

GLOBAL FORUM ON  
**TRANSPARENCY AND EXCHANGE OF  
INFORMATION FOR TAX PURPOSES**



Peer Review Report on the Exchange of Information  
on Request

# PEOPLE'S REPUBLIC OF CHINA

2020 (Second Round)



# **Global Forum on Transparency and Exchange of Information for Tax Purposes: People's Republic of China 2020 (Second Round)**

PEER REVIEW REPORT ON THE EXCHANGE  
OF INFORMATION ON REQUEST

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#### 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

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## 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](http://www.oecd.org/tax/transparency) and <http://dx.doi.org/10.1787/2219469x>.



## Abbreviations and acronyms

|                     |                                                                                             |
|---------------------|---------------------------------------------------------------------------------------------|
| <b>2016 ToR</b>     | Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015   |
| <b>AML</b>          | Anti-Money Laundering                                                                       |
| <b>AML/CFT</b>      | Anti-Money Laundering/Countering the Financing of Terrorism                                 |
| <b>CBIRC</b>        | China Banking and Insurance Regulatory Commission                                           |
| <b>CSRC</b>         | China Securities Regulatory Commission                                                      |
| <b>CTRC</b>         | China Trust Registration Corporation                                                        |
| <b>CDD</b>          | Customer Due Diligence                                                                      |
| <b>DTC</b>          | Double Tax Convention                                                                       |
| <b>EOI</b>          | Exchange of information                                                                     |
| <b>EOIR</b>         | Exchange of information on request                                                          |
| <b>FATF</b>         | Financial Action Task Force                                                                 |
| <b>GCCD</b>         | Global Co-operation and Compliance Division (responsible for the day-to-day EOI operations) |
| <b>Global Forum</b> | Global Forum on Transparency and Exchange of Information for Tax Purposes                   |
| <b>ICPA</b>         | Institute of Certified Public Accountants                                                   |
| <b>JSC</b>          | Joint stock limited company                                                                 |
| <b>LATC</b>         | Law on the Administration of Tax Collection                                                 |
| <b>LLC</b>          | Limited liability company                                                                   |
| <b>MAAA</b>         | Measures for the Administration of Accounting Archives                                      |
| <b>MATC</b>         | Measures for the Administration of Trust Companies                                          |

|                                |                                                                                   |
|--------------------------------|-----------------------------------------------------------------------------------|
| <b>MATR</b>                    | Measures for the Administration of Trust Registration                             |
| <b>MRP</b>                     | Measures for the Registration of Partnerships                                     |
| <b>Multilateral Convention</b> | Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010 |
| <b>PBC</b>                     | People's Bank of China                                                            |
| <b>RACR</b>                    | Regulation on the Administration of Company Registration                          |
| <b>RAF</b>                     | Regulation on the Administration of Foundations                                   |
| <b>RMB</b>                     | Renminbi (the official currency of China)                                         |
| <b>SAMR</b>                    | State Administration for Market Regulation                                        |
| <b>SRSI</b>                    | Securities Registration and Settlement Institution                                |
| <b>STA</b>                     | State Taxation Administration                                                     |
| <b>TIEA</b>                    | Tax Information Exchange Agreement                                                |

## Executive summary

1. This report analyses the implementation of the international standard of transparency and exchange of information on request in the People's Republic of China (hereafter “China”) 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 in force as at 30 April 2020 and the practical implementation of this framework, including in respect of EOI requests received and sent during the review period from 1 October 2015 to 30 September 2018. This report concludes that China is rated overall **Largely Compliant** with the international standard. In 2012, the Global Forum evaluated China against the 2010 Terms of Reference for both the legal implementation of the EOIR standard as well as its operation in practice. The report of that evaluation (the 2012 Report) concluded that China was rated Compliant overall.

### Comparison of ratings for First Round Report and Second Round Report

| Element                                                | First Round Report (2012) | Second Round Report (2020) |
|--------------------------------------------------------|---------------------------|----------------------------|
| A.1 Availability of ownership and identity information | Compliant                 | Largely Compliant          |
| A.2 Availability of accounting information             | Compliant                 | Compliant                  |
| A.3 Availability of banking information                | Compliant                 | Largely Compliant          |
| B.1 Access to information                              | Compliant                 | Compliant                  |
| B.2 Rights and Safeguards                              | Compliant                 | Compliant                  |
| C.1 EOIR Mechanisms                                    | Compliant                 | Compliant                  |
| C.2 Network of EOIR Mechanisms                         | Compliant                 | Compliant                  |
| C.3 Confidentiality                                    | Compliant                 | Compliant                  |
| C.4 Rights and safeguards                              | Compliant                 | Compliant                  |
| C.5 Quality and timeliness of responses                | Compliant                 | Compliant                  |
| OVERALL RATING                                         | <b>Compliant</b>          | <b>Largely Compliant</b>   |

## Progress made since previous review

2. In the 2012 Report, all elements were rated Compliant and only two recommendations for improvement were made to China on deficiencies of low materiality. Both recommendations have been addressed. First, the Chinese authorities reported that all regions have now made the necessary arrangements to ensure the availability of ownership information in relation to bearer shares (two regions had not done so in 2012). Second, the Chinese Competent Authority increased the staff engaged in the day-to-day EOI operations following the recommendation from the 2012 Report to devote additional personnel resources to ensure effective management of China's EOI programme.

## Key recommendations

3. In this report, two areas have been identified where improvement is needed. Both relate to the availability of beneficial ownership information, a new requirement introduced when the standard was strengthened in 2016.

4. China relies on its anti-money laundering (AML) framework for the availability of comprehensive beneficial ownership information, most importantly on information held by banks. China significantly updated its AML legal framework in 2017 and 2018, bringing the AML obligations better in line with the international standard, but some aspects of the framework could be clarified or strengthened.

5. The system of oversight and enforcement that is in place in respect of the AML obligations on banks and other financial institutions is not sufficiently adapted to the introduction of the significant update of the AML legal framework in 2017 and 2018 and the many different applicable legislative instruments. In addition, the level of penalties that can be applied for non-compliance is not proportionate or dissuasive. It is recommended that China ensures that its oversight and enforcement regime in respect of the compliance by banks and other financial institutions with the requirements to keep beneficial ownership information on their clients is commensurate to the circumstances.

## Exchange of information in practice

6. China received 584 requests for information during the period from 1 October 2015 to 30 September 2018. Peers are generally satisfied with the information they received from China as well as with the timeliness of receiving this information. However, communication with partners could be improved on the status of pending requests. A recommendation for this purpose has been made.

## Overall rating

7. China has been given a Compliant rating for eight elements (A.2, B.1, B.2, C.1, C.2, C.3, C.4, C.5), and a Largely Compliant rating for the other two elements (A.1 and A.3). The overall rating is therefore Largely Compliant.

8. This report was approved by the Peer Review Group of the Global Forum on 8 July 2020 and was adopted by the Global Forum on 18 August 2020. A follow up report on the steps undertaken by China 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 ( <i>ToR A.1</i> ) |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                              |
| <b>The legal and regulatory framework is in place, but certain aspects of the legal implementation need improvement.</b>                                                                                                             | The determination of beneficial ownership in respect of general and limited partnerships follows the approach for companies, including taking a 25% ownership threshold as a starting point. This is not in accordance with the form and structure of the partnerships in China.                                                                                                                                                                                                                                                                                                                                                                                                              | China should ensure that the beneficial owners of partnerships are required to be determined in accordance with the form and structure of each partnership.                                                                                                  |
| <b>EOIR rating:<br/>Largely Compliant</b>                                                                                                                                                                                            | China has in place a system of oversight of and enforcement on banks and other financial institutions in respect of their compliance with the requirements to keep comprehensive beneficial ownership information on relevant entities and arrangements. However, the supervision and enforcement actions taken in practice do not seem to sufficiently take into account that there are many different applicable legislative instruments, with significant updates having been introduced later during the review period, and its effectiveness can therefore be questioned. In addition, the level of penalties that can be applied for non-compliance is not proportionate or dissuasive. | China should ensure that its supervision and enforcement regime in respect of the compliance by banks and other financial institutions with the requirements to keep beneficial ownership information on their clients is commensurate to the circumstances. |

| Determinations and Ratings                                                                                                          | Factors underlying Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Recommendations                                                                                                                                                                                                                                              |
|-------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements ( <i>ToR A.2</i> ) |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                              |
| <b>The legal and regulatory framework is in place.</b>                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                              |
| <b>EOIR rating: Compliant</b>                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                              |
| Banking information and beneficial ownership information should be available for all account-holders ( <i>ToR A.3</i> )             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                              |
| <b>The legal and regulatory framework is in place, but certain aspects of the legal implementation need improvement.</b>            | The determination of beneficial ownership in respect of general and limited partnerships follows the approach for companies, including taking a 25% ownership threshold as a starting point. This is not in accordance with the form and structure of the partnerships in China.                                                                                                                                                                                                                                                                                                                                                                                                              | China should ensure that the beneficial owners of partnerships are required to be determined in accordance with the form and structure of each partnership.                                                                                                  |
| <b>EOIR rating: Largely Compliant</b>                                                                                               | China has in place a system of oversight of and enforcement on banks and other financial institutions in respect of their compliance with the requirements to keep comprehensive beneficial ownership information on relevant entities and arrangements. However, the supervision and enforcement actions taken in practice do not seem to sufficiently take into account that there are many different applicable legislative instruments, with significant updates having been introduced later during the review period, and its effectiveness can therefore be questioned. In addition, the level of penalties that can be applied for non-compliance is not proportionate or dissuasive. | China should ensure that its supervision and enforcement regime in respect of the compliance by banks and other financial institutions with the requirements to keep beneficial ownership information on their clients is commensurate to the circumstances. |

| Determinations and Ratings                                                                                                                                                                                                                                                                                                                                                                | Factors underlying Recommendations | Recommendations |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|-----------------|
| Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) ( <i>ToR B.1</i> ) |                                    |                 |
| <b>The legal and regulatory framework is in place.</b>                                                                                                                                                                                                                                                                                                                                    |                                    |                 |
| <b>EOIR rating: Compliant</b>                                                                                                                                                                                                                                                                                                                                                             |                                    |                 |
| The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information ( <i>ToR B.2</i> )                                                                                                                                                                                           |                                    |                 |
| <b>The legal and regulatory framework is in place.</b>                                                                                                                                                                                                                                                                                                                                    |                                    |                 |
| <b>EOIR rating: Compliant</b>                                                                                                                                                                                                                                                                                                                                                             |                                    |                 |
| Exchange of information mechanisms should provide for effective exchange of information ( <i>ToR C.1</i> )                                                                                                                                                                                                                                                                                |                                    |                 |
| <b>The legal and regulatory framework is in place.</b>                                                                                                                                                                                                                                                                                                                                    |                                    |                 |
| <b>EOIR rating: Compliant</b>                                                                                                                                                                                                                                                                                                                                                             |                                    |                 |
| The jurisdictions' network of information exchange mechanisms should cover all relevant partners ( <i>ToR C.2</i> )                                                                                                                                                                                                                                                                       |                                    |                 |
| <b>The legal and regulatory framework is in place.</b>                                                                                                                                                                                                                                                                                                                                    |                                    |                 |
| <b>EOIR rating: Compliant</b>                                                                                                                                                                                                                                                                                                                                                             |                                    |                 |
| The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received ( <i>ToR C.3</i> )                                                                                                                                                                                                                        |                                    |                 |
| <b>The legal and regulatory framework is in place.</b>                                                                                                                                                                                                                                                                                                                                    |                                    |                 |
| <b>EOIR rating: Compliant</b>                                                                                                                                                                                                                                                                                                                                                             |                                    |                 |

| Determinations and Ratings                                                                                                        | Factors underlying Recommendations                                                                                                                                  | Recommendations                                                                                                                                                                                               |
|-----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties ( <i>ToR C.4</i> ) |                                                                                                                                                                     |                                                                                                                                                                                                               |
| <b>The legal and regulatory framework is in place.</b>                                                                            |                                                                                                                                                                     |                                                                                                                                                                                                               |
| <b>EOIR rating: Compliant</b>                                                                                                     |                                                                                                                                                                     |                                                                                                                                                                                                               |
| The jurisdiction should request and provide information under its network of agreements in an effective manner ( <i>ToR C.5</i> ) |                                                                                                                                                                     |                                                                                                                                                                                                               |
| <b>Legal and regulatory framework:</b>                                                                                            | <b>This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.</b>                                 |                                                                                                                                                                                                               |
| <b>EOIR rating: Compliant</b>                                                                                                     | In respect of the EOI requests received in the review period, China has only sent a status update to its EOI partners in half of the cases where this was required. | China should provide a status update to its EOI partners within 90 days of receipt of an EOI request in all cases where the competent authority is unable to provide a substantive response within that time. |

## Overview of China

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

### Legal system

10. China's legal system has the National People's Congress as the highest legislative authority, with the power to amend the Constitution and to enact and amend laws. The State Council, which reports directly to the National People's Congress, can issue administrative regulations in accordance with the Constitution and applicable laws. Departmental rules can be issued by ministries and commissions of the State Council, the People's Bank of China (PBC), the National Audit Office, and institutions under the State Council which perform administrative functions.

11. The legal system reflects the hierarchy of laws, which is as follows: the Constitution, laws, administrative regulations, local regulations, autonomous regulations and special decrees, departmental rules of the State Council, and the rules of local governments. The Constitution has the supreme legal status, and no laws, regulations, rules or circulars may contravene the Constitution.

12. Tax-related international agreements are concluded by the State Taxation Administration (STA) and require the approval of the State Council. They then have the force of law in China. It is explicitly provided that tax agreements override the Law on the Administration of Tax Collection in case of conflict (Art. 91), but not the Constitution.

13. The People's Court is the judicial organ of the State. It is divided into the Supreme People's Court, local people's courts at all levels, military courts and other special people's courts. The Supreme People's Court is the highest judicial organ, supervising the judicial work of local people's courts at all levels and of special people's courts; and people's courts at higher levels supervise the judicial work of those at lower levels. The people's court is responsible for hearing criminal, civil and administrative cases. In general, the court of second instance is the court of last instance.

## Tax system

14. There are 18 types of taxes in China, which can be divided into three categories according to their nature:

- goods and services taxes, including value added tax (VAT), excise tax, tobacco tax and customs duties
- income taxes, being the enterprise income tax and the individual income tax
- property and behaviour taxes, including real estate tax, vessel tonnage tax and environmental protection tax.

15. The goods and services taxes generate more than half of the tax revenue, with the domestic VAT alone accounting for 39.3% of the tax revenue in 2018. The VAT applies to all sales of goods, services and intangible assets within China, and the import of goods. The rates range from 6% to 13%. In order to monitor compliance, invoices may only be issued through the system put in place by the tax authority, giving the tax authority visibility on tax-related payments (Art. 21 Law on the Administration of Tax Collection). This information can be used for checking compliance with both VAT and income tax.

16. The enterprise income tax is levied on all incorporated enterprises, thus excluding sole proprietorships and partnerships (which do not have legal personality in China). Resident enterprises are subject to enterprise income tax on their worldwide income at a rate of 25%; a rate of 20% applies to small businesses. Non-resident enterprises are liable to enterprise income tax if they have established branches or premises in China that generate income, or if they derive income sourced in China in the case that they do not have any establishment in China.

17. Resident individuals are subject to personal income tax on their worldwide income. The tax rate varies depending on the type of income, and is either progressive with maximum rates of 35% or 45% depending on the type of income, or fixed at 20% in respect of certain categories of income such as interest, dividend and income from the transfer of real estate. Non-resident individuals are subject to personal income tax on income derived from China.

18. The Ministry of Finance is responsible for developing policies, laws and regulations in respect of taxes, and works together with the STA, which oversees the administration of the laws and regulations, to ensure the operational perspective of tax administration and collection is taken into account.

19. The administration of taxes is organised at three levels: the provincial level, the municipality level and the county level. Taxpayers fall under the

jurisdiction of the tax service in the location of their activities or headquarters. In practice, the tax authorities at county and municipal levels focus on the day-to-day administration and collection of taxes, while the tax authorities at the provincial level are also responsible for broader issues such as risk management, conducting analysis and setting priorities. In total, approximately 740 000 officials work at the tax authorities throughout China. The STA consists of more than 1 100 officials.

## Financial services sector

20. The financial sector in China comprises three main sectors: the banking sector, the securities sector and the insurance sector. The PBC is in charge of the monetary policy and the AML regulation and supervision on the financial sector (see below under AML Framework), while the regulatory supervision is allocated to separate commissions: the China Banking and Insurance Regulatory Commission (CBIRC)<sup>1</sup> and the China Securities Regulatory Commission (CSRC). Permission is needed from a regulatory authority to conduct any activities in the financial sector.

21. An overview of the number of institutions in the different sectors as at the end of 2018 can be found in the following table.

| Type of institution                                   | Number of institutions | Regulatory authority |
|-------------------------------------------------------|------------------------|----------------------|
| Banking institutions and other financial institutions | 4 503                  | CBIRC                |
| Trust companies                                       | 68                     | CBIRC                |
| Securities companies                                  | 131                    | CSRC                 |
| Futures companies                                     | 149                    | CSRC                 |
| Fund management companies                             | 120                    | CSRC                 |
| Insurance industry                                    | 229                    | CBIRC                |

22. The financial sector has been steadily growing over the last decade and its output accounted for 7.7% of China's GDP in 2018. The assets in the banking sector in China totalled RMB 268.2 trillion (EUR 35.3 trillion) at the end of 2018. Almost 37% of the assets were allocated to the five largest commercial banks, and another 17.5% to the 12 next largest commercial banks, adding up to more than 54%.

23. The other two financial sectors are much smaller. The assets in the insurance industry stood at approximately RMB 17 trillion (EUR 2.2 trillion)

1. The CBIRC was established in April 2018. Before that time, there were two separate commissions for the banking sector (China Banking Regulatory Commission) and the insurance sector (China Insurance Regulatory Commission).

at the end of 2018, and the assets in the securities industry at RMB 6.5 trillion (EUR 0.86 trillion).

## AML Framework

24. China's Anti-Money Laundering Law came into force on 1 January 2007, and forms the basis of the AML legal framework. Regarding the implementation of this framework, the PBC is the authority responsible for issuing further guidance, which it has done in the form of several Orders and Notices, and for the supervision of obligated institutions in respect of their compliance with AML obligations (Art. 4(10) Law on the People's Bank of China).

25. The issuance of three Notices in 2017 and 2018 provided more detailed requirements for AML obligated institutions. The main purpose of these changes was to bring China's AML framework closer to being in accordance with the international standards. The more detailed requirements have been complemented by clarifying that non-financial businesses and professions are covered by AML obligations. This was necessary because unlike financial institutions (banks, insurance companies, securities companies, etc.), non-financial businesses and professions are not explicitly mentioned in the Anti-Money Laundering Law, and the extent to which they are covered should be determined by the PBC in collaboration with the relevant regulatory authorities (Art. 35 Anti-Money Laundering Law).

26. The compliance of China's AML/CFT measures was assessed by the International Monetary Fund, the FATF, the Asia/Pacific Group on Money Laundering and the Eurasian Group on Combating Money Laundering and Financing of Terrorism, and the report was adopted by the FATF in February 2019.<sup>2</sup> The report provides a summary of the AML/CFT measures in place in China as at the date of the on-site visit in July 2018. Conclusions on issues related to the EOIR standard are that the effectiveness of measures ensuring the availability of beneficial ownership on legal persons and arrangements to the Chinese authorities and measures targeted at the prevention of misuse of these persons and arrangements for money laundering or terrorist financing, is considered low. In addition, China's legal framework was found Compliant on Recommendation 11 (record-keeping), Largely Compliant on Recommendation 10 (customer due diligence) and Non-Compliant on Recommendations 24 and 25 (transparency of legal entities and arrangements).<sup>3</sup>

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2. The full report on China is available at [www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-China-2019.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-China-2019.pdf).

3. It is noted in general that the scope and purpose of the FATF assessments differ from the Global Forum's assessments. Specifically, in the case of China, analysis of FATF Recommendation 25 focuses on civil trusts, while the present review expands the

## Recent developments

27. China signed the Multilateral Convention on 27 August 2013 and the Multilateral Convention entered into force in China on 1 February 2016.

28. China has joined international developments in the area of automatic exchange of information. In 2014, China committed to implement the Common Reporting Standard (CRS), and first exchanges took place in September 2018. In addition, China has commenced country-by-country reporting.

29. China is in the process of revising its AML framework, most importantly to address issues raised in the report adopted by the FATF in 2019, in order to further improve the effectiveness of the obligations on AML obligated institutions as well as of the supervision regime.

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analysis to include trusts managed by trust companies (see element A.1.4). Similarly, international co-operation in relation to beneficial ownership information in the context of AML/CFT is covered by FATF Recommendation 24, and the framework under the international standard in the present review is entirely different. Finally, the differences in scope and purpose mean that the extent of the analysis of certain issues and the corresponding level of materiality attached to gaps identified are not necessarily the same in the assessments of China's framework against the FATF and the Global Forum's 2016 Terms of Reference. Together, in their totality, these different approaches to the reviews account for the different outcomes of these assessments.



## Part A: Availability of information

30. 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 bank 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.

31. The 2012 Report concluded that legal ownership information in respect of all relevant entities and arrangements in China was generally available in accordance with the standard. One minor deficiency was identified which resulted in a recommendation for China to ensure that all regions would implement provisions ensuring the availability of ownership information in relation to bearer shares, since two regions had not yet done so. The Chinese authorities reported that these two regions have now made all the necessary arrangements (see A.1.2 for more details), and the recommendation is therefore considered addressed. No new issues in relation to the availability of legal ownership information have been identified.

32. The standard for transparency was strengthened in 2016 to require the availability of beneficial ownership information on relevant entities and arrangements. The only source of comprehensive beneficial ownership information are obligations under the AML framework.<sup>4</sup> The present report identifies two areas for improvement.

33. First, the legal framework could be clarified on the definition of the term “beneficial owner” in respect of partnerships, which is not in accordance with the form and structure of the partnerships in China, and strengthened with a better framing of the obligation to update the beneficial ownership information.

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4. See paragraphs 24-26 of the Overview.

34. The second area for improvement is the oversight and enforcement regime on banks and other financial institutions in respect of their compliance with AML obligations, which does not seem to be sufficiently adapted to the circumstances. The low level of on-site visits and the level of penalties applied do not sufficiently take into account that there are many different applicable legislative instruments, with significant updates having been introduced later during the review period. It is therefore recommended that China ensures that its supervision and enforcement regime in respect of the compliance by banks and other financial institutions with the requirements to keep beneficial ownership information on their clients is commensurate to the circumstances.

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

| <b>Legal and Regulatory Framework</b>                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                              |
|-----------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                 | <b>Underlying Factor</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>Recommendation</b>                                                                                                                                                                                                                                        |
| <b>Deficiencies identified</b>                                                                                  | The determination of beneficial ownership in respect of general and limited partnerships follows the approach for companies, including taking a 25% ownership threshold as a starting point. This is not in accordance with the form and structure of the partnerships in China.                                                                                                                                                                                                                                                                                                                                                                                                              | China should ensure that the beneficial owners of partnerships are required to be determined in accordance with the form and structure of each partnership.                                                                                                  |
| <b>Determination: The element is in place, but certain aspects of the legal implementation need improvement</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                              |
| <b>Practical implementation of the standard</b>                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                              |
|                                                                                                                 | <b>Underlying Factor</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>Recommendations</b>                                                                                                                                                                                                                                       |
| <b>Deficiencies identified</b>                                                                                  | China has in place a system of oversight of and enforcement on banks and other financial institutions in respect of their compliance with the requirements to keep comprehensive beneficial ownership information on relevant entities and arrangements. However, the supervision and enforcement actions taken in practice do not seem to sufficiently take into account that there are many different applicable legislative instruments, with significant updates having been introduced later during the review period, and its effectiveness can therefore be questioned. In addition, the level of penalties that can be applied for non-compliance is not proportionate or dissuasive. | China should ensure that its supervision and enforcement regime in respect of the compliance by banks and other financial institutions with the requirements to keep beneficial ownership information on their clients is commensurate to the circumstances. |
| <b>Rating: Largely Compliant</b>                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                              |

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

36. China's Companies Act allows for the creation of two types of companies:

- Limited liability companies (LLCs): companies with no more than 50 shareholders, which are liable for the company's debts to the extent of their respective capital contributions. At the end of 2018, there were 29 681 574 LLCs registered.
- Joint stock limited companies (JSCs): companies with capital which is divided into equal shares, either listed or non-listed. Shareholders are liable for the company to the extent of the shares it has subscribed to. At the end of 2018, there were 474 757 JSCs registered.

37. The 2012 Report did not identify any material deficiencies with China's legal requirements to ensure the availability of legal ownership information for companies, nor with the practical implementation of these requirements. It did note that two regions had not yet issued rules for the mandatory registration of bearer shares (see A.1.2).

### *Legal ownership and identity information requirements*

38. China's legal framework with respect to the availability of legal ownership information for companies has not significantly changed since the 2012 Report. All companies are required to keep an up-to-date register of shareholders (see paragraphs 75-77 of the 2012 Report). In addition, they must be registered with the State Administration for Market Regulation (SAMR)<sup>5</sup> and with the tax authorities, and ownership and identity information must be provided to both authorities.

39. The following table<sup>6</sup> shows a summary of the legal requirements to maintain legal ownership information in respect of companies.

| Type | Company law | Tax law | AML law |
|------|-------------|---------|---------|
| LLCs | All         | Some    | Some    |
| JSCs | All         | Some    | Some    |

5. The SAMR was established in 2018. Previously, the company registration function was carried out by the State Administration for Industry and Commerce.

6. The table shows each type of company and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All" in this context means that every company of this type is required to maintain ownership information in line with the standard and that there are sanctions and appropriate retention periods. "Some" in this context means that a company will be required to maintain a portion of this information under applicable law.

40. The ownership information that must be provided to the SAMR includes details on all shareholders in the case of an LLC (Arts. 9 and 20 of the Regulation on the Administration of Company Registration (RACR)). This information must be updated within 30 days from the date of any change (Art. 34 RACR), which means that up-to-date legal ownership information on LLCs is required to be available with the SAMR at all times, especially as while the shareholder register is the legal truth vis-à-vis the company, not registering the change with the SAMR means it does not stand vis-à-vis any third party (Art. 32 Company Law).

41. With respect to JSCs, only the details of the initial shareholders (also referred to as “promoters”) must be provided to the SAMR (Arts. 9, 21 and 34 RACR). Subsequent share offerings and transfers must take place either through a stock exchange or, as determined by the State Council, through depository centres (Art. 138 Company Law). The rules governing these share offerings and transfers require that persons can only hold shares in a JSC through an account registered with a Securities Registration and Settlement Institution (SRSI) or a local depository centre. Upon opening such account, identification details must be registered, ensuring legal ownership information to be available with these authorities at all times. More details can be found in paragraphs 110-119 of the 2012 Report.

42. Nominee shareholding is explicitly allowed only in specific circumstances, related to JSCs only (see paragraphs 100-102 of the 2012 Report). The nominee shareholder, which must be a securities company or other institution approved by the CSRC (Art. 79 Measures for the Administration of Securities Registration and Clearing), must in all cases disclose its quality as nominee to public authorities and be able to provide the details of the person(s) it holds the shares for to the SRSI or local depository centre (Art. 18 Measures for the Administration of Securities Registration and Clearing).

43. Where a foreign company wishes to set up a business in China, it must register with the SAMR to obtain a business licence (Art. 192 Company Law) and, where relevant, also apply to the authority responsible for the relevant area to obtain market access. The registration requirements are almost the same as for companies established under the Chinese Company Law, which means that details on the shareholders must be provided.

44. More generally, any company with one or more foreign shareholders (either established in accordance with the Chinese Company Law or established abroad) must always have a legal representative in China and is subject to specific rules, the Interim Measures for the Recordation Administration of the Formation and Modification of Foreign-Funded Enterprises. These Interim Measures require full details on the foreign investors in enterprises established or carrying on business in China to be provided to the SAMR, and to be updated within 30 days of any change (Arts. 5 and 6). Non-compliance with

these requirements is subject to a maximum fine of RMB 30 000 (EUR 3 955) (Art. 24).

45. In October 2015, China introduced a new registration procedure. Since then, new entities only need to fill out one registration form to register with the SAMR and the tax authorities. This form is submitted to the SAMR either electronically or on paper; where a paper form is submitted, the SAMR digitalises the information immediately. The SAMR pushes an update of new registrations to the tax authorities every ten minutes, ensuring that registration with the tax authorities takes place. Only one registration number is issued, which is valid with both the SAMR and the tax authorities. A company is considered established on the date of issuance of its business licence (Art. 7 Company Law).

46. According to the tax authorities, ownership information in respect of companies registered by them comprises the top 10 shareholders (determined by percentage of shareholding). The name, identity document number, investment ratio, and nationality (if foreign shareholder) or registered address (if Chinese shareholder) of the top 10 shareholders of a company must also be provided with the annual tax return.

47. The availability of information on the legal ownership of companies is ensured primarily by company law and tax obligations. The AML legislation offers another source of information, but the competent authority will usually not use it as the first two sources are sufficient and reliable. Where a company engages an AML obligated institution, this institution is likely to have collected legal ownership information in the course of conducting customer due diligence. Notice 235 of 2017 of the People's Bank of China on Strengthening Relevant Work on Customer Identification for Anti-Money Laundering (2017 AML CDD Notice) requires AML obligated institutions to collect and maintain information on the equity or control rights as well as registration information of the shareholders or board of directors of a company. It specifically mentions the articles of association and list of shareholders (Art. I(8) 2017 AML CDD Notice).

## Document retention

48. The SAMR indicated that they keep the records indefinitely or otherwise hand them over to the archive repositories for permanent preservation (Art. 11 Archives Law). The SRSIs and local depository centres must keep relevant records for no less than 20 years (Art. 162 Securities Law). These retention rules ensure that legal ownership and identity information in respect of companies remains available regardless of whether the company conducts business or ceases to exist.

49. In addition to the documents kept by the authorities, most documents kept by companies themselves must also be transferred to the archive repositories once the company ceases to exist (Art. 11 Archives Law). This applies in any case to documents that must be kept permanently, which include documents related to the company's establishment, restructuring and dissolution (Art. 8(1) of the Provisions on the Scope of Collection and Preservation Period in the Document Archiving of Enterprises).

### *Legal ownership information: oversight and enforcement*

50. The SAMR is the authority responsible for supervising companies in relation to their obligations under the Company Law, including the obligation to keep legal ownership information and provide this to the authorities, and laws related to market order and fair competition. The SAMR is a ministerial-level authority with 27 departments, and it operates at national, provincial, municipal and county level. Much of the information kept by SAMR in the register is available to the public, including the legal ownership information.

51. The SAMR's supervision regime comprises all enterprises registered and the analysis below and the statistics do not distinguish between companies and enterprises in other forms (mostly personal businesses). The number of enterprises has grown rapidly over the review period, and had surpassed the 100 million mark at the end of 2018. The supervision regime was strengthened in 2014 with effect from 2015, introducing a list of enterprises with abnormal operations. After notification, an enterprise will end up on this list if it:

- fails to submit its annual report on time
- cannot be contacted at its registered domicile
- fails to publicise information in a timely manner as required; or
- conceals facts or falsifies information.

52. Being on the list of enterprises with abnormal operations restricts an enterprise's business operations, which means, among other things, that it is banned from government procurement or project bidding.

53. If an enterprise fails to rectify the shortcomings within three years, it will be placed on the list of enterprises with serious illegal acts, further restricting its operations. Most importantly, its credit score is (further) lowered, preventing the enterprise from being able to receive credit loans. Moreover, the enterprise will be a key target for the supervisory authorities. In addition, its legal representative can be deprived from the right to remain the legal representative or executive manager of the enterprise and any other enterprise. It will be very difficult in general for an enterprise on either of

these lists to do business, since the listing is visible to the general public on the register and potential business partners will be very apprehensive about doing business with such enterprise.

54. Eventually, after a maximum of five years on the list of enterprises with serious illegal acts, an enterprise will be deemed inactive and is effectively banned from doing business. This will generally also trigger the business licence to be revoked, if this has not been done before. The revocation of the business licence can only be reversed through a court ruling. As the lists were only introduced in 2015, there are no enterprises yet which have gone through the entire process (three years + five years) without rectifying their shortcomings, voluntarily deregistering or having their business licence revoked. However, many enterprises will not go through the entire process since the SAMR and STA started a practice in 2016 to revoke the business licence of any enterprise that fails to submit an annual report to the SAMR and to file a tax return to STA for two consecutive years.

55. From 2015 until the end of 2018, 5.5 million enterprises were put on the list of enterprises with abnormal operations. Of these, around 2 million enterprises rectified their shortcomings, 1.1 million enterprises deregistered and 650 000 enterprises were moved to the list of enterprises with serious illegal acts. It is intended that the other 1.75 million enterprises would be moved to the list of enterprises with serious illegal acts once the three-year period is over, if they would not rectify their shortcomings or deregister in the meantime.

56. Detecting non-compliance takes place through desk-based checks (e.g. checking timely submission of annual reports or, where required, timely publication of information) and through on-site inspections. Both random and targeted inspections take place, and between 2015 and 2018 at least 4.4 million enterprises received an on-site inspection. The combination of the mechanism of the lists of enterprises with abnormal operations and enterprises with serious illegal acts, desk-based checks and on-site inspections resulted in the revocation of the business licence of 1.78 million enterprises between 2015 and 2018. In the same period, 510 000 unlicensed businesses were discovered and banned.

57. The SAMR's supervision activities are comprehensive and ensure that all enterprises, including all companies, are covered. While there is no specific supervision activity that focuses on compliance with requirements to keep legal ownership information and provide this to the authorities, this aspect is covered in the various checks and inspections. The supervision and enforcement regime as a whole is therefore considered adequate to ensure the availability in practice of legal ownership information on companies.

### *Beneficial ownership information requirements*

58. The transparency standard, as strengthened in 2016, requires that beneficial ownership information on companies be available. In China, the only comprehensive legal source requiring beneficial ownership information to be available is the AML framework. All AML-obligated institutions must conduct customer due diligence on their clients leading to the identification of the beneficial owner(s) (Arts. 3 and 7 of the Rules for Financial Institutions on Customer Identification and Retention of Customer Identity Data and Transaction Records (AML CDD Rules)). Obligated institutions include commercial banks, securities companies, insurance companies, trust companies and financial asset management companies (Art. 2 AML CDD Rules).

59. Until the 2017 AML CDD Notice was issued in October 2017, the definition of the term beneficial owner was basic: “the natural person who actually controls the client”. Very little further detail was provided. The 2017 AML CDD Notice introduced guidance and more detailed requirements, which in respect of companies read as follows (Art. I(3)(a) 2017 AML CDD Notice):

The beneficial owner of a company shall be identified according to the following standards in sequence: a natural person who directly or indirectly owns more than 25% of the company’s stock rights or voting rights; a natural person controlling the company by personnel, financial affairs or any other form; and a senior executive of the company.

60. This guidance seems to have introduced the so-called cascade approach, which is confirmed by additional guidance issued in June 2018 through Notice 164 of 2018 of the People’s Bank of China on Issues Concerning More Effectively Conducting Identification of Beneficial Owners (2018 AML CDD Notice, Art. III(1)). This approach, which uses a 25% threshold to indicate a controlling ownership interest, is in line with the 2016 standard.

61. In conducting customer due diligence on their clients, obligated institutions must obtain and verify information on the beneficial owners and register the name, address and ID number (with expiration date) of the beneficial owners (Arts. I(1), I(4) and I(5) 2017 AML CDD Notice). In order to do so, they must take reasonable measures to understand the equity or control structure of clients who are not natural persons (Art. I(1) 2017 AML CDD Notice). In practice, it would only be possible to reliably identify the beneficial owners of a company if one understands the equity and control structure of that company, and this should not be limited to only taking reasonable measures. On the other hand, the basic requirements to identify the beneficial owners are clear, and further guidance states that obligated institutions must “conduct in-depth identification level by level until the natural person who

has the control right or obtains proceeds is finally identified” (Art. I(3) 2017 AML CDD Notice), which suggests that reasonable measures should not be interpreted as making a minimal effort only. Nevertheless, to ensure that in practice an obligated institution always understands the equity and control structure of a company and as a result can reliably identify the beneficial owner(s), China should monitor how obligated institutions have implemented the requirement that reasonable measures be taken to understand the equity or control structure of clients who are not natural persons (see Annex 1).

62. Obligated institutions are required to carry out ongoing customer due diligence on all business relationships in accordance with the risk profile of the customer (Art. I(1) Notice 130 of 2018 of the General Office of the People’s Bank of China on Further Strengthening Anti-Money Laundering and Countering Financing of Terrorism (2018 AML/CFT Notice)). The frequency of carrying out measures of ongoing customer due diligence is dependent on the level of risk of the client, which is determined in application of a 2013 Notice.<sup>7</sup> There are timeframes prescribed in relation to reviewing whether the risk categorisation of customers is still appropriate, and if in the course of this process adequate information is found (such as expired information) it may be decided to gather up-to-date information (Art. II(2) of the 2013 Notice). The only reference to a timeframe specific to ongoing customer due diligence is that it should be done in a timely manner, and that for high-risk clients, the frequency and intensity of the measures should be higher (Art. I(1) 2018 AML/CFT Notice). It was stated during the onsite visit that the authorities expect that the frequency of updates is yearly in case of high risk clients and every three years in other cases. It is also noted that as at November 2019 approximately 95% of the existing customers had been subject to customer due diligence under the new rules (see paragraph 68), showing that the authorities cover this aspect in their supervisory activities. Nevertheless, since there is no explicit guidance in any binding text on the frequency of ongoing CDD, China is recommended to clarify the rules for updating the information obtained during the CDD process in a timely manner (see Annex 1).

63. Obligated institutions are allowed to accept a business relationship with a customer without verifying its identity where the customer is introduced by another institution (domestic or foreign) if three criteria are met (Art. I(2) 2018 AML/CFT Notice). First, the other institution must be subject to requirements and supervision in line with what is applicable in China. Second,

7. Notice of the People’s Bank of China on Issuing the Guidelines for the Assessment of Money Laundering and Terrorist Financing Risks and Categorised Management of Customers of Financial Institutions (No. [2013] 2). The updating of the risk level is performed regularly, i.e. every six months for the higher risk level and the frequency decreases with the level of risk.

the Chinese obligated institution must still upon establishing the business relationship obtain all necessary information in respect of the customer from the other institution (this includes identity information on the beneficial owner, see Art. V(2) 2018 AML CDD Notice). Third, it must be assured that copies of relevant documentation will be made available upon request of the obligated institution by the other institution. The relevant responsibilities of both parties must be included in a written agreement, and the obligated institution relying on the other institution remains liable for any failure to perform the customer due diligence (Art. V(2) 2018 AML CDD Notice). These criteria are in line with the standard.

64. Where an obligated institution is unable to comply with the customer due diligence obligations, it is prohibited to establish or maintain the business relationship with that customer (Art. I(1) 2018 AML/CFT Notice).

65. All information related to a customer's identity, which includes beneficial ownership information and the obligated institution's customer identification work, must be kept for at least five years as of the year when the business relationship was ended (Arts. 27 and 29 AML CDD Rules).

66. Failure to comply with obligations to conduct customer due diligence or to keep the relevant information for the prescribed period may lead to a fine ranging from RMB 200 000 to RMB 500 000 (EUR 26 390 to EUR 65 910) for the obligated institution and from RMB 10 000 to RMB 50 000 (EUR 1 318 to EUR 6 591) for the responsible individual(s) (Art. 32 Anti-Money Laundering Law). Higher monetary penalties as well as suspension and revocation of the obligated institution's licence are possible if the failure can be linked to money laundering.

### Scope of availability of beneficial ownership information

67. Until October 2017, obligated institutions could only rely on a basic definition of the term beneficial owner without additional rules or guidance. It is therefore very likely that the beneficial ownership information that was collected before did not meet the standard. However, the 2017 AML CDD Notice contains a transitional provision requiring obligated institutions to complete the due diligence of all existing customers in accordance with the new rules by 30 June 2018 (Art. IV(3)).

68. According to the Chinese authorities, as at November 2019 approximately 95% of the existing customers had been subject to customer due diligence under the new rules. The division between types of customers (natural persons, companies, partnerships, trusts, etc.) left to cover is not known. While the 95% coverage represents a significant effort, China should ensure that obligated institutions conduct customer due diligence on all existing customers in accordance with the rules put in place by the 2017 AML CDD Notice (see Annex 1).

69. Beneficial ownership information on companies in China will only be available where the company has engaged an AML obligated institution in China. There are no exact figures available regarding the percentage of companies that engaged an AML obligated institution in China, but there is a very high likelihood that a company would engage a bank in China.

70. A company is required to open a bank account after it has obtained a business licence (Art. 25 RACR). To be able to do any business in China, a company needs to open a basic account. The Measures for the Administration of RMB Bank Settlement Accounts define a basic account as the main account of the company, and the receipt and payment of funds related to its daily business activities as well as salary and dividend payments must be handled through that account (Art. 33). A company can only have one basic account (Art. 4). These measures only apply to accounts in the local currency, which can only be maintained by a bank approved by the PBC and falling under the PBC's supervision, i.e. banks in China that are AML obligated institutions. However, it may be the case that a company incorporated in China does not conduct any business activities in China and may therefore not need a Chinese bank account for that purpose.

71. Companies<sup>8</sup> must also provide bank account details to the tax authorities and inform the tax authorities of any changes in these details within 15 days of the occurrence of the change (Art. 17 Law on the Administration of Tax Collection and Art. 17 Rules on the Implementation of the Law on the Administration of Tax Collection). Failure to do so may result in a fine of up to RMB 10 000 (EUR 1 318) (Art. 60(4) Law on the Administration of Tax Collection (LATC)). While there is no explicit obligation to have the account with a bank in China, in practice only accounts with a bank in China must be reported, because the classification of accounts in the registration form is the same as in the Measures for the Administration of RMB Bank Settlement Accounts. These accounts are in local currency and can only be maintained by banks in China. All tax payments must be made in local currency, and it is therefore not possible to make payments to the tax authorities from an account held abroad.

72. The tax authorities indicate that they hold bank account details of 91% of all corporate taxpayers (which includes companies and partnerships). The remaining corporate taxpayers have either not reported their Chinese bank account(s) or have not opened one. Given the rapidly growing number

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8. The legal framework refers to “taxpayers engaged in production or business operations”, the definition of which includes all “enterprises” (Art. 15 Law on the Administration of Tax Collection). In turn, Article 3 of the Company Law classifies all companies as “enterprises”, hence all companies, including foreign companies, are considered “taxpayers engaged in production or business operations”.

of companies, it is likely that an important part of the companies for which the tax authorities do not have bank account details, are companies which have recently been established and have yet to open a basic account. The instances where no Chinese bank account is opened at all would be very rare, as there is an obligation to use the basic account to pay salaries and make business transactions in local currency. Even in cases where a company does not have any business in China, it would still be required to file tax returns and pay taxes on its worldwide income (the on-time filing rate for tax returns for enterprise income tax was 97% in 2017 and 2018, see paragraph 141). As mentioned, tax payments can only be made from an account held with a bank in China. It is therefore very difficult to imagine that a company with any kind of business, including holding assets, could operate without having an account with a bank in China.

73. While there is a residual gap consisting of companies which are generally non-compliant with legal obligations, such as filing annual reports to the SAMR and filing annual tax returns, this gap is very small. In addition, as described in paragraph 54 above, these companies will have their business licence revoked after two years of consecutive non-compliance.

#### *Beneficial ownership information: oversight and enforcement*

74. Because the availability of beneficial ownership information on companies in China relies on the engagement of an AML obligated institution, in particular a bank, this section describes and analyses the oversight and enforcement framework in respect of banks and other financial institutions and their compliance with AML obligations.

75. As mentioned in the Overview, the PBC is the authority responsible for the supervision of obligated institutions in respect of their compliance with AML obligations. In doing so, the PBC collaborates with the regulatory authorities of the different sectors, which for banks is the CBIRC.

76. The PBC is organised across four levels. The headquarters is responsible for the general policy and strategy, but also directly supervises 24 of the largest obligated institutions. There are also 36 provincial branches, hundreds of municipal branches and more than 1 000 county branches. These branches supervise the obligated institutions operating (mainly) in their jurisdiction. The total staff involved in AML supervision at the PBC amounts to more than 5 300. Almost all of the PBC's supervisory activities relate to the slightly fewer than 6 000 financial institutions, of which approximately 4 000 are banking institutions, as activities related to non-financial businesses and professions only commenced recently (see Financial services sector under Overview).

77. The PBC assigns an AML risk rating to all financial institutions that are legal persons on an annual basis. This rating is based on a self-assessment carried out by the financial institution as prescribed by the PBC. It covers, among other factors, the types of customers, business locations, business sectors and financial products and services. The PBC reviews the self-assessments and ultimately determines the AML risk rating. Together with a general risk assessment of the financial sector and financial institutions carried out by the PBC, which in turn is informed by the regulatory authorities of the relevant sectors, this informs which supervisory activities will be conducted and in respect of which financial institutions.

78. The main supervisory activities available to the PBC are inquiries, interviews, supervisory visits and on-site inspections. Inquiries and interviews are part of the off-site supervision and are mainly used to gather information and clarifications. During supervisory visits and on-site inspections, the financial institutions' customer identification and information retention processes are checked. PBC officers assess both the internal control systems, business processes and technical support, as well as their implementation in practice. The latter is done by sampling of files. Supervisory visits are shorter than on-site inspections and either go less in-depth or are targeted to a specific issue.

79. The determination in respect of which institutions are subject to which supervisory activity is made on an annual basis using the AML risk rating and PBC's general risk assessment. The obligated institutions are classified into five categories, and the supervisory intensity and the probability of on-site inspection are higher for high-risk institutions than for low-risk institutions. After the new Notices issued in 2017 and 2018, PBC has taken the newly introduced requirements as the priorities of its supervision. The following table shows the number of supervisory activities carried out by the PBC in the period 2015-19.

|                    | 2015  | 2016  | 2017  | 2018  | 2019  |
|--------------------|-------|-------|-------|-------|-------|
| Inquiry            | 869   | 957   | 1 173 | 922   | 999   |
| Interview          | 1 193 | 1 496 | 1 923 | 2 190 | 2 213 |
| Supervisory visit  | 4 268 | 3 849 | 5 721 | 4 827 | 4 908 |
| On-site inspection | 1 432 | 1 901 | 1 704 | 1 569 | 1 744 |

80. The numbers in the table represent the number of activities rather than the number of institutions covered. In some cases, an AML obligated institution has been subject to more than one supervisory activity per year, and the number of institutions covered is around 50% of the numbers in the table. This means that the number of institutions subject to an on-site inspection in one year lies around 900. The proportion of institutions inspected depends on its sector. The Chinese authorities indicate that more supervisory resources are

allocated to the higher risk sectors, like banking and payment institutions, where the coverage rate of on-site inspection is around 15%. This rate is low, as the on-site inspection is the only supervisory activity where compliance is looked at as a whole and in detail, meaning including the implementation in practice of the BO requirements in addition to checking whether the infrastructure is in place. In the context of the AML framework, looking at compliance as a whole would be particularly important given the many different parts the legislative framework is made up of. In addition to the Anti-Money Laundering Law and the AML/CDD Rules, the 2017 AML CDD Notice, the 2018 AML CDD Notice and the 2018 AML/CFT Notice contain overlapping rules where one Notice may contain more details than the other. The risk is important for an AML obligated institution to rely on one of these Notices and overlook additional rules included in a different one, and it is important that the PBC ensures that all financial institutions are fully aware of their obligations.

81. After a supervisory visit or on-site inspection, the PBC may issue a regulatory opinion or inspection report, identifying any deficiencies found and urging the financial institution to rectify them. For this purpose, financial institutions must develop a remediation plan, the implementation of which is regularly reviewed by the PBC. Progress (or lack of it) in implementing the remediation plan is a factor in the risk rating system and in supervisory strategy going forward. Where serious deficiencies are found, penalties may be imposed by the PBC. AML-related penalties imposed by the PBC in the period 2015-19 can be found in the following table.

|                                      | 2015                              | 2016                              | 2017                               | 2018                                | 2019                                |
|--------------------------------------|-----------------------------------|-----------------------------------|------------------------------------|-------------------------------------|-------------------------------------|
| Number of institutions fined         | 158                               | 249                               | 429                                | 529                                 | 525                                 |
| Total penalty amount on institutions | RMB 25 292 000<br>(EUR 3 284 852) | RMB 45 450 000<br>(EUR 5 902 914) | RMB 98 990 000<br>(EUR 12 856 534) | RMB 153 154 600<br>(EUR 19 891 275) | RMB 202 338 700<br>(EUR 26 279 163) |
| Number of individuals fined          | 173                               | 483                               | 695                                | 877                                 | 838                                 |
| Total penalty amount on individuals  | RMB 1 580 000<br>(EUR 205 206)    | RMB 4 160 500<br>(EUR 540 354)    | RMB 8 410 000<br>(EUR 1 092 266)   | RMB 12 820 800<br>(EUR 1 665 128)   | RMB 13 410 000<br>(EUR 1 741 652)   |

82. The PBC indicated that the deficiencies found cannot be attributed to one or more specific areas but are across the board. The upward trend in the number of persons fined and the amount of penalties imposed is commensurate to the trend with respect to the number of supervisory activities.

83. While one institution or individual can be fined for multiple violations in one year, the average penalty amount ranges from RMB 8 614 to RMB 16 002 (EUR 1 119 to EUR 2 078) for individuals and from RMB 160 076 to RMB 385 407 (EUR 20 790 to EUR 50 711) for institutions, showing an increase of the total number and amount of fines over years. The Chinese authorities indicate that in the Chinese cultural environment reputation is often

valued more than money, which means that even a seemingly low penalty will cause severe damage to the reputation of financial institutions and their management (as the penalties are published by the PBC), leading to loss of customers, revenue and value of the institution. The penalty is generally also paired with a downgrade of the overall rating of the institution with the authorities, and with restrictions to the job qualification of the high-level managers (i.e. they are no longer considered qualified to perform certain functions). Nevertheless, as the financial institutions involved are mostly banks, securities companies and insurance companies handling large amounts of assets, the penalties do not seem to be proportionate or dissuasive.

84. Banks and other financial institutions are also supervised by their respective regulatory authorities. However, the extent to which AML obligations are covered by the regulatory supervision is more limited than in the supervision activities of the PBC, and only includes general checks on whether certain processes and controls are in place so the financial institutions are in a position to comply with the more specific obligations contained in the AML framework. The regulatory authorities in any case do not have the authority to impose penalties under the Anti-Money Laundering Law. As mentioned above, there is regular collaboration between the PBC and regulatory authorities, and supervision findings feed into each other's activities.

## Conclusion

85. A risk-based system of oversight and enforcement on banks (and other financial institutions) in respect of their compliance with AML obligations is in place in China. However, this system needs improvement to be sufficiently adapted to the circumstances. For example, the low ratio of on-site inspections, which is the main supervisory activity where compliance is looked at as a whole and in detail, and the low amount of the penalties applied (although an upward trend in the average penalty amount can be noted) raise doubt on the effectiveness of China's supervision on banks and other financial institutions in respect of their compliance with AML obligations. Close supervision is particularly important because there is a myriad of applicable legislative instruments, and significant updates have been introduced recently. It is therefore recommended that China ensures that its supervision and enforcement regime in respect of the compliance by banks and other financial institutions with the requirements to keep beneficial ownership information on their clients is commensurate to the circumstances.

## *Availability of ownership information on companies in EOI practice*

86. During the review period, China received 341 EOI requests for ownership information (legal and/or beneficial ownership information) in respect

of companies. This information was usually obtained from the database of the tax authorities, from the SAMR (the SAMR provides real-time legal ownership information to the tax authorities) or, in the case of beneficial ownership information, from banks. Peers did not raise specific issues with the availability of ownership information on companies, and indicated they were generally satisfied with the information received.

### ***A.1.2. Bearer shares***

87. JSCs are allowed to issue shares in bearer form, which means that the shareholders' names do not appear in the shareholder register kept by the company. Bearer shares can only be issued to natural persons who are not the initial shareholders of the JSC (Art. 129 Company Law). An immobilisation mechanism is in place to ensure that the owners of bearer shares can be identified at all times. The basis of this mechanism, which is described in more detail in paragraphs 110-119 of the 2012 Report, is that all share transfers must take place through an SRSI or a local depository centre, which holds identification details of the seller and the buyer.

88. The 2012 Report contained a recommendation for China to ensure the availability of ownership information in relation to bearer shares in all regions, since two of the regions had not yet established a depository centre. China stated that these regions, Ningxia and Tibet, established a local depository centre in June 2015 and July 2013 respectively, ensuring that information on all shareholders in JSCs in these regions is available where it is expected to be (according to the Chinese authorities, this information would previously have been available with local depository centres in other regions but there were no rules accommodating this). The recommendation has therefore been addressed.

89. All shares in JSCs, except the ones held by the initial shareholders (which are registered with the SAMR, see paragraph 41), are registered with an SRSI or a local depository centre. In the register, no distinction is made between registered and bearer shares. It is therefore not known whether there have been EOI requests asking for information about holders of bearer shares.

### ***A.1.3. Partnerships***

90. The Partnership Law allows for two types of partnerships to be established: general partnerships and limited liability partnerships (Art. 2). The partners of a general partnership bear unlimited joint and several liabilities for the debts of the partnership, unless otherwise provided by law. Limited liability partnerships have general partners and limited partners. The general partners bear unlimited joint and several liabilities for the debts of the

limited liability partnership. The limited partners bear the liabilities for the partnership's debts to the extent of their capital contributions.

91. Partnerships established in China do not have legal personality as such, but they must register with the SAMR and can, upon issuance of a licence, operate as a business. For tax administration purposes, partnerships are also registered with the tax authorities as they are required to file returns and pay VAT and other taxes. Partnerships are transparent in respect of the enterprise income tax, and their income is allocated and taxed directly at the level of the partners (Art. 6 Partnership Law).

### *Information on the identity of the partners*

92. The 2012 Report concluded that information on the identity of the partners in partnerships established in China was available in line with the standard. This was ensured through the requirements to register the identity information of all partners with the SAMR and the tax authorities, and to update this information when a change occurs.

93. Since the 2012 Report, the registration procedures of the SAMR and the tax authorities were merged in October 2015, as described under element A.1.1 above. In addition, the Measures for the Registration of Partnerships (MRP)<sup>9</sup> have been amended. Nevertheless, it is still required to provide upon registration with the SAMR identity information on all partners, including their names and domiciles, the methods for assuming liabilities, and the amount of financial contributions as subscribed or actually paid (Art. 6(6) MRP). It is also still required to update this information within 15 days of a change (Art. 18 MRP). The tax authorities have direct access to this information.

94. Where a partnership fails to register a change, the SAMR shall order it to do so within a specified time limit; if the partnership still fails to comply, it is subject to a fine between RMB 2 000 (EUR 264) and RMB 20 000 (EUR 2 639) (Art. 39 MRP). If false documents have been submitted, the maximum fine is RMB 200 000 (EUR 26 386) combined with cancellation of the registration (Art. 38 MRP).

95. Foreign partnerships and partnerships with foreign partners are subject to specific rules related to market access, as set out in the Interim Measures for the Recordation Administration of the Formation and Modification of Foreign-Funded Enterprises. As explained under element A.1.1 of this report, these Interim Measures also require full details on the foreign investors in enterprises established or carrying on business in China to be provided to the SAMR.

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9. In the 2012 Report, the MRP is referred to as ARRPE.

96. The information in respect of the partners of a partnership remains available with the SAMR, which keeps the records indefinitely.

97. As at the end of 2018, a total of 611 771 partnerships were registered with the SAMR. The SAMR's supervision regime is described and analysed under element A.1.1 of this report, and it is concluded that its supervision activities are comprehensive and ensure that all enterprises (which includes all partnerships) are covered. SAMR's supervision and enforcement regime as a whole is considered adequate to ensure the availability in practice of information on the identity of the partners of a partnership.

### *Beneficial ownership information requirements*

98. As is the case for companies, the only comprehensive source of beneficial ownership information on partnerships is the AML framework. Apart from the definition of the term “beneficial owner”, the analysis under element A.1.1 in this report with respect to the beneficial ownership requirements for companies, including the in-text recommendations reflected in Annex 1, equally apply to partnerships. While the Partnership Law does not hold an obligation to open a bank account after having obtained the business licence, Article 17 of the LATC also requires partnerships to provide bank account details to the tax authorities (not for income tax purposes, but for VAT purposes). In addition, in order to do business in China, a partnership must have a basic account with a bank in China.

99. The definition of the term “beneficial owner” in respect of partnerships follows the same principles as for companies. This means that the beneficial owner is any natural person who owns 25% or more of the rights and interests of the partnership (Art. I(3)(b) 2017 AML CDD Notice). Where no beneficial owner can be identified in this manner, obligated institutions may use the cascade approach as is in place in respect of companies, and if this does not lead to a conclusion the general partners should be identified as the beneficial owners (Art. III(2) 2018 AML CDD Notice).

100. With these rules, China has taken the approach of treating partnerships as legal persons for AML purposes, even though they do not have legal personality in China. Partnerships can fall within the scope of legal persons under the definition of this term as contained in the Glossary of the FATF Recommendations,<sup>10</sup> and partnerships established under Chinese law

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10. FATF (2012-19), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, FATF, Paris, France. The definition of the term legal persons is as follows: “*Legal persons* refers to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies,

indeed seem to fall within this definition, as they can establish a permanent customer relationship with a financial institution (Art. 11 Measures for the Administration of RMB Bank Settlement Accounts) as well as own property in their own name (Art. 20 Partnership Law). As with all legal persons other than companies, the principle that should then be applied to partnerships is that the determination of beneficial ownership should take into account the specificities of their different forms and structures.<sup>11</sup> By taking the approach to apply the same rules to partnerships as to companies, the difference in organisational structure between these two entities is not sufficiently taken into account.

101. In respect of general partnerships, all general partners are jointly and severally liable for the debts of the partnership, and rules appropriate to this structure are in place. By default, the general partners enjoy equal rights to the execution of partnership affairs (unless another decision-making arrangement was agreed, Art. 26 Partnership Law), and general partners may raise objections to the execution of affairs by another partner (Art. 29 Partnership Law). Certain important decisions, such as changing the business scope, disposing of real estate or intellectual property and hiring a non-partner as business manager require unanimous consent of all partners (Art. 31 Partnership Law). Furthermore, it is not allowed to exclude a partner of a general partnership entirely from the distribution of profits (Art. 33 Partnership Law). Finally, the admission of a new partner is subject to unanimous consent of all existing partners, again unless it is otherwise stipulated in the partnership agreement (Art. 43 Partnership Law).

102. In short, by default the general partners exercise control of the partnership both on a daily basis as well as in respect of major decisions, and their level of control does not depend on their contribution to the partnership. This is a fundamental difference with companies, where the shareholders by default have voting rights at the shareholders' meetings based on their respective percentage of the capital contributions (Arts. 42 and 103 Company Law). In addition, certain important decisions in companies (such as revising the articles of association, increasing or reducing the registered capital, merger, split-up or dissolution) are adopted by the shareholders representing two-thirds or more of the voting rights (Arts. 43 and 103 Company Law), and not by unanimity. A similar rule applies where a shareholder of an LLC wishes to sell its shares, in which case consent of more than half of the other shareholders is required (Art. 71 Company Law), again not unanimity.

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bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities.”

11. See paragraphs 16 and 17 of the Interpretive Note to FATF Recommendation 24.

103. While the specific arrangements of a general partnership may differ depending on what is agreed in the partnership agreement, the applicable legal default provisions result in fundamental differences with the organisational structure of companies. It is for this reason that applying the same approach for companies to general partnerships does not sufficiently take into account the form and structure of the partnership. Instead, it would be more appropriate to, for example, always consider all general partners as beneficial owners when they are natural persons, and the beneficial owners behind the corporate partners should also be identified. Depending on the circumstances of each particular case, there could also be other persons exercising ultimate effective control over the partnership who should be considered beneficial owners.

104. With respect to limited liability partnerships, some differences apply in the level of control when compared to general partnerships. For example, limited partners are prohibited from executing the partnership affairs (Art. 68 Partnership Law). Also, limited liability partnerships are free to choose the conditions and procedures for the admission and withdrawal of limited partners as well as the removal of general partners who may execute the partnership affairs (Art. 63 Partnership Law), which means that unanimity is not the default. More generally, fewer relevant default rules in respect of decision making apply than in the case of general partnerships. However, as is the case for general partnerships, the concept of control through ownership is not strongly present in the legal framework for limited liability partnerships, since it does not link control to the capital contributions made by the partners. Where default rules related to decision making apply to limited liability partnerships, they are not based on capital contributions.<sup>12</sup> Applying the same approach for companies to limited liability partnerships does therefore also not sufficiently take into account the form and structure of this type of partnership.

105. The Chinese authorities consider that the framework for determining the beneficial owners of an entity adequately covers the specific situation of partnerships. This would be because when conducting CDD, while the starting point would be the main rule as explained in paragraph 99, a “substance over form” rule also applies, which requires obligated institutions to adopt both quantitative and qualitative methods to make a comprehensive judgment of the equity and control structure of non-natural person customers, taking into account financial decision-making, personnel appointment and removal, and operation and management (Art. I(3) 2018 AML CDD Notice). Doing so would be facilitated by the requirement to collect the partnership agreement while conducting the due diligence (Art. I(8)(a) 2017 AML CDD Notice).

12. For example, the change from a general partner to a limited partner and vice versa is by default subject to the unanimous consent of all partners (Art. 82 Partnership Law).

106. While these rules may assist in determining the beneficial owners of partnerships in certain cases, obligated institutions would always start with the main rule of applying a 25% ownership interest threshold as a starting point and then applying the cascade approach. Without any further guidance, it can be expected that obligated institutions would only deviate from the main rule in cases where the ownership and control structure is very clearly different from how partnerships are generally structured in China.

## Conclusion

107. The approach taken by China for the determination of beneficial ownership in respect of partnerships is to follow the approach for companies, including taking a 25% ownership threshold as a starting point. This is not in accordance with the form and structure of the partnerships in China. It is, however, noted that the identity of the partners is available in the SAMR's database, and obligated institutions are also expected to collect and maintain the partnership agreement, which must contain the name and residence of each partner (Arts. 18 and 63 Partnership Law). This means that where the partner is a natural person, its information is known (although it may not have been identified as a beneficial owner). In other circumstances, beneficial owners behind corporate partners may still be identified in applying the CDD rules, however this is uncertain, given the main rule of applying the same approach as for companies and the lack of further guidance. It is recommended that China ensures that the beneficial owners of partnerships are required to be determined in accordance with the form and structure of each partnership.

### *Beneficial ownership information: practical implementation*

108. As is the case for companies, beneficial ownership information on partnerships is only comprehensively available with financial institutions. The analysis that can be found under element A.1.1 of this report regarding the oversight and enforcement of the AML obligations by the PBC therefore equally applies to partnerships. This includes the recommendation for China to ensure that its supervision and enforcement regime in respect of the compliance by banks and other financial institutions with the requirements to keep beneficial ownership information on their clients is commensurate to the circumstances.

109. The Chinese authorities have reported no cases where an EOI request received in the review period included a request for partner identity information or beneficial ownership information in respect of partnerships.

#### *A.1.4. Trusts*

110. China's Trust Law governs all trusts in respect of which activities are carried out in China (Art. 3 Trust Law). This means it is applicable to trusts established under the Trust Law as well as to trusts established under foreign law but in respect of which the trustee is a resident in China. A trust is defined as “the act in which the settlor, on the basis of confidence in the trustee, entrusts certain property rights it owns to the trustee, and the trustee manages or disposes of the property rights in its own name in accordance with the intentions of the settlor and for the benefit of the beneficiary or for specific purposes” (Art. 2 Trust Law).

111. Conducting trust business is regulated in China. This means that only trust companies approved by the CBIRC are allowed to conduct “business operations of making commitments to trust and handling trust affairs under fiduciary capacity for the purpose of running business and collecting remunerations” (Arts. 2 and 7 Measures for the Administration of Trust Companies (MATC)). As at the end of 2018, there were 68 trust companies approved to conduct trust business.

112. All trusts that are managed by a trust company or otherwise have trust company involvement must be registered with the China Trust Registration Corporation (CTRC) within ten working days of the establishment or effectiveness of the trust (Art. 11 Measures for the Administration of Trust Registration (MATR)). As at the end of 2018, 52 198 trusts representing assets of RMB 2.27 billion (EUR 300 million) were registered.

113. Some specific rules apply to public trusts, which are trusts exclusively established for a public interest as defined in Article 60 of the Trust Law. The establishment of a public trust and the appointment of the trustee must be approved by the civil affairs authority (Art. 62 Trust Law). Public trusts must also have a trust supervisor, who has the right to institute an action or carry out other legal acts in his/her own name in order to protect the interests of the beneficiary (Arts. 64 and 65 Trust Law). The affairs of public trusts are closely supervised by the civil affairs authority. Given the limitation of the purpose of a public trust and the close supervision it is subject to, public trusts are of no or very limited relevance under the standard.

#### *Beneficial ownership information*

114. The trust deed must contain certain beneficial ownership information, including the names and addresses of the settlor, the trustee and the beneficiary (if any, otherwise the scope of beneficiaries) (Art. 9 Trust Law). Where a trust must be registered because it is managed by a trust company, a copy of the trust deed must be provided to the CTRC (Art. 11 MATR). Any significant changes in the registered information, which would include changes to the

beneficial ownership information, must be notified to the CTRC within ten working days of the occurrence of the change (Art. 12 MATR). The CTRC is legally required to keep the registration information related to the trust for 15 years as from the termination of the trust (Art. 35 MATR). This ensures that basic beneficial ownership information in respect of trusts managed by a trust company is available with the CTRC.

115. Trust companies are also obligated institutions for AML purposes (Art. 2(4) AML CDD Rules). They are therefore required to conduct CDD on their clients, which in practice means that they must identify the beneficial owners of all trusts they are involved in.

116. The AML framework defines the beneficial owner of a trust to mean the settlor, trustee, beneficiary and any other natural person who has ultimate effective control over the trust (Art. I(3)(c) 2017 AML CDD Notice). It then goes into more detail and specifies that where the settlor, trustee or beneficiary is a non-natural person, the obligated institution must identify the natural person who exercises ultimate effective control over the trust (Art. III(3) 2018 AML CDD Notice).

117. While the definition does not explicitly refer to the class of beneficiaries or the protector (if any), as required under the standard, this information will be included in the trust deed. A trust is in any case considered void if the beneficiary or the scope of beneficiaries cannot be identified (Art. 11 Trust Law). The concept of a protector does not exist in the Trust Law, but it is possible that a foreign trust managed by a Chinese trust company has a protector. Information on the class of beneficiaries and the protector would be expected to be available in the trust deed. Because the trust company must always register a copy of the trust deed with the CTRC, this information will be available with both the authorities and the trust company.

118. Apart from the definition of the term “beneficial owner”, the analysis under element A.1.1 in this report with respect to the beneficial ownership requirements for companies, including the in-text recommendations reflected in Annex 1, equally applies to trusts. An exception is the analysis related to the scope of companies that would engage a bank in China.

119. Regarding the scope of trusts covered, the main AML obligated institution is the trust company. As mentioned above, all trusts professionally managed in China must have a trust company as a manager/trustee. This leaves a potential gap concerning trusts that have a non-professional trustee in China (in a domestic context these are referred to as civil trusts, as opposed to business trusts which are trusts managed by a professional trustee, i.e. a trust company) and do not otherwise engage an AML obligated institution in China. As there is no specific regulatory regime covering such trusts, the Chinese authorities indicated that civil trusts are unlikely to exist. In any case, trustees of civil trusts still need to abide by the requirements

of the Trust Law, which requires them to follow the provisions of the trust deed and handle the trust affairs for the utmost interests of the beneficiary (Art. 24). If there is more than one trustee, they shall handle the trust affairs jointly (Art. 31). Trustees must also report to the settlor and the beneficiary on an annual basis (Art. 33). This means that they have to know who the other trustee(s), if any, settlor(s) and beneficiar(y)(ies) are. While this is not the same as a requirement to have information on all beneficial owners available (i.e. it does not add the more detailed requirements as described in paragraph 116), it does ensure that basic beneficial ownership information (the identity of the trustees, settlors and beneficiaries) is available.

### Oversight and enforcement

120. There are three layers of supervision in respect of trusts. Firstly, the CTRC is responsible for overseeing that information on trusts is registered in accordance with the law. If there is any obvious mistake or omission, the CTRC may issue a warning or notice to the trust company, and it will in any case report the issue to the CBIRC as the regulatory authority. The CTRC reports that it has so far returned approximately 36% of the applications for rectification.

121. The CBIRC forms the second layer of supervision, and is in charge of issuing licences to trust companies and checking whether they conduct their activities in accordance with the Trust Law and the MATC. While the Trust Law and MATC do not require comprehensive beneficial ownership information to be available, the regulatory supervision covers many aspects related to the relationship between the trustee and the settlors and beneficiaries. The CBIRC also checks whether trust companies have AML-related processes and controls in place.

122. The CBIRC's supervision of trust companies is risk-based. A risk profile is drawn up for each trust company based on the registration information from the CTRC and performance in previous supervisory activities. This then leads to a supervisory rating to determine which trust companies will receive an on-site inspection. These inspections may be comprehensive (in-depth or high-level) or targeted to a specific area. Every trust company should be subject to an in-depth comprehensive inspection at least once every five years. In 2018, the CBIRC conducted 47 on-site inspections (on a total of 68 trust companies) and identified 21 violations serious enough to issue a penalty. The total penalty amount was more than RMB 10 million (EUR 1.3 million).

123. The third layer of supervision is related to the AML obligations of trust companies and is carried out by the PBC. The analysis that can be found under element A.1.1 of this report regarding the oversight and enforcement

of the AML obligations by the PBC in respect of banks and other financial institutions also covers the oversight and enforcement of trust companies. No separate statistics are available on supervisory activities and enforcement measures in respect of trust companies, but the Chinese authorities report that compliance and general transparency among trust companies is high.

124. Nevertheless, the recommendation for China to ensure that its supervision and enforcement regime in respect of the compliance by banks and other financial institutions with the requirements to keep beneficial ownership information on their clients is commensurate to the circumstances, also applies in respect of trust companies. The materiality is, however, lower than under element A.1.1, as there are other levels of oversight in respect of trusts which capture basic beneficial ownership information.

#### *Availability of beneficial ownership information on trusts in EOI practice*

125. During the review period, China received six EOI requests for beneficial ownership information in respect of trusts. This information was obtained either from trust companies or through investigations by the tax authorities. Peers did not raise any issues with the availability of this information.

#### **A.1.5. Foundations**

126. Foundations can be established in China under the Regulation on the Administration of Foundations (RAF). As was the case at the time of the 2012 Report, there are two types of foundations: public foundations and private foundations. The main difference between the two types is that public foundations are allowed to raise funds from the public while private foundations are not. As at the end of 2018, there were 7 027 foundations registered in China, of which approximately 73% were private foundations and the remaining 27% were public foundations.

127. All foundations must be not-for-profit entities established for public welfare purposes (Art. 2 RAF), and they cannot have specified persons as beneficiaries (Art. 10 RAF). Once a foundation ceases its activities, any remaining assets must be used for welfare purposes in accordance with the provisions of the foundation charter; if this is not possible, the civil affairs authority co-ordinates the donation of the assets to public welfare organisations which have the same character and objectives as the foundation, and makes an announcement to the general public (Art. 33 RAF).

128. The establishment of a foundation is subject to the approval of the civil affairs authority (Art. 11 RAF), which will review whether the foundation charter is in accordance with the requirements of the RAF. The foundation charter must, among other information, contain information on

the foundation's purpose, the composition, function and rules of procedure of the foundation council and the system for the management and use of the property (Art. 10 RAF). Amendments to the charter must also be registered (Art. 15 RAF). Foundations must provide an annual report to the civil affairs authority which must include the financial statement, the auditing report of a certified public accountant, a report on the activities, and any changes to key personnel (Art. 36 RAF).

129. The civil affairs authority runs a supervision programme which is based on reviewing the applications for registration and any changes, as well as reviewing the annual reports submitted by the foundations. It also includes inspections on the basis of intelligence and random inspections. Each year, around 10% of the foundations are inspected. In the years 2015-18, a total of 14 foundations were found to have violated the requirements for information disclosure, and in 6 of these cases this was serious enough to issue an administrative penalty. Another 7 foundations were found to be non-compliant in the use and/or management of the funds.

130. Considering that foundations in China (i) can only be established for public welfare purposes, (ii) cannot have specified persons as beneficiaries, (iii) have any assets remaining upon termination of activities be used for public welfare purposes, and (iv) are subject to an approval and supervisory regime by the civil affairs authority, they are not considered relevant entities from the perspective of the Global Forum's work.

## A.2. Accounting records

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

131. As was already the case in the 2012 Report, China has a strong legal framework for ensuring the availability of accounting records, which contains detailed requirements on how to keep and archive such records.

132. The legal framework is complemented by adequate oversight and enforcement activities carried out by different authorities, in particular the tax authorities. Both the legal framework as well as the combination of the various oversight and enforcement activities cover all relevant entities and arrangements. China's framework for ensuring the availability of accounting records for all relevant entities and arrangements therefore complies with the international standard.

133. The table of determination and rating is follows:

| Legal and Regulatory Framework                |
|-----------------------------------------------|
| <b>Determination: The element is in place</b> |
| Practical implementation of the standard      |
| <b>Rating: Compliant</b>                      |

#### *A.2.1. General requirements and A.2.2. Underlying documentation*

134. China's legal framework requires relevant entities and arrangements to maintain comprehensive accounting records, including underlying documentation, for a minimum of five years, based on a combination of obligations under the Accounting Law, tax law and the laws governing the relevant entities and arrangements.

135. The Accounting Law applies to all relevant entities and arrangements and includes the general obligation to maintain accounting books (Art. 3). This includes the preparation of accounting documents, accounting record books and financial statements based on the business and economic transactions that have taken place (Arts. 9 and 10, see paragraph 195 of the 2012 Report for more details). Entries into accounting books must be based on examined and verified accounting documents, which include original documents and accounting vouchers (Arts. 14 and 15). Penalties are in place for a wide range of situations of non-compliance (Arts. 42-49). The provisions of the Accounting Law require accounting records, including underlying documentation, to be kept in accordance with the standard.

136. The Law on the Administration of Tax Collection (LATC) contains an obligation for taxpayers to establish accounting books in accordance with relevant laws and administrative regulations (Art. 19 LATC), which includes the Accounting Law. Accounting books, accounting vouchers, financial statements, tax payment vouchers, invoices, exportation vouchers and other tax-related documents must be kept for at least ten years (Art. 24 LATC and Art. 29 Rules for the Implementation of the Law on the Administration of Tax Collection). As mentioned in the Introduction, a system is in place whereby invoices may only be issued through the system put in place by the tax authorities, giving them visibility on tax-related payments (Art. 21 LATC).

137. In respect of the laws governing the relevant entities and arrangements, two requirements may be mentioned. First, companies are required to prepare a financial report after the end of each tax year (which in China is the same as the calendar year, Art. 164 Company Law). Second, trustees must manage the trust property separate from its own, and keep separate accounts; the trustee must also keep separate accounts in respect of the trust property

entrusted by different settlors (Art. 29 Trust Law). This ensures that accounting records in respect of trusts are clearly identifiable.

### *Document retention*

138. The retention period for accounting records is governed by the Measures for the Administration of Accounting Archives (MAAA), which applies to all relevant entities and arrangements (Art. 2). The retention period for the main types of records are as follows (Arts. 14 and 15):

- vouchers: 30 years
- accounting books (journals and ledgers): 30 years with the exception of the fixed assets ledger, which must be kept for 5 years
- financial reports: annual reports must be kept permanently, other reports (monthly, quarterly, etc.) for 10 years.

139. The lists of accounting archives retained and destroyed must be kept permanently to have a permanent historical record. Where an entity or arrangement is terminated due to cancellation, dissolution, bankruptcy or any other reason, the accounting archives formed before it is terminated must be handled in accordance with the relevant provisions on archives management (Art. 20 MAAA). This means that they must at that time be handed over to the archive repositories for permanent preservation under Article 11 of the Archives Law. Co-ordination exists between the SAMR and the archive repositories in order to ensure that the accounting archives are provided in cases where an entity or arrangement ceases to exist. The archive repositories will respect at a minimum the retention periods provided by the MAAA.

### *Oversight and enforcement*

140. The supervision in respect of compliance with accounting record-keeping obligations is mostly performed by the tax authorities. All companies are subject to enterprise income tax and must file annual tax returns which must be accompanied by a financial statement (Art. 25 LATC). The partners in a partnership are also subject to income tax (either as an enterprise or an individual) and must file annual tax returns.

141. The tax authorities reported an on-time filing rate for tax returns for enterprise income tax of 97% in 2017 and 2018. This does not take into account the taxpayers that are on the list of taxpayers with abnormal operations. Similar to the list of enterprises with abnormal operations maintained by the SAMR (see element A.1.1), taxpayers may end up on this list when they fail to file a tax return or for other non-compliance. The consequences of being on this list include suspension of the tax registration certificate and of the use of the tax authorities' invoice system. This effectively prohibits the enterprise from doing business in China.

142. Tax returns are checked in two main ways. First, an automated check is performed on all enterprise income tax returns which compares each return with the return of the previous year to search for major discrepancies. Then there are risk-based checks based on different parameters which are determined in accordance with the risk profile of each province. Based on the outcomes of these checks, as well as the general policies applied by the tax authorities, taxpayers may be subjected to different measures. First, alerts can be sent to taxpayers to rectify possible shortcomings that have been identified (low-risk). Approximately 700 000 of such alerts are sent by the tax authorities every month. Second, taxpayers can be selected for a tax inspection, which is done either on-site or through an interview at the tax office (medium-risk). Third, taxpayers can be selected for a comprehensive and in-depth audit (high-risk). This process is similar for enterprise income tax and individual income tax. Audits are also conducted in relation to VAT and other taxes. The following table shows the number of taxpayers subject to enterprise income tax who received a tax inspection or an audit in the years 2016-18, as well as the revenue recovered through the tax audits (revenue recovered through tax inspections is not available).

|                                                                                       | 2016                                        | 2017                                        | 2018                                        |
|---------------------------------------------------------------------------------------|---------------------------------------------|---------------------------------------------|---------------------------------------------|
| Number of taxpayers subject to a tax inspection                                       | 658 034                                     | 843 225                                     | 551 532                                     |
| Number of audited taxpayers                                                           | 363 500                                     | 315 700                                     | 205 200                                     |
| Revenue recovered through tax audits, including late payment surcharges and penalties | RMB 191.438 billion<br>(EUR 25.269 billion) | RMB 192.197 billion<br>(EUR 25.369 billion) | RMB 168.653 billion<br>(EUR 22.262 billion) |

143. The total number of taxpayers subject to enterprise income tax currently stands at 30.16 million, but has grown substantially over recent years. This means that the rate of taxpayers that received a tax inspection or audit in the years 2016-18 was between 2.6% and 4% (the rate was lower than average in 2018 because of a large-scale reorganisation of the tax authorities). When conducting an audit, accounting documents will be requested and checked, and failure to produce these documents may result in a penalty. Accounting documents are also checked in most instances of a tax inspection. No specific statistics are available regarding the number and amount of penalties that may have been imposed for non-compliance with record-keeping obligations. However, one area of focus for the tax authorities has been tax fraud related to issuing false and fake invoices, and more than 100 000 cases per year were investigated in the years 2016-18 (these investigations were in addition to the audits covered in the table above). The tax authorities discovered more than 10 million illegal invoices per year and they recovered taxes and imposed fines accordingly. Moreover, the tax authorities conduct special tax audits

which focus on a specific tax type, such as enterprise income tax (these are to be distinguished from the audits in the table above, which cover compliance in respect of all taxes in one single audit). Over 100 000 taxpayers were so audited in 2018.

144. Another form of oversight relates to the accounting profession. Some companies must have their annual financial statements audited by an accountant. The accounting profession in China is regulated and accountants must be approved by the self-regulatory body, the Institute of Certified Public Accountants (ICPA), and work in an accounting firm licensed by the Ministry of Finance. As at November 2019, there were approximately 109 000 practising accountants working at 8 145 accounting firms, serving approximately 4.2 million enterprises.

145. The Ministry of Finance and the ICPA both carry out supervisory activities. Accounting firms must file an annual report to the Ministry of Finance, which is reviewed and may lead to questioning. Both the Ministry of Finance and the ICPA also conduct on-site inspections of accounting firms. The selection of firms is based on the off-site supervision and previous performance, and some random selection is made as well. The Ministry of Finance and the ICPA co-ordinate to ensure they do not inspect the same accounting firms in the same year (although this may still happen if an ad hoc inspection is conducted). One area which is reviewed in the on-site inspections is the quality of the accounting and auditing work. The following table shows the on-site inspections and enforcement measures taken by the Ministry of Finance in recent years:

|                                                                 | 2015    | 2016  | 2017  | 2018  |
|-----------------------------------------------------------------|---------|-------|-------|-------|
| <b>On-site inspections</b>                                      |         |       |       |       |
| Ministry of Finance                                             | 1 108   | 1 389 | 1 529 | 1 080 |
| ICPA                                                            | No data | 1 253 | 1 267 | 1 241 |
| <b>Enforcement measures</b>                                     |         |       |       |       |
| Number of accounting firms penalised by the Ministry of Finance | 91      | 69    | 57    | 67    |
| Number of accountants penalised by the Ministry of Finance      | 159     | 126   | 96    | 133   |
| Number of accounting firms penalised by the ICPA                | No data | 83    | 105   | 94    |
| Number of accountants penalised by the ICPA                     | No data | 206   | 228   | 242   |

146. The penalties by the ICPA consist of different types of warnings, as more severe cases of non-compliance must be referred to the Ministry of Finance. No specific statistics are available regarding penalties related to a finding of insufficient quality of the accounting or auditing work.

147. The Ministry of Finance is also in charge of the administration of the Accounting Law and its related measures. In this respect, the Ministry of Finance conducts inspections on the accounting practices of enterprises and administrative and public institutions. The enterprises and institutions are selected based on indications of possible non-compliance (which could, for example, come from ICPA inspections) and are supplemented by random inspections. The inspections mainly take place on-site, and non-compliant enterprises and institutions will be requested to rectify the shortcomings and are subject to administrative penalties. In the years 2015-18, a total of 90 982 inspections were conducted to check compliance with the Accounting Law.

148. In respect of trusts, the supervisory activities of the CBIRC on trust companies also cover compliance with accounting record-keeping obligations. During on-site inspections, a sample of accounting records in respect of trusts managed by the trust company is reviewed. The CBIRC's supervision of trust companies is described under element A.1.4 of this report, where the Chinese authorities report that compliance and general transparency among trust companies is high. This also applies with respect to the requirement to keep (separate) accounting records for the trusts managed by the trust companies. No specific supervision is in place in respect of any trusts managed by non-professional trustees, although income received by beneficiaries is taxable and thus supervision by the tax authorities would apply.

## Analysis and conclusion

149. Various supervision mechanisms related to accounting record-keeping obligations are in place. In respect of companies, the supervisory activities of the tax authorities clearly include checks of accounting records. It is also reassuring that the on-time filing rate for enterprise income tax is very high, as companies must attach a financial statement to their tax return. This means that at least some degree of accounting records will be kept by the companies in order to produce the financial statement. Finally, the tax authorities have visibility of invoices issued by Chinese enterprises, including partnerships, and perform regular checks on these.

150. The ICPA indicated that approximately 4.2 million enterprises use accounting services, out of more than 30 million companies and many other enterprises. In respect of the companies and other enterprises, which includes partnerships, that use the services of an accounting firm, a higher level of

comfort exists that reliable accounting records are kept because of the comprehensive supervision on the accounting firms as conducted by the Ministry of Finance and the ICPA.

151. The supervision by the CBIRC of trust companies includes verification of accounting records in respect of the trusts they manage, and appears to be adequate.

152. Taken together, the oversight and enforcement measures in respect of the accounting record-keeping obligations on relevant entities and arrangements, in particular by the tax authorities, are adequate. They support the strong legal framework, which contains detailed requirements on how to keep and archive accounting records.

### *Availability of accounting information on companies in EOI practice*

153. During the review period, the EOI requests received by China included a request for accounting information in respect of 488 persons, of which 397 were companies, one was a foundation and the remaining were individuals. The information requested included the full range of accounting information, from financial statements to specific underlying documentation. This information was usually obtained by the tax authorities, either from within their own records or by obtaining the information from the taxpayer(s). Peers did not raise specific issues with the availability of accounting information, and indicated they were generally satisfied with the information received.

## **A.3. Banking information**

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

154. As was the case in the 2012 Report, China's legal framework requires that banks maintain all records pertaining to accounts as well as related financial and transactional information.

155. The standard was strengthened in 2016 and now requires that beneficial ownership information (in addition to legal ownership information) in respect of accountholders be available. The analysis under element A.1 of this report concludes that there are deficiencies in the legal framework related to the availability of beneficial ownership information, as well as in its practical implementation. These deficiencies also apply to banks. Recommendations to address these deficiencies, in line with element A.1 of this report, have therefore been made. As a consequence, the rating for element A.3 has been downgraded to Largely Compliant.

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

| Legal and Regulatory Framework                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                              |
|-----------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                 | Underlying Factor                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Recommendations                                                                                                                                                                                                                                              |
| <b>Deficiencies identified</b>                                                                                  | The determination of beneficial ownership in respect of general and limited partnerships follows the approach for companies, including taking a 25% ownership threshold as a starting point. This is not in accordance with the form and structure of the partnerships in China.                                                                                                                                                                                                                                                                                                                                                                                                              | China should ensure that the beneficial owners of partnerships are required to be determined in accordance with the form and structure of each partnership.                                                                                                  |
| <b>Determination: The element is in place, but certain aspects of the legal implementation need improvement</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                              |
| Practical implementation of the standard                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                              |
|                                                                                                                 | Underlying Factor                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Recommendations                                                                                                                                                                                                                                              |
| <b>Deficiencies identified</b>                                                                                  | China has in place a system of oversight of and enforcement on banks and other financial institutions in respect of their compliance with the requirements to keep comprehensive beneficial ownership information on relevant entities and arrangements. However, the supervision and enforcement actions taken in practice do not seem to sufficiently take into account that there are many different applicable legislative instruments, with significant updates having been introduced later during the review period, and its effectiveness can therefore be questioned. In addition, the level of penalties that can be applied for non-compliance is not proportionate or dissuasive. | China should ensure that its supervision and enforcement regime in respect of the compliance by banks and other financial institutions with the requirements to keep beneficial ownership information on their clients is commensurate to the circumstances. |
| <b>Rating: Largely Compliant</b>                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                              |

#### *A.3.1. Record-keeping requirements*

157. As mentioned in the Overview, no person is allowed to conduct banking without permission of the regulatory authority. The establishment of a commercial bank is subject to the approval of the CBIRC (Art. 11 Law on Commercial Banks), and at the end of 2018 a total of 4 503 institutions were in possession of a licence to conduct banking activities.

158. The 2012 Report concluded that the AML framework (the Anti-Money Laundering Law and the AML CDD Rules) contained sufficient legal obligations for banks to maintain all records pertaining to accounts as well as related financial and transactional information in China. In addition, no issues were raised with the practical implementation.

159. The Anti-Money Laundering Law and AML CDD Rules have not changed since the 2012 Report. This means that banks are still required to obtain and keep information identifying all account holders as well as related financial and transactional information (see paragraphs 231-238 of the 2012 Report).<sup>13</sup>

### *Beneficial ownership information on account holders*

160. The standard was strengthened in 2016 to specifically require that beneficial ownership information be available in respect of all account holders. The legal requirements for banks to keep beneficial ownership information can be found in the AML legislation, which is described and analysed under element A.1 of this report. All banks in China are financial institutions covered by this AML legislation and are required to carry out CDD measures, which include identification and verification of the beneficial owners of account holders (Arts. 3 and 7 AML CDD Rules).

161. The analysis of the AML legal framework under element A.1 of this report<sup>14</sup> fully applies to banks insofar as it covers the definition of the term “beneficial owner” and the application of CDD measures. Consequently, the in-text recommendations reflected in Annex 1 are also relevant for element A.3. In addition, it is recommended that China ensures that the beneficial owners of partnerships are required to be determined in accordance with the form and structure of each partnership.

### *Banking information: oversight and enforcement*

162. As described under element A.1.1 of this report, the PBC is the authority responsible for supervising banks with respect to their compliance with AML obligations. The supervisory regime is risk based and has includes four main supervisory activities. The following table shows the number of supervisory activities and related enforcement measures in respect of banks carried out by the PBC in the period 2015-19:

|                               | 2015  | 2016  | 2017  | 2018  | 2019  |
|-------------------------------|-------|-------|-------|-------|-------|
| <b>Supervisory activities</b> |       |       |       |       |       |
| Inquiry                       | 450   | 561   | 544   | 380   | 457   |
| Interview                     | 588   | 679   | 816   | 889   | 812   |
| Supervisory visit             | 2 460 | 2 215 | 3 360 | 2 484 | 2 571 |
| On-site inspection            | 785   | 955   | 938   | 900   | 1 320 |

13. Note that the 2016 Report uses the acronym *AMLL* for the Anti-Money Laundering Law and *ARCIV* for the AML CDD Rules.

14. See also paragraphs 24-26 of the Overview.

|                                      | 2015                                | 2016                                | 2017                                | 2018                                 | 2019                                  |
|--------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------------------|---------------------------------------|
| <b>Enforcement measures</b>          |                                     |                                     |                                     |                                      |                                       |
| Number of banks fined                | 116                                 | 155                                 | 273                                 | 350                                  | 422                                   |
| Total amount of fines on banks       | RMB 17 million<br>(EUR 2.2 million) | RMB 31 million<br>(EUR 4.1 million) | RMB 64 million<br>(EUR 8.4 million) | RMB 99 million<br>(EUR 13.1 million) | RMB 144 million<br>(EUR 17.9 million) |
| Number of individuals fined          | 138                                 | 326                                 | 486                                 | 598                                  | 690                                   |
| Total amount of fines on individuals | RMB 1.1 million<br>(EUR 145 191)    | RMB 3 million<br>(EUR 395 971)      | RMB 5.9 million<br>(EUR 778 744)    | RMB 7.7 million<br>(EUR 1 016 327)   | RMB 9.57 million<br>(EUR 1 191 574)   |

163. This table is a subset of the tables depicted under element A.1.1 of this report, which reflect the supervisory activities and enforcement measures in relation to all AML obligated institutions supervised by the PBC. It can be determined that more than 50% of PBC's on-site supervisory activities and more than 60% of the enforcement measures were targeted at banks, which reflects the importance of the banking sector compared to the other financial services sectors.

164. As is the case with the legal framework, the analysis in respect of the oversight and enforcement as described under element A.1.1 of this report also applies to the specific supervision of banks. In line with the conclusion drawn in paragraph 85, it is therefore recommended that China ensures that its supervision and enforcement regime in respect of the compliance by banks and other financial institutions with the requirements to keep beneficial ownership information on their clients is commensurate to the circumstances.

165. For completeness, it may be mentioned that the CBIRC also carries out supervisory activities on banks. However, the extent to which AML obligations are covered by the regulatory supervision is more limited than in the supervision of the PBC, and only includes general checks on whether certain processes and controls are in place (which are also checked by the PBC) so the financial institutions are in a position to comply with the more specific obligations contained in the AML framework. The CBIRC does in any case not have the authority to impose penalties under the Anti-Money Laundering Law. Regular collaboration between the PBC and the CBIRC is taking place, and supervision findings feed into each other's activities.

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

166. During the review period, the EOI requests received by China contained enquiries to exchange banking information in respect of 199 persons (81 companies and 118 individuals). Two peers indicated that they have not always received banking information. However, this seems to be related to an issue analysed under element B.1 in this report (see below under Obtaining banking information). There are no indications that banking information has not been available where it should have been.



## Part B: Access to information

167. 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).

168. As concluded in the 2012 Report, China's tax authorities have the necessary powers to obtain information for EOI purposes. In practice, while many pieces of information are directly available with the tax authorities, the increasing complexity of EOI requests results in the authorities visiting the information holder in order to obtain the information in more than half of the cases. This proved to be effective, and there has been no or a very limited need to use compulsory powers specifically for the production of information in relation to an EOI request.

169. The Chinese authorities faced some challenges in obtaining banking information. The main challenge related to the large size of the population in China, with many people having the same name. In cases where the name was the only identifier of the person on whom banking information was requested, the Chinese authorities have systematically asked the requesting jurisdiction to provide additional identification information. This approach is sensible and efficient in most cases, however in certain circumstances asking for additional identification information may not be the most appropriate option and China should reconsider its systematic approach (see Annex 1).

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

| Legal and Regulatory Framework                |
|-----------------------------------------------|
| <b>Determination: The element is in place</b> |
| Practical implementation of the standard      |
| <b>Rating: Compliant</b>                      |

### ***B.1.1. Ownership, identity and bank information and***

### ***B.1.2. Accounting records***

171. China's tax authorities have the necessary powers to obtain information for EOI purposes. This follows from the Protocol for the International Exchange of Tax Information (EOI Protocol), which forms the bridge between the international agreements and domestic law in respect of EOI, and effectively ensures that China is able to meet the obligations of the international agreement. Article 6 of the Protocol for the International Exchange of Tax Information (EOI Protocol) authorises the tax authorities to use their domestic powers for EOI purposes. These powers include the power to inspect taxpayers' accounting books, supporting vouchers for the accounts, statements and relevant information, which may be done on-site, and to make copies of the relevant information and material (Arts. 54(1) and 58 LATC, and Art. 86 Rules for the Implementation of the LATC). There have been no changes in the relevant provisions since the 2012 Report.

172. The STA or its predecessor is designated as China's Competent Authority in the EOI Protocol (Art. 4). Within the STA, the administration of EOI has been allocated to the Global Co-operation and Compliance Division (GCCD) in the International Tax Department.

### ***Obtaining information in practice***

173. The GCCD operates as the co-ordination and administration office in respect of EOI. It collects information with the assistance of STA officials across China by allocating the requests for information to the relevant part(s) of the tax authority, but it does not itself collect information directly from information holders outside the STA.

174. As mentioned in the Overview, the administration of taxes is organised at three levels, the provincial level, the municipality level and the county level, and taxpayers fall under the jurisdiction of the tax service in the location of their activities or headquarters. In practice, the tax authorities at the municipal level carry out the tasks to obtain the information requested pursuant to an EOI request, unless the information can be obtained by querying the STA database, in which case the GCCD obtains the information itself. Before

reaching the tax authorities at the municipal level, the EOI request has gone through the checks as described under elements C.1.1 and C.5 in this report.

175. It is up to the tax authorities at the municipal level to determine where and how they obtain the information, taking into account any specific requests from the requesting jurisdiction. Certain information is available in the records of the tax authorities themselves, such as tax return information and certain accounting information. Legal ownership information is gathered from the STA database, which is fed with information from the SAMR's database (see paragraph 45 above). A cross-check between the information in the STA database and the information from SAMR takes place before exchanging it.

176. The SAMR's database is sometimes also used to determine who the beneficial owners are in cases where the ownership structure is simple and the legal ownership traces back to natural persons only. In these cases, caution should be taken regarding what the information represents. The information in the SAMR's database is collected with the specific purpose of collecting legal ownership information, and no due diligence is performed or monitoring is carried out with the view to determining whether the legal owner is also the beneficial owner. While the tax authorities can perform some verification with data in their possession in respect of natural persons who are also taxpayers, there may be facts and circumstances which are unknown to the tax authorities. Although this may be an issue in rare cases only and the Chinese authorities indicated that beneficial ownership information is obtained from banks in the majority of cases, China should ensure that the beneficial ownership information requested pursuant to an EOI request is obtained from, or checked with, a source established with the purpose of containing beneficial ownership information in all cases (see Annex 1).

177. In practice, in more than half of the EOI requests, the tax authorities visit the information holder to obtain the information, and this proportion is increasing. The Chinese authorities indicated that this is due to the increasing complexity of the EOI requests they receive. The tax authorities often find it more efficient to visit the information holder and do an "interview" to obtain the information, rather than sending a written request to produce the information. It allows the tax officials conducting the visit to ask questions and resolve issues on the spot, so the case can be closed immediately after the visit.

178. Where a visit is not considered necessary but the information is not in the possession of the tax authorities, a Notice on Tax Matters is issued to the information holder. The deadline given to respond varies from 7 to 30 working days, depending on the amount and complexity of the information requested. Extensions may be given where appropriate, and continued non-compliance may lead to the use of compulsory powers (see B.1.4 below).

Where the information holder is another governmental authority, the same deadlines are applied. The co-operation with other authorities is generally smooth, as co-operation with the tax authorities also takes place in respect of domestic issues. Other governmental authorities from which information is sought in EOI matters include the authorities in charge of immigration and real estate.

179. The deadline given by the GCCD to the local tax authorities to provide the information to them is either one month (for urgent or simple EOI requests) or two months (other requests). According to the Chinese authorities, these deadlines are realistic and generally met. They are also evaluated in the annual performance review of the provincial and municipal tax authorities.

### *Obtaining banking information*

180. Banking information is in all cases obtained from a bank. Article 54(6) of the LATC introduces the requirement of specific approval from the director of the local tax authority in order to obtain information from banks, which is usually obtained within a day.

181. After having obtained the necessary approval, it takes on average ten days to obtain information from a bank. This may be longer in cases where the information is not readily available, for example if the information is stored centrally and must be produced by the head office. It rarely takes more than one month to obtain information from banks.

182. The tax authorities face two challenges in obtaining banking information, and these have had a limited impact on EOI in practice (see paragraph 166). Firstly, the records are generally kept in Chinese characters while the EOI requests are generally in Latin script. One spelling in Latin characters can have multiple variations in Chinese characters. In these cases, one or more identifiers are needed in addition to the name of the individual on whom banking information is requested in order to be certain the information in respect of the correct person is being obtained, for instance a TIN, passport number, date of birth, address or even name of the employer. If such additional identifier is not included in the EOI request, the GCCD sends a request for additional identification information to the requesting jurisdiction. In a few cases where the entity was not identifiable with only its English name or an invalid address was provided, the GCCD generally asked for a Chinese name, valid address or other useful information.

183. China's approach to this transliteration issue is sensible, since non-publicly available information should not be provided unless there is a sufficiently clear connection with the EOI request. There have been cases during the review period where no additional identification information was available, or where the additional identification information was still not

sufficient to know which account holder to obtain and exchange information on (for example where the date of birth was provided but there were two or more account holders with the same/similar name and date of birth). In such cases, it is not possible to know on which account holder information should be obtained and exchanged. Where this occurred, the GCCD closed the case without obtaining and providing the information, since it would otherwise still be at risk of exchanging confidential information without there being a sufficiently clear connection with an EOI request.

184. The second challenge in this context relates to the situation where there is no transliteration issue, but the only identification information of the person on whom banking information is requested is its name. The Chinese authorities indicated that even in cases where the bank has been identified, it would not seek to obtain the banking information without having received additional identification information from the requesting jurisdiction. The reason for this is that there are many people with the same name in China, due to the large size of the population. In these cases, the GCCD systematically sends a request for additional identification information to the requesting jurisdiction.

185. China's approach to this second challenge in obtaining banking information is too strict, since it should not in all cases be assumed that there will be more than one account holder with the name of the person on whom the information is requested with a specific bank. While this may be the most efficient approach in cases where it is a very common name and a larger bank, in cases where the name is less common and/or the bank is smaller it would be more reasonable to first ask the bank to provide the requested information. If the bank responds that there is more than one account holder with the name of the person on whom the information is requested, this can then be relayed to the requesting jurisdiction with a request for additional identification information. In cases where only the name of the account holder is provided as an identifier, China should not systematically ask the requesting jurisdiction for additional identification information before attempting to collect the information from a bank, but take into account all facts and circumstances of the specific EOI request in making a decision on the best way forward (see Annex 1).

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

186. Article 6 of the EOI Protocol authorises the tax authorities to use their domestic powers for EOI purposes. In addition, Article 10(1) of the EOI Protocol states that the tax authorities shall not refuse to provide the requested information where it is irrelevant to China's taxation interest. Hence, the access powers of China's tax authorities can be used irrespective of whether a domestic tax interest in the information exists.

187. During the review period, China received a limited number of EOI requests related to a person who was not a taxpayer under Chinese law and thus there was no domestic tax interest in obtaining the requested information. The Chinese authorities report that the information was obtained and exchanged in these cases, most of which related to banking information.

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

188. The financial penalties identified in the 2012 Report for failure by a taxpayer to comply with any form of tax inspection and for failure by a bank or other financial institution to comply with the tax authorities, are still the same. The same applies to the possibility to take copies of documents and to take records to the tax office for further examination (see paragraphs 267-269 of the 2012 Report).

189. The decision on whether to impose penalties is made by the local tax authority responsible for collecting the information, and they inform the GCCD when penalties are imposed in an EOI-related case. In the years 2016-18, the GCCD was notified of 37 cases in total where an EOI-related case resulted in the imposition of penalties and/or additional tax revenue, for an amount of RMB 19 million (EUR 2.47 million). It has generally not been necessary to share details of the cases with the GCCD, since the information was ultimately collected. In fact, it seems that the majority of the 37 cases relate to situations where the Chinese tax authorities initiated their own investigations based on findings in the process of collecting the information pursuant to an EOI request. This shows that the local tax authorities are taking requests from the GCCD to collect information seriously, as in more than 5% of the EOI requests received during the review period findings in the process of collecting the information have led to the collection of tax revenue and penalties by the Chinese tax authorities.

190. Since the decision to use compulsory powers is made by the local tax authorities, there is no precise information on the number of cases where this was done in relation to the collection of information pursuant to an EOI request. There are no indications that there have been cases where information was not available and thus where the use of compulsory powers could have been expected. It can be concluded that China's enforcement provisions to compel the production of information are effective.

#### ***B.1.5. Secrecy provisions***

191. The 2012 Report indicated that there were only two relevant areas where China's domestic law provided for keeping information secret. This continues to be the case.

### *Bank secrecy*

192. Banks must follow the principle of secrecy with respect to the account holders, and are thus entitled to refuse a request for information, unless otherwise prescribed by law (Arts. 29 and 30 Law on Commercial Banks). One of the laws which requires banks to lift secrecy is the LATC. Under Article 54(6) of the LATC, the tax authorities have the power to request information about “the deposit accounts that a taxpayer engaged in production or business operations or a withholding agent has opened with the bank or other financial institution”. In addition, when investigating a case regarding a violation of tax laws, the tax authorities may request information about “the savings and deposits of the suspects in the case”.

193. Article 54(6) of the LATC provides full access powers in criminal tax matters (i.e. in respect of accounts of suspects in an investigation of an alleged violation of tax law). In non-criminal tax matters, the provision limits the powers of the tax authorities to access “deposit accounts of taxpayers engaged in production or business operations” (which would exclude most individuals). However, as mentioned above, Article 6 of the EOI Protocol authorises the tax authorities to use their domestic powers for EOI purposes. In addition, Article 10(4) of the EOI Protocol states that the tax authorities shall not refuse to provide the relevant information where the relevant bank is obliged to keep the information confidential. The Chinese authorities explained that this means that the limitation of using the full access powers only in criminal tax matters does not apply where information must be obtained pursuant to an EOI request. This interpretation is also in line with the general principle that tax agreements override the LATC in case of conflict (Art. 91 LATC).

194. The Chinese authorities report that they have used their access powers to gather information on individuals in civil tax matters, and there have been no cases in practice where the tax authorities found themselves in a position where the use of access power was unsuccessful or challenged by a bank. There is also no peer input suggesting that a lack of access powers resulted in a failure to exchange banking information. The two peers responsible for more than 60% of the 199 requests for banking information received in the review period did not flag that any of these requests were pending, and indicated that they were satisfied with the responses received.

### *Lawyers’ professional privilege*

195. According to the Chinese authorities, the concept of professional privilege only applies to lawyers (and not to any other professions). As noted in the 2012 Report, this concept is not well-defined in the law but seems to be limited to state secrets, trade secrets and the privacy of a client (Art. 38 Lawyers Law). This information is generally not expected to be obtained

and exchanged under the international standard (trade secrets are explicitly exempt and state secrets would likely be covered by the *ordre public* exemption).

196. The tax authorities have the power to obtain information from lawyers under Article 57 of the LATC, which authorises them to request information from persons (other than the taxpayer under investigation) about tax matters of a taxpayer. This power may be used for EOI purposes as well (Arts. 6 and 10(5) EOI Protocol).

197. In practice, during the period under review China did not receive any EOI request where the tax authorities needed to contact a lawyer in order to obtain the requested information, which is consistent with China's framework for the availability of information as described in Part A of this report.

## 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.

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

198. The 2012 Report did not identify any issues related to rights and safeguards that could unduly prevent or delay effective exchange of information. The same continues to be the case.

199. The table of determination and rating is as follows:

| Legal and Regulatory Framework                |
|-----------------------------------------------|
| <b>Determination: The element is in place</b> |
| Practical implementation of the standard      |
| <b>Rating: Compliant</b>                      |

200. There is no requirement in China's domestic legislation that the taxpayer under investigation or examination, or any other person, must be notified of a request, either before or after the exchange of information takes place.

201. Taxpayers have the right to request administrative review of any administrative act they believe infringes their rights (Art. 8 LATC), which would include a request from the tax authorities to produce information. Such administrative review is governed by the Administrative Appeal Law, which does not just apply to taxpayers but to all persons who believe an administrative act infringes their rights (Arts. 2 and 9 Administrative Appeal Law).

202. The tax authorities also have their own rules in respect of administrative appeal, which are tailored to tax-related cases but follow the Administrative Appeal Law. In tax-related cases, the request for administrative review is handled by the tax office at the next higher level above the tax office that performed the administrative act (Art. 16 Rules for Tax Administrative Appeal).

203. A decision on the request must be made by the authorities within 60 days, and this deadline may be extended by 30 days where the circumstances are complex (Art. 31 Administrative Appeal Law and Art. 83 Rules for Tax Administrative Appeal). The administrative act is not suspended during the procedure unless deemed necessary by the tax authorities or the administrative appeal board (either on its own initiative or following a request of the applicant), or where suspension is prescribed by law (Art. 21 Administrative Appeal Law and Art. 51 Rules for Tax Administrative Appeal). Where a person refuses to accept an administrative review decision, this person may bring the case to the people's court (Art. 5 Administrative Appeal Law and Art. 6 Rules for Tax Administrative Appeal).

204. There is no reason to believe that the rules and timelines for administrative review would unduly prevent or delay effective exchange of information. The Chinese authorities reported that no administrative review was requested in respect of cases related to EOI requests received during the review period.



## Part C: Exchanging information

205. Part C evaluates the effectiveness of China's EOI in practice by reviewing its network of EOI mechanisms – whether these EOI mechanisms cover all its relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether it respects the rights and safeguards of taxpayers and third parties and whether China could provide the information requested in an effective manner.

### C.1. Exchange of information mechanisms

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

206. The 2012 Report concluded that China's comprehensive network of EOI relationships generally provided for effective exchange of information in line with the standard. This continues to be the case, and there are now only 2 out of the 162 EOI relationships where it has been identified that exchange of information in line with the standard is not possible, in both cases relating to the domestic law of China's treaty partner (see Annex 2 for a list of EOI instruments).

207. No issues have arisen in practice with respect to the application of the EOI agreements by China in the review period.

208. The table of determination and rating is as follows:

| Legal and Regulatory Framework                |
|-----------------------------------------------|
| <b>Determination: The element is in place</b> |
| Practical implementation of the standard      |
| <b>Rating: Compliant</b>                      |

209. China concluded its first DTCs allowing for exchange of tax information in the 1980s. It now has EOI relationships in place with 162 jurisdictions through DTCs, TIEAs and the Multilateral Convention, which entered into force on 1 February 2016 in China. In concluding bilateral agreements, China

has generally followed Article 26 of the OECD Model Tax Convention and the OECD Model Agreement on Exchange of Information on Tax Matters.

### ***C.1.1. Foreseeably relevant standard***

210. 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 2012 Report noted that only the DTC with Switzerland did not meet the foreseeably relevant standard. Since then, China and Switzerland concluded a new bilateral DTC and signed the Multilateral Convention, both of which are in conformity with the standard. All of China's other EOI relationships also meet the foreseeably relevant standard.

### ***Clarifications and foreseeable relevance in practice***

211. China does not require the requesting jurisdiction to use a specific template for an EOI request. The GCCD indicated that a request should meet certain requirements, including but not limited to clear background information, reasonable grounds, identity information of the subject of the request and the relevant tax years. China reported that it has never declined a request for lack of foreseeable relevance.

212. In relation to requests received in the review period, China has made 107 requests for clarification, which corresponds to 18% of the EOI requests received. The majority of these clarification requests ask for additional identification information of the subject of the request. This mainly relates to requests for banking information, as described and analysed under element B.1 of this report. There were also some cases where China has sent clarification requests because the background information and grounds for suspicion were too vague.

213. Peer input confirms the overall picture of China sending requests for clarification, with the majority related to identification information and the rest related to the foreseeable relevance of the EOI request in general. Peers did not raise any concerns with the clarification requests received from China apart from the issue described under element B.1 of this report in respect of additional identification information. Peers reported that where they provided additional information, the requested information was exchanged by China.

### ***Group requests***

214. There is no indication that any of China's EOI agreements contains language prohibiting group requests. While China has not received a group request during the review period, the authorities indicated that the process for responding to group requests would be the same as for any other EOI request.

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

215. The 2012 Report concluded that only the DTC with Switzerland did not provide for exchange of information with respect to all persons. As noted above, China and Switzerland have concluded a new bilateral DTC and signed the Multilateral Convention. Both mechanisms provide for exchange of information with respect to all persons. This is also the case in respect of all of China's other EOI relationships concluded since the 2012 Report.

### ***C.1.3. Obligation to exchange all types of information***

216. As concluded in the 2012 Report and confirmed by the analysis in this report, China's legal framework does not restrict the access to or exchange of information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person. This means that even without an explicit provision to this end in the EOI agreement, China can and does in practice exchange such information.

217. The 2012 Report noted that there were limitations in place in the domestic law of some of China's treaty partners which prevented them from exchanging all types of information. It was recommended that China continue to renegotiate the DTCs with Austria, Estonia, Luxembourg and Malaysia to include paragraph 26(5) of the OECD Model Tax Convention. Since then, these four jurisdictions and China signed the Multilateral Convention, which holds the equivalent of that provision. The recommendation has therefore been addressed.

218. It is noted that China concluded a DTC with Cambodia in 2016 which does not include the equivalent of paragraph 26(5) of the OECD Model Tax Convention. The DTC explicitly states that this is because of the incompatibility with the laws of Cambodia.

### ***C.1.4. Absence of domestic tax interest***

219. As concluded in the 2012 Report and confirmed by the analysis in this report, no domestic tax interest restrictions exist in China's legal framework. This means that even without an explicit provision in the EOI agreement requiring the exchange of information irrespective of whether the requested jurisdiction has a domestic tax interest in such information, China can and does in practice exchange this information.

220. The 2012 Report noted that a domestic tax interest requirement existed in the domestic law of some of China's treaty partners. It was recommended that China continue to renegotiate the DTCs with Brunei Darussalam, Jamaica and Trinidad and Tobago to include paragraph 26(4) of

the OECD Model Tax Convention. Since then, Brunei Darussalam, Jamaica and China signed the Multilateral Convention, which holds the equivalent of that provision. China can exchange information with Trinidad and Tobago irrespective of whether there is a domestic tax interest as soon as Trinidad and Tobago's domestic law no longer contains a domestic tax interest requirement. The recommendation has therefore been addressed.

221. It is noted that China concluded a DTC with Cambodia in 2016 which does not include the equivalent of paragraph 26(4) of the OECD Model Tax Convention. The DTC explicitly states that this is because of the incompatibility with the laws of Cambodia.

***C.1.5. and C.1.6. Absence of dual criminality principles and Exchange information relating to both civil and criminal tax matters***

222. All of China's EOI agreements require the exchange of information irrespective of whether the conduct under investigation, if committed in China, would constitute a crime. China's EOI agreements also all provide for exchange of information in both civil and criminal matters.

223. In practice, the procedures to obtain and exchange information by the Chinese Competent Authority are the same for civil and criminal matters. China reports that it only received a few EOI requests related to criminal matters during the review period, and no issues in this respect have arisen.

***C.1.7. Provide information in specific form requested***

224. The 2012 Report concluded that there are no restrictions in China's legal framework that would prevent it from providing information in a specific form requested, as long as this is consistent with its own administrative practices. This continues to be the case. No issues in this respect have arisen during the review period.

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

225. The 2012 Report noted that it usually takes less than 12 months for China to ratify a bilateral EOI agreement. This continues to be the case, and the ratification procedure has also not changed (see paragraph 319 of the 2012 Report for details).

226. The table below provides an overview of China's EOI relationships, taking into account the analysis under element C.1 of this report.

|                                                                                             |                 |
|---------------------------------------------------------------------------------------------|-----------------|
| Total EOI relationships, <b>including</b> bilateral and multilateral or regional mechanisms | <b>162</b>      |
| <b>In force</b>                                                                             | 150             |
| In line with the standard                                                                   | 148             |
| Not in line with the standard                                                               | 2 <sup>a</sup>  |
| <b>Signed but not in force</b>                                                              | 12 <sup>b</sup> |
| In line with the standard                                                                   | 11              |
| Not in line with the standard                                                               | 0               |
| Among which – mechanisms <b>not complemented</b> by the Multilateral Convention             | <b>29</b>       |
| <b>In force</b>                                                                             | 27              |
| In line with the standard                                                                   | 25              |
| Not in line with the standard                                                               | 2 <sup>a</sup>  |
| <b>Signed but not in force</b>                                                              | 2 <sup>b</sup>  |
| In line with the standard                                                                   | 1               |
| Not in line with the standard                                                               | 0               |

Notes: a. These are the EOI relationships with Cambodia and Trinidad and Tobago.

b. The text of the DTC with Angola was not available for review (for reasons beyond China's control), therefore no assessment could be made on the conformity of its EOI provision with the standard.

227. As discussed in Part B and element C.1 of this report, China has in place the legal and regulatory framework to give effect to its EOI mechanisms.

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

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

228. As discussed under element C.1 of this report, China has a comprehensive network of EOI relationships, with a total of 162 partners. This is an increase of 55 from the 107 partners at the time of the 2012 Report, mostly related to China becoming a signatory to the Multilateral Convention on 27 August 2013. The 2012 Report did not identify any issues related to the scope of China's network of EOI relationships.

229. Comments were sought from Global Forum members in the preparation of this report and no jurisdiction indicated that China refused to negotiate or sign an EOI instrument with it. As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, China should continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

230. The table of determination and rating is as follows:

| Legal and Regulatory Framework           |                   |                                                                                                  |
|------------------------------------------|-------------------|--------------------------------------------------------------------------------------------------|
|                                          | Underlying Factor | Recommendation                                                                                   |
| Deficiencies identified                  |                   | China should continue to develop its exchange of information network with all relevant partners. |
| 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.

231. The 2012 Report concluded that the combination of provisions in EOI agreements and domestic law regarding confidentiality of information ensured that information received under an EOI agreement would be kept confidential in line with the standard. This remains the case.

232. The practical implementation of the legal requirements by the Chinese tax authorities covers all aspects adequately so the risk of a breach of confidentiality is mitigated to an acceptable level. The Chinese authorities report that no unauthorised disclosure of information received under an EOI agreement has occurred.

233. The table of determination and rating is as follows:

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

#### *C.3.1 and C.3.2. Information received: disclosure, use and safeguards and Confidentiality of other information*

234. All of China's exchange agreements contain a confidentiality provision modelled on Article 26(2) of the OECD Model Tax Convention or Article 8 of the OECD Model Agreement on Exchange of Information on Tax Matters. These provisions must be respected by China as a party to these agreements.

235. The main obligation in domestic law to keep tax information confidential can be found in Article 8 of the LATC. While the scope of this provision is limited domestically to “the commercial secret and individual privacy of taxpayers and tax withholding agents” (Art. 5 Rules for the Implementation of the LATC), the obligation applies to all information received under an international agreement providing for EOI following the rule that tax agreements override the LATC in case of conflict (Art. 91 LATC).

236. This interpretation is confirmed by the EOI Protocol, which sets out detailed rules regarding the confidentiality of information received under an EOI agreement. The information can be classified as secret, confidential or top secret (Art. 17 EOI Protocol), although in most circumstances it will be classified as “confidential”. The Chinese authorities explained that these three levels of confidentiality correspond to those of State secrets, the breach of which is sanctioned by criminal penalties (see paragraph 243 for more details).

237. The information must then be kept confidential for 20 years (Art. 18 EOI Protocol), after which it is disposed of according to the Chinese authorities. In practice, each page of information received (including EOI request letters) is stamped with an indication that the information is protected as information received under an EOI agreement so any person coming into contact with the information is aware.

238. Such awareness is ensured by the requirement that the information may only be handled by designated persons, who must receive training on confidentiality before working with confidential information (Arts. 24 and 25 EOI Protocol). All staff in the tax authorities must attend an orientation training on confidentiality and regular follow-up trainings, and staff with access to confidential information must attend additional training designed for the specific tasks they are expected to conduct.

239. More generally, the hiring process for tax officials is centralised and includes a general background check. Stricter background checks apply to staff with access to confidential information, and staff at key positions can only be enrolled after having passed a review by a designated committee (the Confidentiality Committee). Access to information is determined based on the role and responsibilities of the tax official.

240. Staff rarely leave the tax authority during their career. When this happens, and upon retirement, the official must hand over any confidential information under its control before leaving the office (Art. 24 EOI Protocol). Staff leaving during their career must sign a document indicating the obligation to keep the information confidential after leaving the tax authority. Staff retiring from the tax authority continue to be ranked as an official and are therefore still subject to the obligation to keep the information confidential.

241. The necessary (adequate) equipment must be in place to store the information, which could include designated computers (Arts. 22 and 25).

Since 2018, all information received under an EOI agreement is processed in an electronic international taxation management platform (see also element C.5.2 of this report). Only designated employees have access to this system, and they must use a separate username and password to log in. The platform is only accessible from designated IP addresses and isolated from the internet.

242. Information received under an EOI agreement is only to be used for purposes of taxation, unless otherwise provided for in the EOI agreement, and it may not be used in any public announcements by the tax authorities (Arts. 29 and 30 EOI Protocol). Exceptions may be made if information is requested by the auditing department, the disciplinary examination department or the anti-financial-crime department, but in those cases explicit approval from the STA headquarters is required (Art. 29 EOI Protocol). In practice, the tax authorities have received requests from other government authorities to use the information received under an EOI agreement for non-taxation purposes, but this has always been refused; China never asked its partners to use the information received through EOIR for non-tax purposes. China has received requests from partners to use the information exchanged for non-tax purposes and declined the requests.

243. Any tax official who discloses confidential information, is subject to administrative sanctions under the Civil Servant Law (Art. 53). Sanctions include warning, demerit, serious demerit, demotion, and removal from post and dismissal (Art. 56). In addition, the Chinese authorities indicated that Article 398 of the Criminal Law protects State secrets under the Law on Guarding State Secrets and any public official of a State organ who intentionally or negligently divulges State secrets, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention. While information exchanged for tax purposes is not expressly covered in this Law, the Chinese authorities explained that the three levels of confidentiality in the EOI Protocol correspond to State secrets level and therefore the Criminal Law applies in case of breach of the confidentiality of information exchanged. This interpretation has not been tested in practice as no breach has been detected.

### *Confidentiality in the process of obtaining information*

244. The tax authorities may contact an information holder (taxpayer or third party) to obtain information pursuant to an EOI request. This may either occur through sending a Notice on Tax Matters or by visiting the information holder (see element B.1 of this report).

245. Article 27 of the EOI Protocol allows the tax authorities to disclose the purpose of the information collection (international exchange) as well as the source of the information (requesting jurisdiction) when collecting information

for EOI purposes. This general rule is in line with the international standard. In addition, exceptions apply in cases where (i) there is a clear suspicion that a person concerned violated tax obligations and any notification may affect the investigation into the relevant case; or (ii) the requesting jurisdiction requests not to notify the persons concerned (Art. 27 EOI Protocol).

246. According to the Chinese authorities, in practice the Notice on Tax Matters only quotes the domestic access power and contains the list of the requested information. Correspondingly, the purpose of the information collection and the sources of the information are normally also not communicated when obtaining the information through visiting the information holder.

247. The Chinese authorities indicate that there is no specific regulation or rule stipulating that the persons concerned by an EOI request have the right to access the information related to the EOI request. The tax authority will determine whether the persons concerned should be notified or not. In practice, for confidential purposes, usually the minimum disclosure principle is followed and the taxpayer or the information holder is not informed of the content of the EOI request.

## 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.

### *C.4.1. Exceptions to requirement to provide information*

248. The international standard allows requested parties not to supply information in response to a request in certain identified situations where this might reveal a trade, business or other secret. The 2012 Report concluded that China's EOI instruments and their application in practice concerning the rights and safeguards of taxpayers and third parties was in line with the standard. This continues to be the case. China reports that, during the review period, there have been no instances where professional privileges or any other exceptions have been claimed in order to not provide information to the tax authorities in cases related to EOI.

249. The table of determination and rating remains as follows:

| Legal and Regulatory Framework                |
|-----------------------------------------------|
| <b>Determination: The element is in place</b> |
| Practical implementation of the standard      |
| <b>Rating: Compliant</b>                      |

## 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.

250. The 2012 Report did not raise any issues with the timeliness and organisational process related to responding to EOI requests received by China, indicating that the majority were responded to within 90 days.

251. Over the period under review (1 October 2015 to 30 September 2018), China received 584 requests for information mainly from Japan, France and India, and sent about 130 EOI requests to its partners, mainly Hong Kong (China), Japan and Korea.

252. For the EOI requests received in the current review period, 39% received a final response within 90 days, but most requests were responded to within 180 days and almost all within one year. These timelines are longer than the ones in the 2012 Report, which may for a large part be explained by the requests having become more complex and more frequently requiring gathering information from a third party. Peers indicated that they were generally satisfied with the information received and raised no concerns in respect of the timeliness of the final response. The organisational processes in China for obtaining and exchanging information are also compatible with effective EOI.

253. The provision of status updates, however, needs improvement, as they were only sent in half of the cases where this was required and peers raised concerns with this. A recommendation to address this issue has been made.

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

| Legal and Regulatory Framework                                                                |                                                                                                                                                                     |                                                                                                                                                                                                               |
|-----------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>This element involves issues of practice. Accordingly, no determination has been made.</b> |                                                                                                                                                                     |                                                                                                                                                                                                               |
| Practical Implementation of the standard                                                      |                                                                                                                                                                     |                                                                                                                                                                                                               |
|                                                                                               | Underlying Factor                                                                                                                                                   | Recommendation                                                                                                                                                                                                |
| <b>Deficiencies identified</b>                                                                | In respect of the EOI requests received in the review period, China has only sent a status update to its EOI partners in half of the cases where this was required. | China should provide a status update to its EOI partners within 90 days of receipt of an EOI request in all cases where the competent authority is unable to provide a substantive response within that time. |
| <b>Rating: Compliant</b>                                                                      |                                                                                                                                                                     |                                                                                                                                                                                                               |

### *C.5.1. Timeliness of responses to requests for information*

255. Over the period under review (1 October 2015 to 30 September 2018), China received 584 requests for information and its main EOI partners were Japan, France and India. The following table relates to the requests received during the review period and gives an overview of response times needed by China to provide a final response to these requests, together with a summary of other relevant factors impacting the effectiveness of China's exchange of information practice during the review period.

**Statistics on response time**

|                                                                                                                                               | 1 Oct 2015-<br>30 Sep 2016 |     | 1 Oct 2016-<br>30 Sep 2017 |     | 1 Oct 2017-<br>30 Sep 2018 |     | Total |     |
|-----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|-----|----------------------------|-----|----------------------------|-----|-------|-----|
|                                                                                                                                               | Num.                       | %   | Num.                       | %   | Num.                       | %   | Num.  | %   |
| Total number of requests received [A+B+C+D+E+F]                                                                                               | 198                        | 100 | 225                        | 100 | 161                        | 100 | 584   | 100 |
| Full response: ≤ 90 days                                                                                                                      | 71                         | 36  | 96                         | 43  | 60                         | 37  | 227   | 39  |
| ≤ 180 days (cumulative)                                                                                                                       | 146                        | 74  | 165                        | 73  | 141                        | 88  | 452   | 77  |
| ≤ 1 year (cumulative)                                                                                                                         | [A] 174                    | 88  | 197                        | 88  | 154                        | 96  | 525   | 90  |
| > 1 year                                                                                                                                      | [B] 6                      | 3   | 10                         | 4   | 0                          | -   | 16    | 3   |
| Declined for valid reasons                                                                                                                    | [C] 18                     | 9   | 15                         | 7   | 7                          | 4   | 40    | 7   |
| Requests withdrawn by requesting jurisdiction                                                                                                 | [D] 0                      | -   | 3                          | 1   | 0                          | -   | 3     | <1  |
| Failure to obtain and provide information requested                                                                                           | [E] 0                      | -   | 0                          | -   | 0                          | -   | 0     | -   |
| Requests still pending at date of review                                                                                                      | [F] 0                      | -   | 0                          | -   | 0                          | -   | 0     | -   |
| <b>Status updates</b>                                                                                                                         |                            |     |                            |     |                            |     |       |     |
| Outstanding cases after 90 days                                                                                                               | 109                        | 100 | 114                        | 100 | 94                         | 100 | 317   | 100 |
| Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided > 90 days) | 47                         | 43  | 54                         | 47  | 61                         | 65  | 162   | 51  |

*Notes:* a. China counts each request letter as one request, irrespective of the number of taxpayers involved.

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, excluding the time taken by the requesting jurisdiction to provide clarifications.

256. In the 2012 Report, only a general sense was provided regarding the timeliness of responses to EOI requests. This was based on the peer input, which indicated that 85% of the EOI requests were answered within 90 days in relation to 862 requests received in the period 2009-11. It is not possible to fully compare this statistic with the table above as the calculation methods might be different, but it is clear that there has been a decline in the proportion of responses provided within 90 days. The vast majority of EOI requests are still responded to within 180 days and almost all within one year.

257. In general, one factor that could cause longer response times to EOI requests could be the time taken by the requesting jurisdiction to respond to requests for clarification sent by China, as was done in 107 cases (see C.1.1 of this report). However, China has indicated that this time is excluded from the response times in the table above. This means that in reality the response times in these 107 cases have been longer than reflected in the table. More detailed information on how much longer this has been, is not available.

258. The organisational processes and resources of the Chinese Competent Authority, as described below under C.5.2, seem compatible with effective EOI. The same applies to the processes described under element B.1 of this report.

259. A possible explanation for the longer response times is that, as already noted under element B.1 of this report, China observed an increased complexity of EOI requests received. As an illustration, the Chinese authorities explained that although the number of requests has decreased compared to the 2012 Report, the number of taxpayers under investigation has increased by approximately 36%. This means that often the information for one EOI request must be collected by different local tax authorities, increasing the chances of delays and adding to the time it takes to collate all information in a comprehensive response (where it does not make sense to send partial information). In addition, EOI requests include more information which is not readily available in the database of the tax authorities, which means it has to be obtained from various sources. This means that it would generally take a little longer to collect all the requested information and provide a full response. The peer input confirms that EOI requests may have been complex.

260. Peers have not raised concerns with the timeliness of responses from China to their EOI requests. Considering all of these factors, it is concluded that the general timeliness of China's responses to EOI requests is satisfactory.

### *Communication with partners*

261. Peers report that they enjoy a good working relationship with the GCCD. Communication occurs in various ways depending on the partner, and can be by regular post, courier or encrypted email. Some partners, including one of its main partners, also have a liaison officer in China who facilitates the exchange of information operations. Some peers noted that China needed to receive a hardcopy of the EOI request. This may have caused some minor delays where the EOI request was initially sent by encrypted email, because the GCCD would wait with processing the request until it had received a hardcopy as well. The Chinese authorities indicated that this was indeed the practice for most of the review period, but that the GCCD now starts processing EOI requests received by electronic means immediately (a hardcopy is still requested for official documentation).

262. One area where improvement is needed, is in the provision of status updates. As the statistics show, a status update has only been provided by China in half of the cases where this was required. This is also confirmed by peers, who raised concerns with this and indicated that they often had to take the initiative in order to be informed about the status of their EOI request. Some peers provided more general comments indicating that communication with the Chinese Competent Authority could be improved.

263. Sending status updates is a manual process, and while the database used by the GCCD (see below under C.5.2) contains the information on whether a response is overdue, it depends on manual checking and intervention whether a status update is sent. In a few cases China considered a status update not necessary and not to confuse EOI partners when a full response was issued soon after the 90 day deadline. While some improvement is noted in the last 12 months of the review period, it is recommended that China provides a status update to its EOI partners within 90 days of receipt of an EOI request in all cases where the competent authority is unable to provide a substantive response within that time.

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

264. As mentioned under element B.1 of this report, the competent authority function in China is carried out by the GCCD. The details of the main contacts in the GCCD are available in the Global Forum's Competent Authorities secure database.

265. The GCCD currently has six staff working on EOI. This is double the amount of staff compared to the 2012 Report, which included a recommendation for China to devote additional personnel resources to the GCCD to ensure effective management of China's EOI programme. Since then, the number of incoming EOI requests has decreased from almost 290 per year to an average of less than 200 per year, but the number of taxpayers involved in each request letter has increased. The workload of the GCCD in relation to automatic exchange of information has also increased. The current amount of staff seems to be sufficient to deal with the number of incoming EOI requests, in particular considering that the actual collection of information is handled by the tax authorities at a local level. The recommendation from the 2012 Report is therefore considered addressed.

266. Staff working on EOI in tax authorities at all levels receive training on EOI and international taxation. Training programmes include training courses by international organisations such as the Global Forum, the Organisation for Economic Co-operation and Development (OECD) and the Study Group on Asian Tax Administration and Research (SGATAR). In-house trainings organised by the STA and the provincial tax authorities cover approximately 1 000 staff each year.

*Incoming requests*

267. The process for handling incoming EOI requests follows the principles laid down in the EOI Protocol, and starts with recording the request in a database. Since 2018, an electronic international taxation management platform is in place, which facilitates the tracking of the progress and the collection of statistics.

268. The GCCD then checks whether the request is valid, including whether it was made by an authorised competent authority, whether it complies with the relevant international agreement and whether it meets the foreseeably relevant standard. This has resulted in 107 requests for clarification sent by China in respect of EOI requests received in the review period (see element C.1.1 of this report), as well the declining of 40 EOI requests. China reports that it has only declined EOI requests for three reasons:

- the taxpayer under investigation is located in Hong Kong (China) or Macau (China), which are independent tax jurisdictions
- the requested information relates to a category of tax which is not covered by the relevant international agreement
- the EOI request is drafted in a language other than Chinese or English.

269. These are all valid reasons for declining an EOI request, and peers have not raised any concerns in this respect.

270. If it has been determined that an EOI request is valid, the GCCD will forward it to the relevant provincial tax authority (or authorities in cases where information must be collected from different sources falling under the jurisdiction of different provinces) with a specific deadline, except in cases where the information can be obtained by the GCCD directly. This is done through the electronic international taxation management platform. Specific instructions<sup>15</sup> have been issued upon the introduction of this platform on how to operate it.

271. The platform includes checks for every step and forces these steps to be followed. Upon receipt of a request, a designated person in the provincial office allocates the request to a municipal office for processing. This allocation is then reviewed by another person and approved by a designated approver. A similar concept then applies at the level of the municipal office, where a designated person collects the information, which is then reviewed by another person. The case then goes back to the provincial office, where a designated person checks again whether all of the requested information has been collected, whether the attachments are complete and whether the

15. Notice on Matters Related to International Exchange of Tax Information (Shuizongfa [2018] No. 65).

draft response letter addresses all the questions. This is then again reviewed by another person and approved by a designated approver before being sent back to the GCCD.

272. Finally, the GCCD reviews and sends the response letter to the requesting jurisdiction, and may return the case to the provincial office if it does not meet the requirements. The multiple checks along the way ensure that the quality of the responses is adequate, which corresponds to the comments from peers that they are generally satisfied with the responses received.

273. The performance of provincial and municipal tax offices is rated on an annual basis, and EOI is one of the performance indicators. The GCCD reviews the performance on EOI and looks at the quality and timeliness of the responses on a case-by-case basis. This is meant to motivate the provincial and municipal tax offices to provide timely and high-quality responses. The GCCD also monitors pending cases. When the deadline given to local tax authorities is approaching, the platform gives an alert. The GCCD then contacts the relevant local tax authorit(y)(ies) to identify whether a delay is expected. Based on the specific case, the GCCD decides to either maintain or extend the deadline.

### *Outgoing requests*

274. The organisational process for outgoing EOI requests is similar to that for incoming requests. An outgoing EOI request would usually be initiated by a tax official in a municipal office. A designated person will then include basic information in a form on the electronic international taxation management platform, upload attachments, including a report in Chinese, a request letter in English and other relevant documents. If the requested information is urgent and the requested jurisdiction should be asked to reply quickly, the designated person must explain the reasons in the description and select a deadline.

275. The request and accompanying documentation is then reviewed by another person in the municipal office before being forwarded to the provincial office. At the provincial office, a designated person performs another check. This is again reviewed by a reviewer and an approver at the same time before being sent to the GCCD. Where the reviewer and the approver have different opinions, the opinion of the approver prevails. The GCCD performs a final check of the request and accompanying documents and decides whether the EOI request can be sent.

276. During the review period, China sent approximately 130 EOI requests to its partners, mainly Hong Kong (China), Japan and Korea. All peers providing input to this review indicated that the requests they received

were complete and contained all the elements required for an EOI request and thus met the foreseeably relevant standard. China reported that it received a request for clarification in four cases only. Considering the various checks that are in place in the internal organisational process and the peer input received, it can be concluded that the quality of China's outgoing EOI requests during the review period has been adequate.

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

277. There are no factors or issues identified that could unreasonably, disproportionately or unduly restrict effective EOI in China.

## Annex 1: List of in-text recommendations

The assessment team or the Peer Review Group may identify issues that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, 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. A list of such recommendations is presented below.

- **Elements A.1 and A.3:** To ensure that in practice an obligated institution always understands the equity and control structure of a company and as a result can reliably identify the beneficial owner(s), China should monitor how obligated institutions have implemented the requirement that reasonable measures be taken to understand the equity or control structure of clients who are not natural persons (paragraphs 61, 98, 118 and 161).
- **Elements A.1 and A.3:** Since there is no explicit guidance in any binding text on the frequency of ongoing CDD, China is recommended to clarify the rules for updating the information obtained during the CDD process (paragraphs 62, 98, 118 and 161).
- **Elements A.1 and A.3:** While the 95% coverage of existing customers represents a significant effort, China should ensure that obligated institutions conduct customer due diligence on all existing customers in accordance with the rules put in place by the 2017 AML CDD Notice (paragraphs 68, 98, 118 and 161).
- **Element B.1:** China should ensure that the beneficial ownership information requested pursuant to an EOI request is obtained from or checked with a source established with the purpose of containing beneficial ownership information in all cases (paragraph 176).
- **Element B.1:** In cases where only the name of the account holder is provided as an identifier, China should not systematically ask the requesting jurisdiction for additional identification information

before attempting to collect the information from a bank, but take into account all circumstances of the specific EOI request in making a decision on the best way forward (paragraphs 169 and 185).

- **Element C.2:** As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, China should continue to conclude EOI agreements with any new relevant partner who would so require (paragraph 229).

## Annex 2: List of China's EOI mechanisms

### Bilateral international agreements for the exchange of information

|    | EOI partner                         | Type of agreement | Signature         | Entry into force  |
|----|-------------------------------------|-------------------|-------------------|-------------------|
| 1  | Albania                             | DTC               | 13 September 2004 | 28 July 2005      |
| 2  | Algeria                             | DTC               | 6 November 2006   | 27 July 2007      |
| 3  | Angola                              | DTC               | 9 October 2018    | Ratified by China |
| 4  | Argentina                           | TIEA              | 13 December 2010  | 16 September 2011 |
|    |                                     | DTC               | 2 December 2018   |                   |
| 5  | Armenia                             | DTC               | 5 May 1996        | 28 November 1996  |
| 6  | Australia                           | DTC               | 17 November 1988  | 28 December 1990  |
| 7  | Austria                             | DTC               | 10 April 1991     | 1 November 1992   |
| 8  | Azerbaijan                          | DTC               | 17 March 2005     | 17 August 2005    |
| 9  | Bahamas                             | TIEA              | 1 December 2009   | 28 August 2010    |
| 10 | Bahrain                             | DTC (+ Protocol)  | 16 May 2002       | 8 August 2002     |
| 11 | Bangladesh                          | DTC               | 12 September 1996 | 10 April 1997     |
| 12 | Barbados                            | DTC (+ Protocol)  | 15 May 2000       | 27 October 2000   |
| 13 | Belarus                             | DTC               | 17 January 1995   | 3 October 1996    |
| 14 | Belgium                             | DTC               | 7 October 2009    | 29 December 2013  |
| 15 | Bermuda                             | TIEA              | 2 December 2010   | 31 December 2011  |
| 16 | Bosnia and Herzegovina <sup>a</sup> | DTC               | 2 December 1988   | 16 December 1989  |
| 17 | Botswana                            | DTC               | 11 April 2012     | 19 September 2018 |
| 18 | Brazil                              | DTC               | 5 August 1991     | 6 January 1993    |
| 19 | British Virgin Islands              | TIEA              | 7 December 2009   | 30 December 2010  |
| 20 | Brunei Darussalam                   | DTC               | 21 September 2004 | 29 December 2006  |
| 21 | Bulgaria                            | DTC (+ Protocol)  | 6 November 1989   | 25 May 1990       |
| 22 | Cambodia                            | DTC               | 13 October 2016   | 26 January 2018   |
| 23 | Canada                              | DTC               | 12 May 1986       | 29 December 1986  |

|    | EOI partner         | Type of agreement | Signature         | Entry into force  |
|----|---------------------|-------------------|-------------------|-------------------|
| 24 | Cayman Islands      | TIEA              | 26 September 2011 | 15 November 2012  |
| 25 | Chile               | DTC (+ Protocol)  | 25 May 2015       | 8 August 2016     |
| 26 | Congo               | DTC               | 5 September 2018  | Ratified by China |
| 27 | Croatia             | DTC               | 9 January 1995    | 18 May 2001       |
| 28 | Cuba                | DTC               | 13 April 2001     | 17 October 2003   |
| 29 | Cyprus <sup>c</sup> | DTC               | 25 October 1990   | 5 October 1991    |
| 30 | Czech Republic      | DTC               | 28 August 2009    | 4 May 2011        |
| 31 | Denmark             | DTC               | 16 June 2012      | 27 December 2012  |
| 32 | Ecuador             | DTC               | 21 January 2013   | 6 March 2014      |
| 33 | Egypt               | DTC               | 13 August 1997    | 24 March 1999     |
| 34 | Estonia             | DTC (+ Protocol)  | 12 May 1998       | 8 January 1999    |
| 35 | Ethiopia            | DTC               | 14 May 2009       | 25 December 2012  |
| 36 | Finland             | DTC               | 25 May 2010       | 25 November 2010  |
| 37 | France              | DTC               | 26 November 2013  | 28 December 2014  |
| 38 | Gabon               | DTC               | 1 September 2018  | Ratified by China |
| 39 | Georgia             | DTC               | 22 June 2005      | 10 November 2005  |
| 40 | Germany             | DTC               | 28 March 2014     | 6 April 2016      |
| 41 | Greece              | DTC               | 3 June 2002       | 11 November 2005  |
| 42 | Guernsey            | TIEA              | 27 October 2010   | 17 August 2011    |
| 43 | Hong Kong (China)   | DTC (+ Protocols) | 21 August 2006    | 8 December 2006   |
| 44 | Hungary             | DTC               | 17 June 1992      | 31 December 1994  |
| 45 | Iceland             | DTC               | 3 June 1996       | 5 February 1997   |
| 46 | India               | DTC (+ Protocol)  | 18 July 1994      | 19 November 1994  |
| 47 | Indonesia           | DTC (+ Protocol)  | 7 November 2001   | 25 August 2003    |
| 48 | Iran                | DTC               | 20 April 2002     | 14 August 2003    |
| 49 | Ireland             | DTC               | 19 April 2000     | 29 December 2000  |
| 50 | Isle of Man         | TIEA              | 26 October 2010   | 14 August 2011    |
| 51 | Israel              | DTC               | 8 April 1995      | 22 December 1995  |
| 52 | Italy               | DTC               | 31 October 1986   | 13 December 1989  |
|    |                     | New DTC           | 23 March 2019     |                   |
| 53 | Jamaica             | DTC               | 3 June 1996       | 15 March 1997     |
| 54 | Japan               | DTC               | 6 September 1983  | 26 June 1984      |
| 55 | Jersey              | TIEA              | 29 October 2010   | 10 November 2011  |

|    | EOI partner                      | Type of agreement | Signature         | Entry into force  |
|----|----------------------------------|-------------------|-------------------|-------------------|
| 56 | Kazakhstan                       | DTC               | 12 September 2001 | 27 July 2003      |
| 57 | Kenya                            | DTC               | 21 September 2017 | Ratified by China |
| 58 | Korea                            | DTC (+ Protocol)  | 28 March 1994     | 27 September 1994 |
| 59 | Kuwait                           | DTC               | 25 December 1989  | 20 July 1990      |
| 60 | Kyrgyzstan                       | DTC               | 24 June 2002      | 29 March 2003     |
| 61 | Lao People's Democratic Republic | DTC               | 25 January 1999   | 22 June 1999      |
| 62 | Latvia                           | DTC (+ Protocol)  | 7 June 1996       | 27 January 1997   |
| 63 | Liechtenstein                    | TIEA              | 27 January 2014   | 2 August 2014     |
| 64 | Lithuania                        | DTC               | 3 June 1996       | 18 October 1996   |
| 65 | Luxembourg                       | DTC               | 12 March 1994     | 28 July 1995      |
| 66 | Macau (China)                    | DTC (+ Protocols) | 27 December 2003  | 30 December 2003  |
| 67 | Malaysia                         | DTC (+ Protocol)  | 23 November 1985  | 14 September 1986 |
| 68 | Malta                            | DTC               | 18 October 2010   | 25 August 2011    |
| 69 | Mauritius                        | DTC (+ Protocol)  | 1 August 1994     | 4 May 1995        |
| 70 | Mexico                           | DTC               | 12 September 2005 | 1 March 2006      |
| 71 | Moldova                          | DTC               | 7 June 2000       | 26 May 2001       |
| 72 | Mongolia                         | DTC               | 26 August 1991    | 23 June 1992      |
| 73 | Morocco                          | DTC               | 27 August 2002    | 16 August 2006    |
| 74 | Nepal                            | DTC               | 14 May 2001       | 31 December 2010  |
| 75 | Netherlands                      | DTC               | 31 May 2013       | 31 August 2014    |
| 76 | New Zealand                      | DTC               | 16 September 1986 | 17 December 1986  |
|    |                                  | New DTC           | 1 April 2019      |                   |
| 77 | Nigeria                          | DTC               | 15 April 2002     | 21 March 2009     |
| 78 | North Macedonia                  | DTC               | 9 June 1997       | 29 November 1997  |
| 79 | Norway                           | DTC               | 25 February 1986  | 21 December 1986  |
| 80 | Oman                             | DTC               | 25 March 2002     | 20 July 2002      |
| 81 | Pakistan                         | DTC (+ Protocols) | 15 November 1989  | 27 December 1989  |
| 82 | Papua New Guinea                 | DTC               | 14 July 1994      | 16 August 1995    |
| 83 | Philippines                      | DTC               | 18 November 1999  | 23 March 2001     |
| 84 | Poland                           | DTC               | 7 June 1988       | 7 January 1989    |
| 85 | Portugal                         | DTC               | 21 April 1998     | 7 June 2000       |
| 86 | Qatar                            | DTC               | 2 April 2001      | 21 October 2008   |

|     | EOI partner          | Type of agreement | Signature         | Entry into force  |
|-----|----------------------|-------------------|-------------------|-------------------|
| 87  | Romania              | DTC               | 4 July 2016       | 17 June 2017      |
| 88  | Russia               | DTC (+ Protocol)  | 13 October 2014   | 9 April 2016      |
| 89  | San Marino           | TIEA              | 9 July 2012       | 30 April 2013     |
| 90  | Saudi Arabia         | DTC               | 23 January 2006   | 1 September 2006  |
| 91  | Serbia <sup>c</sup>  | DTC               | 21 March 1997     | 1 January 1998    |
| 92  | Seychelles           | DTC               | 26 August 1999    | 17 December 1999  |
| 93  | Singapore            | DTC (+ Protocols) | 11 July 2007      | 18 September 2007 |
| 94  | Slovak Republic      | DTC               | 11 June 1987      | 23 December 1987  |
| 95  | Slovenia             | DTC               | 13 February 1995  | 27 December 1995  |
| 96  | South Africa         | DTC               | 25 April 2000     | 7 January 2001    |
| 97  | Spain                | DTC               | 22 November 1990  | 20 May 1992       |
|     |                      | New DTC           | 28 November 2018  |                   |
| 98  | Sri Lanka            | DTC               | 11 August 2003    | 22 May 2005       |
| 99  | Sudan                | DTC               | 30 May 1997       | 9 February 1999   |
| 100 | Sweden               | DTC (+ Protocols) | 16 May 1986       | 3 January 1987    |
| 101 | Switzerland          | DTC               | 25 September 2013 | 15 November 2014  |
| 102 | Syrian Arab Republic | DTC               | 31 October 2010   | 1 September 2011  |
| 103 | Tajikistan           | DTC               | 27 August 2008    | 28 March 2009     |
| 104 | Thailand             | DTC               | 27 October 1986   | 29 December 1986  |
| 105 | Trinidad and Tobago  | DTC               | 18 September 2003 | 22 May 2005       |
| 106 | Tunisia              | DTC               | 16 April 2002     | 23 September 2003 |
| 107 | Turkey               | DTC               | 23 May 1995       | 20 January 1997   |
| 108 | Turkmenistan         | DTC               | 13 December 2009  | 30 May 2010       |
| 109 | Uganda               | DTC               | 11 January 2012   | Ratified by China |
| 110 | Ukraine              | DTC               | 4 December 1995   | 18 October 1996   |
| 111 | United Arab Emirates | DTC               | 1 July 1993       | 14 July 1994      |
| 112 | United Kingdom       | DTC (+ Protocol)  | 27 June 2011      | 13 December 2013  |
| 113 | United States        | DTC               | 30 April 1984     | 21 November 1986  |
| 114 | Uzbekistan           | DTC (+ Protocol)  | 3 July 1996       | 3 July 1996       |
| 115 | Venezuela            | DTC               | 17 April 2001     | 23 December 2004  |
| 116 | Viet Nam             | DTC               | 17 May 1995       | 18 October 1996   |
| 117 | Zambia               | DTC               | 26 July 2010      | 30 June 2011      |
| 118 | Zimbabwe             | DTC               | 1 December 2015   | 29 September 2016 |

*Notes:* a. China continues to apply the provisions of the DTC with the former Socialist Federal Republic of Yugoslavia (SFRY) for its relationship with Bosnia and Herzegovina.

- b. 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.

- c. Serbia is the legal successor of the state union of Serbia and Montenegro, which ceased to exist on 5 June 2006. The DTC with the former SFRY continued to apply in relations between “Serbia and Montenegro” and China. Following the declarations of independence of both Serbia and Montenegro in June 2006, the DTC continues to apply between Serbia and China. While Montenegro has declared that it will honour all tax treaties that applied with respect to “Serbia and Montenegro”, application of the treaty with Montenegro has not (yet) been confirmed by China.

## **Multilateral international agreements providing for the exchange of information**

### ***Convention on Mutual Administrative Assistance in Tax Matters (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).<sup>16</sup> 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 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.

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

The amended Convention was signed by China on 27 August 2013 and entered into force on 1 February 2016 in China. China can exchange information with all other jurisdictions where the Multilateral Convention is in force, except with Hong Kong (China) and Macau (China).

The amended Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by the People's Republic of China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by the People's Republic of China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), 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, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the following are the jurisdictions that have signed the Multilateral Convention, but where it is not yet in force: Armenia (entry into force on 1 June 2020), Benin, Bosnia and Herzegovina, Burkina Faso, Cabo Verde (entry into force on 1 May 2020), Gabon, Kenya, Liberia, Mauritania, Mongolia (entry into force on 1 June 2020), Montenegro (entry into force on 1 May 2020), Oman, Paraguay, Philippines, Thailand (signed on 3 June 2020),<sup>17</sup> Togo and the United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

17. 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.

### **Annex 3: Methodology for the review**

The reviews are based on the 2016 Terms of Reference, 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.

This evaluation is based on the 2016 ToR, and has been prepared using the 2016 Methodology. 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 30 April 2020, China's EOIR practice in respect of EOI requests made and received during the three year period from 1 October 2015 to 30 September 2018, China's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by China during the on-site visit that took place from 12-14 November 2019 in Beijing, China.

#### **Authorities and organisations interviewed during the on-site visit**

All China Lawyers Association

China Banking and Insurance Regulatory Commission

China Notary Association

China Securities Regulatory Commission

China Trust Registration Company

Chinese Institute of Certified Public Accountants

Ministry of Civil Affairs

Ministry of Finance

People's Bank of China

State Administration for Market Regulation

State Taxation Administration

**List of laws, regulations and other materials received*****Commercial legislation***

Accounting Law  
Accounting System for Business Enterprises  
Archives Law  
Civil Procedure Law  
Company Law  
Contract Law  
General Principles of the Civil Law  
Interim Measures for the Recordation Administration of the Formation and Modification of Foreign-Funded Enterprises  
Law on Foreign-funded Enterprises  
Measures for the Administration of Accounting Archives  
Measures for the Registration of Partnerships  
Notice of the Ministry of Finance on Strengthening the Regulation of the Industry of Certified Public Accounts  
Notice of the State Administration for Industry and Commerce and the State Administration of Taxation on Issues concerning the Clean-up of Non-Operating Enterprises under Long-Term Suspension  
Partnership Law  
Provisional Regulation on Publicity of Enterprise Information  
Provisions on the Administration of Registration of the Registered Capital of Companies  
Regulation on the Administration of Company Registration  
Trust Law

***AML legislation***

Anti-Money Laundering Law  
Measures for the Administration of Anti-Money Laundering and Combating the Financing of Terrorism of Payment Institutions  
Measures for the Administration of Anti-money Laundering Work in the Insurance Sector

Notice of the General Office of the People's Bank of China on Further Strengthening Anti-Money Laundering and Countering Financing of Terrorism (2018 AML/CFT Notice)

Notice of the Ministry of Housing and Urban-Rural Development, the People's Bank of China, and the China Banking Regulatory Commission on Regulating the Financing of Housing Purchase and Strengthening Anti-money Laundering Work

Notice of the People's Bank of China on Issues Concerning More Effectively Conducting Identification of Beneficial Owners (2018 AML CDD Notice)

Notice of the People's Bank of China of Strengthening Anti-Money Laundering and Countering Financing of Terrorism at Precious Metal Trading Venues

Notice of the People's Bank of China on Strengthening Relevant Work on Customer Identification for Anti-Money Laundering (2017 AML CDD Notice)

Provisions on Anti-money Laundering through Financial Institutions

Rules for Financial Institutions on Customer Identification and Retention of Customer Identity Data and Transaction Records (AML CDD Rules)

### ***Regulatory legislation***

Administrative Measures for the Disclosure of Information of Listed Companies

Banking Supervision Law

Guidance Notes on the Examination of Natural Persons by Notary Offices

Law on the People's Bank of China

Law on Commercial Banks

Securities Law

Notary Law

Lawyers Law

Measures for the Administration of Lawyers' Business Archives

Measures for the Administration of Notarial Archives

Measures for the Administration of RMB Bank Settlement Accounts

Measures for the Administration of Securities Registration and Clearing  
Measures for the Administration of Trust Companies  
Measures for the Administration of Trust Companies' Trust Plans of Assembled Funds  
Measures for the Administration of Trust Registration  
Measures for the Sale of Securities Investment Funds  
Notice of the General Office of the State Council on Regulating and Developing Regional Equity Markets  
Notice of the State Administration of Foreign Exchange on Issues concerning Foreign Exchange Administration of the Overseas Investment and Financing and the Round-tripping Investment Made by Domestic Residents through Special-Purpose Companies  
Opinions of the General Office of the China Banking Regulatory Commission on Further Strengthening the Risk Supervision of Trust Companies  
Regulation on the Administration of Foundations  
Rules for Notarisation Procedures  
Work Rules for Legal Counsels

### ***Tax legislation***

Law on the Administration of Tax Collection  
Enterprise Income Tax Law  
Interim Measures for the Administration of Taxation on Non-residents for Contracting Engineering Projects and Providing Services  
Measures for the Administration of Tax Registration  
Notice of the STA on Matters Related to International Exchange of Tax Information  
Protocol for the International Exchange of Tax Information  
Provisions on the Scope of Collection and Preservation Period in the Document Archiving of Enterprises  
Regulation on the Implementation of the Enterprise Income Tax Law  
Rules for the Implementation of the Law on the Administration of Tax Collection  
Rules for Tax Administrative Appeal

## *Miscellaneous*

Administrative Appeal Law

Constitution

## **Current and previous reviews**

This report provides the outcomes of the second peer review of China's implementation of the EOIR standard conducted by the Global Forum. China previously underwent a combined EOIR peer review in 2012, which evaluated China's legal and regulatory framework as well as its implementation in practice. This review was conducted according to the ToR approved by the Global Forum in February 2010 and the Methodology used in the first round of reviews. The current report contains the first peer review of China under the 2016 ToR and the Methodology used in the second round of reviews.

Information on both peer reviews is provided in the table below.

| <b>Review</b>       | <b>Assessment team</b>                                                                                                                                                                 | <b>Period under review</b>         | <b>Legal framework as of</b> | <b>Date of adoption by Global Forum</b>        |
|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|------------------------------|------------------------------------------------|
| Round 1<br>Combined | Ms Silke Voß of the Federal Ministry of Finance of Germany; Ms Shauna Pittman of the Canada Revenue Agency; and Mr Stewart Brant and Mr Rémi Verneau from the Global Forum Secretariat | 2009-11                            | April 2012                   | June 2012<br>(rating adopted in November 2013) |
| Round 2             | Mr Michael Braun of the Federal Ministry of Finance of Germany; Mr Suyash Divekar of Inland Revenue New Zealand; and Mr Mikkel Thunnissen from the Global Forum Secretariat            | 1 October 2015 – 30 September 2018 | April 2020                   | August 2020                                    |

## **Annex 4: China's response to the review report<sup>18</sup>**

China would like to record its heartfelt appreciation again for the hard work done by the assessment team, the Secretariat and all Peer Review Group members in the whole peer review process.

China will continue to work with all Global Forum members and other relevant jurisdictions to promote the international standard of transparency and exchange of information for tax purposes worldwide.

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18. 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 PEOPLE'S REPUBLIC OF CHINA 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 the People's Republic of China.



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