the new provisions (para. 276).
- **Element C.1:** Gibraltar should ensure that the criterion of foreseeable relevance is not narrowly interpreted and information is provided to

partners where the competent authority of the requesting jurisdiction is able to establish foreseeable relevance to the satisfaction of the Gibraltar Competent Authority (para. 294).

- **Element C.2:** Gibraltar should continue to conclude EOI agreements with any new relevant partner who would so require (para. 306).

Annex 2: List of Gibraltar's EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Australia	TIEA	26 Aug 2009	26 Jul 2010
2	Austria	TIEA	17 Sep 2009	1 May 2010
3	Belgium	TIEA	16 Dec 2009	17 Jun 2014
4	Denmark	TIEA	2 Sep 2009	13 Feb 2010
5	Faroe Islands	TIEA	20 Oct 2009	8 Jun 2011
6	Finland	TIEA	20 Oct 2009	6 May 2010
7	France	TIEA	22 Sep 2009	9 Dec 2010
8	Germany	TIEA	13 Aug 2009	4 Nov 2010
9	Greece	TIEA	21 Jan 2013	not yet in force
10	Greenland	TIEA	20 Oct 2009	24 Dec 2009
11	Guernsey	TIEA	22 Oct 2013	12 Mar 2014
12	Iceland	TIEA	16 Dec 2009	18 Apr 2012
13	India	TIEA	1 Feb 2013	11 Mar 2013
14	Ireland	TIEA	24 Jun 2009	25 May 2010
15	Isle of Man	TIEA	28 Jun 2019	5 Feb 2020
16	Italy	TIEA	2 Oct 2012	12 Jun 2015
17	Malta	TIEA	24 Jan 2012	1 Apr 2012
18	Mexico	TIEA	29 Nov 2012	27 Aug 2014
19	Netherlands	TIEA	23 Apr 2010	1 Dec 2011
20	New Zealand	TIEA	13 Aug 2009	13 May 2011
21	Norway	TIEA	16 Dec 2009	8 Sep 2010
22	Poland	TIEA	31 Jan 2013	5 Dec 2013
23	Portugal	TIEA	14 Oct 2009	24 Apr 2011

	EOI partner	Type of agreement	Signature	Entry into force
24	South Africa	TIEA	2 Feb 2012	21 Jul 2013
25	Sweden	TIEA	16 Dec 2009	3 Jul 2010
26	Turkey	TIEA	4 Dec 2012	15 Feb 2018
27	United Kingdom	TIEA	27 Aug 2009	15 Dec 2010
28		DTC	15 Oct 2019	24 March 2020
29	United States	TIEA	31 Mar 2009	22 Dec 2009

Convention on Mutual Administrative Assistance in Tax Matters (as amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).[19] The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

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

The United Kingdom has extended the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC), as amended by the 2010 protocol, with effect from 1 March 2014 for Gibraltar. Gibraltar can exchange information with all other jurisdictions where the Multilateral Convention is in force, except with the United Kingdom and those jurisdictions to which United Kingdom has extended the MAAC. The Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Antigua and Barbuda, Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Brazil, Brunei Darussalam, Bulgaria, Cameroon, Canada, Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the

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

Netherlands), Cyprus,[20] Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Greece, Greenland (extension by Denmark), Grenada, Guatemala, Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Morocco, Nauru, Netherlands, New Zealand, Nigeria, Niue, North Macedonia, Norway, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Korea, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Armenia (enters into force on 1 June 2020), Benin, Bosnia and Herzegovina, Burkina Faso, Cabo Verde (enters into force on 1 May 2020), Gabon, Kenya, Liberia, Mauritania, Mongolia (enters into force on 1 June 2020), Montenegro (enters into force on 1 May 2020), Oman, Paraguay, Philippines, Thailand (signature on 3 June 2020),[21] Togo and United States (the original 1988 Convention in force on 1 April 1995, the amending Protocol signed on 27 April 2010).

EU Directive on Mutual Administrative Assistance in Tax Matters

Gibraltar can exchange information relevant for direct taxes upon request with EU member states under the EU Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation (as

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

    Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

21. This signature took place after the cut-off date of the present report and therefore this EOI relationship is not taken into account in the core text of the report.

amended). The Directive came into force on 1 January 2013. All EU members were required to transpose it into their domestic legislation by 1 January 2013, i.e. Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.

Gibraltar cannot exchange information on request with the United Kingdom and those jurisdictions for whose external relations United Kingdom is responsible.

Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference and conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and the 2016-21 Schedule of Reviews.

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at April 2020, Gibraltar's EOIR practice in respect of EOI requests made and received during the three year period from, Gibraltar's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Gibraltar's authorities during the on-site visit that took place in September 2019.

List of laws, regulations and other materials received

Commercial laws

Companies Act

Companies (Accounts) Act 1999

Protected Cell Companies Act 2001

Partnership Act

Partnership and Unlimited Companies (Accounts) Regulations 1999

Limited Partnerships Act

Trustees Act

Registered Trust Act 1999

Business Names Registration Act

Taxation laws

Income Tax Act 2010

International Cooperation (Tax Information) Act 2009

Anti-money laundering laws

Crime (Money Laundering and Proceeds) Act 2007

Gibraltar AML Guidance Notes

Gibraltar's laws can be found online at www.gibraltarlaws.gov.gi/full_index.php

Authorities interviewed during on-site visit

Ministry of Financial Services, Finance Centre Department

Ministry of Finance, Income Tax Office

Financial Services Commission

Companies House

Gibraltar Association of Compliance Officers

Society of Trust and Estate Practitioners

Gibraltar Association of Banks

Current and previous reviews

This report is the third review of Gibraltar conducted by the Global Forum. Gibraltar previously underwent a review of its legal and regulatory framework (Phase 1) originally in 2010 and the implementation of that framework in practice (Phase 2) in 2014. The 2014 Report containing the conclusions of the first review was first published in October 2014 (reflecting the legal and regulatory framework in place as of August 2014).

The Phase 1 and Phase 2 reviews were conducted according to the terms of reference approved by the Global Forum in February 2010 (2010 ToR) and the Methodology used in the first round of reviews.

Summary of reviews

Review	Assessment team	Period under review	Legal framework as of	Date of adoption by Global Forum
Round 1 Phase 1	Mr Tilo Welz, Germany; Ms Marlene Parker, Director of Legislation and Treaty Services Unit, Jamaica; and Mr Guozhi Foo of the Global Forum Secretariat	n.a.	October 2010	January 2011
Round 1 Phase 2	Mr Tilo Welz, Executive Officer from the Federal Ministry of Finance, Germany; Ms Ann O'Driscoll, Director of Tax Treaties Branch of the Office of the Revenue Commissioners, Ireland; and Ms La Toya James from the Global Forum Secretariat	1 January 2011 to 31 December 2013	August 2014	October 2014
Round 2	Mr Bent Bertelsen, Danish Customs and Tax Administration, Mr Joseph Balikuddembe, Uganda Revenue Authority and Mr Venkata Bhaskar Eranki from the Global Forum Secretariat	1 January 2016 to 31 December 2018	30 April 2020	August 2020

Annex 4: Gibraltar's response to the review report[22]

HM Government of Gibraltar would like to express its sincere thanks to the assessment team, the Global Forum secretariat and the Peer Review Group for this very thorough and detailed report which we embrace and support.

We remain fully committed to the process of exchange of information and transparency and have already begun planning the implementation of the recommendations contained in the report. As such we will keep the Global Forum appraised, via the secretariat, of progress in this regard which we intend to tackle swiftly.

Our thanks also to all the Government departments and agencies in Gibraltar that ably assisted in the review process.

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

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request GIBRALTAR 2020 (Second Round)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 160 jurisdictions participate on an equal footing.

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

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

This report contains the 2020 Peer Review Report on the Exchange of Information on Request of Gibraltar.

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