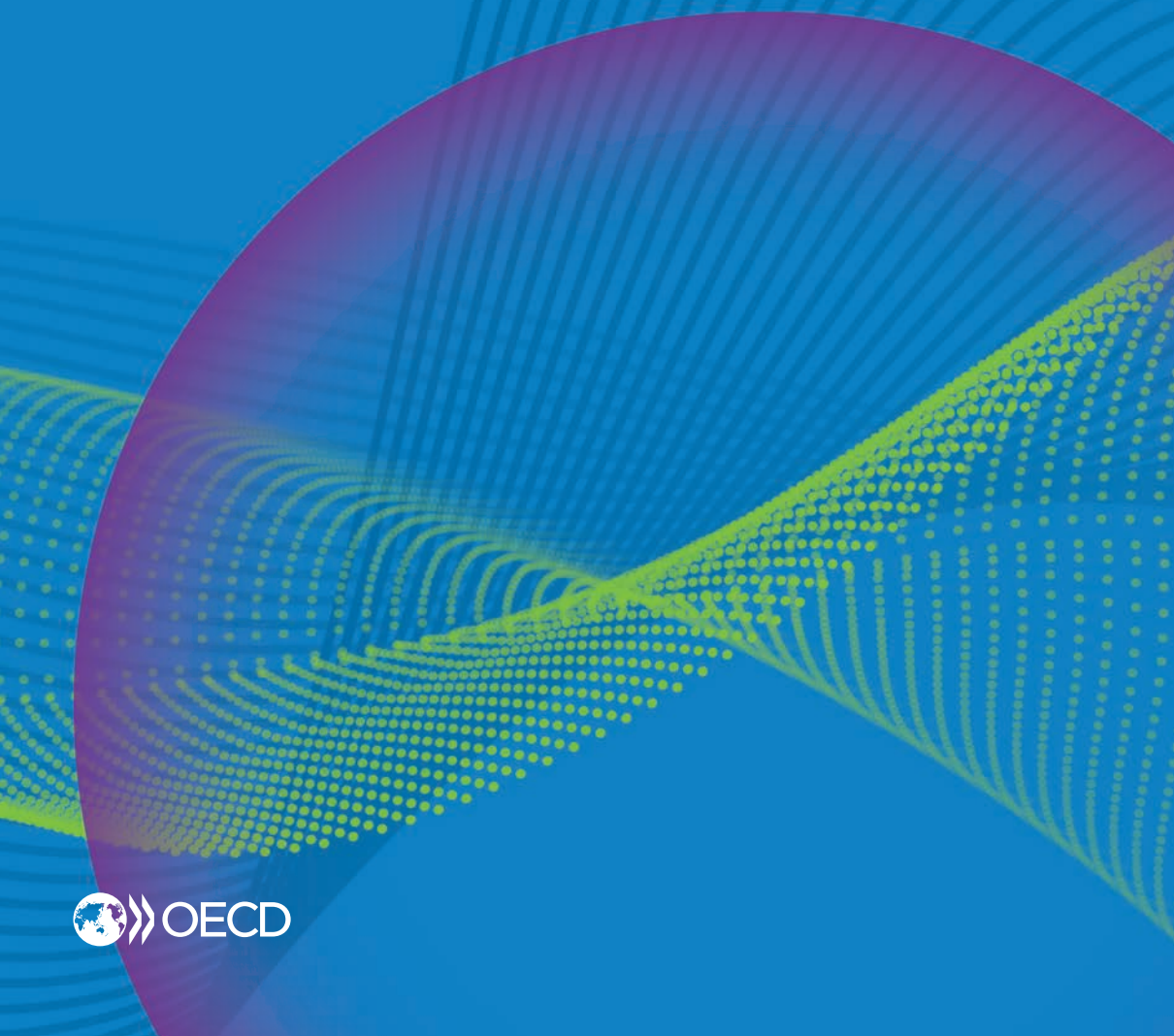
GLOBAL FORUM ON
TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

EL SALVADOR

2022 (Second Round, Phase 1)



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Global Forum on Transparency and Exchange of Information for Tax Purposes: El Salvador 2022 (Second Round, Phase 1)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

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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/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

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

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

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

More information

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

Abbreviations and acronyms

2016 TOR	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
BCR	Central Reserve Bank
CDD	Customer Due Diligence
Central American Convention	Multilateral Convention on the Mutual Assistance and Technical Co-operation among Central American Tax and Customs Administrations Convention
CFATF	Caribbean Financial Action Task Force
DNFBP	Designated non-financial businesses or professions
DGII	General Directorate of Internal Taxes
DTC	Double Tax Convention
EOI	Exchange of Information
EOIR	Exchange of Information on Request
FATF	Financial Action Task Force
FIU	Financial Investigation Unit
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
IAS	International Accounting Standards
IFRS	International Financial Reporting Standards
MER	Mutual Evaluation Report
INSAFOCOOP	El Salvadoran Co-operatives Promotion Institute

Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
NIT	Taxpayer Identification Number (*número de identificación tributaria*)
RUC	Taxpayer Unique Register (registro único de contribuyentes)
SCO	Superintendence of Commercial Obligations
SIIT	Integrated Tax Information System (*Sistema Integral de Información Tributaria)*
SFS	Superintendence of the Financial System
SVC	El Salvadoran colón
TIEA	Tax Information Exchange Agreement
VAT	Value-added tax

Executive summary

1. This report analyses the implementation of the standard on transparency and exchange of information on request in El Salvador in the second round of reviews conducted by the Global Forum. Due to the global COVID-19 pandemic, the Assessment Team was unable to conduct an onsite visit. The present report therefore assesses the legal and regulatory framework in force as at 19 November 2021 against the 2016 Terms of Reference (Phase 1 review). The assessment of the practical implementation of El Salvador's legal framework (Phase 2 review) will be conducted separately, at a later time.

2. This report concludes that, overall, El Salvador has a legal and regulatory framework in place that ensures the availability of legal ownership information, but that an important shortcoming exists with regard to the availability of beneficial ownership information, which relies on the rudimentary information that is available through the customer due diligence processes conducted by banks and other financial institutions. As a result, improvements are also needed in relation to the availability of information held by banks, as this covers beneficial ownership information held by banks as well as banking information. In addition, improvements are needed with regard to access to information held by banks and related notification requirements. The former also affects, to some degree, El Salvador's ability to exchange relevant information for tax purposes in accordance with the standard.

3. In 2015 and 2016 the Global Forum evaluated El Salvador against the 2010 Terms of Reference for the legal implementation of the exchange of information on request (EOIR) standard and for its operation in practice, respectively (Phase 1 and Phase 2 reviews). The report of the Phase 2 evaluation (the 2016 Report) concluded that El Salvador was rated Largely Compliant overall (see Annex 3).

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

Element	First Round Report (2016)		Second Round Report (2021)
	Ratings	Determinations	Determinations
A.1 Availability of ownership and identity information	Non-Compliant	Not in place	Needs improvement
A.2 Availability of accounting information	Compliant	In place	In place
A.3 Availability of banking information	Compliant	In place	Needs improvement
B.1 Access to information	Compliant	In place	Needs improvement
B.2 Rights and Safeguards	Compliant	In place	Needs improvement
C.1 EOIR Mechanisms	Compliant	In place	Needs improvement
C.2 Network of EOIR Mechanisms	Compliant	In place	In place
C.3 Confidentiality	Compliant	In place	In place
C.4 Rights and safeguards	Compliant	In place	In place
C.5 Quality and timeliness of responses	Largely Compliant	Not applicable	Not applicable
OVERALL RATING	LARGELY COMPLIANT		Not applicable

Note: The three-scale determinations for the legal and regulatory framework are: In place, In place but certain aspects of the legal implementation of the element need improvement (Needs improvement), and Not in place. The four-scale ratings on compliance with the standard (capturing both the legal framework and practice) are: Compliant, Largely Compliant, Partially Compliant, and Non-Compliant.

Progress made since previous review

4. The 2016 Report concluded that while El Salvador has a well-developed legal and regulatory framework, the lack of a mechanism to identify the holders of bearer shares was considered a fundamental shortcoming in its legal framework. As a result, the legal and regulatory framework to meet Element A.1 was considered "not in place" and a recommendation was made for El Salvador to take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares. In September 2021, El Salvador abolished bearer shares through a legislative amendment to the Code of Commerce.[1]

5. The determination for A.1 in this report is "in place, but needs improvement". This is due to the strengthening of the standard in 2016 in

1. The 2016 Report also included a monitoring recommendation with regard to Element C.5, as El Salvador had not received EOI requests and its organisational processes for EOI had therefore not been tested in practice. This remains the case, but has not impacted the present report due to its focus on the legal and regulatory framework (Phase 1 review).

relation to the availability of beneficial ownership information for all relevant entities and arrangements and the related shortcomings identified in El Salvador's legal and regulatory framework.

6. In relation to the exchange of information, the Convention on the Mutual Administrative Assistance in Tax Matters, as amended in 2010 (Multilateral Convention) has come into force. El Salvador has therefore been able to exchange information with all parties to the Multilateral Convention since 1 June 2019.

7. On the other hand, a degree of deterioration of certain aspects of the legal and regulatory framework has occurred, as summarised in the *Key recommendations*, the materiality of which will be further considered in the Phase 2 review on the practical implementation of the standard.

Key recommendations

8. The main shortcoming identified in the present report relates to the availability of beneficial ownership information with regard to all relevant entities and arrangements. Other than in relation to banks and other financial institutions, i.e. a subset of persons subject to anti-money laundering (AML) obligations in El Salvador, there is no requirement to keep beneficial ownership information. In addition, while there exists a general definition of beneficial ownership which conforms to the standard, the existing obligations in this regard rely on rudimentary customer due diligence (CDD) processes that do not ensure that adequate, accurate and up-to-date beneficial ownership information is available. There is also no obligation on all relevant entities and arrangements to maintain an ongoing relationship with a bank or other financial institution. The legal framework to address Element A.1 is therefore considered as "in place, but needs improvement". The same shortcomings permeate Element A.3, which is also considered as "in place, but needs improvement". Whilst beneficial ownership information on account holders should be available, the information held may not be adequate.

9. Improvements are also recommended with regard to the access to information. Whilst the 2016 Report found that the legal and regulatory framework in respect of Element B.1 was in place, this took into account amendments to the Tax Code introduced in 2014. These amendments avoided the need to open a formal tax audit in order to lift bank secrecy and thereby access information held by banks. This includes both banking information and CDD information held by banks (referred to together as information held by banks). However, the amendments concerned were found to be unconstitutional and set-aside in 2018 because of a procedural issue associated with the related legislative process. As a result, it is still necessary to open a tax audit in order to access information held by banks. However, it is only possible to

open a tax audit with respect to persons registered with the El Salvadoran tax authority and holding a tax identification number (*número de identificación tributaria*, NIT). Whilst this would cover the vast majority of persons in El Salvador, a tax audit could not be opened in relation to a foreigner who is not a taxpayer in El Salvador/does not hold a NIT, but has a bank account there.

10. This in turn permeates Element B.2, for which the legal framework is considered as "in place, but needs improvement", like for Element B.1. This is because the opening of a tax audit involves the notification of the subject of the audit, without exception.

11. It further permeates Element C.1, also considered as "in place, but needs improvement": if a tax audit cannot be opened on someone not registered with the El Salvadoran tax authority but holding a bank account there, not all persons are covered by the exchange of information mechanisms (sub-Element C.1.2); and information held by financial institutions cannot be exchanged in all cases (sub-Element C.1.3).

Exchange of information in practice

12. El Salvador has to date not received any exchange of information (EOI) requests, including during the period under review in the first round (January 2012 to December 2014). On the other hand, El Salvador does send EOI requests to its EOI partners (two in the period of October 2017 to September 2020), and no negative peer input was received on the quality of these requests. The assessment of the exchange of information in practice is not covered by this report and will be the object of the Phase 2 review, by which time El Salvador may have built more experience.

Next steps

13. This review assesses only the legal and regulatory framework of El Salvador for transparency and exchange of information. El Salvador has achieved a determination of "in place" for four elements (A.2, C.2, C.3 and C.4); and "in place but needs improvement" for five elements (A.1, A.3, B.1, B.2, C.1). Overall, El Salvador has a legal and regulatory framework in place that ensures the availability of legal ownership, accounting and banking information, and generally ensures the exchange of relevant information for tax purposes in accordance with the standard. However, improvements are needed with regard to the availability of beneficial ownership information and with regard to access to information held by banks and related notification requirements. A rating for each element and an Overall Rating will be issued once the Phase 2 review is completed.

14. This report was approved by the Peer Review Group of the Global Forum on 19 January 2022 and was adopted by the Global Forum on 31 March 2022. A follow-up report on the steps undertaken by El Salvador to address the recommendations made in this report should be provided to the Peer Review Group no later than 30 June 2023 and thereafter in accordance with the procedure set out under the 2016 Methodology, as amended in December 2020.

Summary of determinations, ratings and recommendations

Determinations	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place but certain aspects of the legal implementation of the element need improvement	Beneficial ownership information is not available in El Salvador for all entities and arrangements in all cases. The availability of beneficial ownership information is dependent on customer due diligence obligations of a subset of anti-money laundering-obliged persons consisting of banks and other financial institutions. In addition, these obligations are rudimentary and fall short of the standard. In particular, the scope of application does not cover all relevant entities and arrangements (only those listed in Article 2 of the Technical Norms on Anti-Money Laundering), and there is no obligation for all entities or arrangements to engage one of the listed entities. Nor is there a clear procedure for identifying a beneficial owner, including the absence of a definition of control through other means than ownership, or a default position where neither the ultimate controlling ownership interest nor exercise of control through other means can be established. Furthermore, there is no clear obligation to update the information, and no indication of what particular elements should be recorded, and what identification sources would serve to satisfy these.	El Salvador should take necessary measures to ensure that beneficial ownership information is available for all relevant entities and arrangements in accordance with the standard.

Determinations	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place		
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place but certain aspects of the legal implementation of the element need improvement	Information regarding the beneficial ownership of accounts is not adequate in all cases, for the reasons set out under A.1. In particular, the Technical Norms on Anti-Money Laundering and related requirements lack the necessary guidance in relation to all entities and legal arrangements. In addition, banks are not clearly required to continuously update anything aside from what may be considered "general information", which is not defined as including beneficial ownership information.	El Salvador is recommended to ensure that up-to-date beneficial ownership information is available for all account-holders in accordance with the standard, and that banks are appropriately guided in relation to their obligations vis-à-vis all types of client entities and legal arrangements in this regard.

Determinations	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) *(ToR B.1)*		
The legal and regulatory framework is in place but certain aspects of the legal implementation of the element need improvement	Information held by banks, whether of a reserve nature or subject to bank secrecy can only be accessed by the General Directorate of Internal Taxes if a tax audit has been opened, as a 2014 amendment of Article 120 of the Tax Code that sought to avoid this was set aside by the Constitutional Court on procedural grounds. This covers banking information, but also beneficial ownership information held by banks. A tax audit can only be opened in relation to natural or legal persons registered with the El Salvadoran tax authorities and holding a tax identification number (NIT). This would allow the competent authority to access beneficial ownership information held by banks on the basis that a tax audit can be opened on a NIT-holding entity or legal arrangement, which includes foreign companies. However, it would not allow access to, for example, banking information in relation to a foreigner who is not a taxpayer in El Salvador/does not hold a NIT, but has a bank account there.	El Salvador is recommended to ensure that banking information can be accessed as required pursuant to the standard for EOIR, notwithstanding any requirement for a tax audit to be opened.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place but certain aspects of the legal implementation of the element need improvement	Where a request for information includes information held by banks, the subject of the request will be notified. This is because a formal tax audit is required in order to lift bank secrecy and access information held by banks, and the opening of a tax audit involves notification of the subject of the audit. There is no exception to this notification.	El Salvador is recommended to ensure that exceptions to the notification of the account holder be introduced in line with the standard, when accessing information held by banks in the context of EOI requests.

Determinations	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place but certain aspects of the legal implementation of the element need improvement	The opening of a formal tax audit is required to access information held by banks, further to the setting aside of an amendment of Article 120 of the Tax Code that sought to avoid the need to open a formal tax audit in order to lift bank secrecy. A tax audit can only be opened in relation to natural or legal persons registered with the El Salvadoran tax authorities and holding a tax identification number (NIT). Therefore, where a person subject to a request for banking information does not hold a NIT, it is not possible for the General Directorate of Internal Taxes (DGII) to identify that person unequivocally and for the DGII to therefore exercise its powers of audit and access in their respect. It follows that El Salvador is not able to provide banking information on a foreigner who is not a taxpayer in El Salvador/does not hold a NIT and that its information exchange mechanisms can therefore not be fully applied. This requirement also prevents responding to group requests for information held by banks.	El Salvador is recommended to ensure that it can provide for exchange of information to the standard under its EOIR mechanisms in respect of all persons (including in relation to group requests), where the information is held by a bank.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place		

Determinations	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	

Overview of El Salvador

15. This overview provides some basic information about El Salvador that serves as context for understanding the analysis in the main body of the Report.

Legal system

16. El Salvador's legal system follows a civil law tradition, with minor common law influence. Laws are therefore codified.

17. An elected president heads the executive branch; legislative power is vested in the Legislative Assembly; and the judiciary is independent. There is the possibility of review of legislative acts and administrative acts by the Supreme Court of Justice in specific circumstances.[2]

18. The hierarchy of legal norms is as follows:

- the Constitution of the Republic of El Salvador
- Treaties ratified by the Legislative Assembly and ordinary domestic laws
- regulations issued by the executive branch or other authority delegated by the legislator (for example, the Technical Norms on Anti-Money Laundering, issued by the Central Reserve Bank of El Salvador (BCR) in November 2013)
- other acts issued by the executive branch or by entities with regulatory powers, such as the Superintendence of the Financial System (SFS) and the BCR, for example circulars and guidelines.

19. Article 5 of the Tax Code also refers to jurisprudence concerning the constitutionality of provisions of the Tax Code as a relevant source in relation to the tax system, as well as other specific sources of jurisprudence.

2. See paragraphs 349-350 for an example relevant to the context.

20. Pursuant to Article 168 of the Constitution, treaties are entered into by the President and ratified by the Legislative Assembly. Article 144 of the Constitution stipulates that treaties shall constitute laws of the Republic upon their entry into force in accordance with the provisions of the treaty concerned. Treaties therefore have the same normative weight as ordinary domestic laws. Nevertheless, in the event of a conflict between the treaty and an ordinary domestic law, Article 144 of the Constitution provides that the terms of the treaty shall prevail.

Tax system

21. The General Directorate of Internal Taxes (*Dirección General de Impuestos Internos*, DGII) is an independent government agency responsible for revenue collection on behalf of the Government of El Salvador. The Director of the DGII is appointed by the Minister of Finance.

22. El Salvador imposes a range of taxes which are collected at the national level by the DGII. The main ones are income tax and capital gains tax (*impuesto sobre la renta e impuesto de ganancia de capital*) and value added tax (*impuesto al valor agregado*).

23. The imposition of income tax is governed by the Tax Code[3] and the Income Tax Law, which also set out general tax principles, rules for the administration of taxes, penalties, procedures and collection.

24. El Salvador's tax burden is among the lowest in the region. It operates on a mixed tax system with some elements of worldwide taxation. Since December 2009, any resident individual or entity that derives income from certain foreign sources must declare and pay taxes from that income in El Salvador (Article 16 of the Income Tax Law). Those foreign sources include returns on El Salvadoran securities and financial instruments paid abroad; interest from loans or financing provided by El Salvadoran persons or entities to persons or entities located abroad; and interest on deposits in financial institutions located abroad.[4]

25. Taxpayers are referred to under the Tax Code as "passive [tax] subjects", in contrast to the State or municipalities, who are "active [tax] subjects". Taxpayers (*sujetos pasivos*)[5] are further divided into "contributors" (*contribuyentes*), or direct taxpayers; and "those responsible" (*responsables*),

3. See Annex 3 for the titles in Spanish of referenced legislation.
4. Depending on the nature of the income source, any tax paid in the foreign jurisdiction may also be taken into account.
5. Where quotations from legislation are included, this term is translated directly as "passive subjects". Throughout the text of the report, "taxpayer" is however used.

i.e. persons required to fulfil the obligation of a taxpayer, though not personally (directly) a taxpayer. The Tax Code therefore applies to all persons – natural or legal – subject to tax in El Salvador, whether on behalf of another or directly. All "contributors" are in turn required to register with the tax administration and to obtain a tax identification number (NIT). A "*responsable*" will in turn identify him-/herself in relation to the contributor for whom he/she is responsible, and their corresponding NIT. If a "*responsible"* is also a "*contribuyente"* in their own right, they will be registered as such, and will have an NIT, allowing the tax authorities to also open an audit into them.

26. A company is resident in El Salvador if it is incorporated under the laws of El Salvador or its day-to-day management and control are exercised in El Salvador at any time during the year of assessment. Foreign companies – of which there are 347 in El Salvador as at October 2021 – and branches of foreign companies not having their effective management and control in El Salvador, are subject to income tax on certain income from sources in El Salvador, such as income attributable to a permanent establishment in El Salvador.[6]

27. Tax rates for individuals are progressive, consisting of a fixed amount per income tranche, plus a percentage of net income. The maximum percentage rate is 30%, applicable on an annual net income of USD 22 857 and above. Non-resident individuals are subject to income tax at a flat rate of 30%.

28. The corporate income tax rate is 30%, applicable on the total amount of the company's revenues and regardless of the domicile of the company. A reduced rate of 25% applies for companies with an annual taxable income that is equal to or less than USD 150 000.

29. Capital gains are taxed at 10% of net profits, except when gains are realised within 12 months following the purchase date, in which case they are taxed as ordinary income and may be subject to a tax rate of up to 30%. This does not apply for securities however, which are subject to the flat rate of 10% regardless of when purchased. Pursuant to the Bitcoin Law, exchanges in Bitcoins are not subject to capital gains tax.

30. Withholding income taxes apply for certain income including royalties, dividends, income from deposits and securities. Taxpayers (*contribuyentes*) subject to withholding tax are also required to register with the DGII and obtain a NIT. The basic tax rate varies from 5% to 25%, depending on the type of payment. The lowest rate applies *inter alia* to dividend

6. According to recent research by the Central Reserve Bank Researchers Network (Redibacen), 63.4% of foreign direct investment concerns companies with industrial activities or commerce. The next biggest categories of foreign investment are financial activities (see below with regard to foreign commercial banks) and the insurance sector (13.5%).

payments, insurance services paid to non-residents, and the highest on payments to foreign entities located in "tax haven regimes", determined in accordance with a list of territories and countries issued by the tax administration.

31. Most services, sales of goods and imports are subject to value-added tax (VAT) at a rate of 13% over the taxable amount. Exports are levied at a rate of 0% but are subject to information-filing requirements, and certain imports and services, such as health services rendered by public institutions and leases and subleases of real estate properties for housing, are exempt from VAT.

Financial services sector

32. The Superintendence of the Financial System (*Superintendencia del Sistema Financiero*) (the SFS) supervises the members of the financial sector, i.e. entities comprising banks; non-banking financial institutions such as co-operative banks, federations and credit and savings societies; financial conglomerates;[7] reciprocal guarantee companies; stock market participants; insurance companies; public credit institutions; and pension fund administrators, as well as their operations and the natural and legal persons that comprise their staff, shareholders, intermediaries and administrators, in accordance with what is provided under Article 7 of the Law of Supervision and Regulation of the Financial System. As at March 2021, there were 130 members of the financial sector, governed by 24 specific laws.[8] As at December 2020, 10 270 natural and legal persons came under the supervision of the SFS.

33. The SFS comprises a Governing Board; the Superintendent of the Financial System; and four Deputy Superintendents, responsible respectively for four sectors: banking, insurance and other financial entities; pensions; securities; and public institutions of a financial nature. Its supervision role involves monitoring the compliance of these financial institutions with the relevant banking laws and the anti-money laundering framework.

34. The banking sector comprises financial conglomerates and commercial private banks, state-owned banks and non-banking financial institutions such as co-operative banks and credit and savings societies, non-governmental organisations and microfinance institutions. The banks are subject to

7. Pursuant to Article 113 of the Law of Banks, these are defined as "a group of companies characterised by the fact that over fifty percent of their respective share capitals is owned by a controlling company that is also a member of the conglomerate".

8. See the list of relevant laws at the website of the SFS: Leyes | Superintendencia del Sistema Financiero (ssf.gob.sv).

the Law of Banks or the Law of Co-operative Banks and Credit and Savings Societies, as appropriate. The total assets of El Salvador's banking sector were USD 20.1 billion in March 2019. The percentage of GDP represented by the banking sector decreased from 4.5% in 2014 to 2.2% in 2018, and it can therefore be considered a modest local market.

35. Foreign multinational banks control a large portion of the financial market in El Salvador.[9] According to the March 2019 study by the SFS on the financial sector in El Salvador, the El Salvadoran banking system comprised 25 supervised depository institutions; 12 commercial banks (1 local and 11 foreign banks); 2 state banks; 6 co-operative banks and federations of co-operative banks; and 4 credit and savings societies.

36. The Central Reserve Bank of El Salvador (*Banco Central de Reserva*, BCR) oversees monetary policy and is governed by its own organisation laws. In 2001, El Salvador was dollarised by virtue of the Monetary Integration Law. Accordingly, the United States dollar (USD) accounts for nearly all currency in circulation and can be used in all transactions. El Salvadoran banks are therefore required to keep all accounts in US dollars.

37. In June 2021, El Salvador became the first country worldwide to classify Bitcoin as legal tender, alongside the US dollar. Accordingly, since September 2021, every business must accept Bitcoin as legal tender for goods or services, unless it is unable to provide the technology needed to process the transaction (Article 1 of the Bitcoin Law). The Bitcoin Law Regulations, issued as by Presidential Decree to facilitate the implementation of the Bitcoin Law, establish a Registry of Bitcoin Service Providers. The Bitcoin Service Providers are supervised by the SFS.

38. The 1994 Securities Market Law established the present framework for the El Salvadoran securities exchange. Stocks, government and private bonds, and other financial instruments are traded on the exchange, which is also regulated by the SFS. 48 companies are listed on the market, and the market capitalisation value, based on a total of 20 reporting companies, is approximately USD 4.6 billion, representing a modest-sized market.[10]

39. A particular characteristic of the financial sector is the high volume of remittances from workers abroad, in proportion to the size of its economy. The World Bank calculates remittances as making up 24% of GDP in 2020.[11] According to a study of the Central Reserve Bank of El Salvador (Work Document 2008-01), cash transfers were very common in the past and, in the

9. CFATF, El Salvador, Mutual Evaluation Report, 2010, paragraphs 3 and 26.
10. See https://www.bolsadevalores.com.sv/index.php/precios-y-estadisticas/estadisticas-por-mercado.
11. See https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=SV.

early 2000s, represented over 33% of total remittances. Whilst this percentage decreased to less than 2% in 2021 with the increased availability and ease of use of electronic transfer options,[12] there now exist requirements as to the notification of cash transactions totalling USD 10 000 (or equivalent) in aggregate per month pursuant to the AML framework.

Anti-money laundering framework

40. The principal anti-money laundering/countering financing of terrorism (AML/CFT) legislation in El Salvador comprises the Anti-Money Laundering Law, law number 498 (the "AML Law"), dating from December 1998, and the Special Law Against Terrorist Acts, law number 108, dating from October 2006. These two laws are complemented by relevant provisions in other laws, notably the Organic Law of the Superintendence of the Financial System; Organic Law of the Securities Superintendence; Code of Commerce; Criminal Code; Criminal Procedural Code; and the Organic Law of the Public Ministry.

41. The AML Law was most recently amended in 2015, resulting in an increase in the scope of the entities covered and falling under the jurisdiction of the SFS. The AML Law requires AML-obliged persons to report suspicious transactions to the Financial Investigation Unit (FIU), which is a department within the Public Prosecutor's Office.

42. AML-obliged persons include "any company, firm or entity of any kind, whether domestic or foreign, which integrates an institution, group or financial conglomerate supervised and regulated by the Superintendence of the Financial Sector", as well as the catch-all of "any other private or mixed economy institution and commercial companies". The scope of application of the AML Law is therefore wide, and the principal obligations on AML-obliged persons to have knowledge of the legal origin of the funds of clients, and to notify suspicious transactions to the FIU, are set out under the AML Law. AML-obliged persons are also required to identify their clients, but an express requirement to identify the beneficial owners of clients only applies to a subset of AML-obliged persons consisting of banks and other financial institutions, under a related set of norms (see below). There is no regulatory scheme in place to supervise the filing of reports by entities not supervised by the SFS, notwithstanding their status as AML-obliged persons.

43. In addition to the AML Law, the following norms form part of El Salvador's AML framework:

12. See *Informe de Remesas Familiares*, Banco Central de Reserva (bcr.gob.sv).

- the Regulations of the Anti-Money Laundering Law, Presidential Decree No. 2 dated 31 January 2000 (the "AML Regulations")
- the Technical Norms on Anti-Money Laundering, NRP-08, issued by the BCR in November 2013 (the "AML Technical Norms")
- the FIU Instructive for the Prevention of Money and Asset Laundering, Agreement 085 of the Public Prosecutor's Office of the Republic, dated July 2013
- norms issued by the SFS, which, though not enforceable, recall and clarify the scope of obligations foreseen in the AML Law and FIU Instructive.

44. Reforms to the Law of Supervision and Regulation of the Financial System of 2015 mean that any entity sending or receiving systematic or substantial amounts of money by any means, at the national and international levels, now falls under the jurisdiction of the SFS.[13] The SFS is responsible for supervising the financial services sector in relation to the entities coming under its purview, for granting licences and registrations to them and for overseeing their compliance with the AML framework. The SFS does not have the power to issue regulations on AML/CFT, but can issue guidelines in this regard.

45. The FIU on the other hand is able to issue regulations on AML/CFT, and was established by virtue of Article 3 of the AML Law as a department primarily assigned to the Public Prosecutor's Office in relation to the offence of money laundering.

46. The core role of the FIU is the receipt, analysis and transmission of reports of suspicious transactions, including for investigation or prosecution

13. Article 7(t) of the Law of Supervision and Regulation of the Financial System lists as supervised persons: "Legal persons that send or receive systematic or substantial amounts of money by any means, at the national and international level". The BCR was tasked with the further definition of "systematic or substantial amounts" and issued, in September 2019, the Technical Rules for the Registration, Obligations and Operation of Entities that Perform Money Sending or Receiving Operations through Subagents or Subagent Administrators, which provide at Article 2(2) that "…it will be understood that sending or receiving systematic or substantial amounts of money takes place when said activity is carried out on a regular basis or constitutes an important activity within the entity's business operations."

Similarly, Article 2(5) of the AML Law lists as an AML-obliged persons "Natural and legal persons making regular or substantial money transfers, including pawnshops and those granting loans". See also paragraph 32.

purposes, identified and filed in accordance with the provisions of the AML Law. The FIU does not however have an investigative or verification role vis-à-vis the information-keeping requirements established by the AML framework, as responsibility for that rests with the SFS.

47. El Salvador is a member of the Caribbean Financial Action Task Force (CFATF). The most recent mutual evaluation report (MER) of El Salvador dates from May 2010. The evaluation therefore predated the strengthening in 2012 of the Financial Action Task Force's (FATF) standards to expand to beneficial ownership, to give more clarity about how countries should ensure information is available, and to deal with vulnerabilities such as bearer shares and nominees.

48. In the 2010 MER, El Salvador was given the rating of Partially Compliant in two of the six Core Recommendations (including R5 – Customer Diligence), and in three of the ten Key Recommendations of the FATF. It received a rating of Partially Compliant in relation to Recommendation 33 with regard to access to information on control and beneficiaries of legal persons, due in part to the "opacity of bearer shares",[14] and a Largely Compliant rating in relation to Recommendation 34 with regard to access to information on control and beneficiaries of legal structures, due to practical challenges associated with identifying the beneficial owner of a foreign trust.

49. More generally, the MER noted that some financial activities, including non-banking money remittance services, were subject to the requirements of the AML/CFT Laws, but not under the control of any regulatory authority and supervision. The MER also recommended improvement of the distribution of functions among government institutions in AML/CFT, as well as resources and priorities assigned to these. The MER therefore concluded as points of vital importance for El Salvador to strengthen the monitoring of preventive AML/CFT compliance, to review AML/CFT regulation competencies, and to develop supervision methods or manuals based on risks appropriate to the specific conditions of different types of regulated entities. It was further noted that there is no industry dedicated to offshore corporate services in El Salvador.

50. The most recent follow-up report dates from 2014.[15] El Salvador was found to have adequately addressed the shortcomings identified in the MER and to have achieved a level of compliance comparable with at least Largely Compliant. It was subsequently removed from the follow-up process. Specifically, CFATF noted that remittances had been subjected to all the obligations established under the AML Law and therefore strengthened, with

14. It was also considered that there was "a low degree of efficiency" in justification of the rating for Recommendation 33.

15. See *El Salvador 9th Follow-Up Report* (cfatf-gafic.org).

anonymous accounts being prohibited. The follow-up report also noted that the SFS adopted the General Framework for the Supervision of the Financial System and with it, risk-based supervision methods.

Recent developments

51. On 14 September 2021, Law number 153, effective as of 8 October 2021, was adopted to amend the Commercial Code so as to delete the provisions that allow for the issuance of bearer shares and bonds. A one-year transition period was introduced for the conversion of existing bearer shares, if any, to nominative shares (see A.1.2).[16]

52. In addition, a bill of law of central importance is pending before the office of the President, for submission to El Salvador's Legislative Assembly. This bill of law has the objective of introducing further obligations on the availability of information on beneficial ownership of entities and arrangements, as well as miscellaneous other improvements to El Salvador's legislative framework in relation to the standard for exchange of information on request.

53. The bill of law includes a "wide" definition of beneficial ownership that the authorities note would support the content of the AML Technical Norms in this respect (for the definition of beneficial ownership under the AML Technical Norms, see A.1.1), but apply beyond the AML context and specifically to all taxable persons.

54. The bill of law is also due to clarify the meaning of the expressions "effectively owns or controls" and "ultimate effective control". It is further due to set out requirements where it is not possible to determine ultimate effective control, as well as provisions on how a legal arrangement is to be defined, and the effective control of legal arrangements.

55. The El Salvadoran authorities consider that the effect of this bill of law will be to bring its legal framework in line with the standard in relation to beneficial ownership – thereby also recognising the shortcomings of the current framework. However, no specific timeline is currently foreseen for the adoption of the bill of law. As it is not in force as of 19 November 2021 its contents are not reflected in this report.

16. This is in line with what was proposed in the bill of law referred to in the 2016 Report. The previous bill of law was however archived as it formed part of a wider reform to the Commercial Code that agreement could not be reached on.

Part A: Availability of information

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

A.1. Legal and beneficial ownership and identity information

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

57. The main laws governing the establishment and operation of entities of relevance are the Code of Commerce, the Tax Code, the Law on the Supervision and Regulation of the Financial System and the AML Law, as set out in the 2016 Report.

58. Companies, partnerships and *fideicomisos* – arrangements with certain trust-like features – are each deemed to be "merchants" under the Code of Commerce (*Código de Comercio)* and subject to the rights and obligations therein. Companies and partnerships are formed by a public notarised deed containing legal ownership information. They are "perfected and extinguished" through registration of the relevant documents with the Commercial Registry. They are required to keep, update and in some cases submit, a range of documents reflecting legal ownership pursuant to both company and tax law. The concept of nominees does not exist in El Salvador.

59. Importantly however, there is no express requirement for all relevant entities and arrangements to keep beneficial ownership information, other than for a subset of AML-obliged persons consisting of banks and other financial institutions. In addition, while the general definition of beneficial ownership meets the standard, the existing obligations rely on customer due diligence (CDD) processes that are rudimentary and do not ensure that adequate, accurate and up-to-date beneficial ownership information is available in all cases. Therefore, the legal and regulatory framework for Element A.1 is considered to need improvement. The recommendation made under

Element A.1 is not only applicable to companies and any bodies corporate, but also to partnerships and trusts, and therefore repeated in each of the corresponding sub-sections.

60. With regard to *fideicomisos*, only banks and credit institutions authorised by the financial regulator are permitted to act as a *fiduciario* (similar to a trustee). Banks and credit institutions are AML-obliged persons to whom beneficial ownership identification requirements apply. A combination of information-keeping requirements in the Code of Commerce, the Tax Code and the AML Law therefore ensures that both some legal and beneficial ownership information on the *fiduciario*, *fideicomitente* (settlor) and *fideicomisario* (beneficiary) is generally available, but like for companies and partnerships, the information available is not adequate.

61. Foundations can only be established for non-profit, public interest activities. Similarly, associations are private law arrangements with non-profit and public interest objectives. Neither are therefore of particular relevance for EOIR purposes and therefore not considered in detail.

62. Whilst bearer shares could be issued by companies until recently, a law was passed in September 2021 to abolish bearer shares. Accordingly, holders have until 8 October 2022 to convert any existing bearer shares to nominative shares. The process and sanctions for non-compliance are set out in the relevant law. An in-text recommendation is made to the effect that El Salvador should ensure and monitor that the procedures to convert any existing bearer shares are effectively implemented.

63. Oversight measures take the form of verification processes via desktop audits and onsite inspections. Non-compliance with information keeping requirements results in the application of fines as set out in the Code of Commerce and the Tax Code. Oversight is carried out by the General Directorate of Internal Taxes (*Dirección* de *Impuestos Internos,* DGII), the SFS and, to some extent, the Notary Section of the Supreme Court. Sanctions are set at a level that appears to be effective, proportionate and dissuasive. These aspects will be assessed in the Phase 2 review.

64. The conclusions are as follows:

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

Deficiencies identified/Underlying factor	Recommendations
Beneficial ownership information is not available in El Salvador for all entities and arrangements in all cases. The availability of beneficial ownership information is dependent on customer due diligence obligations of a subset of anti-money laundering-obliged persons consisting of banks and other financial institutions. In addition, these obligations are rudimentary and fall short of the standard. In particular, the scope of application does not cover all relevant entities and arrangements (only those listed in Article 2 of the Technical Norms on Anti-Money Laundering), and there is no obligation for all entities or arrangements to engage one of the listed entities. Nor is there a clear procedure for identifying a beneficial owner, including the absence of a definition of control through other means than ownership, or a default position where neither the ultimate controlling ownership interest nor exercise of control through other means can be established. Furthermore, there is no clear obligation to update the information, and no indication of what particular elements should be recorded, and what identification sources would serve to satisfy these.	El Salvador should take necessary measures to ensure that beneficial ownership information is available for all relevant entities and arrangements in accordance with the standard.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

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

65. The principal type of legal entity in El Salvador is called a "*sociedad*", defined in the Code of Commerce as a legal entity separate from its owners (Article 18). Adopting the characterisation of the principal legal entities applied in the 2016 Report to facilitate a comparison with other reports, *sociedades anónimas* (joint stock companies or SAs) and *sociedades en comandita por acciones* (limited liability companies or SCAs) are dealt with as companies in this Report. *Sociedades colectivas* (SCs); *sociedades por acciones simplificadas* (SAS) (limited liability partnerships or LLPs); and *sociedades de responsibilidad limitada* (SRLs) are considered under partnerships. However, due to their classification as "*sociedades*", the same legal framework is applicable to both in the context of El Salvador.

66. SCs, SAS and SRLs therefore being considered as partnerships, two types of companies exist under El Salvadoran law. They are subject to incorporation in accordance with the Code of Commerce:

- *Sociedades anónimas* (Articles 191 to 295 of the Code of Commerce): The company's capital is divided into nominative shares[17] represented by negotiable share certificates. Shareholders can be either natural or legal persons. SAs are managed and legally represented by a single administrator or a board of directors. The total number of SAs registered by September 2020 was 64 513, with 1 069 having registered in 2020 alone, making SAs the most popular form of entity in El Salvador.
- *Sociedades en comandita por acciones* (Articles 296 to 305 of the Code of Commerce): The company's capital is also divided into nominative shares represented by negotiable share certificates, but they have hybrid characteristics typical of both private limited companies and partnerships limited by shares: SCAs have two different kinds of members: (i) general members (*socios comandiatrios* or *gestores*) with joint and unlimited liability, responsible for the company's management; and (ii) limited members (*socios comanditarios*), whose liability is limited to the amount of their capital contributions. As at September 2020, there were 13 SCAs.

67. Foreign companies can operate in El Salvador as subsidiaries by fixing their domicile in El Salvador, or as branches of foreign-incorporated companies. In either case, they will be subject to the same company and tax law framework as domestic companies.

Legal ownership and identity information requirements

68. The legal ownership and identity requirements for companies and partnerships are found in the company and tax laws, complemented by the AML framework.[18] The following table shows a summary of the

17. Until 8 October 2021, it was possible for nominative shares of SAs and SCAs to be subsequently transformed into bearer shares (see A.1.2 below).
18. Identification requirements under the AML framework also require AML-obliged persons to obtain and keep certain legal ownership information about their clients. This is considered under the section on the availability of beneficial ownership information below. For legal persons, CDD obligations include the identification of all shareholders or partners who have at least a 10% participation in the company or partnership (Article 18(a) of the AML Technical Norms), i.e. not full legal ownership information.

legal requirements to maintain legal ownership information in respect of companies:

Companies covered by legislation regulating legal ownership information

Type	Company law	Tax law	AML law
Companies (SAs and SCAs)	All	All	Some
Partnerships (SCs, SASs and SRLs)	All	All	Some
Foreign companies (tax resident)	All	All	Some

Note: The table shows each type of entity and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All" means that the legislation, whether or not it meets the standard, contains requirements on the availability of ownership information for every entity of this type. "Some" means that an entity will be covered by these requirements if certain conditions are met.

Legal ownership held through company law

69. Both SAs and SCAs are formed by public deed (Article 21 of the Code of Commerce) which is notarised, meaning that an independent notary ensures that the documentation of persons preparing to form a company complies with all the relevant legal guidelines and that the formation of the company is made public as necessary. Article 22 of the Code of Commerce sets out the information the deed must contain, and this includes the name, nationality and domicile of the founders of the company; the domicile and legal form of the company; the duration of its activities; the amount of its share capital; and the contribution of each founder. The El Salvadoran authorities note that in practice, the number of shares subscribed to, their value and payment method are also provided, and this is reflected in the model deed that is provided on the official online company establishment platform.[19]

70. The deed is then recorded in the "*protocolo*", or notary's register. The completeness of the information recorded is verified by the Notary Section of the Supreme Court of Justice, which checks the registers after every 500 entries or annually, whichever is earlier.

71. Once constituted by public deed, SAs and SCAs must register the public deed and the company statutes, as incorporated into the minutes of the resolution through which they were approved, with the Commercial Registry (Articles 23 and 24 of the Code of Commerce). Incorporation is subject to a fee (pursuant to Article 63 of the Law of the Commercial Registry) and grants the entity legal personality. Article 25 of the Code of Commerce provides that the legal personality of companies is "perfected and extinguished"

19. See https://www.miempresa.gob.sv/servicios/escrituras/.

through registration of the relevant documents with the Commercial Registry. As such, the certificates of dissolution or liquidation of companies must also be filed. In addition, any subsequent modification of the information in the incorporation deed that is required pursuant to Article 22 must also be notarised and filed with the Commercial Registry. Given that the nature of the information is foundational, there is no deadline associated with this requirement.[20] However, the notification of the notarised act is a prerequisite for the reliance of the modification vis-à-vis third parties.

72. Article 1 of the Law of the Commercial Registry describes the Registry, which constitutes one centralised institution, and the documents there deposited: "[t]he Commercial Registry is an administrative office dependent on the National Centre of Registries, in which commercial, local, agency or branch registrations and commercial acts and contracts will be registered, as well as the documents subject to this formality under law; likewise, balance sheets, profit and loss accounts and statements of changes in equity will be deposited in this office, accompanied by the opinion of the auditor's opinion and the respective annexes."

73. Companies subject to modification, transformation, merger, dissolution or liquidation are required to register their change of status with the Commercial Registry (Article 24 of the Code of Commerce). Upon recognition of the dissolution or liquidation of a company, the company will be removed from the Commercial Register. Similarly, any modification, transformation or merger will be reflected in the Company Register, i.e. the list held by the Commercial Registry, following notification.

74. Registration must be carried out in person by the legal representative of the company, and each founding member is required to fill out a form in order to obtain a tax identification number (NIT) for the company. The El Salvadoran authorities have advised that all documents submitted to the Commercial Registry are maintained indefinitely, in view of the requirement incumbent on the Registry to verify any new requests for registration against previous registration requests and to allow for replacement in the case of loss or deterioration of related documentation.[21]

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20. An exception applies where the request for modification emanates from the Commercial Registry itself (for instance, because an error is noticed in the information filed), in which case the modification (correction) must be made within 30 days pursuant Article 7 of the Law of Uniform Procedures for the Presentation, Processing and Registration or Deposit of Instruments in the Registries of Real Property and Mortgages, Social Property, Commerce and Intellectual Property.
21. For financial entities, supervised by the SFS, an additional step is required prior to registration with the Commercial Registry, consisting of authorisation, or

75. Foreign companies that wish to carry on business in El Salvador can either do so by establishing a domicile, and therefore subsidiary, in El Salvador, or by operating through a branch. In either case, they are required to register with the Commercial Registry (Article 358 of the Code of Commerce). For purposes of such registration, the foreign company must provide, amongst other information, company statutes demonstrating that it is duly constituted pursuant to the laws of the country in which it was incorporated; documents demonstrating that the decision to establish a domicile in El Salvador or to operate in the country has been validly adopted in accordance with the company statutes; and the name of its representative, who must be a permanent resident of El Salvador. The foreign company must also show that its share capital is sufficient to cover the applicable social contributions, which is verified through registration of the foreign investment with the Ministry of Economic Affairs. Such registration constitutes a prior step, and involves submission of a copy of the company's statutes and its shareholder register to the Ministry of Economic Affairs.

76. Registration by all companies, including foreign companies, must be renewed annually with the Commercial Registry, during the month of the anniversary of the registration, via a standardised form F001, available on the website of the Commercial Registry.[22] The form must be accompanied by the annual balance sheet from the year prior (or account filing number) and proof of payment of the renewal fee. The information submitted at the time of registration is publicly available through the Commercial Register and therefore includes the updated amount of its share capital and the contributions of each founder. Updates to the number of shares subscribed to, their value and payment method are not provided in this context.

77. In addition to the requirements in relation to information filed with the Commercial Registry, there are company law requirements for legal ownership information to be maintained directly by companies. In particular, Article 40(IV) of the Code of Commerce requires companies (and partnerships) to keep certain books, including a register of their shareholders or partners (depending on the nature of the entity).

licensing, by the SFS. The authorisation process requires companies that intend to undertake financial activities to illustrate compliance with a number of obligations, including the submission of shareholder information to the SFS with regard to shareholdings of certain sizes in certain types of financial entities (for example, a shareholding of above 1% in a bank requires prior authorisation pursuant to Article 11 of the Law of Banks).

22. See https://www.cnr.gob.sv/download/renovacion-de-matricula-de-empresa-persona-juridica/.

78. Article 155 of the Commercial Code confirms that the legal ownership information relating to the nominative shares issued by a company is recorded in the shareholder register of the company. This must include the following information for each shareholding:

- shareholder's name and address
- class, series and number of shares held
- payments associated with the shares
- changes in ownership.

79. In order for a transfer of nominal shares to be effective, the transfer must be registered in the shareholders' register (Article 154 of the Code of Commerce).

80. Article 451 of the Code of Commerce provides that all "merchants", the definition of which is wide and includes companies (and partnerships), are required to maintain records for a period of at least 10 years, including insolvent companies and companies that cease to exist.

81. Finally, legal entities that are supervised by the SFS – i.e. public and private banks; co-operative banks; non-banking financial institutions, savings and loan organisations; insurance companies; pension schemes; and the stock exchange – are subject to additional requirements to those under company law (and tax law). Article 78(a) of the Supervision and Financial Sector Regulation Law provides that the SFS must keep a register of all members of the financial sector and their shareholders. Article 78(b) further provides that a separate register must be kept of all shareholdings of over 10% in each registered issuer. The financial entities are in turn required to provide corresponding information to the SFS, including changes in shareholdings, within 30 days of them taking effect.

Implementation and enforcement of company law obligations in practice

82. The formation of a company via public deed usually takes between 1-10 days. Whilst the initial requests for company registration may be done online, representatives of companies must present themselves in person in order to complete registration and be able to commence business.

83. With regard to initial registration requirements, some oversight is practiced in relation to the role of notaries in the constitution of a company. The completeness of the information recorded is further verified by the Notary Section of the Supreme Court of Justice, which checks the registers after every 500 entries or annually, whichever the earlier. By its nature, this

verification process does not involve a review of the correctness of the information recorded in the *protocol*, but rather of its completeness. Pursuant to the Notary Law, notaries who do not comply with obligations such as recording the constitution deed in the Commercial l Registry are subject to a fine of up to SVC 200 (approximately USD 22) (Article 63 of the Notary Law). This is in addition to the recourses available in respect of, for example, any negligent or malicious conduct on the side of the notary in the context of the registration process, in accordance with Article 62 of the Notary Law.

84. Representatives of the Commercial Registry report that there is a compliance rate of approximately 54% with the annual registration renewal obligation.[23] However, to know the current ownership structure of a company, it would in any event be necessary to refer to the register kept by the company, as the Commercial Register contains only the name of the founders rather than of the current owners.

85. In order to encourage company renewal, the Commercial Registry has undertaken activities such as public advertising campaigns. These have been effective in increasing the rate of company renewals. Late renewal is subject to fines of 25% of the renewal fee for the first month of delay, 50% for the second month and 100% for the third month. In the case of non-renewal for a period of more than one year, Article 65 of the Law of the Commercial Registry provides that a company is "disabled from being a merchant" (*inhabilitado como comerciante*). The El Salvadoran authorities note that the company retains its legal personality in the circumstances, as well as its obligations, including with regard to annual reporting. It therefore remains possible for transactions to be carried out in relation to the company, but the company is not able to benefit from rights otherwise accorded to merchants such as the concessions, tax incentives and participation in public tenders (Article 101 of the Law of the Commercial Registry). The company's status as a merchant can be reinstated at any time, regardless of how much time has passed, through a straightforward application to the Companies Registry and payment of outstanding fees. The impact of this in practice, including relevant statistics, will be further considered in the Phase 2 review on the practical implementation of the standard (see Annex 1).

86. Companies that are economically inactive and not carrying on any business activity are not attributed a particular status, as long as they comply with their annual renewal obligations.

23. According to the statistics of the Commercial Registry, which collects information dating back to 1970, when the current Commercial Code was enacted, 67 173 *sociedades* (companies and partnerships) were incorporated in El Salvador as at September 2020, and the number of *sociedades* that did not successfully renew their registration as at the same date was 30 768.

87. Enforcement of the company law requirements set out in relation to legal ownership is the responsibility of the Superintendence of Commercial Obligations. The Superintendence of Commercial Obligations (SCO) undertook various activities to ensure compliance with these obligations.

88. With regard to financial entities, the SFS prepares a supervision plan at the start of each year to be implemented over the course of the calendar year, based on risk maps by industry and entity type. The selection of entities to be audited as part of this plan is based on factors such as when the entity was most recently audited; the type of business it engages in; its size; the market it operates in; and the type of clients with whom it engages. The oversight programme includes a combination of onsite and desktop inspections. All enforcement aspects will be further considered in the Phase 2 review on the practical implementation of the standard.

89. In relation to supervision by the SCO, this consists of various processes including commercial and accounting audits that cover all entities regulated by the SCO; follow-up audits that focus on verifying compliance with the findings established in the commercial and accounting audits; and special audits, which are focused on increases and/or decreases of capital, transformations, mergers and dissolutions of national and foreign companies. Where breaches in relation to commercial or accounting obligations are detected as a result of the SCO's audit, the merchant concerned may be issued with a compliance resolution (in the case of compliance), or a reprimand (in the case of continued non-compliance), both amongst the administrative sanctions available to the SCO.

Legal ownership information available with the tax administration

90. First, registration with the tax administration is mandatory. Pursuant to Article 1 of the Law on the Registry and Special Control of Taxpayers to the Treasury, all natural and legal persons, *fideicomisos*, *de facto* companies and entities with no legal personality that are taxable, that transact with persons subject to income tax and VAT, and that are required to comply with obligations of a fiscal character[24] – must register in the "System for Registration and Special Control of Taxpayers to the Treasury" and thereby obtain a tax identification number (NIT). This includes foreign companies operating in El Salvador. The information in the registry includes identity information on the taxpayer and its legal owners, and must be updated regularly. The information does not include information on the position or role of senior managers in the company. It comes under the purview of the Minister of Finance.

24. For example, auditors appointed to issue tax opinions or reports; notaries; legal representatives (for tax purposes, distinguishable from attorneys-at-law); representatives in the sense of attorneys-in-fact.

91. Furthermore, SAs and SCAs are specifically required to register with the DGII within 15 days of their constitution (Article 86 of the Tax Code). The registration process includes the completion of a company tax registration form (referred to as the RUC, *Registro Unico de Contribuyentes*, form F-210). The RUC requires ownership information in relation to all shareholders to be listed, including their name, NIT, number of shares held and amount of their capital contribution, as well as the name of the company; the company address in El Salvador; a description of the activity that will be carried out; the exact address where the activity will be carried out; and the name, identity number, address and signature of the legal representative of the company.

92. Like domestic companies, foreign companies are required to register with the tax authorities within 15 days of their establishment, and to obtain their NIT in the same way.

93. Second, ownership information must be updated annually. Pursuant to Article 124 of the Tax Code, all taxpayers, which includes SAs and SCAs, are required to update the information filed at the time of tax registration in January of each year through form F-915. This involves updates to the list of shareholders, together with the book value of their shares, value of their capital contributions, ownership interests and rights. Where dividends, surpluses or profits are distributed, the amount received by the shareholders must also be reported.

94. Foreign companies are under the same obligation to provide an annual update of tax registration information, including updated shareholder information and details of any transfer of shares (Article 124(2) of the Tax Code).

95. Further, pursuant to Article 121(a) of the Tax Code, the Commercial Registry must notify the DGII biannually of companies that were newly registered, transformed, merged, dissolved or liquidated during the preceding six-month period and provide their name, identification of their members and the name of the legal representative. The information is sent to the Case Selection Unit of the DGII, which is in charge of verifying the information so as to establish the existence of tax compliance risks and schedule verification and auditing processes. This therefore ensures accuracy of the list of corporate taxpayers. To some extent, it also provides for a cross-check between legal ownership information available in the company law framework and that in the tax law framework.

96. Article 86(6) of the Tax Code, requires taxpayers to notify the DGII of dissolution, liquidation, merger, transformation or any other modification

of companies. Breach of this requirement is subject to a fine of approximately USD 1 920-2 880[25] pursuant to Article 235(d) of the Tax Code.

97. Hence, legal ownership information in relation to companies and bodies corporate, both domestic and foreign, is available as a result of the registration and updating requirements under tax, as well as company law.

98. In addition, the DGII holds information regarding economic inactivity, as a result of information held in relation to the payment of VAT. Accordingly, as at June 2021, the DGII identified approximately 40 000 taxpayers that stated not to have been carrying out any activity for the previous three to five years, and that were not referred to by third parties in corresponding tax statements either.

Implementation and enforcement of tax law obligations in practice

99. In practice, initial registration with the DGII is done online, via the DGII services portal on the website of the Ministry of Finance. However, the online registration must be followed by an in-person request at the office of the DGII in order to complete the process and generate a NIT. The annual update of the information filed at the time of tax registration through form F-915 can be submitted online. The DGII collects the information received for its own use using an electronic tool known as the "Integrated Tax Information System" (*Sistema Integral de Información Tributaria*, SIIT).

100. The DGII is responsible for overseeing compliance by taxpayers. It is divided into four main divisions (Administrative; Registration and Assistance; Audit; and Control of Fiscal Obligations). The Audit Division is further divided into units based on the size of the taxpayers or regional location: the large taxpayer unit; medium taxpayer unit; a taxpayer unit which captures all other taxpayers; and a unit each for the east and west of the country. The Control of Fiscal Obligations Division comprises *inter alia* the *Gestión Tributaria* unit, which is generally responsible for overseeing compliance with the above requirements and tax obligations. It in turn consists of teams that include those responsible for verification; planning; and the enforcement of omissions. The *Gestión Tributaria* division comprises 40 officials. Their supervision programme, like that of other relevant auditing

25. Specifically, eight minimum monthly wages. The relevant monthly minimum wage in El Salvador in July 2021 was approximately USD 300-360. The minimum monthly wage is defined by the National Minimum Salary Council of the Ministry of Labour and Social Welfare, and periodically updated (Article 159 of the Labour Code provides that minimum monthly wages fixed by decree must be reviewed at least every three years) in accordance with Article 38(2) of the Constitution.

units, includes both desktop checks and onsite visits, and one of the items that is checked in this context is whether the register of shareholders is kept.

101. Under the Tax Code, penalties are calculated with reference to the monthly minimum wage, which is defined by the National Minimum Wage Council of the Ministry of Labour and Social Welfare, and periodically updated,[26] in accordance with Article 38(2) of the Constitution. The monthly minimum wage in El Salvador is dependent on the sector, but in July 2021 it was approximately USD 300 to USD 360 for the trade sector ("*Comercio y Rango*"), which the DGII noted would be used for purposes of calculating fines. Failure to register with the DGII is subject to a fine of approximately USD 900 to USD 1 080[27] (Article 235(a) of the Tax Code). In the event of non-compliance with the annual information update obligation, a taxpayer is liable to a fine of 0.1% of the amount of the accounting assets or total equity shown on the balance sheet, less the surplus for the re-evaluation of unrealised assets, which may not be less than approximately USD 900 to USD 1 080[28] (Article 241(h) the Tax Code). In the case of continued non-compliance, the fines will be applied each year. The El Salvadoran authorities report a compliance rate of 73% with regard to the annual tax filing obligation.

102. There is no distinction made for taxpayers that are legal persons rather than natural persons in terms of the level of sanctions applicable. Whilst sanctions appear to be designed to take into account what form of person would likely contravene a specific requirement and the El Salvadoran authorities confirm that this is the intention of the legislator, this aspect will be further considered in the Phase 2 review on the practical implementation of the standard.

103. Article 144 of the Tax Code provides that taxpayers who definitively cease their activity or put an end to their business by sale, liquidation, exchange, dissolution, or other cause, must inform the DGII in writing of this circumstance within 15 days following its occurrence, with proof of payment of the relevant taxes. In the case of liquidation, dissolution or merger, the legal representative or liquidator must attach relevant information and documentation to the tax return to be submitted to the DGII. Non-compliance with this obligation is subject to a fine of approximately USD 1 200 to USD 1 440[29] (Article 244(h) of the Tax Code).

104. The responsibility for retaining documents following the dissolution or liquidation of a company applies for 10 years in the tax law context

26. Article 159 of the Labour Code provides that minimum monthly wages fixed by decree must be reviewed at least every three years.
27. Specifically, three times the monthly minimum wage.
28. Specifically, three times the monthly minimum wage.
29. Specifically, four times the monthly minimum wage.

pursuant to Article 147 of the Tax Code (this period is five years from the date of liquidation of all of their commercial business in the company law context, pursuant to Article 451 of the Code of Commerce) and lies with the company concerned, its successors or heirs. The El Salvadoran authorities note that where there are no successors or heirs of a company, recourse will be made to the persons listed under Article 43 of the Tax Code, who are considered jointly liable in the context of tax evasion. This list includes bankruptcy trustees and depositaries, company liquidators, those who manage or have access to the assets of companies and collective entities lacking legal personality, as well as curators and legal or private administrators of successions.

Availability of legal ownership information in EOIR practice

105. The implementation of the legal framework and the availability of legal ownership information on companies in practice will be considered in the Phase 2 review on the practical application of the standard.

Availability of beneficial ownership information

106. The standard was strengthened in 2016 to require that beneficial ownership information be available on companies. In El Salvador, this aspect of the standard relies on the application of the AML framework, and more specifically the AML Technical Norms, issued by the BCR, that are legally binding on banks and other financial institutions.[30] Hence, for companies that have a bank account in El Salvador, beneficial ownership information will be available via the banks on the basis of the CDD requirements of the banks. However, there is no obligation for companies to have a local bank account and therefore the coverage of the AML framework does not necessarily extend to all relevant entities and arrangements.

107. The El Salvadoran authorities note in this regard that pursuant to Article 206-A of the Tax Code, any taxpayer wishing to claim a deduction from their tax liability for expenditure of more than USD 17 400-20 800,[31]

30. Other AML-obliged persons have very limited CDD obligations: there is no direct obligation on other service providers to maintain specific information on their clients in El Salvador, and there is no obligation on professional advisors or intermediaries (other than *fideicomiso* service providers and real estate agents) to identify their clients. Lawyers, notaries and accountants are only required to notify transactions above USD 10 000 in accordance with Article 9 of the AML Law (Article 2(3) of the AML Law).

31. Specifically, 58 minimum monthly wages (calculated in aggregate where a payment is made to the same subject within a period of ten days). The relevant monthly minimum wage in El Salvador in July 2021 was approximately USD 300-360.

must make the payment that they will seek to deduct by cheque, bank transfer or bank card emitted from an El Salvadoran bank. As such, any such taxpayer seeking to claim a deduction must have a bank account in El Salvador in order to make a payment in this way. However, given the amount of the payment compared with the average monthly wage (58 times that), this only captures some medium and large taxpayers, and therefore a maximum of approximately 0.7% of total taxpayers.[32]

108. Considered together with the company and tax law requirements relating to the keeping and updating of registers of shareholders, set out in relation to legal ownership information, controlling ownership interests could be identified on the basis of the shareholding information available to the DGII, to the extent the chain of ownership remains in the country. On the other hand, if any part of the chain is incorporated in another jurisdiction, or if beneficial ownership is exercised otherwise than through controlling ownership interest, beneficial ownership information will not be available if the entity does not have a relationship with a bank or other financial institution in El Salvador.

109. The identification of the relevant natural person who holds the position of senior managing official and control of the legal person through other means could be ascertained by the DGII in certain circumstances. For example, the DGII could rely on the constitutional documents of companies (and partnerships) that are required to be submitted to the Commercial Registry and that reflect both the composition of the board of directors, managers and/or founders, and the relationship between founding members. However, such information may not necessarily reflect the division of roles and responsibilities in the detail required, for example so as to ascertain who on a board of directors could be considered the senior managing official for the purposes of establishing beneficial ownership. In addition, the persons concerned may not necessarily be natural persons and, in the absence of a requirement to update this information, may only provide historic information.

110. None of these potential information sources are referred to as sources of beneficial ownership information for purposes of exchange of information on request, including in the EOI Manual. The El Salvadoran authorities note in this respect that a bill of law has been prepared by the DGII with the objective of bringing its legal framework in line with the standard in this respect (see paragraphs 52 to 55).

111. Each of the legal regimes is analysed below.

32. The DGII states that 3 854 taxpayers out of 564 115 are considered medium and large taxpayers.

Companies covered by legislation regulating beneficial ownership information

Type	Company law	Tax law	AML law
Companies (SAs and SCAs)	None	None	Some
Partnerships (SCs, SASs and SRLs)	None	None	Some
Foreign companies (tax resident) [a]	None	None	Some

Note: a. Where a foreign company has a sufficient nexus, the availability of beneficial ownership information is required to the extent the company has a relationship with an AML-obligated service provider that is relevant for the purposes of EOIR (Terms of Reference A.1.1, footnote 9). In the case of El Salvador, not all AML-obligated service providers that are relevant for the purposes of EOIR have full CDD obligations (e.g. accountants and auditors are not part of the subset of AML-obliged persons having the obligation to identity the beneficial ownership of their clients), therefore it is determined that information would be available only for "some" foreign companies.

Anti-money laundering law requirements

112. AML-related obligations are set out in the AML Law and a number of subsidiary norms. AML-obliged persons include "any company, firm or entity of any kind, whether domestic or foreign, which integrates an institution, group or financial conglomerate supervised and regulated by the Superintendence of the Financial Sector", as well as the catch-all of "any other private or mixed economy institution and commercial companies" (Article 2(1) and (20) of the AML Law). The same definition of AML-obliged persons applies under the AML Regulations. However, the obligations on these AML-obliged persons do not extend to the obligation of maintaining beneficial ownership information.[33]

113. This is because the AML Law itself does not directly set an obligation for AML-obliged persons to identify the beneficial owners of themselves or their clients. Rather, it sets an overarching framework, with all AML-obliged persons being required to fully identify, with the "necessary diligence", all customers that seek their services, as well as identifying any other natural or legal person on whose behalf the customer in question is acting (Article 10.A). AML-obliged persons are required to establish an internal CDD policy for the identification of their clients and users (Article 9.B).

33. Rather, AML-obliged persons have an obligation to know the legal origin of the funds of clients, and to notify suspicious transactions to the FIU as set out under the AML Law. AML-obliged persons are also required to notify the FIU, within five days of the transaction of all cash transactions totalling USD 10 000 (or equivalent) in aggregate per month, and all other transactions totalling USD 25 000 (or equivalent) in aggregate per month, i.e. whether of a suspicious nature or not (Article 9).

114. As set out above, the AML Law is complemented by a number of subsidiary norms, notably:

1. The Regulations of the Anti-Money Laundering Law, Presidential Decree No. 2 dated 31 January 2000 (the "AML Regulations"), the purpose of which is to "facilitate and ensure" the application of the AML Law (Article 1 of the AML Regulations). The AML Regulations are addressed to AML-obliged persons as defined in Article 2 of the AML Law.
2. The Technical Norms on Anti-Money Laundering, issued by the BCR in November 2013 (the "AML Technical Norms"). The AML Technical Norms set out minimum guidelines for the appropriate handling of the risks associated with money laundering/terrorist financing, so as to allow the entities that make up the financial system to prevent and detect irregular transactions and suspicious transactions relating to such risks (Article 1 of the AML Technical Norms).
3. The FIU Instructive, Agreement 085 of the Public Prosecutor's Office of the Republic, dated July 2013. The FIU Instructive has as its objective "to develop the obligations of AML-obliged persons" established in the AML Law and the AML Regulations (Article 1 of the FIU Instructive). It applies to a sub-group of AML-obliged persons, defined in Article 2 of the FIU Instructive.

115. Of the above, it is the AML Technical Norms that are of relevance in the EOIR context as regards availability of information on beneficial ownership. The AML Technical Norms are addressed specifically to a subset of AML-obliged persons set out in Article 2 of the AML Technical Norms, notably all banks established in El Salvador (including their subsidiaries and branches located abroad); the subsidiaries and branches of banks established abroad; co-operative banks and savings societies; insurance and pensions providers; and entities offering services that are complimentary to financial services offered by financial sector entities. They are issued by the BCR but are binding on all financial and other entities to whom they apply.[34]

34. This is because they are stated to detail obligations set out in other laws, notably Article 10.E) of the AML Law and Article 4(b) of the AML Regulation, which provide that financial entities are to adopt policies, rules and mechanisms of conduct and to develop and execute programmes, norms, procedures and internal controls to avoid the offence of money and asset laundering, and Article 35(d) of the Supervision and Financial Sector Regulation Law, which provides that managers of members of the financial sector are to comply with the adoption and updating of policies and mechanisms for the management of risks.

116. The provisions on beneficial ownership are found in Chapter IV of the AML Technical Norms and relate to CDD procedures. Specifically, Articles 17 and 18 provide as follows (emphasis added):

> 17. Due Diligence: "Entities must apply due diligence, which will involve the implementation of procedures and controls to assess, *identify and verify the identity of their clients and beneficial owners*, monitor their operations, to the end of adequately managing the ML/FT risk. This includes the documentation that justifies the origin of funds, economic activity, geographical location and other information that may be necessary to know their client and establish a transaction profile."
>
> 18. Procedures for Due Diligence: "Entities should *take reasonable measures to carry out due diligence processes* on their clients, whether natural or legal persons, including:
>
> *a)* the identification of their clients in a reliable manner through identification documents and other basic information that is requested at the time of contracting, assuring themselves that the documents provided are originals. In the case of legal persons, apart from identifying them, entities should know and document, inter alia, their legal form, name, economic activity, the accreditation and identification of their legal representative, the identity of all shareholders and partners with a shareholding of least a 10%, and members of the board of directors. […]
>
> *f)* the final beneficiaries in all transactions and operations that the entities realise […]".

117. Article 3 of the AML Technical Norms sets out the definition of beneficial owner. This is the only definition of beneficial ownership in El Salvador's AML framework (see paragraphs 40 to 43), but it is in line with the definition of beneficial ownership in the standard:

> [Beneficial owner] "Refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person in whose name a transaction is being conducted, and also includes those persons who exercise ultimate effective control over a legal person or other legal arrangement."[35]

35. The Spanish provides: "*Beneficiario Final: Se refiere a la(s) persona(s) natural(es) que finalmente posee o controla a un cliente y/o la persona en cuyo nombre se realiza una transacción. Incluye también a las personas que ejercen el control efectivo final sobre una persona jurídica o otra estructure jurídica*." "[*E*]*n cuyo nombre*" has been translated as "in whose name" in order to stay as

118. Article 18 of the AML Technical Norms raises some concerns. First, the text in Article 18 appears to fall short of the standard (the standard requires AML-obliged persons to *identify* the beneficial owner and then to take reasonable measures to *verify* their identity). However, the El Salvadoran authorities state that it is Article 17 which imposes the overarching obligation, and that Article 18 complements it in relation to individual procedural aspects of CDD. According to the El Salvadoran authorities, the overriding obligation is *both* the identification and verification of *both* legal and beneficial owners, as provided for under Article 17. It remains that the obligation to always identify and verify the beneficial owners of the AML-obliged person's clients is ambiguous and could mean that the identity of beneficial owners will not always be available.

119. Second, Article 18 does not refer to the beneficial ownership of clients. Article 18.a) refers to legal owners (and potentially beneficial owners) of 10% of a shareholding, and Article 18.f) to the ultimate beneficiaries of transactions. Neither the beneficial ownership definition itself, nor other provisions of the AML Technical Norms, refer to the method for identifying beneficial owners and taking reasonable measures to verify their identity (either through the cascade or other approach).

120. Indeed, the notion of control is not defined or explained in any available document. Control of a legal person through means other than ownership could only be partially ascertained by the DGII on the basis of the constitutional documents of companies (and partnerships) that are required to be submitted to the Commercial Registry and that reflect the relationship between founding members. This would only cover control referred to in the deeds.

121. Some specific provisions apply when the client is another financial institution or a designated non-financial business or professional (DNFBP).[36] Pursuant to Article 21 of the AML Technical Norms, entities should request, from clients carrying out supervised financial activities and DNFBPs, information on natural or legal persons who have a share of ownership in them of at least 10%. In the case of credit associations, co-operative associations and co-operative banks, the list of members and the size of the contributions should be requested. Where any owners are legal persons, the AML Technical Norms specify that the owners of these should be identified until a natural person is arrived at. This requirement does not meet the standard

closely to the original wording as possible, but the phrase is interchangeable with "on behalf of" in Spanish and is therefore no more restrictive in meaning.

36. DNFBPs are defined in the AML Technical Norms in a somewhat circular manner as "Designated Non-Financial Activities or Professions. Client whose economic activity corresponds to designated non-financial activities or professions.".

however, as by limiting the investigation to a limited range of clients (financial institutions and DNFBPs) and to their shareholders having at least 10% of the shares, this method would miss the circumstances in which a beneficial owner holds or controls several shareholders having individually less than 10% of the shares.

122. The requirement under Article 21 of the AML Technical Norms to identify holders of at least 10% shares and their ownership chain applies at the start of a business relationship and generally every two years, "whenever considered necessary". The updating requirement is therefore somewhat unclear. Moreover, Article 18(g) of the AML Technical Norms provides that procedures should be put in place to keep updated general information on existing clients, but "general information" is defined as covering basic information such as address, and not the beneficial owners of clients.

123. Article 10.B) of the AML Law requires AML-obliged persons to file and keep documentation relating to their operations for a period of five years, counting from the date of finalisation of each transaction. Identification data, accounting files and commercial correspondence of clients must be kept for the same amount of time, counting from the termination of an account or client relationship. The same applies with regard to the CDD information required pursuant to the AML Technical Norms. The Article further stipulates that the information about the client and transactions must be available when required by the competent authorities in the right form.[37] This retention requirement therefore also applies to AML-obliged persons in relation to entities that cease to exist.

124. The AML framework also does not indicate that in case no beneficial owner is identified, the identity of a senior manager who is a natural person should be recorded. Article 18 of the AML Technical Norms rather requires that the due diligence conducted on clients that are legal persons covers the members of the board of directors. Article 21 requires, in relation to clients with supervised financial activities and DNFBPs, "details of the officials holding management positions in the company, [together with the] name and designation of the positions". However, these may not be natural persons and this would make it difficult to identify the beneficial owners where entities in the ownership chain are incorporated outside of El Salvador. Also, in the absence of a requirement to update this information, they would only provide historic information on the persons holding the position of senior managing officials.

37. The requirement under Article 12 of the AML Law for records of realised transactions, whether national or international, that would allow a prompt response to requests for information from tax audit or supervisory bodes in relation to money laundering, to be kept for a minimum of 15 years, applies to money-laundering offences. The retention period in other scenarios is therefore five years.

125. The El Salvadoran authorities note that the AML framework does not allow reliance of CDD conducted by others, because nothing is provided for in this respect and Article 12 of the AML Technical Norms refers expressly to the CDD carried out by the entities concerned.

126. Given the recent introduction of Bitcoin as legal tender, a number of related legal and regulatory instruments have been introduced. These impose CDD requirements on the entities that provide USD-Bitcoin conversion services and *vice versa,* and on the administrators of technological platforms for Bitcoin and USD wallets. However, as these entities are banks, co-operative banks and credit and savings societies, and as the standard of CDD is not enhanced as compared with the existing AML framework, this is not expected to result in new information being collected in relation to the beneficial owners of companies and any bodies corporate.[38] In fact, it further disperses the sources of AML-related obligations. The practical aspects of the implementation of Bitcoin as legal tender and the consequent availability of information on both legal and beneficial owners will be further considered in the Phase 2 review on the practical application of the standard (see Annex 1).

127. In conclusion, while the definition of beneficial ownership conforms to the standard, the remainder of the obligations fall short of the standard:

- The scope of application does not cover all relevant entities and arrangements, as there is no obligation for all entities or arrangements to engage one of the entities listed in Article 2 of the AML Technical Norms.
- There is no clear procedure for identifying a beneficial owner, including:
  - There is no definition of control through other means than ownership.
  - There is no default position where neither the ultimate controlling ownership interest nor exercise of control through other means can be established.

38. With regard to banks, co-operative banks and credit and savings societies that provide USD or Bitcoin digital wallet services, the Guidelines for the Authorisation of the Operation of Digital Wallets (*Lineamientos para la Autorización del Funcionamiento de la Plataforma de la Billetera Digital para Bitcoin y Dólares*), issued in September 2021, provide that such entities are considered AML-obliged persons and required to comply with the AML Law and related instruments (Article 7). The Guidelines are subject to supervision and enforcement by the BCR, though the BCR is required to communicate any non-compliance to the SFS within five working days (Article 19).

- There is no clear obligation to update the information.
- The obligation to always identify and verify beneficial owners is ambiguous.
- There is no indication of what particular elements should be recorded, and what identification sources would serve to satisfy these.

128. Therefore, **El Salvador should take necessary measures to ensure that beneficial ownership information is available for all relevant entities and arrangements in accordance with the standard**.

Nominees

129. The concept of nominees does not exist under El Salvadoran law. Rather, where a person holds property for the benefit of or on behalf of another person, this is considered equivalent to a "*mandato*" under the Civil Code (*Código Civil)*, and that person (i.e. the "nominee") would have no legal rights to that property. Hence, in general, shares held by anyone acting as a "nominee" on behalf of another would be seen as belonging to the person for whom the shares are held.[39] There is no recognition given to nominees in any of El Salvador's laws, including its AML framework.

130. The El Salvadoran authorities have stated that they have not encountered nominee shareholding in practice.

Beneficial ownership information – enforcement measures and oversight

131. The SFS is an autonomous entity which, since 2011, has been responsible for the inspection, supervision and control of members of the financial sector including public and private banks; co-operative banks; non-banking financial institutions; savings and loan organisations, insurance companies; pension schemes; and the stock exchange. As at December 2020, 468 officials worked at the SFS and 10 270 natural and legal persons came under its supervision.[40]

132. Compliance with the AML framework is overseen by a dedicated department of the SFS. Specifically, CDD and information keeping

39. In the 2016 Report, the concept of *mandatario* or *mandato mercantil* was considered in more detail. As it describes a representational relationship, involving a principal (*mandante*) authorising another party (*mandatario*) to act on its behalf, usually in business negotiations, it is not expected to pose an obstacle to the availability of beneficial ownership information.

40. See the distinction made between members of the financial sector (supervised entities) and the scope of all related supervised persons at paragraph 32.

requirements under the AML Law come under the ambit of the SFS' supervision and sanctioning powers. As at October 2021, there were 12 officials in this department, representing an important increase from the 8 officials in August 2015. The SFS conducts both desktop audits and onsite visits. Onsite visits are determined with reference to a risk map by industry, which creates a risk of visit for each entity. However, entities are informed in advance of the risk map, which includes their ML/FT risk. The SFS performs an average of ten visits of regulated entities per year, with some variance from year-to-year due to the industry-specific approach. The amount of time spent on the onsite visits depends on the entity and the level of risk. The process generally lasts from 6 to 12 weeks, counting from the onsite visit to the preparation of the note communicating the findings.

133. The El Salvadoran authorities have advised that the SFS verifies the CDD documentation relating to current client files, but that the maintenance of registers of beneficial owners going back the extent of the retention period is not verified. Rather, the SFS relies on the retention period being reflected in internal procedures and manuals.

134. In relation to breaches by AML-obliged persons, Article 15 of the AML Law provides that non-compliance with the law and related norms will be subject to liability under Article 38(2) of the Criminal Code, without prejudice to the personal criminal liability applicable pursuant to Chapter II of the AML Law. However, this relates to the actual offence of money laundering, predicated offences and related offences, and specific forms of criminal participation and other applicable consequences, including administrative ones.

135. Failure to comply with obligations under Article 10.A) and D) of the AML Law, Article 8(5) of the FIU Instructive and Articles 17 and 18 of the AML Technical Norms, is punishable with a fine of up to 2% of the total assets with regard to legal persons, or with a fine of approximately USD 150 000 to USD 180 000[41] for natural persons (Article 44 of the Supervision and Financial Sector Regulation Law).

136. The El Salvadoran authorities have confirmed that in practice, information on beneficial ownership is obtained through the SFS and will involve the information that the relevant subset of AML-obliged, supervised entities hold in their respective records as a result of their CDD processes.

41. Specifically, 500 times the minimum monthly wage. The relevant monthly minimum wage in El Salvador in July 2021 was approximately USD 300-360. The minimum monthly wage is defined by the National Minimum Salary Council of the Ministry of Labour and Social Welfare, and periodically updated (Article 159 of the Labour Code provides that minimum monthly wages fixed by decree must be reviewed at least every three years) in accordance with Article 38(2) of the Constitution.

137. However, considering the number of shortcomings identified in the legal framework regarding the availability of beneficial ownership information, the information may not be adequate, accurate or up-to-date, and it would not be possible for enforcement actions to compensate for this.

138. In addition to the recommendation concerning El Salvador's legal and regulatory framework with regard to the availability of beneficial ownership information (see paragraph 128), whether El Salvador has in place a comprehensive and effective supervision and enforcement programme to ensure the availability of accurate and up-to-date beneficial ownership information for all legal entities and legal arrangements, in line with the standard, will be considered in the Phase 2 review on the practical application of the standard.

Availability of beneficial ownership information in EOIR practice

139. The implementation of the legal framework and the availability of beneficial ownership information on companies in practice will be considered in the Phase 2 review on the practical application of the standard.

A.1.2. Bearer shares

140. Until recently, bearer shares could be issued by SCAs and SAs, pursuant to Articles 632 and 153 of the Code of Commerce, as well as bearer coupons or bonds (Article 680 of the Code of Commerce). Bearer shares first had to be issued as nominative shares and could only be converted once the nominal value of the shares had been paid up.

141. All *sociedades de capital* (companies formed by capital) are required to keep a shareholder register that states *inter alia* where nominative shares have been converted into bearer shares (Article 155(IV) of the Code of Commerce). There is no related obligation however to provide information as to who holds the share upon its conversion to a bearer share.

142. Under the Tax Code, companies are required to notify the DGII of all share transfers in February of each year. However, it is not clear that this would include a reference to the change in form of shares, or information on the holder of the bearer share, in particular as the obligation is on the company, rather than on the individual shareholders.

143. Therefore, no effective mechanism was in place to identify the owners of bearer shares. The 2016 Report consequently recommended El Salvador to take necessary measures to ensure that appropriate mechanisms are in place to identify them.

144. Whilst in practice the issue appears to have been of limited importance in the context of El Salvador,[42] bearer shares have been abolished by Law number 153, adopted on 14 September 2021 and effective as of 8 October 2021. Specifically, the law amends the Code of Commerce so as to delete the provisions that pertain to the conversion of nominative shares into bearer shares. The law further provides for the conversion of existing bearer shares, if any, to nominative shares within a year and a day of the entry into force of the law, i.e. by 9 October 2022. After that date, no voting or distribution rights would attach to any non-converted bearer shares, and companies with remaining non-converted bearer shares would be subject to sanctions. In case of non-conversion of bearer shares to nominative shares after more than 18 months following the effective date of the law, such sanctions include the requirement for the company concerned to trigger the dissolution and liquidation provisions under the Code of Commerce.

145. The practical aspects associated with this abolishment, including its effectiveness in practice, and the related transitional arrangements provided for under the law will be further considered in the Phase 2 review on the practical application of the standard (see Annex 1).

A.1.3. Partnerships

Types of partnerships

146. Three types of partnership (*sociedades de personas*) exist in El Salvador, all of which have legal personality:

- *Sociedad colectiva* (SC): a commercial entity with at least two members (either natural or legal persons), who are jointly, personally and severally liable for the obligations of the partnership without any limitation. SCs are governed by Articles 73 to 92 of the Code of Commerce. The transfer of quotas in an SC requires an amendment to the partnership's by-laws. As at December 2015, there were 2 085 SCs in El Salvador. According to the El Salvadoran authorities, this number has remained constant.
- *Sociedad en comandita simple* (LLP, limited liability partnership): a commercial entity, the capital of which is divided into parts or quotas rather than shares. The partnership has two kinds of members: (i) *socios gestores* which are jointly and severally liable for the partnership's obligations as in the Sociedad Colectiva, and

42. According to a 2015 study of the approximately 200 largest companies operating in the country, none were found to have issued bearer shares. However, it is possible that bearer shares exist in at least some of the other 64 326 companies.

(ii) *socios comanditarios* who are the equivalent to quota holders in a Sociedad de responsibilidad limitada; hence their liability is limited to the amount of their capital contributions except for tax and labour liabilities. LLPs are governed by Articles 93 to 100 of the Code of Commerce. As at December 2015, there were 34 LLPs in El Salvador. According to the El Salvadoran authorities, this number is now 10. The reason for the decrease is not known.

- *Sociedad de responsabilidad limitada* (SRL): a commercial entity the capital of which is divided into quotas rather than shares. The quota holders can be either entities or individuals. The liability of quota holders is limited to the amount of their capital contributions, except for tax and labour law liabilities. SRLs are governed by Articles 101 to 125 of the Code of Commerce. As at December 2015, there were 350 SRLs in El Salvador; as at September 2020, there were 552.

147. Whilst SRLs could also be considered under companies, the classification of the 2016 Report has been maintained to avoid ambiguity.

Identity information

148. SCs, LLPs and SRLs are formed by public notarised deed, in the same way as companies, pursuant to Article 21 of the Code of Commerce. Article 22 sets out the information the deed must contain, and this includes the name, nationality and domicile of the founding partners; the domicile and legal form of the partnership; the duration of its activities; the amount of its share capital; and the contributions of each founding partner (see paragraph 69 et seq.).

149. The deed is then recorded in the "*protocolo*" or notary's register. The completeness of the information recorded is verified by the Notary Section of the Supreme Court of Justice, which checks the registers after every 500 entries or annually, whichever the earlier. Any subsequent modification of the deed is subject to the same formalities as the original deed (Article 21 of the Code of Commerce).

150. The deed (and any subsequent modifications thereto) must also be registered in the Commercial Registry (Article 24 of the Code of Commerce). This step grants the partnership legal personality. If this obligation is not complied with, acts and documents that should have been registered will have no effect vis-a-vis third parties until such time as they are properly registered. As noted with regard to companies, the legal personality of partnerships is "perfected and extinguished" through registration of the relevant documents with the Commercial Registry (Article 25 of the Code of Commerce).

151. Registration must be renewed annually with the Commercial Registry, during the month of the anniversary of the registration, via standardised form F001, available on its website (Article 420 of the Code of Commerce).[43] The form must be accompanied by the annual balance sheet from the year prior (or account filing number) and proof of payment of the renewal fee. The information submitted at the time of registration is publicly available in the Commercial Register and includes the updated amount of the share capital of the partnership.

152. SCs, SRLs and LLPs are taxed at entity level. They are considered taxpayers and therefore subject to the registration and record keeping obligations under the Tax Code (see paragraph 90 et seq.). Pursuant to Article 124 of the Tax Code, all taxpayers, including partnerships, are required to update the information filed at the time of tax registration in January of each year through form F-915. This involves updating the list of partners, together with the book value of their shares, value of their capital contributions, ownership interests and rights. Where dividends, surpluses or profits are distributed, the amount received must also be reported.[44]

153. According to Article 86(6) of the Tax Code, any modification to the partnership (or company) must be reported to the DGII along with a copy of the updated notarised deed within 15 days, accompanied by the relevant documents. The DGII notes that this is interpreted to include changes in the partners only where these lend their name to the partnership.

154. With regard to foreign partnerships, a legal arrangement established in accordance with the laws of a foreign jurisdiction, whether or not described as a partnership, cannot operate in El Salvador unless it registers as a partnership (whether as an SC, LLP or SRL) in accordance with the applicable provisions of the Code of Commerce, making it subject to the obligations set out above.

155. Hence, identity information in relation to partnerships, both domestic and foreign, is available as a result of the registration and updating requirements under company and tax law. In addition, retention requirements are the same as those set out above regarding companies, including in relation to partnerships that cease to exist.

43. See https://www.cnr.gob.sv/download/renovacion-de-matricula-de-empresa-persona-juridica/.

44. The form can be accessed at https://www.mh.gob.sv/wp-content/uploads/2020/11/PMHDC8241.pdf.

Beneficial ownership

156. The availability of beneficial ownership information in relation to partnerships is the same as with regard to companies, set out under A.1.1 (see paragraphs 106 et seq.). Given that, depending on the type of partnership concerned, partners are not necessarily jointly and severally liable in El Salvador, it may not be necessary to require the identification of all partners as beneficial owners in all cases. As such, identification based on a controlling ownership interest may be appropriate in relation to SRLs and in relation to the *socios comanditarios* of LLPs (*sociedades en comandita simple*). However, with regard to more typical arrangements, notably as concerns partners of LLPs with unlimited liability (*socios gestores)* and the partners of SCs, it would be appropriate to identify all partners. In addition, where a partner is a legal person, it would still be necessary to identify a natural person as the beneficial owner.

157. Whilst some information will be available as a result of company and tax law requirements in El Salvador, the availability of beneficial ownership will hinge mainly on the financial institutions that have a relationship with partnerships. As there is no obligation for a partnership to engage a bank or other financial institution, and as even then, the relevant CDD obligations are rudimentary and do not ensure that adequate, accurate and up-to-date beneficial ownership information is available, beneficial ownership information will not be available in all circumstances for partnerships. Any information available is subject to the same retention requirements as set out in relation to AML-obliged persons in paragraph 123. **El Salvador should take necessary measures to ensure that beneficial ownership information is available for all relevant entities and arrangements in accordance with the standard**.

Oversight and enforcement

158. Partnerships, as another type of *sociedad*, are subject to the same obligations under company and tax laws as companies, and the oversight and enforcement information provided in relation to companies and set out under A.1.1 thereby applies in the same way to partnerships.

Availability of partnership information in EOI practice

159. The implementation of the legal framework and the availability of information on partnerships in practice will be considered in the Phase 2 review on the practical application of the standard.

A.1.4. Trusts

160. The concept of "trust" equivalent to the common law notion does not exist under El Salvadoran law, and El Salvador is not a party to The Hague Convention on the Law Applicable to Trusts and on their Recognition. Rather, El Salvadoran law recognises the establishment of "fideicomiso" arrangements, which have some common law trust-like features.

161. There is no obstacle that would prevent a foreign trust from investing or acquiring assets in El Salvador. However, El Salvador's law does prohibit residents from acting as trustees outside of a *fideicomiso* arrangement, and certain other exceptions (see paragraphs 175 and 176 below).

Fideicomiso

162. The *fideicomiso* is an arrangement by which a *fideicomitente* (settlor) transmits certain assets or rights to the *fiduciario* (trustee), subject to the obligation to transfer the income derived therefrom and/or that property to a determined *fideicomisario* (beneficiary) once a specific condition has been met. It is normally used in the context of succession planning. They are governed by Chapter G of the Code of Commerce.

163. Specifically, Article 1233 of the Code of Commerce defines a *fideicomiso* as follows:

> The *fideicomiso* is constituted by means of a declaration of will through which the settlor transfers the usufruct, use or habitation, in whole or in part, of certain assets in favour of the beneficiary, or establishes a specific income or pension, entrusting its fulfilment to the trustee, to whom the assets or property rights will be transferred, but without the power to dispose of them other than in accordance with the particular instructions given by the settlor in the constitutional act [of the *fideicomiso*].

164. Before the assets and rights are transferred to the beneficiary, the trustee is responsible for their management and receives a fee for this from the settlor.

165. While the arrangement is in place – i.e. until the condition is met – the trustee is considered as the owner of the property. Once the condition has been met, the assets and rights are transferred to the beneficiary without restriction. If the condition is not met after 25 years, the assets and rights will revert to the settlor pursuant to Article 1236 of the Code of Commerce.

166. There are three types of *fideicomiso:*

- between living people
- by cause of death

- mixed nature (where *fideicomiso* begins to be administered while the settlor is still alive, and continues after his/her death).

167. Only banks and credit institutions[45] are allowed to act as *fiduciarios*, with prior authorisation from the SFS (Article 1238 of the Code of Commerce). This means that the *fiduciario* will form part of the subset of AML-obliged persons subject to CDD requirements under the AML Technical Norms and therefore required to hold beneficial ownership and identity information on the settlor and beneficiary (Article 17 of the AML Technical Norms) for five years, including after having ceased to be the trustee (see paragraph 123). It also means that the information held on the *fideicomiso* will be considered reserved information, given that it is held by a bank (see B.1.5).

168. The constitutional act establishing the *fideicomiso* must be written in a public notarised deed that must be registered in the Commercial Register (with the exception of *fideicomisos* by cause of death, which are established by will). Any subsequent modification or cancellation of the *fideicomiso* must also be entered in the Commercial Register (Article 1250 of the Code of Commerce and Article 13(9) of the Law of the Commercial Registry). A failure to register the *fideicomiso* results in it being unenforceable against third parties.

169. Pursuant to Article 1240 of the Code of Commerce, the act must identify the *fideicomitente*, *fiduciario* and the *fideicomisario* (apart from in the case of a *fideicomiso* amongst living persons, if the trust is formed for commercial purposes in favour of a collective and future, i.e. not yet determinable, beneficiary holding trust certificates under Article 1239 of the Code of Commerce);[46] the assets administered by the *fideicomiso*; the relevant instructions; and the reasons for which the *fideicomiso* is established. This is therefore the principal source of identification information with regard to *fideicomisos*. Article 9 of the FIU Instructive also provides that *fideicomisos* must state in their constitutional act the persons that subscribe to it.

170. *Fideicomisos* over real estate must also be registered in the national Property Register through presentation of the public deed establishing them, as must any changes to them (Article 1249 of the Code of Commerce). In the absence of such registration, there is no enforceable right with regard to the property in question.

45. Article 1234 of the Code of Commerce.

46. The issuance of trust certificates is subject to the requirements set out in Article 898 of the Code of Commerce, and must be granted by means of a public deed filed with the Commercial Registry.

171. For tax purposes, a *fideicomiso* is a taxable arrangement (Article 32 of the Tax Code). It must be registered with the tax registry (Article 86(3) of the Tax Code) and must appoint a legal representative to ensure it meets its obligations under the tax laws, including, beyond registration, the filing of tax returns and payment of any taxes due (Article 127 of the Tax Code). The information in the registry mirrors that required by companies and is also provided through the company tax registration form (referred to as the RUC, *Registro Unico de Contribuyentes*, form F-210). It therefore includes identity information on the parties to the *fideicomiso*, and must be updated regularly. *Fiduciarios* are subject to record and account-keeping requirements in relation to the income of the *fideicomiso*. Thus, all records that are required for determining the *fideicomiso*'s taxable income must be maintained to ensure compliance with its tax obligations.

172. The AML Regulations list *fideicomisos* with large asset values as one of the operations deserving special attention due to their rare characteristics (Article 14(4) of the AML Regulations), without being more specific. Similarly, Article 10E)I) of the AML Law refers to *fideicomisos* specifically in the context of know-your-client requirements on the part of AML-obliged persons.

173. Therefore, the combination of company law, tax law and AML requirements ensure the availability of identity information with regard to *fideicomisos*, the closest arrangement to the common law notion of trust that exists in El Salvador. Whilst this includes beneficial ownership information, it is constrained by the limitations to the availability of such information set out under A.1.1, in particular given that there is no requirement for either the *fideicomitente* or the *fideicomisario* to be natural persons and there is no guidance in the AML Technical Norms or elsewhere to assist banks or financial institutions in applying their AML obligations – and the beneficial ownership definition contained therein – in respect of *fideicomisos*. This makes it unlikely that information on the beneficial owner of such arrangements would be available in all cases or adequate. For example, there is no guidance for AML-obliged persons on identifying "any other natural person exercising ultimate effective control" over the *fideicomiso*.

Foreign trusts

174. The El Salvadoran authorities have advised that they are not aware of an El Salvadoran resident having acted as trustee for a foreign trust in El Salvador to date. This is attributable mainly to El Salvador not recognising the concept of trusts.

175. Indeed, the Constitution considers trusts as "entailments" and restricts these as follows:

"All kinds of entailment (vinculación) are prohibited, except:

1. trusts constituted in favour of the State, the municipalities, public entities, charities or cultural institutions and the legally disabled
2. trusts constituted for a period that does not exceed that established by the law and whose management is under the charge of legally authorised banks or credit institutions
3. the goods of the family."

176. As such, any person acting as trustee of a foreign trust would risk breaching the law unless doing so with regard to one of the three categories of trust recognised under the Constitution. However, the three categories are of limited relevance for foreign trusts: the first, trusts in the favour of public authorities, charities, cultural institutions or the disabled are unlikely to be used for occulting revenue or assets to the extent that the beneficiaries are public authorities or institutions charged with public interest objectives; the second category covers *fideicomisos*, dealt with above; and the third category covers the specific concept of entailments for what are referred to as goods of the family. These cover specific assets that belong to a family group and cannot, as a result of the entailment, be sold, given away, mortgaged, or rented, as long as the minor member of the family group has not reached the age of majority (pursuant to the 1933 Law of the Goods of the Family), and are therefore not considered likely to be of pertinence in the EOIR context either. This is particularly the case given that the El Salvadoran authorities are not aware of any instances where a resident has acted as a trustee of a foreign trust.

177. The El Salvadoran authorities note that where an El Salvadoran resident were nevertheless to act as a professional trustee, performing the services of administering assets on behalf of another for a fee, then the trustee would be considered a merchant (*comerciante*) for purposes of Article 2(I) of the Code of Commerce. As a merchant, the trustee is required to register with the Commercial Registry, provide his/her identification and a description of the activity carried on. Further, a merchant must keep records relating to the business administered including any contracts or agreements relating to the trusteeship. In such cases it would therefore be possible that identity information on the settlor, trustee and beneficiaries would be maintained by the trustee. However, the AML obligations that are otherwise applicable to banks and credit institutions acting as *fiduciarios*, and therefore the already scarce requirements associated with identification, would not apply, rendering the information that is maintained even less reliable.

178. For income tax purposes, the assets and income of a foreign trust, as well as any benefit attributed to the beneficiaries, would be taxable. As a

taxpayer, the trustee – acting in a professional or non-professional capacity – would be required to register with the DGII and keep accounting records. In the event that a trustee claims that part of his/her taxable income was generated from assets held on trust, the trustee could only avoid the tax liability for that revenue by providing evidence of the existence of the fiduciary relationship (most typically the trust deed) and disclosing the identity of the settlor and beneficiaries to the DGII. El Salvadoran authorities have reported that in that case, the income would be classified as income of a "non-domiciled" entity and Article 158 of the Tax Code ("Withholding tax for non-domiciled entities") would apply. The trustee would then be subject to an obligation to withhold tax on income earned in El Salvador and would be obliged to submit a tax return to the DGII through form F-910, which includes information on the legal owner of the asset as well as the person acquiring the income.

179. In any event, the shortcomings identified in relation to the availability of beneficial ownership information would apply in the context of foreign trusts, in particular given that a trustee of a foreign trust need not be a bank or credit institution like in the case of *fiduciarios*, and may therefore not be subject to the CDD requirements under the AML Technical Norms. The considerations set out in relation to foreign trusts would also be relevant where a foreign trust forms part of an ownership chain of an entity or arrangement that is subject to an information request.

180. In sum, so as to ensure that there is no gap in practice in relation to trusts, the application of the exceptions to the prohibition on entailments will be further considered in the Phase 2 review on the practical application of the standard (see Annex 1).

Oversight and enforcement

181. With regard to foreign trusts, representatives of both the DGII and the SFS have reported that in the course of their oversight programme, they have never come across an El Salvadoran individual or entity administering a foreign trust. However, in the absence of an oversight programme to detect such arrangements, this is of limited reassurance.

182. *Fideicomisos* on the other hand are subject to obligations under company and tax law, and the oversight and enforcement by the SCO and the DGII described in relation to companies also applies to *fideicomisos*.

183. As only authorised banks or credit institutions may be *fiduciarios* of *fideicomisos*, *fiduciarios* will also be subject to the supervision programme of the SFS, including its regular onsite inspections and the imposition of sanctions in the case of non-compliance. Tax obligations on the other hand are overseen by the DGII, including through a comprehensive onsite inspection programme.

184. As at September 2020, 250 *fideicomisos* between living people were in place; 1 by cause of death and 16 of mixed nature. The specific requirements regarding the formation by deed or testament, the identification of all parties in a *fideicomiso*, the registration of the *fideicomiso* with the Commercial Registry and the DGII, and the restriction of the role of *fiduciario* to banks or credit institutions, means that the authorities have significant information available in relation to *fideicomiso.*

185. Nevertheless, the shortcomings identified under A.1.1 with regard to beneficial ownership information apply, and are compounded by the fact that there is no guidance to assist in the application of the beneficial ownership definition and identification and that not all parties to a *fideicomiso* need be natural persons. In addition, though the risk may be low, there exists at least the theoretical possibility that an El Salvadoran resident may act as a trustee and potentially escape the rules associated with the *fideicomiso* framework, or that a foreign trust exists in a relevant ownership chain.

186. Therefore, **El Salvador should take necessary measures to ensure that beneficial ownership information is available for all relevant entities and arrangements in accordance with the standard**.

Availability of trust information in EOIR practice

187. The implementation of the legal framework and the availability of information on *fideicomisos* (and any existing trusts) in practice will be considered in the Phase 2 review on the practical application of the standard.

A.1.5. Foundations

188. In El Salvador, the concept of private foundation does not exist. Rather, pursuant to the Non-Profit Associations and Foundations Law, foundations and corporations may be formed but only for non-profit purposes either as foundations of public law, or as public utility foundations. Whilst the former covers institutions such as the tax authority, municipalities and churches, the latter covers entities with objectives of an educational, beneficial, scientific, artistic or literary nature and, in general, activities that represent social well-being. Their income is applied for the fulfilment of their objectives; there is no direct or indirect distribution of revenue to their members. Therefore, they are of limited pertinence to the exchange of information for tax purposes.

189. Foundations must be formed by public deed or will, which must include the name and address of the foundation, the names and addresses of the founders, the names and identity card numbers of the legal representatives and directors, the objects of the foundation and details on how it will be administered (Article 26 of the Non-Profit Associations and Foundations

Law). In the event of a change in this information, the public deed must be updated within 14 days of the change (Article 28).

190. In all cases, in accordance with Article 173 of the Tax Code, the DGII's powers of audit, inspection, investigation and control to ensure the effective fulfilment of tax obligations, apply also in respect of persons who enjoy tax exemptions, deductions or incentives. Both foundations and associations (see below) are accordingly required to register with the DGII, and are allocated a NIT.

Other relevant entities and arrangements: associations

191. There exist three types of associations in El Salvador: non-profit associations (governed by the Non-Profit Associations and Foundations Law); special interest associations (governed also by the Non-Profit Associations and Foundations Law, and by the General Law on Co-operative Associations); and co-operative associations (governed by the General Law on Co-operative Associations). Co-operative associations are private law associations of public interest. They may also be referred to simply as "co-operations", "federations" or "confederations".

192. Due to their characterisation as non-profit, the three types of associations are unable to distribute benefits, retained earnings or profits (Article 56 of the General Law on Co-operative Associations). Given their nature, like foundations, associations are of limited pertinence to the exchange of information for tax purposes.

193. Article 6 of the General Law on Co-operative Associations also provides that co-operative associations may not carry out for-profit transactions with third parties so as to allow these to participate, directly or indirectly, in the prerogatives or benefits granted to co-operative associations in accordance with the law. Co-operative associations must be constituted for the purposes of service, production, distribution or participation. However, they may organise themselves and operate freely, in accordance with the General Law on Co-operative Associations and the Law Creating the Salvadoran Institute for Co-operative Development (INSAFOCOOP), its Regulations and its Statutes. Co-operative associations are of variable and unlimited capital, and of indefinite duration. Their members enjoy limited liability and their number is not capped. A total of 162 co-operative associations were registered in El Salvador as at September 2020.[47]

47. Whilst not explored in further detail under A.2 because of their nature and consequent limited relevance for exchange of information on request purposes, co-operative associations are required to keep the books such as minutes and accounts, and to submit to INSAFOCOOP their financial statements within

194. In order to register with the Registry of Non-Profit Associations, it is necessary to present the statutes of the association, a register of members, the act confirming election of the board of directors of the association and the books in which the balance sheet and profit and loss statement will be maintained. In addition, in order to register with the DGII, the names of persons constituting the association must be provided: associates, participants, co-operators and/or members of the board of directors.

A.2. Accounting records

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

195. The 2016 Report found that the legal and regulatory framework in respect of Element A.2 was in place and the element was rated "Compliant" with the standard. The situation with regard to accounting records remains unchanged since the 2016 Report. All "merchants", defined under Article 2 of the Code of Commerce as natural persons exercising through a commercial enterprise, as well as companies and partnerships, are required to keep reliable accounting records and underlying documentation for at least ten years. This captures all entities and arrangements relevant for EOIR purposes. Under the tax laws, all taxpayers (which encompasses companies, partnerships and *fideicomisos*) are required to keep reliable accounting records for ten years.

196. Compliance is monitored by the General Directorate of Internal Taxes (DGII) and the Superintendence for Commercial Obligations (SCO), and oversight is carried out via a combination of desktop audits and onsite inspections. Sanctions are set at a level that appears to be effective, proportionate and dissuasive.

197. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the legislation of El Salvador in relation to the availability of accounting information.

30 days of their approval by their General Assembly (Article 70(c) of the General Law on Co-operative Associations). Non-profit associations and special interest associations are also required to keep accounts, based on generally accepted accounting practice and the needs of the entity concerned, provided this conforms with what is set out by INSAFOCOOP and relevant laws.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

A.2.1. General requirements

198. The standard is met by a combination of company and tax law requirements. Accounting requirements under the Code of Commerce apply to "merchants", and therefore to all entities and arrangements relevant for EOIR purposes. Similarly, accounting requirements under the Tax Code apply to taxpayers under an equivalent obligation under the Code of Commerce or special laws.

Company law

199. Pursuant to the Code of Commerce, accounting requirements apply to all *comerciantes* – "merchants". Merchants who are natural persons exercising through a commercial enterprise are referred to as "sole traders" (*comerciantes individuales*), and companies and partnerships are referred to as "corporate merchants" (*comerciantes sociales*) – including where incorporated as investment holding or asset holding companies (Article 2 of the Code of Commerce). The same provision sets out that foreign persons and companies incorporated under foreign laws are permitted to carry on business in El Salvador, subject to the provisions of the Code of Commerce and other laws of El Salvador. Hence, domestic companies, foreign companies and partnerships alike are considered merchants. Similarly, the financial institution that acts as the *fiducario* (trustee) and any trustees of trusts formed under foreign law who conduct their duties as professional trustees will come under the definition of merchant.[48]

200. The obligations of merchants, with the exception of individuals with an asset value below USD 12 000,[49] are set out in the Second Book of the

48. Foundations and associations, due to their non-profit nature and, in some instances, public interest focus, would not be considered "merchants".

49. Article 15 of the Code of Commerce. Article 437 of the Code of Commerce specifies that sole traders and industrial entrepeneurs (*industriales individuales*, i.e. those merchants whose activity is focused on the industrial production of consumer goods) with an asset value below USD 12 000 shall have the option of keeping their own accounts or having them kept by someone of their nomination. Sole traders whose asset value is below USD 12 000 are required to keep a bound book to separately record their expenses, purchases and sales, in cash and on credit. At the end of each year, this book must include a general balance sheet

Code of Commerce. Title I, Chapter I of the Second Book includes a general provision at Article 411(II) that: "Sole traders [with an asset value above USD 12 000] and corporate merchants are required to… keep accounts and correspondence in the form prescribed in this Code". Title II is dedicated specifically to accounting obligations (Articles 435 et seq.). Accordingly, merchants are required to keep:

- daily and general ledgers
- financial statements
- such accounts as may be necessary under accounting requirements or law.

201. Pursuant to Article 435 of the Code of Commerce, merchants are required to keep well organised accounts, in line with any of the generally accepted systems of accountancy and approved by those exercising the public audit function. El Salvador applies both the International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS). Accounts can be kept on separate sheets and use can be made of electronic or other technical means to record accounting transactions.

202. Accounts can be maintained in SVC or USD, and all accounting is to be carried out and kept in the country, including for subsidiaries or branches of foreign companies exercising business activities in El Salvador, for ten years (Articles 436 and 451 of the Code of Commerce).

203. The financial statements must include ordinary and extraordinary balance sheets; the summary of inventories as relative to each balance; the summary of the accounts grouped to form the individual lines of the balance sheet; the profit and loss statement for each balance; the composition of the equity; any other statement necessary to illustrate the economic and financial situation of the merchant; and the manner in which the distribution of profits or the application of net losses was verified (Article 442 of the Code of Commerce).

204. At the close of each tax year (calendar year), merchants are required to establish the financial position of the enterprise through preparation of a balance sheet and profit and loss statement. The balance sheet, income statement and a statement documenting all changes in the equity of a company must be certified by an authorised public accountant and must be submitted to the Commercial Registry (Article 441 of the Code of Commerce).

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of all transactions, specifying the values that make up their assets and liabilities (Article 452 of the Code of Commerce).

205. For sole traders with asset values equal to or above USD 34 000, and all corporate merchants, the accounts must be certified by an external auditor (Article 474(1) of the Code of Commerce).

206. Sole traders whose asset value is equal to or above USD 12 000 are required to submit to the Commercial Registry their end-of-year balances, signed by the owner or legal representative and the accountant, in order to figure in the balance sheet records (Article 474 of the Code of Commerce).

207. Other sole traders and corporate merchants[50] are required to submit their balance sheet to the Commercial Registry every year, duly signed by their legal representative, accountant and external auditor, together with their statement of profit and loss and the auditor's report with its annexes (Article 474(2) of the Code of Commerce).

208. Non-compliance with the accounting-related requirements under the Code of Commerce is supervised and sanctioned by the SCO (Article 362(IV) of the Code of Commerce and Article 10 of the Law of the Superintendence of Commercial Obligations). Accordingly, the Superintendence may impose fines of up to approximately USD 18 000[51] (Article 12 of the Law of the Superintendence of Commercial Obligations).

Tax law

209. The Tax Code establishes audit requirements (Article 133 of the Tax Code); reinforces the accounting obligations of taxpayers as required under the Code of Commerce or special laws (Article 139 of the Tax Code); and provides for an alternative requirement in certain cases for the keeping of special records (for example by merchants not required to keep formal accounts [see below] and independent professionals).

210. More specifically, Article 139 of the Tax Code provides that taxpayers that are required to maintain accounts according to the Code of Commerce or special laws are obliged, for purposes of the Tax Code, to maintain "formal accounts". Formal accounts are defined as accounts that consistently adhere to one of the generally accepted methods of accounting appropriate for the business in question. DGII representatives confirm that this refers to the International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS) and in March 2021 the Public

50. In Spanish, "*sociedades mercantiles y empresas individuales de responsabilidad limitada*" are referred to. The El Salvadoran authorities note that these terms are interchangeable with corporate merchants (*comerciantes sociales*) and sole trader/sole proprietorship companies (*comerciantes individuales*).

51. Specifically, 50 times the monthly minimum urban wage (a specific category of minimum wage).

Accounting Oversight Board adopted the IFRS formally, in their complete version, pursuant to Resolution 462.

211. Hence, the Tax Code effectively reiterates the requirement for taxpayers that are merchants to prepare financial statements, whilst further defining certain accounting-related obligations for tax purposes. For example, Article 139 of the Tax Code specifies that operations must be accounted for as they are carried out and within no more than two months of their occurrence. It further requires that the accounts be exhibited at the head office or at the location they informed they would be kept at.

212. Taxpayers that are obliged to maintain formal accounts must submit to the DGII a general balance sheet, income statement and statement of profit and loss at the close of each tax year, together with their tax return (Article 91 of the Tax Code). Non-compliance with this requirement is subject to a fine of 0.5% of the amount of the accounting assets or total equity shown on the balance sheet, less the surplus for the re-evaluation of unrealised assets, which may not be less than approximately USD 300 to USD 360[52] (Article 238A of the Tax Code).

213. Non-compliance with the requirement to keep books, records, manual or computerised accounting systems is subject to a fine of approximately USD 1 200 to USD 1 440[53] (Article 242(a) of the Tax Code).

214. Non-compliance with the requirement to maintain the books, records, accounting documents and files at the place of establishment, business or office of the taxpayer or the location the DGII was informed of, may be subject to a fine of approximately USD 2 700 to USD 5 760[54] (Article 242(c)(4) of the Tax Code).

215. Article 249A of the Criminal Code provides that it will be considered tax evasion where accounting records are not kept in accordance with the relevant tax laws. Where non-compliance with the requirements to maintain accounting information is deemed to be a serious offence (for example because of the falsification of documents), a sanction of up to three years of imprisonment may be applied under Article 283 of the Criminal Code.

52. Specifically, one minimum monthly wage. The minimum monthly wage is dependent on the sector and defined by the National Minimum Salary Council of the Ministry of Labour and Social Welfare, and periodically updated (Article 159 of the Labour Code provides that minimum monthly wages fixed by decree must be reviewed at least every three years) in accordance with Article 38(2) of the Constitution. For purposes of the calculation of fines, the minimum wage for the trade sector is used ("*Comercio y Rango*").
53. Specifically, four minimum monthly wages.
54. Specifically, 9-16 times the minimum monthly wage.

Partnerships and trusts

216. The partnerships existing in El Salvador come under the definition of "merchants", specifically corporate merchants. They are therefore subject to the accounting requirements under the Code of Commerce and the Tax Code set out above.

217. In the case of a *fideicomiso*, the financial institution that acts as the *fiducario* (trustee) comes under the definition of merchant. The same will apply to any trustees of trusts formed under foreign law who conduct their duties as professional trustees and are resident in El Salvador, as they come under the definition of "merchant" (notwithstanding that the common law concept of trust is not recognised in El Salvador).

218. Pursuant to Article 68(3) of the Law of Banks, banks acting as *fiducarios* are required to ensure the complete separation of the assets of the *fideicomitente* (settlor) in relation to their own assets, and each *fideicomiso* must have separate accounting. Article 70 of the Law of Banks further provides that banks will carry out the operations and provide the services under Article 51 of the same Law (which includes, at letter "k)", the acceptance and management of *fideicomisos*, with the prior authorisation of the SFS), in accordance with the provisions of the Commercial Code and other applicable laws.

219. In the event that an El Salvadoran resident acts as a non-professional trustee, he/she will not be subject to the accounting requirements under the Code of Commerce. However, as set out above, this situation has never been detected because El Salvador does not recognise the concept of trusts and a legal risk would therefore be taken by any person acting as trustee of a foreign trust. In addition, a non-professional resident trustee holding the assets of a foreign trust and income as their own would have to declare these in their annual income tax return and maintain accounting records pertaining to this income pursuant to the Tax Code.

Entities and arrangements that cease to exist and retention period

220. Under the Code of Commerce, a retention period of ten years applies to the transaction records of merchants and their heirs or successors, and this includes accounts and underlying documentation. For dissolved entities, this period is five years from the date of liquidation of all of their commercial business and the obligation will lie with an entity's successors or heirs (Article 451 of the Code of Commerce). Pursuant to Article 436 of the Code of Commerce, accounting records must be maintained in El Salvador, and no exception is made for entities that cease to exist. The El Salvadoran authorities note that where there are no successors or heirs of an entity, recourse will in practice be made to the persons listed under Article 43 of the Tax Code.

This list includes bankruptcy trustees and depositaries, company liquidators, those who manage or have access to the assets of companies and collective entities lacking legal personality, as well as curators and legal or private administrators of successions.

221. In case of non-respect of the document retention obligation, the Commercial Registry will refuse registration (including re-registration) or cancel the registration already granted. Any authority aware of such non-respect is required to inform the Registry (Article 451 of the Code of Commerce).

222. In the tax law context, a retention period of ten years from the date of issue or receipt applies to all documents, including accounting records, held by all persons in El Salvador's jurisdiction, whether taxpayers or not (Article 147 of the Tax Code). According to the El Salvadoran authorities, the retention period applies equally to entities that have ceased to conduct business or to exist, and the responsibility will lie with the persons set out in paragraph 220.

223. In addition, a retention period of five years applies to AML-obliged persons pursuant to Article 10.B) of the AML Law, thereby covering accounting information in relation to *fideicomiso* arrangements.

224. According to the El Salvadoran authorities, non-compliance is sanctioned in the same manner as for active entities and arrangements in both the company law and the tax law context in theory. However, entities and arrangements that cease to exist are not systematically audited.[55] The application of requirements in relation to retention periods by entities and arrangements that cease to exist, including the effectiveness of applying the list in Article 43 of the Tax Code to identify persons responsible for record-keeping where there are no successors or heirs, and its supervision, will be further considered in the Phase 2 review on the practical application of the standard (see Annex 1).

A.2.2. Underlying documentation

225. The Code of Commerce stipulates that merchants are required to keep in good order correspondence and documents supporting their accounts (Article 435 of the Code of Commerce). The El Salvadoran authorities note that "supporting documents" are interpreted widely so as to include contracts, vouchers, debit and credit notes, expenses receipts and invoices.

55. However, they are subject to a formal tax audit prior to registration in the Commercial Register of a change in status as a result of modification, transformation, merger, dissolution or liquidation pursuant to Article 218 of the Tax Code.

226. In addition, Article 139 of the Tax Code provides that formal accounts must be supplemented by "subsidiary ledgers" and be "backed by the legal documentation that supports the records and that allows to establish with sufficient order and clarity the facts generating the taxes established in the respective tax laws, expenditures, estimates and all transactions that allow ascertaining of the real tax position". The El Salvadoran authorities note that this refers to underlying documentation such as contracts, vouchers, debit and credit notes, expenses receipts and invoices – essentially, all documents that allow it to establish with sufficient order and clarity the movements that generate the taxes established in the different tax laws, the expenditures, estimates and all operations that allow it to establish the real tax situation of the taxpayer (Article 139 of the Tax Code).

227. Furthermore, the clients of AML-obliged persons are required to provide upon request "any type of documentation related to financials, accounting, tax, ownership, possession or tenancy of movable and immovable property, proof of wage or revenue that may justify the origin and purpose of every transaction" (Article 10.E).I)), hence accounting records are also covered by the AML framework to the extent entities have a relationship with an AML-obliged person.

Oversight and enforcement of requirements to maintain accounting records

228. Obligations to maintain accounts under the Code of Commerce are overseen by the Superintendence for Commercial Obligations (*Superintendencia de Obligaciones Mercantiles*) pursuant to Article 362(IV) of the Code of Commerce and Article 3 of the Law of the Superintendence for Commercial Obligations. Specifically, the Superintendence undertakes onsite audits, resulting in the issuance of a compliance or non-compliance report, a presentation of evidence, and finally a resolution of the Legal Management Unit of the Superintendence.

229. Furthermore, the Commercial Registry receives the accounts submitted annually to the Registry. However, there is no enforcement of this obligation by the Commercial Registry. The El Salvadoran authorities note that where the Commercial Registry becomes aware of a record-keeping related breach, it will transfer this to the SCO for follow-up.

230. Taxpayers are subject to the oversight programme of the DGII in relation to tax law obligations including the maintenance and filing of annual accounts as part of tax returns. Specifically, the *Gestión Tributaria* and units of the Audit Division undertake both desktop audits and onsite inspections. Officials from these units confirm that financial statements, accounting records and reports and statements prepared by an external auditor are amongst the documents examined during the course of onsite inspections.

231. The DGII notes that onsite inspections have shown a high level of compliance with accounting record requirements. Where breaches of obligations under the Tax Code were found, fines were imposed. Hence, even though there is an absence of oversight from the commercial law perspective, the tax law framework echoes the commercial law requirements and provides a method of enforcement.

232. In terms of audit planning, each year documents called "autos" are generated, stipulating on whom audits shall be conducted and also specifying the documents that must be reviewed for each taxpayer. Every auditor is assigned a number of cases per calendar year, the number depending on the taxpayer unit concerned,[56] with the object of verifying whether taxpayers have honoured their tax-related obligations generally. In the event of apparent non-compliance, a sanctioning process is commenced. This involves the generation of an administrative order, which is a document that permits the imposition of sanctions further to an infringement. Once the order has been generated, the auditor will notify the taxpayer and commence a process known as "*audencia y apertura a prueba*", requiring the taxpayer to appear before the *Sección de Incumplimientos Tributarios* of the DGII – the Non-Compliance Tax Section.

233. The Non-Compliance Tax Section operates under Article 260 of the Tax Code which sets out the procedure to follow when an infringement has been found. In the case that a taxpayer, including a company, has not kept, updated or provided information it is required to keep, update or provide, a report outlining the audit or infringement is produced. There then follow several steps in which the taxpayer is heard and evidence is invited. Fines will be imposed by the Non-Compliance Tax Section in accordance with Article 241 of the Tax Code, depending on the particular infringement.

234. Implementation and supervision will however be further considered in the Phase 2 review on the practical application of the standard.

Availability of accounting information in EOIR practice

235. The availability of accounting information in practice will be considered in the Phase 2 review on the practical application of the standard.

56. In the large taxpayer unit, 2-3 cases per year and 55 auditors in 2019; in the medium taxpayer unit, 3-4 cases per year and 56 auditors in 2019; in the unit capturing all other taxpayers, 5-6 cases per year and 42 auditors in 2019.

A.3. Banking information

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

236. The 2016 Report found that the legal and regulatory framework in respect of Element A.3 was in place and the element was rated "Compliant" with the standard. The situation with regard to banking information remains unchanged since the 2016 Report, but considerations of beneficial ownership information available for account holders are now also taken into account.

237. Whilst beneficial ownership information is available in the context of information held by banks to a greater extent than in the general context as a result of the obligation on banks and other financial institutions to conduct CDD and to keep records in relation to account holders pursuant to the AML framework, the information available nevertheless suffers from the overall shortcomings described under A.1.1.

238. However, financial institutions are subject to numerous regulatory requirements set out in the Code of Commerce, the Law on the Supervision and Regulation of the Financial System and specialised laws such as the Law of Banks, supervised by the SFS. Oversight of compliance with AML obligations is conducted by the SFS.

239. The conclusions are as follows:

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

Deficiencies identified/Underlying factor	Recommendations
Information regarding the beneficial ownership of accounts is not adequate in all cases, for the reasons set out under A.1. In particular, the Technical Norms on Anti-Money Laundering and related requirements lack the necessary guidance in relation to all entities and legal arrangements. In addition, banks are not clearly required to continuously update anything aside from what may be considered "general information", which is not defined as including beneficial ownership information.	El Salvador is recommended to ensure that up-to-date beneficial ownership information is available for all account-holders in accordance with the standard, and that banks are appropriately guided in relation to their obligations vis-à-vis all types of client entities and legal arrangements in this regard.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

A.3.1. Record-keeping requirements

Availability of banking information

240. As at March 2019, the El Salvadoran banking system comprised 25 supervised depository institutions; 12 commercial banks (1 local and 11 foreign banks); 2 state banks; 6 co-operative banks and federations of co-operative banks; and 4 credit and savings societies. Banks in El Salvador are subject to all the accounting obligations described under section A.2 above, given their status as "merchants" under the Code of Commerce.

241. The Law on the Supervision and Regulation of the Financial System also provides that the managers of members of the financial sector, which include banks, are required to ensure the "efficient operation of the systems of registration, treatment, storage, transmission, production, security and control of the flows of information" and "the adequate disclosure of information, the timely availability of relevant information on the performance of activities, the transparency of operations and the economic and financial status for purposes of decision-making by its governing bodies" (Article 35(g) and (h) of the Law on the Supervision and Regulation of the Financial System, respectively).

242. The AML framework complements these general obligations with specific obligations to maintain information on transactions performed and on account holders. AML-obliged persons are required to fully identify, applying the "necessary diligence", all customers that seek their services, as well as identifying any other natural or legal person on whose behalf the customer in question is acting (Article 10.A) of the AML Law). CDD is therefore applied to occasional customers in the same way as to regular ones.

243. AML-obliged persons are required to adopt policies, rules and mechanisms to ensure that their administrators, officers and employees have adequate knowledge of the economic activity of their clients, their magnitude, frequency, basic characteristics of their daily transactions and, in particular, knowledge of the activities of clients that effect any type of site or term deposit; have savings accounts or safe deposit boxes; and deliver trust goods or goods in a *fideicomiso* arrangement (Article 10.E).I), of the AML Law).

244. There is a requirement to file and keep documentation relating to transactions for a period of five years, counting as of the date of finalisation of each transaction, as well as identification information, accounting files and commercial correspondence of clients, as of the date of the closing of a client account or termination of a commercial relationship (Article 10.B) of the AML Law).[57]

57. See footnote 37.

245. Article 10.B) of the AML Law stipulates that the client identification and transactional information "must be available when requested by the relevant authorities in the right form". Article 11 of the AML Law further provides that AML-obliged persons are required to keep nominative records of their users, who may not maintain anonymous accounts or accounts in incorrect or fictitious names.

246. Transaction reporting obligations also ensure the keeping of transactional information. AML-obliged persons are required to notify the FIU of cash transactions totalling USD 10 000 (or equivalent) in aggregate per month, and all other transactions totalling USD 25 000 (or equivalent) in aggregate per month (Article 9 of the AML Law). For this purpose, AML-obliged persons may use the FIU template form, or provide the information in another format so long as it comprises the following (Article 13 of the AML Law):

- identification of the person physically realising the transaction, consisting of their full name, date of birth, nationality, domicile and residence, profession, civil status and identification document
- identification of the person on whose behalf the transaction is being realised, consisting of the same information as in relation to the person physically realising the transaction
- identification of the beneficiary or recipient of the transaction, if available, consisting of similar information as in relation to the person physically realising the transaction
- type of transaction
- code of the institution realising the transaction and of the officer or employee handling it
- the amount, location, date and time of the transaction.

247. Whilst the formal reporting requirement therefore does not cover smaller transactions, i.e. non-cash transactions totalling less than USD 25 000 per month or cash transactions totalling less than USD 10 000 per month, the El Salvadoran authorities stated in the context of the 2016 Report that this requirement is interpreted as effectively requiring financial institutions to maintain information concerning all transactions relating to any account; i.e. according to the authorities, the reporting requirements have triggered comprehensive record-keeping requirements.

248. The DGII itself does not maintain banking information (for example, a database of accounts of taxpayers).

Beneficial ownership information on account holders

249. The standard was strengthened in 2016 to specifically require that beneficial ownership information be available in respect of all account holders, and whether beneficial ownership information is available for account holders was therefore not evaluated in the 2016 Report which is based on the 2010 Terms of Reference.

250. The principal legal provision in the El Salvadoran AML framework referring to a requirement to obtain beneficial ownership information is in the AML Technical Norms, which apply notably to all private and public banks, co-operative banks and saving societies established in El Salvador.

251. As set out under A.1.1 above, Article 3 of the AML Technical Norms contains the definition of beneficial owner, whilst Article 17 sets the obligation to conduct CDD (including the identification of the beneficial owners of clients) and Article 18 complements it in relation to procedural aspects of CDD (see paragraphs 117 to 120).

252. Article 18(g) of the AML Technical Norms provides that procedures should be put in place to keep updated general information on existing clients. "General information" is however defined as basic information, such as address, and does not include information on the identity of clients and their beneficial owners. Article 21 of the AML Technical Norms further requires to identify holders of at least 10% shares and their ownership chain and to update this information generally every two years, "whenever considered necessary".

253. Overall, there is a lack of guidance in the AML Technical Norms to assist banks or financial institutions in applying their AML obligations in practice. This is particularly the case in relation to legal arrangements other than companies, such as partnerships and *fideicomisos* (see A.1.3 and A.1.4), which warrant a specialised approach to identification based on their nature and composition.

254. Whilst beneficial ownership information is available in the context of information held by banks to a greater extent than in the general context on the basis of the CDD requirements applicable to banks by virtue of the AML Technical Norms, it is nevertheless inadequate overall. Therefore, **El Salvador is recommended to ensure that up-to-date beneficial ownership information is available for all account-holders in accordance with the standard, and that banks are appropriately guided in relation to their obligations vis-à-vis all types of client entities and legal arrangements in this regard**.

Oversight and enforcement

255. The AML Law requires AML-obliged persons to establish internal audit mechanisms in order to verify compliance with the requirements of the law (Article 10.D) of the AML Law). It further provides that where a customer does not provide the information or documentation requested by the AML-obliged person, the AML-obliged person can terminate the contract with the customer and inform the FIU (Article 10.E)II of the AML Law). As the provision is drafted as optional, there is no obligation to terminate the contractual relationship according to the letter of the law. The FIU Instructive on the other hand provides that transactions cannot be undertaken with clients that do not provide documents or information to identify them (Article 8(2) of the FIU Instructive). The FIU Instructive is binding on banks.

256. In relation to breaches, Article 15 of the AML Law provides that non-compliance with the law and related norms will be subject to liability under Article 38(2) of the Criminal Code, without prejudice to the personal criminal liability applicable pursuant to Chapter II of the AML Law. However, Chapter II of the AML Law relates to the actual offence of money laundering, predicate offences and related offences; and Article 38 of the Criminal Code provides for special subsidiary civil liability for money laundering for legal persons.

257. With regard to the actual CDD and information keeping requirements under the AML Law, the El Salvadoran authorities confirm that it falls to the SFS to supervise compliance with these as a result of its general obligation pursuant to Article 4(c) of the Law on the Supervision and Regulation of the Financial System to "carry out individual and consolidated supervision of the members of the financial system, as well as the supervision of the other subjects regulated by this law".

258. The authorities further note that the SFS has in practice therefore taken the role of ensuring that the documentation necessary to be kept under the AML law, including information on beneficial ownership, are complied with by the entities it supervises.

259. The SFS oversees compliance with the AML regime. Its AML department is attributed this task and comprises 12 officials. The SFS' supervision programme involves desktop inspections of the annual reports that banks are required to submit, as well as unannounced onsite visits to entities, which may include banks, with some variance from year-to-year due to audits being organised per industry, in order to inspect the processes in place, documents available and general compliance with AML requirements. The process generally lasts from 6 to 12 weeks, counting from the onsite visit to the preparation of the note communicating the findings.

260. Article 37 of the Law on the Supervision and Regulation of the Financial System further requires supervised persons to allow, without opposing on the grounds of confidentiality or any reservation, the examination of their business, acts, operations, goods, books, accounts, files, documents, correspondence, databases and information systems, as pertinent to the SFS' supervisory activity.

261. Banks are required to establish an independent compliance function, headed by a compliance officer, to ensure compliance with the AML Law and related norms. The compliance officer is appointed by the board of directors or the competent organ who is required to fulfil a number of criteria set out in the AML Law, including a certification ratified by the Public Prosecutor on the prevention of AML/CFT and two years of experience therein (Article 14 of the AML Law).

Availability of banking information in EOIR practice

262. The availability of banking information in practice will be considered in the Phase 2 review on the practical application of the standard.

Part B: Access to information

263. 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).

264. The 2016 Report found that the legal and regulatory framework in respect of Element B.1 was in place and the element was rated "Compliant" with the standard. This took into account amendments to the Tax Code introduced in 2014, in particular to avoid the need to open a formal tax audit in order to lift bank secrecy and thereby access information held by banks, including CDD information held by banks.

265. However, the 2014 amendments were found to be unconstitutional in 2018 because of a procedural issue associated with the related legislative process. As a result, a tax audit is again required to be opened in order to access information held by banks. To open a tax audit, the DGII must be able to unequivocally identify the person subject to the audit – defined as anyone who is registered for tax purposes in El Salvador and therefore has a NIT. Hence, the access powers of the DGII do not extend to information held by banks in relation to any person that cannot be identified through a NIT, such as a foreigner holding a bank account in El Salvador, if they do not have a NIT.

266. Amongst the amendments found to be unconstitutional in 2018 was an addition to the tax authority's access powers in Article 120 of the Tax Code stating that the El Salvadoran tax administration can exchange

tax-related information with tax administrations of foreign jurisdictions and enter into international agreements for this purpose. The present report has therefore considered whether the now absence of this provision puts into question El Salvador's ability to access information absent a domestic tax interest. El Salvador's authorities state that they can use their ordinary domestic powers to access information for exchange purposes even without a domestic tax interest, and that the provision which has been set aside was to clarify its powers to exchange information with other tax administrations and enter into agreements for this purpose, rather than to give the tax authority additional access powers in the EOIR context. As nothing else in El Salvador's legal and regulatory framework suggests that a domestic tax interest would be required, and as El Salvador ratified the Multilateral Convention, which includes express reference to the use of a tax authority's information gathering measures to obtain requested information in the absence of a domestic tax interest, shortly after the set-aside decision, it appears that El Salvador would be able to access information in the absence of a domestic tax interest. An in-text recommendation is nevertheless included to address any uncertainties that may remain in this respect (see Annex 1 and paragraph 315).

267. Overall, this represents a deterioration of the situation compared with at the time of the 2016 Report. The conclusions are therefore as follows:

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

Deficiencies identified/Underlying factor	Recommendations
Information held by banks, whether of a reserve nature or subject to bank secrecy, can only be accessed by the General Directorate of Internal Taxes if a tax audit has been opened, as a 2014 amendment of Article 120 of the Tax Code that sought to avoid this was set aside by the Constitutional Court on procedural grounds. This covers banking information, but also beneficial ownership information held by banks. A tax audit can only be opened in relation to natural or legal persons registered with the El Salvadoran tax authorities and holding a tax identification number (NIT). This would allow the competent authority to access beneficial ownership information held by banks on the basis that a tax audit can be opened on a NIT-holding entity or legal arrangement, which includes foreign companies. However, it would not allow access to, for example, banking information in relation to a foreigner who is not a taxpayer in El Salvador/ does not hold a NIT, but has a bank account there.	El Salvador is recommended to ensure that banking information can be accessed as required pursuant to the standard for EOIR, notwithstanding any requirement for a tax audit to be opened.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

B.1.1. Ownership, identity and banking information

268. El Salvador's competent authority under both the Multilateral Convention and the Mutual Assistance and Technical Co-operation among Central American Tax and Custom Administrations Convention (Central American Convention) is the Director of the General and Internal Tax Directorate (*Director General de Impuestos Internos*, DGII), or his/her authorised representative. The competent authority under El Salvador's Double Taxation Convention (DTC) with Spain is the Minister of Finance, who has delegated this role to the DGII Director.

269. The DGII has broad access powers to obtain information for both domestic tax and EOI purposes, regardless of the source of the information sought. Information may be requested directly from the information holder, and there are measures to compel the production of information. This means that access is effectively limited only by availability. However, in the case of information held by banks, a formal tax audit must first be opened, as set out below.

270. The El Salvadoran authorities have confirmed that they proceed by first consulting their own information sources, and will make recourse to information held by other authorities or third parties where information directly held in tax files is insufficient, incomplete or outdated. The DGII's own information technology system, the "Integrated Tax Information System" (*Sistema Integral de Información Tributaria*, SIIT), provides access to the following non-exhaustive list of information:

- information on the deed of incorporation of companies and about shareholders
- information from the Single Taxpayer Registry (personal identification data, address, etc.)
- tax returns
- exogenous information: income, expenses, creditors and debtors
- customs information: imports and exports.

271. For information not directly available within the DGII, the DGII can use its access powers. As noted in the 2016 Report, the DGII has broad access powers to obtain information for EOI purposes, as well as measures to compel the production of such information.

272. These powers are generally the same regardless from whom the information is sought (i.e. whether from another government authority, company, individual or "*fiduciario"*) and whether or not the information is required to be kept pursuant to a law.

273. However, as a result of the setting aside of several amendments to the Tax Code in 2018, including a legal provision that was relied on for purposes of the 2016 Report, in order to access information from a bank, the DGII is required to open a formal tax audit so as to override legal provisions protecting the confidentiality of such information. The opening of a tax audit is procedurally uncomplicated, subject to no significant impediments and the DGII considers that it may open a tax audit further to a request for information received from a foreign jurisdiction.

274. However, a tax audit may only be opened in relation to persons whom the DGII can unequivocally identify, and this is defined as anyone who is registered for tax purposes in El Salvador and therefore has a NIT.

275. The El Salvadoran authorities note that this covers not only natural or legal persons carrying out an economic activity in El Salvador, but also those transacting with other persons that are subject to income tax or VAT (given the broad definition of who must register for tax purposes pursuant to Article 1 of the Law on the Registry and Special Control of Taxpayers to the Treasury – see paragraph 90), and that it forms part of the standard information requested to identify oneself, notably upon the opening of a bank account in El Salvador. Therefore, the El Salvadoran authorities state that banking information could be obtained, further to the opening of a tax audit, even with regard to a foreigner who is not a taxpayer in El Salvador but has a bank account there, because that person will have had to provide a NIT in order to open the account, and can therefore be identified through means of that NIT.

276. Whilst there appears to be no gap with regard to beneficial ownership information held by banks, as this could be obtained by opening a tax audit on the NIT-holding entity or legal arrangement (which includes foreign companies operating in El Salvador), the situation appears to be different with regard to banking information. The analysis of the regulations and guidance relied on by the El Salvadoran authorities in this respect suggests that the NIT is a common method of identification, but that the presentation of a NIT is not necessarily mandatory for the opening of a bank account.

277. For example, SFS' Norms on Information on Deposits and their Holders provide at Article 4 that:

> "The [NIT] is mandatory only for those clients who, in addition to passive operations, have active operations or who are required to have a NIT by virtue of other legal provisions, unless exceptionally it is not required in their situation or given their specific

> nature in accordance with the regulations applicable to the particular situation of the financial entity concerned]".

278. The Norms for the Generation of Information on Monetary Deposits and their Holders similarly provide at Article 10 that:

> "The identification of clients, whether natural persons, legal persons or autonomous patrimonies, will be done through the Unique Identification Number assigned by each bank (NIU) and a second complementary document, be this the [NIT], the Unique Identity Document (DUI) or other valid identification document, in accordance with the Regulations of the Superintendence and the internal policies of each bank."[58]

279. Hence, there is still a gap for example with regard to foreigners who are not taxpayers in El Salvador and therefore do not have a NIT, but have a bank account there. The actual materiality of this gap on the other hand is difficult to determine from a Phase 1 perspective, and will be considered further in the Phase 2 review on the practical implementation of the standard (see Annex 1). Nonetheless, a Phase 1 recommendation is included in this report for El Salvador to ensure that banking information can be accessed as required pursuant to the standard, notwithstanding any requirement for a tax audit to be opened (see paragraph 296).

Accessing information generally

280. There are two main access powers in El Salvador: the general obligation to provide information upon request, and the increased powers available to access information in the context of tax audits.

281. First, the general legal provision relating to access to information by the DGII is Article 120(1) of the Tax Code:

> "All authorities, administrative and judicial entities of the country, as well as institutions, estates, trusts, collective entities without legal personality, natural or legal persons, whether passive subjects or otherwise, are required to provide to the tax administration, through the means, in the form and under the specifications so specified, all information, documentation, data, explanations, background or justifications requested or required [by the tax

58. Other documents referred to also suggest that the provision of a NIT is optional for identification purposes, for example the Article 6 of the FIU Instructive provides, with regard to the identification of clients "and if applicable, Tax Identification Number (NIT)" and later, with regard to requirements to be requested by type of person: "NIT… if any".

> administration], be it as originals or photocopies compared with the original by the tax administration, or certified by a notary."

282. Article 120 of the Tax Code further allows the tax administration to carry out any necessary investigations to verify the data and information provided.

283. Article 120 of the Tax Code further stipulates that the expiry of an audit examination period is not an impediment to access to information, and that secrecy or whatsoever reservations do not constitute justifications to opposing the provision of information required.

284. Article 126 of the Tax Code in turn requires taxpayers to present to the DGII, and allow it to examine and verify, a range of documents in relation to their own tax obligations, including accounting records, inventories, registers and files.

285. There is no time limitation for the application of the powers of the DGII under Article 120 or Article 126. Moreover, the El Salvadoran authorities have confirmed that general statute of limitations do not apply to access powers exercised by the DGII, meaning they are not limited by any rules that may otherwise limit its enforcement of taxpayer obligations. In practice, its access powers will therefore apply for at least the duration of the time the related information is required to be kept for (i.e. ten years for transaction records, which includes accounts and underlying documentation).

286. Second, the DGII has additional access powers in the context of tax audits. Pursuant to Article 173 of the Tax Code, the DGII also has the powers of audit, inspection, investigation and control to ensure the effective fulfilment of tax obligations, including in respect of persons who enjoy tax exemptions. In the exercise of such powers, the DGII is specifically authorised to require the production of tax receipts, books of accounts, balance sheets, records, systems, programmes and files of manual, mechanic or computerised accounting, business correspondence and documents emitted by the person under investigation or by third parties, and to examine and verify these.

Accessing beneficial ownership information

287. The above described access powers are constrained neither to specific information sources, nor by a legal requirement to hold the information concerned. Therefore, the DGII can use its access powers to obtain information on beneficial ownership wherever it may exist.

288. As set out under A.1, financial institutions are required to hold information on beneficial ownership in relation to their clients. The access powers

under Article 120 of the Tax Code can be applied by the DGII to obtain such information from them.

289. However, such information, obtained by banks in the context of their CDD processes, is considered "reserve" information and therefore subject to confidentiality, unless a tax audit is formally opened by the DGII with the effect of lifting such confidentiality and allowing access to the information. The requirements to open a tax audit are discussed throughout B.1 and are considered not to pose any particular challenge in the context of access to beneficial ownership information held by banks.

Accessing banking information

290. Pursuant to Article 232 of the Law of Banks and Article 143 of the Law of Co-operative Banks and Credit and Savings Societies, the DGII is required to commence a tax audit so as to lift applicable confidentiality provisions before information can be accessed from banks. This covers information on bank accounts and beneficial ownership information obtained by banks through CDD processes.

291. Article 38 of the Law on the Supervision and Regulation of the Financial System further provides that "the information required by the tax authorities will be provided by the supervised entity in accordance with the provisions of the special law that regulates this subject". In other words, the general access powers under Article 120 of the Tax Code are insufficient to lift the confidentiality provisions in the absence of a tax audit being opened, because a tax audit is stated to be a precondition to the access to information held by banks on the basis of the laws regulating banks.

292. The requirement to open a tax audit in order to access information held by banks was originally removed through an amendment to Article 120 of the Tax Code dating from July 2014, according to which the access powers in Article 120 constitute "a special regime, which will be applied preferentially to other laws or regulations, unless those [laws or regulations] expressly provide that the reservation is extended to the tax administration". However, this addition was set aside for procedural reasons related to the legislative process (specifically, the lack of discussion in the plenary of the Legislative Assembly) further to a decision of the Constitutional Court dated 28 May 2018 (Judgment 96-2014). It is therefore not applicable, though it still appears in the consolidated version of the Tax Code that is publicly available.[59]

59. Article 120(8) of the Tax Code with a mention that it was declared unconstitutional by Decision 126-2014.

293. Article 174(8) of the Tax Code sets out the process for opening a tax audit. It is commenced through the issuance of a designation notice (*auto de designación*), addressed to the taxpayer. The notice indicates the identity of the taxpayers through reference to their NIT, the periods, fiscal years, taxes and obligations to be audited, as well as the name of the auditor(s) who will perform the audit. Once this notice is issued, a request for information can be prepared. At the end of the process, an audit report is drafted by the auditor(s) appointed to the case. DGII officials therefore note that the process is procedurally uncomplicated. Moreover, there are no provisions in the Tax Code limiting multiple audits being conducted on the same taxpayers, nor restrictions in relation to the periods, fiscal years, or taxes covered that would impede effective EOIR. In the same vein, nothing prevents an audit being opened in relation to a taxpayer solely because of its transactions with a foreign person.

294. The El Salvadoran authorities have further confirmed that a tax audit could be opened by the DGII as a result of a request for information received from a foreign jurisdiction under an EOIR instrument. The process in that case would involve an analysis of the request by the DGII's Case Selection Unit and the forwarding of the analysis to an Auditing Unit within five working days, for issuance of the notice within a further three working days.

295. The legal provisions relating to tax audits are worded with a focus on only the domestic context. For example, Article 174(7) provides that: "the tax audit process or procedure is the set of actions that the tax administration performs with the purpose of establishing the real tax situation of taxpayers, both in relation to those who have submitted their tax declaration and those who have not". The DGII has confirmed that it follows that the persons whose real tax situation is to be established through the tax audit must be registered as a taxpayer in El Salvador, regardless of their domicile. The justification is that for the DGII, the starting point for the application of its powers is the identification of the subjects of these through a NIT.

296. The DGII states that in practice, this ensures their ability to obtain and provide information held by banks because everyone is effectively covered by the requirement to register with the tax authority and obtain a NIT. As explained above, a gap may nevertheless exist at least with regard to foreigners who are not registered with the tax authority/do not have a NIT, but have a bank account in El Salvador. Therefore, **El Salvador is recommended to ensure that banking information can be accessed as required pursuant to the standard for EOIR, notwithstanding any requirement for a tax audit to be opened**.

297. From a practical perspective, the requests for information held by banks are prepared in the form of a notice to the SFS rather than directly to the financial institutions, though both avenues are possible. This is because

the SFS may, if necessary, request information from all and any financial institution with which the subject of the request may hold an account. They are prepared in accordance with the requirements of the Internal Procedure Manual for the Exchange of Information ("EOI Manual"). They must include "sufficient information to identify the taxpayer" and "sufficient information to understand the notice". There is no requirement to necessarily identify the account holder by name, nor to indicate which jurisdiction made the EOI request.

298. The EOI Manual has not been updated to take into account the Constitutional Court decision, and currently provides that "Salvadoran legislation in this regard does not specify any particular procedure for accessing information held by banks (for example, that the information must be required on a case-by-case basis)".

299. DGII officials have stated that pursuant to Article 88 of the Law of Administrative Procedures, a deadline of ten working days is normally provided to financial institutions or taxpayers directly, for the provision of the requested information. This deadline can be extended depending on the circumstances for another ten days.

300. The EOI Manual however refers to a deadline of 15 days, which can be extended to 90 or 120 days where a tax audit is opened and which would therefore be applicable in the case of requests for information held by banks. It is unclear how the 120 days would fit with the maximum of 90 days provided for elsewhere in the EOI Manual as the maximum response period (in addition to the doubts expressed above as to whether a tax audit can be opened for EOIR purposes in all cases).

301. The authorities have noted that information held by banks is generally sought via the SFS rather than directly from the financial institutions as it accelerates the process. This is because the SFS has access to the account databases of individual banks, allowing it to identify which institution/s the person concerned holds an account without having to approach each bank individually, as the DGII would have to. The information is however provided directly by the financial institution to the DGII.

302. More generally, the application of the requirement to open a tax audit in order to access both bank account information and information on beneficial ownership will be considered further in the Phase 2 review on the practical application of the standard also to ensure that it does not inhibit or delay effective exchange of information (see Annex 1).

B.1.2. Accounting records

303. The access powers under Article 120 of the Tax Code set out above apply to accounting information; there are no separate provisions in this regard.

304. The DGII has considerable information at its disposal with regard to accounting records, as described in A.2. Taxable persons are obliged to provide certain accounting information at the time of filing their annual return with the DGII. In addition, pursuant to Article 120-A of the Tax Code, all financial institutions providing loans of over USD 40 000 must require the loan taker to maintain accounts, and pursuant to Article 120-B of the Tax Code, the financial institutions are required to submit the income statement or profit and loss account of any clients that submitted such information to them as a requirement to obtain the loan to the DGII in February of each year.

305. The Tax Code also provides for several instances in which the DGII may request *ad hoc* access to accounting records. For example, Article 126(b) requires taxpayers to present to the DGII and allow to examine and verify a range of documents including accounting records. Article 173(a) also empowers the DGII to require taxpayers to produce books, balance sheets and records, emitted by the person under investigation or by third parties in the context of exercising its powers of audit, inspection, investigation and control to ensure the effective fulfilment of tax obligations. Access to accounting records forms a regular part of the domestic access powers of the DGII.

306. The EOI Manual further sets out, by way of example, a list of information that could be requested under the title of accounting information records, including "[s]upporting documents for accounting records, such as invoices, contracts, etc. that reflect the detail of (i) all the amounts of money received and spent and the concept with respect to which the money received and spent takes place (ii) all sales and purchases and other transactions and (iii) the assets and liabilities of the legal entity or arrangement".

307. Where the information is already in the possession of the DGII, the EOI Unit is required to provide it to the requesting jurisdiction within 15 working days of receipt of the request. Where the information is not available within the DGII, but is with either another government authority or a third party, a response will be requested within a maximum of 20 working days (Article 86 of the Law of Administrative Procedures). The process is set out in more detail under C.5.2.

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

308. The access powers under Article 120(1) of the Tax Code are wide, encompassing all information, documentation, data, explanations, background or justifications requested or required by the tax administration. As the provision does not require a justification for the requested information, the question does not arise as to whether the provision applies only to requests for information based on domestic tax investigations or otherwise.

309. Article 120(2) of the Tax Code further provides that the tax administration can request or require any information, documentation, data, explanations, background or justifications, either for incorporation into their databases or computer records, or for use in the lawful exercise of its powers of audit, verification, investigation, inspection, control, invoicing, collection and other matters relating to the taxes it administers. A definition of the "taxes administered" is not provided for in the Tax Code, but the authorities have stated that this description is not restricted to taxes covered by the Tax Code and extends to tax information administered as a result of the treaty relationship with an EOI partner.

310. The categorisation of public international law by El Salvador corroborates this position: pursuant to Article 144 of the Constitution, treaties constitute laws of the Republic upon their entry into force, and treaties therefore have the same normative weight as ordinary domestic laws. In the event of a conflict between the treaty and an ordinary domestic law, Article 144 of the Constitution provides that the terms of the treaty shall prevail.

311. Whilst there exist no practical examples of where the DGII has accessed information for which there is no domestic tax interest (as a result of El Salvador having never received an EOI request), the El Salvadoran authorities maintain that the legal framework and practical guidance issued by El Salvador for EOIR purposes indicate that there would be no such impediment to EOI in practice.

312. A provision introduced into the seventh paragraph Article 120 of the Tax Code in 2014 was to refer to the DGII's ability to exchange tax-related information with another jurisdiction, and to enter into agreements to this effect:

> "The tax administration may exchange information of a tax character with tax administrations of foreign jurisdictions. To this end, it may enter into agreements for the fulfilment of such purposes, such agreements being subject to the signature and ratification processes applicable in accordance with domestic legislation."

313. However, this addition was set aside for procedural reasons related to the legislative process (specifically, the lack of discussion in the plenary of the Legislative Assembly) further to a decision of the Constitutional Court dated 28 May 2018 (see paragraph 292).

314. The El Salvadoran authorities maintain that the setting aside of this provision has no bearing on their ability to access information for EOIR purposes because the provision concerned was inserted not because access would not otherwise be possible in the EOIR context, but because the provision enabled direct incorporation of a reference to EOIR agreements in the Tax Code, and thereby also strengthened the addition of the separate paragraph that sought to avoid the necessity to open a tax audit in order to access information held by banks (see B.1.1). They further note that the issue cannot be one of principle, because the Multilateral Convention was successfully ratified only four months after the set-aside decision, and includes express reference to the use of a tax authority's information gathering measures to obtain requested information in the absence of a domestic tax interest.[60]

315. Nevertheless, to avoid uncertainty, El Salvador should ensure that the El Salvadoran competent authority can access information for purposes of exchange with the competent authorities of foreign jurisdictions, absent a domestic tax interest (see Annex 1).

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

316. Article 173 of the Tax Code, whilst providing a legal basis for the access to information in the context of tax audits, also sets out the broader powers of the DGII in relation to inspection, investigation and control to ensure the effective fulfilment of tax obligations, and is therefore in itself an enforcement provision. This can be contrasted with the general access powers under Article 120 of the Tax Code, whose enforcement is subject to separate provisions.

60. Article 21(3) of the MAAC provides that: "If information is requested by the applicant State in accordance with this Convention, the requested State shall use its information gathering measures to obtain the requested information, even though the requested State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations contained in this Convention, but in no case shall such limitations, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because it has no domestic interest in such information.".

317. The penalties for failure to provide information requested by the DGII pursuant to its access powers, including under Articles 120 and 173 of the Tax Code are set out in Article 241(a) and (d) of the Tax Code:

> "The following constitute non-compliance with regard to the obligation to provide information:
>
> a) To refuse to provide, not to provide or to hide the data, reports, background or justifications that are required by the tax administration in relation to facts that the person concerned is obliged to know, whether concerning its own activities or those of third parties in relation to transactions carried out with passive subjects [for tax law purposes]. …
>
> d) To present or provide data, reports, background or justifications to the tax administration that are falsified, inexistent, incomplete, altered or simulated."

318. The El Salvadoran authorities state that Article 241 of the Tax Code applies to all taxpayers that do not provide information, not just those that are subject to an investigation or linked thereto. They further clarify that Article 241(a) covers situations where there is a refusal to provide information, whilst Article 241(d) covers situations where information is provided in incomplete form, and that a failure to provide information on the basis of a lack of awareness of the need to hold information will come under one of these situations.

319. The related sanction is a fine of 0.5% of the amount of the accounting assets or total equity shown on the balance sheet, less the surplus for the re-evaluation of unrealised assets, which may not be less than approximately USD 300 to USD 360.[61]

320. Sanctions are also applicable for the delayed provision of information (Article 241(b) of the Tax Code); and the provision of information without regard to the requirements or specifications established in the Tax Code, other tax laws or as specified by the tax administration, or through means other than those established by the same (Article 241(c) of the Tax Code).

61. Specifically, one minimum monthly wage. The minimum monthly wage is dependent on the sector and defined by the National Minimum Salary Council of the Ministry of Labour and Social Welfare, and periodically updated (Article 159 of the Labour Code provides that minimum monthly wages fixed by decree must be reviewed at least every three years) in accordance with Article 38(2) of the Constitution. For purposes of the calculation of fines, the minimum wage for the trade sector is used ("*Comercio y Rango*").

321. The DGII has confirmed that the practice is to repeat a request to provide information two times before a request is considered not responded to and transferred to the Non-Compliance Department of the DGII (*Sección de Incumplimientos Tributarios*).

322. The DGII may also conduct onsite inspections of the premises at which a taxpayer carries out its economic activity, a place related thereto or the premises of a third party with whom the taxpayer has or had economic relations (Article 173(c) of the Tax Code). Furthermore, the DGII may request a taxpayer to appear for oral or written questioning (Article 173(d) of the Tax Code).

323. The DGII can also seek precautionary measures via judicial order to enter and search premises and seize documents "in order to safeguard the interests of the Treasury in relation to the timely and complete collection of taxes, as well as to prevent any potential damage of the same" (Article 176 of the Tax Code). Whilst this possibility extends to the premises and documents of third parties linked to the taxpayer subject to the audit such as other group companies or business representatives, the provision applies to the taxpayer under investigation (and not for example to an information holder).

324. Article 177 of the Tax Code lists the specific circumstances in which such precautionary measures can be sought. These include lack of co-operation or partial co-operation from the taxpayer and the prevention, complication or delay of an audit, investigation, verification, inspection or control by the DGII. This does not appear to cover investigations by another jurisdiction however and therefore the application of these measures in the EOIR context.

B.1.5. Secrecy provisions

325. Article 120 of the Tax Code provides that the "secret" or "reserve" nature of information will not be a justification for refusing to provide information sought by the tax administration in order to verify compliance with tax obligations. However, this must be read together with the requirement for a tax audit to exist in order to set aside bank secrecy.

326. Indeed, the powers of the DGII appear to be greatest in the context of a tax audit. Article 25 of the Tax Code provides as follows, noting also the sole exception that applies:

> "When the tax administration exercises its powers of audit, verification, inspection, investigation and control established in the present Code, these cannot be opposed to through any reservation, except with regard to persons for whom the provision of

information would constitute an offence pursuant to criminal law as a result of situation."

327. A specific situation however applies in relation to information held by banks: the legal provisions protecting the disclosure of such information can only be overridden if a tax audit is opened by the DGII.

Bank secrecy

328. The Law of Banks regulates two types of confidential information, together covering all information held by banks: (i) reserved information, relating to information on the operations of banks and information communicated to them (for example in the context of CDD conducted by a bank, or in the context of their role as *fiduciario*) (Article 201), and (ii) bank secrecy, relating to bank deposits and the collection of funds by banks (Article 232). Both can be lifted further to the opening of a formal tax audit.

329. Article 232 of the Law of Banks provides that bank deposits and the collection of funds by banks are subject to secrecy, and information relating thereto can only be shared with the account holder, their legal representative or the DGII when so required for tax audit purposes (first paragraph). Bank secrecy shall not however be an obstacle to uncover crime, determine or collect taxes, or to prevent the seizure of assets (fourth paragraph). An equivalent requirement is contained in Article 143 of the Law of Co-operative Banks and Credit and Savings Societies in relation to bank deposits and the collection of funds by co-operative banks and saving societies.

330. Article 201 of the Law of Banks in turn provides for liability for the damage caused as a result of the revelation or divulgence of reserved information, notwithstanding the application of any criminal penalties (second paragraph). However, an exception to such liability is provided in relation to information required by the DGII for tax audit purposes (third paragraph).

331. Article 1185 of the Code of Commerce further obliges all banks to maintain confidential the operations of their customers, except in cases where the production of such information has been "mandated by law". The El Salvadoran authorities have confirmed that the request for information from a bank for tax purposes, including in the context of an EOI request, would be considered an exception to bank secrecy "as mandated by law". However, it would be subject to the same requirement to commence a formal tax audit to lift secrecy as applies in the domestic context.

332. A 2014 amendment to Article 120 of the Tax Code sought to define the access powers provided therein as a special regime to be applied preferentially to other laws. However, this amendment was set aside for procedural reasons associated with the adoption of the relevant bill of law.

333. Given that the DGII's access powers apply equally in the EOIR context, the exceptions to bank secrecy, and their attached conditions, encompass information sought from banks by the DGII for exchange of information purposes. Whether the DGII would have a basis for declining to respond to a request for information on the grounds of bank secrecy would therefore depend on its ability to open a tax audit in relation to the information requested. The El Salvadoran authorities have stated this would be possible, and there do not appear to be any legal impediments in this respect. However, it is unclear if this would always be straightforward in practice, and the matter will therefore be further considered in the Phase 2 review on the practical application of the standard under B.1.

Professional secrecy

334. Whilst professional secrecy is not defined under El Salvadoran law, its breach can be sanctioned under Article 187 of the Criminal Code, entitled "Revelation of Professional Secrets":

> "Anyone who reveals a secret that has been imposed by reason of his/her profession or trade, shall be punished with imprisonment from six months to two years and disqualification from profession or trade for one to two years."

335. The El Salvadoran authorities state that the scope of professional secrecy is interpreted broadly, and would cover, at the very least, lawyers, notaries, accountants and other professionals. The authorities have stated that the concept of professional secrecy is however not covered in their respective professional rules, and the scope of application is therefore difficult to assess.

336. Given the ineffectiveness of the addition of the eighth paragraph to Article 120 of the Tax Code to the effect that the Article constitutes "a special regime, which will be applied preferentially to other laws or regulations, unless those [laws or regulations] expressly provide that the reservation is extended to the tax administration", as referred to above, it appears that the requirements to provide information to the DGII pursuant to Article 120 of the Tax Code will not necessarily override any contrary provision in professional rules.

337. However, DGII officials maintain that professional secrecy is not used as a basis to refuse to provide information to them, that the general access powers in Article 120(4) of the Tax Code are sufficient to override professional secrecy if necessary, and that there has never been a refusal to provide information on this basis to date.

338. Where, in theory, such an argument were to be made, the matter would be referred to the Non-Compliance Division of the DGII (*Sección de*

Incumplimientos Tributarios) after two unsuccessful attempts, and sanctions imposed. Officials from the *Procuraduría General de la República* (the Attorney-General's Office) confirm that claims of legal professional privilege do not arise often, even in relation to non-tax related matters in El Salvador. The authorities have stated that therefore, professional secrecy would not prevent disclosure of information to the tax authorities.

339. Though professional secrecy may pose only a theoretical obstacle to responding to a request for information, and though, in the context of El Salvador, the information held by professionals does not represent a core information source, the uncertainty about its application means that it risks extending beyond what is foreseen by the standard. Therefore, El Salvador should nevertheless clarify the scope of professional secrecy, including legal professional privilege, in order to ensure consistency with the standard for EOIR (see Annex 1).[62]

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.

340. The 2016 Report found that the legal and regulatory framework in respect of Element B.2 was in place and the element was rated "Compliant" with the standard.

341. Whilst there are no safeguards in place in El Salvador that would unduly prevent or delay effective EOI, it is currently the case that taxpayers are notified where information held by banks is requested due to the requirement to open a tax audit prior to accessing such information. This notification consists of informing the taxpayer of the existence of the tax audit and its legal basis. Prior authorisation or court order are not required to obtain information held by banks.

342. The only appeal procedure possible relates to the challenge of the sanctions imposed by the DGII as a result of the failure of the information holder to provide or hold information.

343. Overall, this nevertheless represents a deterioration of the situation compared with that at the time of the 2016 Report. The conclusions are therefore as follows:

62. The practical application of the scope of legal professional privilege will also be further considered in the Phase 2 review on the practical implementation of the standard.

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

Deficiencies identified/Underlying factor	Recommendations
Where a request for information includes information held by banks, the subject of the request will be notified. This is because a formal tax audit is required in order to lift bank secrecy and access information held by banks, and the opening of a tax audit involves notification of the subject of the audit. There is no exception to this notification.	El Salvador is recommended to ensure that exceptions to the notification of the account holder be introduced in line with the standard, when accessing information held by banks in the context of EOI requests.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

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

Notification of the person concerned

344. The DGII is not obliged to inform persons that are the subject of an exchange of information request of the existence of the request; to notify them prior to contacting third parties to obtain information relating to them; or to notify them that an exchange of information has taken place (post-exchange notification).

345. Where information is requested from a third party such as a public or private institution or financial institution, the EOI Unit will request the information using a notice template. The details provided in this document include, according to the EOI Manual, the identification of the taxpayer concerned; a description of the information being requested; references to the legal basis of the request (including the EOIR agreement); and the deadline (up to 20 working days) by which the person has to provide the information to the DGII. The specific reason for which the information has been requested, i.e. the facts underlying the investigation of the foreign partner, is not provided. The practical application of this step will be further considered in the Phase 2 review on the practical implementation of the standard.

346. DGII officials have confirmed that whilst the identity of the taxpayer is naturally provided to third parties in order to identify in relation to whom

the information is sought,[63] El Salvador would disclose information relating to the person actually subject to the exchange of information request, to the extent that their identity is different from that of the notified taxpayer, only with prior authorisation from the requesting jurisdiction.

347. This step is however not reflected in the EOI Manual. Rather, the EOI Manual provides that the acknowledgment of receipt that is to be sent within seven days of receipt of a request should advise the requesting jurisdiction whether the person subject to the exchange of information request (referred to as the taxpayer) will be contacted directly, unless the requesting jurisdiction previously indicated to avoid notifying the person subject to the exchange of information request. This will be further considered in the Phase 2 review on the practical implementation of the standard.

348. An important exception to the absence of a general notification requirement exists with regard to information held by banks, as set out under B.1.1. Accordingly, the DGII is only able to obtain access to information held by banks where confidentiality is lifted through the opening of a tax audit by the DGII. The opening of a tax audit requires notification of the person subject to the audit. The notification will state the legal basis for the request, including the EOIR agreement applicable. Where the legal basis is a bilateral EOIR agreement, this reveals the requesting party. No exceptions are applied to this procedure, notably, in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction; therefore, **El Salvador is recommended to ensure that exceptions to the notification of the account holder be introduced in line with the standard, when accessing information held by banks in the context of EOI requests**.

Appeal rights

349. There are no grounds for objection or appeal in relation to information requested or obtained by the DGII. The only recourse for appeal is with regard to the sanctions imposed by the DGII on the information holder as a result of any failure to provide or hold information.

350. This appeal is heard in the first instance by the Court of Appeals of Internal and Customs Taxes as an administrative appeal, but could be brought before the Supreme Court of Justice thereafter as a contentious administrative procedure (*proceso Contencioso Administrativo*).

351. The DGII confirms that a taxpayer is not able to appeal the opening of an audit procedure, as the Law on the Organisation and Functioning of the

63. See paragraph 293 for the information contained in the notice.

Court of Appeal of Internal Taxes and Customs establishes exhaustively the bases on which appeals may be filed.

Other rights and safeguards

352. There is no need for prior authorisation or court order to obtain information held by banks.

Part C: Exchanging information

353. Sections C.1 to C.5 evaluate the effectiveness of El Salvador's network of EOI mechanisms. For mechanisms other than the Multilateral Convention, this evaluation considers whether those EOI mechanisms provide for exchange of the right scope of information, cover all of El Salvador's relevant partners and whether El Salvador's network of EOI mechanisms respects the rights and safeguards of taxpayers. The evaluation also considers whether there are adequate provisions to ensure the confidentiality of information received and whether El Salvador can provide the information requested in an effective manner.

C.1. Exchange of information mechanisms

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

354. The 2016 Report found that the legal and regulatory framework in respect of Element C.1 was in place and the element was rated "Compliant" with the standard.

355. The 2016 Report set out the bilateral agreement and the regional agreement through which El Salvador could exchange information, namely the Double Taxation Convention (DTC) with Spain and the Mutual Assistance and Technical Co-operation among Central American Tax and Custom Administrations Convention (the "Central American Convention").[64] The 2016 Report also noted that El Salvador had signed the Multilateral Convention on 1 June 2015.

356. Since the publication of the 2016 Report, the Multilateral Convention has come into force. El Salvador has been able to exchange information with

64. The parties to the Central American Convention are the members of the Central American Common Market (CACM), namely; Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. Of these, Costa Rica and Guatemala also participate in the Multilateral Convention.

all parties to the Multilateral Convention since 1 June 2019. El Salvador has not entered into any other new EOI agreements (see Annex 2).

357. El Salvador's instruments for EOIR conform to the standard. The findings of the 2016 Report are revisited in summarised form below. While the EOIR agreements have not changed, the present report has considered whether the domestic framework has changed as a result of the Constitutional Court decision setting aside amendments made to the Tax Code, including a provision stating that the El Salvadoran tax administration can exchange tax-related information with tax administrations of foreign jurisdictions and enter into international agreements for this purpose, and whether this negatively affects the application of the EOI instruments. Given the explanation of the El Salvadoran authorities that this is not a question of principle and that the Multilateral Convention, which includes express reference to the use of a tax authority's information gathering measures to obtain requested information in the absence of a domestic tax interest, was successfully ratified only four months after the set-aside decision, no recommendation is made in this respect under Element C.1 (or B.1).

358. However, the same set-aside decision means that it remains necessary to open a formal tax audit in order to lift bank secrecy and thereby access information held by banks. In order to open a tax audit, the tax authority must identify the person subject to the audit through a tax identification number (NIT). A NIT may not be available for all persons, notably for foreigners who hold a bank account in El Salvador. As this would impede access to banking information in relation to such persons and therefore the exchange of such information, a recommendation is made in this regard under Element C.1 (as well as under B.1).

359. It remains the case that El Salvador has not received any requests for information to date, and hence the application of the legal and regulatory framework remains untested. However, El Salvador sent two requests itself in the last three years, both based on its original EOIR relationships, and more experience may be built prior to its Phase 2 review on the practical application of the standard.

360. The conclusions are as follows:

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

Deficiencies identified/Underlying factor	Recommendations
The opening of a formal tax audit is required to access information held by banks, further to the setting aside of an amendment of Article 120 of the Tax Code that sought to avoid the need to open a formal tax audit in order to lift bank secrecy. A tax audit can only be opened in relation to natural or legal persons registered with the El Salvadoran tax authorities and holding a tax identification number (NIT). Therefore, where a person subject to a request for banking information does not hold a NIT, it is not possible for the General Directorate of Internal Taxes (DGII) to identify that person unequivocally and for the DGII to therefore exercise its powers of audit and access in their respect. It follows that El Salvador is not able to provide banking information on a foreigner who is not a taxpayer in El Salvador/does not hold a NIT and that its information exchange mechanisms can therefore not be fully applied. This requirement also prevents responding to group requests for information held by banks.	El Salvador is recommended to ensure that it can provide for exchange of information to the standard under its EOIR mechanisms in respect of all persons (including in relation to group requests), where the information is held by a bank.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

C.1.1. Foreseeably relevant standard

361. 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.

362. El Salvador's DTC with Spain and the Central American Convention use the language "foreseeably relevant".[65] The Central American Convention on the other hand provides at its Article 4 that it "shall apply to information and documentation *related* to taxes in effect, to all […]" (emphasis added). Whilst "related" is still indicative of a need for a nexus, it is arguably wider in meaning than "foreseeably relevant", and therefore in line with the standard regarding foreseeable relevance.

65. The Spanish text at Article 27(1) provides: "*previsiblemente pertinente*".

Clarifications and foreseeable relevance in practice

363. The EOI Manual of the DGII's EOI Unit sets out a checklist of factors that contribute to indicating foreseeable relevance, as summarised under C.5.2.

364. Therefore, based on the relevant legal provisions and the information provided by the El Salvadoran authorities in this respect, no specific materials are required to indicate foreseeable relevance, nor would a restrictive approach to EOI be applied in practice.

Group requests

365. Neither El Salvador's EOI agreements, nor El Salvador's domestic law contain language that would prohibit group requests.

366. The EOI Manual covers group requests expressly and provides that the requesting jurisdiction will be required to provide the following:

- a detailed description of the group and the specific facts and circumstances that gave rise to the request
- an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for which the information is requested are not acting in accordance with that law, supported by a clear factual basis
- a sample that the requested information could help determine taxpayer compliance in the group.

367. EOI Unit officials confirm that the second criterion above is to be interpreted as consistent with and equivalent to "foreseeable relevance", and that it does not set a higher standard.

368. However, given the requirement to open a formal tax audit in order to lift bank secrecy and thereby access information held by banks, which in turn requires identification of the subject/s of the audit through a NIT, responding to a group request does not appear possible where the information is held by a bank. **El Salvador is recommended to ensure that it can provide for exchange of information to the standard under its EOIR mechanisms, including in relation to group requests, where the information is held by a bank**.

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

369. El Salvador's DTC with Spain stipulates that the exchange of information is not restricted by Article 1 on persons covered,[66] and neither the Central American Convention nor the Multilateral Convention restrict the scope of information exchange to certain persons.

370. However, where a person subject to a request for information is not registered as a taxpayer in El Salvador and does not have a NIT, it is not possible for the DGII to identify that person unequivocally and for the DGII to therefore exercise its powers of audit and access in their respect. The El Salvadoran authorities note that the same limitation would apply in the domestic context, and that in accordance with its EOIR mechanisms, El Salvador is not required to provide information that cannot be obtained in accordance with its own legislation. However, as it follows that El Salvador is not able to provide information, for example, on a foreigner holding a bank account in El Salvador but not a NIT, **El Salvador is recommended to ensure that it can provide for exchange of information to the standard under its EOIR mechanisms in respect of all persons, including where the information is held by a bank**.

C.1.3. Obligation to exchange all types of information

371. The EOI instruments of El Salvador conform to the standard. El Salvador's DTC with Spain includes Article 26(5) of the OECD Model Taxation Convention at its Article 27(5),[67] and the Central American Convention provides at its Article 8 that information that can be exchanged includes "commercial, financial, industrial, intellectual property transactions or operations or those pertaining to any other economic activity", which therefore includes information held by financial institutions.

372. The 2016 Report noted that El Salvadoran law does not have any provisions that limit the exchange of information held by financial institutions and that the exchange of all types of information is therefore also permitted under the terms of El Salvador's domestic law. As set out above and under B.1 however, the opening of a formal tax audit is now required to access information held by banks, and this may not be possible in respect of all persons.

66. Article 1 provides that the DTC shall apply to residents of one or both of the contracting parties.

67. Paragraph 26(5) of the OECD Model Taxation Convention provides: "In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.".

El Salvador is recommended to ensure that it can provide for exchange of information to the standard under its EOIR mechanisms in respect of all persons, including where the information is held by a bank.

C.1.4. Absence of domestic tax interest

373. El Salvador's DTC with Spain includes Article 26(4) of the OECD Model Taxation Convention at its Article 27(4).[68] The Central American Convention provides for the exchange of information relating to taxes in force and any laws modifying these or establishing new taxes that post-date the signature of the Convention.[69] Therefore, there is no domestic tax interest requirement in the two agreements. The same applies with regard to the Multilateral Convention.

374. Furthermore, the El Salvadoran authorities have confirmed that information would be provided regardless of whether or not El Salvador has an interest in the information for its own purposes.

375. The present report has considered whether a 2018 decision of the Constitutional Court setting aside the amendments of a provision in the Tax Code stating that the El Salvadoran tax administration can exchange tax-related information with tax administrations of foreign jurisdictions and enter into international agreements for this purpose puts into question whether El Salvador can access information absent a domestic tax interest (see B.1.4). The El Salvadoran authorities maintain that this remains the case, and that the provision concerned was inserted not because access would not otherwise be possible in the EOIR context, but because the provision enabled direct incorporation of a reference to EOIR agreements in the Tax Code, and thereby also strengthened the addition of a separate paragraph that sought to avoid the necessity to open a tax audit in order to access information held by banks (see B.1.1 and C.1.3). The El Salvadoran authorities further note that the successful ratification of the Multilateral Convention, which includes express reference to the use of a tax authority's information gathering measures to obtain requested information in the absence of a domestic tax interest, shortly after the set-aside decision, illustrates that a cross-reference in the Tax Code to the power of the

68. Paragraph 26(4) of the OECD Model Taxation Convention provides: "If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.".

69. Article 4(2) of the Central American Convention.

DGII to exchange tax-related information with other jurisdictions and enter into EOIR agreements to this effect is not legally necessary.[70] Therefore, no additional recommendation is proposed in this respect under Element C.1.

C.1.5 and C.1.6. Civil and criminal tax matters

376. El Salvador's EOI agreements provide for the exchange of information in both civil and criminal tax matters, and none require a dual criminality in case of exchange in criminal tax matters.[71]

377. The El Salvadoran authorities confirm that information would be provided regardless of whether it relates to civil or criminal tax matters.

378. Pursuant to Article 28(5) of the Tax Code and Article 76 of the Code of Criminal Procedure,[72] if a criminal investigation is underway in El Salvador, information in relation to that criminal investigation (the "*diligencias de investigación*") may only be obtained via a request to the Public Prosecutor's Office. The rationale put forward for this is that the Public Prosecutor's Office has sole competence for criminal matters in El Salvador, pursuant to treaties signed in relation to the investigation and prosecution of crimes. The El Salvadoran authorities confirm however that this does not restrict the ability of the DGII to exchange information underlying those criminal tax matters; the restriction concerns rather the particularities of the investigation under way. This will be considered further in the Phase 2 review on the practical implementation of the standard (see Annex 1).

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70. As set out in paragraph 312, the relevant provision did not seek to clarify that the access powers in the Article concerned also extended to the EOIR context. Rather, it provided the more general premise that "The tax administration may exchange information of a tax character with tax administrations of foreign jurisdictions. To this end, it may enter into agreements for the fulfilment of such purposes, such agreements being subject to the signature and ratification processes applicable in accordance with domestic legislation.".

71. See the fifth item in the preamble and Article 16 of the Central American Convention.

72. Article 28(5) of the Tax Code provides: "The reservation of information provided for in this Article is not applicable to the Public Prosecutor's Office or to the judiciary, as regards those cases that are pending judicial hearing and in relation to which the Tax Administration is required to provide information in fulfilment of the attributions that correspond to it in the investigation of crimes and in defence of tax interests." Article 76 of the Code of Criminal Procedure (*Código Procesal Penal*) in turn provides: "Without prejudice to the principle of publicity of acts in criminal procedures, investigation processes will be reserved and only the parties concerned will have access to them, or such persons who may request access and are empowered to intervene in the process".

C.1.7. Provide information in specific form requested

379. There are no restrictions in any of El Salvador's DTC with Spain, the Central American Convention or the Multilateral Convention that would prevent information from being provided in a specific form.

380. Furthermore, the El Salvadoran authorities have confirmed that information would be provided in the specific form requested to the extent permitted under El Salvadoran law and administrative practice.

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

381. The 2016 Report did not identify any particular issue with the process or timing for the bringing into force of international agreements by El Salvador. Furthermore, according to the hierarchy of legal norms in El Salvador, international agreements have the same ranking as ordinary laws and, pursuant to Article 144 of the Constitution, they will prevail in the event of a conflict with ordinary law.

382. The Multilateral Convention, El Salvador's DTC with Spain and the Central American Convention, are all in force.

EOI mechanisms

Total EOI relationships, **including** bilateral and multilateral or regional mechanisms	**146**
In force	
In line with the standard	133
Not in line with the standard	0
Signed but not in force	
In line with the standard	13
Not in line with the standard	0
Total bilateral EOI relationships **not supplemented** with multilateral or regional mechanisms	0

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

The jurisdiction's network of information exchange should cover all relevant partners, meaning those jurisdictions who are interested in entering into an information exchange arrangement.

383. The 2016 Report found that the legal and regulatory framework in respect of Element C.2 was in place and the element was rated "Compliant" with the standard.

384. Through entry into force of the Multilateral Convention, the number of EOI partners under which exchange of information is possible has greatly expanded since the 2016 Report to reach 145. This extensive EOI network consists of the Multilateral Convention, one regional agreement and one bilateral agreement. This covers all of El Salvador's major trading partners, with the exception of the United States, which has however not approached El Salvador in this respect.

385. No Global Forum members indicated, in the preparation of this Report, that El Salvador refused to negotiate or sign an EOI instrument with it. As the standard ultimately requires that jurisdictions establish an EOI relationship that conforms to the standard with all partners who are interested in entering into such relationship, El Salvador should continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

386. The conclusions are as follows:

Legal and Regulatory Framework: in place

The network of information exchange mechanisms of El Salvador covers all relevant partners.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

C.3. Confidentiality

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

387. The 2016 Report found that the legal and regulatory framework in respect of Element C.3 was in place and the element was rated "Compliant" with the standard.

388. Specifically, the 2016 Report noted that the confidentiality provisions in El Salvador's EOI instruments conform to the standard, including the limitation on disclosure of information received and use of the information exchanged that are provided in Article 26(2) of the OECD Model Taxation Convention and Article 8 of the OECD Model Tax Information Exchange Agreement (TIEA). Furthermore, domestic laws and the respective enforcement measures are in line with the standard. The situation in this respect remains unchanged, and the conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the EOI mechanisms and legislation of El Salvador concerning confidentiality.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

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

389. El Salvador's DTC with Spain contains the same wording as the Model DTC in relation to confidentiality at its Article 27(2). The Central American Convention provides for the confidentiality of information exchanged under its Articles 2(b) and 9.[73] The Multilateral Convention includes confidentiality provisions at Article 22, stipulating that any "information obtained by a Party under the Multilateral Convention shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying Party as required under its domestic law".

390. The Terms of Reference, as amended in 2016, clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI agreement provides that the information may be used for such other purposes under the laws of both contracting parties and the competent authority supplying the information authorises the use of information for such other purposes. The Multilateral Convention provides at Article 22(4) that information received by a Party may be used for non-tax purposes when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use. The DTC with Spain also stipulates that the information exchanged can be shared with the authorities responsible for combatting money laundering, if such use is permitted by the laws of the requesting State. The Central American Convention does not

73. Article 2(b) provides: "Confidentiality: Obliging the Administrations to keep confidential the information and documentation obtained pursuant to this Convention in accordance with the legislation of the State Parties." Article 9 (Confidentiality of information) provides: "All information provided by an Administration to a requesting Administration is confidential. The information will be used only for the fulfilment of the functions and powers of the requesting Administration. Each Administration will adopt and maintain procedures to guarantee the confidentiality of the information.".

provide for the possibility to use the information for purposes other than its general purpose, to provide the information to another agency or authority or to another party to the Central American Convention. As in the 2016 Report, the El Salvadoran authorities reconfirm that the provisions in the two agreements would not constitute an obstacle to the use of the information for purposes other than tax purposes, albeit this being subject to prior authorisation from the requested party, in line with the standard.

391. El Salvador's domestic laws provide for sufficient protection for the confidentiality of information obtained by the tax administration. Article 28 of the Tax Code provides that:

> "Information regarding the taxable bases and the determination of taxes that appears in the tax returns and in the other documents in the possession of the Tax Administration, will have the character of reserved information. Consequently, employees and officials who, through the exercise of their duties, have knowledge of [this information], may only use it for the control, collection, determination, issuance of transfers, reimbursement and administration of taxes, and for purposes of impersonal statistical information […]".

392. The DGII notes that this Article covers tax returns and is interpreted so as to include information used to determine taxable bases and calculate the determination of taxes, hence underlying information on income, such as information received from an EOI partner, would be covered.

393. In practice, the DGII's Information Security Management System labels responses to information requests as confidential information, meaning that only authorised persons have access to them and only in the exercise of their professional activities. The El Salvadoran authorities have stated that this classification is in the process of being revised so as to give wider coverage to the information and documentation exchanged, to ensure that all relevant items are correctly identified.

394. The EOI Manual of the EOI Unit underscores the confidential nature of information exchanged in the EOIR context throughout, and describes the practical steps to be taken to ensure confidentiality. The Work Instructive on the Clearing of Requests and Responses in relation to the Exchange of Information in application of Treaties concerning Tax Matters (EOI Work Instructive), sets out the text of the confidentiality notice to be included in all communications sent in relation to EOI requests: "All information received in connection with this request must be kept confidential and will be used only for the purposes permitted in the agreement which forms the basis of the request".

395. Confidentiality obligations for members of the tax administration due to their categorisation as civil servants are provided for under Article 31(c) of

the Civil Service Law, which sets out the duty to keep confidential and treat with discretion as necessary matters of which they have knowledge by reason of their position, even after they cease to perform their duties.

396. Article 120(5) of the Tax Code, which sets out the powers of the DGII to obtain information and the obligation to provide it with information, provides:

> "Public officials or employees who reveal or disclose information, documentation, data or background that should remain confidential or will in any way facilitate the knowledge of them, will be subject to sanctions under the Criminal Code."

397. Article 324 of the Criminal Code in turn provides that any civil servant or public official who reveals or divulges confidential information or documentation – including ex officials – shall be subject to imprisonment for a period of four to six years.

398. In addition, all employees are subject to confidentiality obligations set out in the terms of their employment. These confidentiality obligations continue indefinitely after the end of the employment relationship. In the event of breach of confidentiality, administrative penalties may be applied, ranging from suspension without pay to dismissal.

399. Moreover, in case of breach of confidentiality rules, the EOI Unit is subject to the *Procedure Manual for the Management of Security Incidents related to Information held by the Ministry of Finance*. A template exists for incident reports and it is necessary to communicate the incident to the Director, President, Head of Unit or other designated person in accordance with the incident report. Though not expressly stated in that Manual or in the EOI Manual, DGII officials confirm that the requesting jurisdiction would be notified in the case of a breach concerning information received from another jurisdiction.

C.3.2. Confidentiality of other information

400. The confidentiality provisions in El Salvadoran domestic law relating to civil servants set out in C.3.1, and the associated sanctions for breach apply equally to protect the request for information itself, as no distinction is made with regard to the source or destination of the information. They include background documents provided by a requesting jurisdiction, as well as any other information related to the request, such as communications between the EOI partners in respect of the 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.

401. The 2016 Report found that the legal and regulatory framework in respect of Element C.4 was in place and the element was rated "Compliant" with the standard.

402. Specifically, the 2016 Report noted that the EOI agreements concluded by El Salvador meet the standards for the protection of rights and safeguards of taxpayers and third parties, which are provided in Article 26(3) of the OECD Model Taxation Convention and Article 7 of the OECD Model TIEA, and that these rights and safeguards are reflected in domestic law provisions. That is, information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or that would be contrary to public policy, is not required to be exchanged. The situation in this respect remains unchanged, and the conclusions are as follows:

Legal and Regulatory Framework: in place

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

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

C.4.1. Exceptions to provide information

403. The 2016 Report noted that El Salvador's DTC with Spain includes Article 26(3)(c) of the OECD Model Taxation Convention at its Article 27(3)(c).[74] The Central American Convention does not provide for the effect of specific rights and safeguards.[75]

74. Paragraph 26(3)(c) of the OECD Model Taxation Convention provides: "In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation: c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*)."

75. Article 8(b) provides that information can be exchanged on transactions or operations of a commercial, financial, industrial, intellectual property nature or of any

404. As set out in the 2016 Report and reiterated in relation to B.1.5 in the present report, the scope of professional secrecy in El Salvador is interpreted broadly and would appear to cover, at the very least, lawyers, notaries, accountants and other professionals. However, the El Salvadoran authorities state that by operation of the access power provisions under Article 120 of the Tax Code, professional privileges in El Salvador do not prevent access by the DGII and have not arisen in the context of access to information by the DGII in the domestic context.

405. The El Salvadoran authorities have further reported that the scope of legal professional privilege specifically is not set out in any specific document. The Criminal Code however refers to "professional secrets" at its Article 187 (entitled "Revelation of Professional Secrets"), and breaches thereof are punishable by imprisonment for a term of six months to two years, and by disqualification for a period of one to two years. An in-text recommendation is made to El Salvador under Element B.1.5 to clarify the scope of professional secrecy, including legal professional privilege, in order to ensure consistency with the standard for EOIR.

406. As further set out in the 2016 Report, El Salvadoran domestic law provides for the protection of industrial and commercial secrets in its Intellectual Property Law,[76] the scope of which is consistent with the Commentary on Article 26 of the Model Taxation Convention. This is notwithstanding that pursuant to Article 120 of the Tax Code, confidentiality and secrecy provisions are not accepted as justifications for denying the provision of information to the DGII.

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.

407. El Salvador has received no EOI requests to date, hence the organisational processes for EOI have not been tested in practice. In the 2016 Report, a monitoring recommendation was therefore issued and Element C.5 was rated "Largely Compliant" with the standard.

408. Over the review period, El Salvador sent two requests for information to partner jurisdictions. A timely response was received in both cases, and there were no requests for clarification. Neither of these partners indicated that any issues arose in relation to these requests in the preparation of this report.

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other economic activity. The Convention does however provide for the possibility of declining a request based on reciprocity (at its Article 2) and on constitutional limitations (at its Article 10).

76. See Article 177 of the Intellectual Property Law.

409. However, as requesting and providing information in an effective manner is a matter of practice, related aspects will be further considered in the context of El Salvador's Phase 2 review. Nevertheless, an analysis has been conducted of the theoretical procedures and processes in place to allow for timely and effective EOI in practice, when the occasion arises. This analysis reveals, on the one side, a comprehensive framework for information exchange and several best practices for EOI, and on the other, uncertainty as regards the implementation of a number of practical aspects.

Legal and Regulatory Framework

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

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

The Phase 2 recommendation issued in the 2016 Report is reproduced below for information.

Deficiencies identified/ Underlying factor	Recommendations
El Salvador has committed resources and has in place extensive organisational processes for exchange of information that appear to be adequate. Whilst these processes have been applied in part in the domestic context, El Salvador did not receive any EOI requests during the period under review. Consequently, the processes have not been tested in practice.	El Salvador should continue to monitor all EOI processes and once an EOI request is received, El Salvador should ensure that all of its EOI processes are utilised efficiently to respond to EOI requests in a timely manner.

C.5.1. Timeliness of responses to requests for information

410. Although not tested in practice, the provisions on the time periods for responses in the Central American Convention are easily in accordance with the standard: Article 15 provides for a deadline to respond to a request for information within 15 working days of receipt of the request. This can be considered in line with the requirement under the standard for an "effective" exchange and with, for example, the timelines referred to in Article 5(6) of the OECD Model TIEA, where a party is expected to respond "promptly".

411. El Salvador's DTC with Spain does not stipulate time limits for responding to requests for information. Whilst the default standard time limits are two months from the receipt of the information request if the requested information is already in the possession of the tax authorities of the requested party, and six months in all other cases,[77] the El Salvadoran authorities state that the deadlines applicable in domestic law administrative procedures, set out in the Law of Administrative Procedures, will apply in the EOIR context. Accordingly, they will be required to respond to requests within 20 working days of receipt (Article 86 of the Law of Administrative Procedures).[78]

412. However, according to the EOI Manual, the timeframes for the provision of information depend on the location of the information, as set out under C.5.2. For example, for requests from another regional or other centre of the tax administration, or from a public or private institution, a deadline for delivery of the information of up to 30 days is referred to (see paragraph 431).

413. Given the short deadlines, whichever source is considered, a number of aspects of the processes in place for responding to EOI requests focus on the timeliness of the preparation of responses. For example, the incoming and outgoing dates are annotated on a tracking sheet attached at the back of each physical file that is created, and automatic reminders are set at specific time intervals. The timeliness of responses is integrated into the follow-up of the monthly objectives of the DGII, which in turn feeds into the annual stocktaking exercise.

Status updates and communication with partners

414. Pursuant to the Central American Convention, several circumstances give rise to a need to communicate with regard to the status of the request under Article 15: (i) an extension of the 15-working day deadline for a response. The notice to the requesting party should provide the reasons for the delay and an alternative deadline; and (ii) a lack of legal possibility to respond, requiring the requested party to inform the requesting party of the lack of legal possibility and the reasons for the impediment (for example, where disclosure would be contrary to public policy). Article 15 further provides that a lack of response within the 15-day deadline, in the absence of an extension, allows the requesting party to inform the senior authorities of the requested administration of the lack of response so as to ensure that the

77. See paragraph 10.5 of the Commentary on the Model DTC.

78. The Article stipulates a 20-day deadline for "opinions, expert opinions and similar technical reports", as well as a 15-day deadline for "non-technical administrative reports".

requested information be provided (or the reasons provided for not doing so). In addition, Article 17 provides an obligation for rectification and updating of information on the part of the requested jurisdiction whenever relevant.

415. El Salvador's DTC with Spain does not stipulate anything with regard to communication or status updates.

416. The El Salvadoran authorities affirm that they would seek to communicate regularly and provide status updates to the requesting jurisdiction as may be necessary, regardless of the EOI mechanism concerned.

417. The Manual includes a process for communicating time lags or delays to the requesting jurisdiction that also involves informing the Head of Unit, determining an updated deadline and registering actions in the tracking sheet. Specifically, the Manual provides that:

> "If the information has not been collected within 90 calendar days of receiving the request, prepare:
>
> a. a status update communication, if no information is available,
>
> b. a partial response communication, if any information is available".

418. This is in line with the standard.

C.5.2. Organisational processes and resources

Organisation of the competent authority

419. El Salvador has an EOI Unit in place within the Legal Division of the DGII. Whilst the DGII Director holds the official title of competent authority, the EOI Unit conducts the role on an operational basis.[79]

420. An internal framework is in place for EOIR purposes, with:

1. Internal Procedure Manual for the Exchange of Information (EOI Manual), setting out the procedures that must be followed by the EOI Unit for gathering information pursuant to an EOI request in order to ensure effectiveness. It contains templates such as a list of information to be included in responses to requests.
2. Work Instructive on the Clearing of Requests and Responses in relation to the Exchange of Information in application of Treaties concerning Tax Matters (EOI Work Instructive), containing instructions on the step-by-step execution of specific tasks by the EOI Unit and naming those responsible for them.

79. The delegation of responsibilities by the DGII Director to the EOI Unit is established in DGII Agreement 07/2019.

3. Orientation Guide for the Preparation and Sending of Requests for Exchange of Information on Request in Tax Matters, issued in September 2020 to provide additional guidance on the preparation and dispatch of EOI requests, directed at all parts of the tax administration in order to disseminate the process and possibility more widely across the DGII.

421. Whilst this framework offers relatively comprehensive guidance on the practical aspects of dealing with EOIR, the interrelationship between the content of the various documents is not always clear, nor the intended application of their appendices, which include various forms and notices. How this works in practice will be considered in the context of El Salvador's Phase 2 review, to the extent possible.

Resources and training

422. The EOI Unit is made up of six permanent staff: one Head of Unit, one Legal Supervisor, three Legal Officers and one translator (English-Spanish). The DGII indicates that the resourcing plans for the future will be dependent on whether and to what extent EOIR practice increases.

423. Each of the technical officials are senior employees of the DGII with several years of experience in collecting information for domestic tax purposes. In addition to EOIR and in view of the limited EOIR practice of El Salvador to date, the staff is also responsible for responding to any queries or requests associated with international tax treaties.

424. Each of the officials of the EOI Unit has attended specific training on EOI as provided by the Inter-American Centre of Tax Administrations (CIAT), and has also benefited from technical assistance programmes in relation to EOIR provided by the Global Forum and via the EUROsociAL programme, a co-operation programme between Latin America and the European Union which seeks to contribute to improving social cohesion and institutional strengthening in Latin American countries. A number of training modules offered by the Global Forum Secretariat were subscribed to by El Salvador in 2020.

425. Induction training is provided to the officials also on the EOI Manual, which was prepared in consultation with CIAT as part of the Swiss-funded Programme "SECO-CIAT Partnership for Strengthening Tax Administrations" of 2015-19 to strengthen tax policy and revenue administration in the Latin America and Caribbean region.

Incoming requests

426. The procedure to be followed upon receipt of an EOI request is largely set out in the EOI Manual (Procedure for Incoming Applications).

427. If the preliminary conditions for the validity of a request are not met, an official will prepare, within seven days of receipt of the request, a communication in the name of the DGII Director, specifying that the request is returned and setting out the reasons for this.

428. If the request is preliminarily validated, it is reviewed by one of the EOI Unit officials to ensure the request is clear, specific and relevant, verifying the following aspects:

- The request meets the prerequisites set out in the underlying agreement (taxes covered by the agreement, the information requested is foreseeably relevant).
- The requested information is of a nature that can be provided under the agreement and pursuant to domestic law provisions.
- Sufficient information is provided to identify the taxpayer concerned.
- Sufficient information is provided to understand the request.

429. If a request is found to be incomplete or unclear, the Head of Unit is informed and a communication is prepared in the name of the DGII Director to request additional information and/or clarifications, or to return the request explaining the reasons for the return.

430. If a request is validated, the official obtains authorisation from the Head of Unit to collect information and prepare a response. A physical file is opened, and the request is checked for specific instructions, for example particular urgency or a request for the person subject to the request not to be contacted directly.

431. The next steps depend on the location of the information:

- When the requested information is available locally within the DGII, the information is accessed by the official directly and the requesting jurisdiction is to be responded to within 20 working days.
- When the information is with another regional or other centre of the tax administration, the notice setting out the required information is sent as an internal communication memorandum or email to another official of the tax administration in the local branch of the department in which the information holder resides. The DGII notes that in-person delivery is also possible, based on its internal working instructions. The other official concerned is designated based on the nature of the information sought, and the request channelled through the department, section or unit that has the authority to provide the information. Once received by that other official, the EOI Unit official explains via telephone the urgency and nature of the request. The other official will be given 20 or 30 days to provide the information

to the EOI Unit (the deadline is different in Article 86 of the Law of Administrative Procedures and the EOI Manual). If it is necessary to initiate an audit process, the EOI Manual provides that this time period will be extended to 90 or 120 days. According to the DGII, the other official will deliver the notice personally to the information holder, in line with its internal procedures. All information received at the local office is subject to the same confidentiality measures as those in place at the EOI Unit.

- When the information holder is a public or private institution, a written notice of request will either be delivered in person or sent to the information holder, in accordance with the notice processes set out in the Tax Code. The public or private institution will be given 20 or 30 working days to produce the information.
- When the information holder is a financial institution, a notice of request will be sent to either the SFS (as is most commonly done in the domestic context) or the financial institution directly. The SFS or financial institution have 15 or 20 working days to produce the information.

432. Where the EOI Manual refers to an extension of the deadline for the provision of information to 90 or 120 days in the context of a request forwarded to another regional or other centre of the tax administration, the same would apply to the opening of a tax audit by the EOI Unit, for example where this is necessary in order to access information held by banks, as discussed under B.1.1.

433. Overall, there appears to be some uncertainty in relation to the content of the EOI Manual and the application of certain legal provisions, such as the Law of Administrative Procedures, to various practical aspects of the process, notably the deadlines applicable dependent on the location of the information requested and the procedures for the transmission of requests for information. The DGII notes that this is because the coming into force of the Law of Administrative Procedures post-dates the publication of the EOI Manual, which suggests that the deadlines set out in the EOI Manual are now outdated. However, this still leaves the question as to what procedures should apply for transmission of requests. Therefore, El Salvador should review the discrepancies or omissions in relation to relevant procedural steps and agree on the sources and legal bases for the practical implementation of EOIR, amending the EOI Manual and other internal guidance as necessary (see Annex 1). These aspects will be further considered in the context of El Salvador's Phase 2 review.

434. Once the information has been received, a response is prepared in the name of the DGII Director and verified, together with the information collected, by the Head of Unit. The originals of the documents are sent to the

requesting jurisdiction via private courier service. Finally, an email is sent to confirm dispatch of the response and providing the tracking number allocated by the courier service.

435. The El Salvadoran authorities have explained that they rely on Article 120 of the Tax Code, which provides the DGII with wide access powers to information, in combination with Article 126 of the Tax Code, which establishes an obligation for taxpayers to present to the DGII and allow it to examine and verify information. In this manner, the information received is verified in the first instance through comparison with the information already available to the DGII or available through other public registries.

436. In the event that it is not possible to obtain the requested information, a response is prepared to the requesting jurisdiction as soon as possible, setting out why the information cannot be provided.

437. Where a third party does not furnish the information requested after two requests to do so, the case is transmitted to the Non-compliance Department of the DGII in order for a disciplinary procedure to be commenced and sanctions imposed (see B.1.4).

Outgoing requests

438. The EOI Manual establishes a process for outgoing requests (Procedure for Outgoing Applications), using the Model Template Request for Information form included in EOI Work Instructive. Its existence is however publicised separately, namely in the Orientation Guide that is available to all areas of the DGII through the Intranet.

439. The El Salvadoran authorities note that they have conducted training events across the DGII, including Global Forum Secretariat online tools, in order to raise awareness about EOIR options and specifically the entry into force of the Multilateral Convention.

440. In addition, El Salvador has established a framework for the collection of statistics in relation to requests sent. This involves recording elements such as the name of the requested jurisdiction; the name of the taxpayer subject to the request for information; the information requested; and the total time period for handling of the request.

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

441. There do not appear to be in place any laws or regulations in El Salvador that would impose unreasonable, disproportionate, or unduly restrictive conditions on the exchange of information.

Annex 1: List of in-text recommendations

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

- **Element B.1**:
  - El Salvador should ensure that the El Salvadoran competent authority can access information for purposes of exchange with the competent authorities of foreign jurisdictions, absent a domestic tax interest (paragraph 315).
  - El Salvador should clarify the scope of professional secrecy, including legal professional privilege, in order to ensure consistency with the standard for EOIR (paragraph 339).
- **Element C.2**:
  - El Salvador should continue to conclude EOI agreements with any new relevant partner who would so require (paragraph 385).
- **Element C.5.2**:
  - El Salvador should review the discrepancies or omissions in relation to relevant procedural steps and agree on the sources and legal bases for the practical implementation of EOIR, amending the EOI Manual and other internal guidance as necessary (paragraph 433).

Moreover, the Global Forum may identify some aspects of the legal and regulatory framework to follow-up in the Phase 2 review. A non-exhaustive list of such aspects is reproduced below for convenience:

- **Element A.1.1**: The consequences of non-renewal of the annual company re-registration requirement, specifically the practical impact

of the resulting loss of merchant status, as well as related statistics (paragraph 85).

- **Element A.1.1:** The practical aspects of the implementation of Bitcoin as legal tender and the consequent availability of information on both legal and beneficial owners (paragraph 126).
- **Element A.1.2**: The practical aspects associated with the implementation of Law number 153 effective as of 8 October 2021 with regard to the abolishment of bearer shares and related transitional arrangements (paragraph 145).
- **Element A.1.4**: The practical aspects relating to the application of the exceptions to the prohibition on entailments in the Constitution (paragraph 180).
- **Element A.2.1:** The application of requirements in relation to the retention of records by entities and arrangements that cease to exist, and its supervision (paragraph 224).
- **Element B.1.1:** The materiality of the gap represented by the requirement to open a tax audit when it is not possible to identify anyone subject to a tax audit unequivocally through a tax identification number (NIT) (paragraph 279).
- **Element B.1.1:** The application of the requirement to open a tax audit in order to access both bank account information and information on beneficial ownership and its potential impact on the timing of responses (paragraph 302).
- **Element C.1.6:** That the requirement that information in relation to a criminal investigation that is underway in El Salvador (the "*diligencias de investigación*") may only be obtained via a request to the Public Prosecutor's Office does not restrict the ability of the DGII to exchange information underlying those criminal tax matters (paragraph 378).

Annex 2: List of El Salvador's EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1.	Spain	DTC	7 July 2008	1 January 2010

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

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).[80] The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

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

The Multilateral Convention was signed by El Salvador on 1 June 2015 and entered into force on 1 June 2019 in El Salvador. El Salvador can exchange information with all other Parties to the Multilateral Convention.

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

The Multilateral Convention is in force in respect of the following jurisdictions, in addition to El Salvador: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Armenia, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Bosnia and Herzegovina, Botswana, Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Cabo Verde, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus,[81] Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, Estonia, Eswatini, 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 China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Jordan, Kazakhstan, Kenya, Korea, Kuwait, Latvia, Lebanon, Liberia Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), North Macedonia, Malaysia, Maldives, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Montserrat (extension by the United Kingdom), Morocco, Namibia, Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Oman, Pakistan, Panama, Paraguay, 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 Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Benin, Burkina Faso, Gabon,

81. 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.

Mauritania, Papua New Guinea, Philippines, Rwanda, Thailand, Togo, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).[82]

Central American Mutual Assistance Convention

Pursuant to the Mutual Assistance and Technical Cooperation among Central American Tax and Custom Administrations Convention, El Salvador can request and provide the mutual assistance and technical cooperation from and to the other contracting jurisdictions, as well as obtaining and providing information and documentation on, inter alia, tax matters, commercial transactions and identification information in relation to natural or legal persons in their capacity as taxpayers, legal representatives, shareholders or other members of companies. The Central American Mutual Assistance Convention was signed by Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua on 25 April 2006, and came into force on 31 October 2012.

82. Since the United States is a Party to the original Convention but only a signatory to its Protocol, the Convention does not apply between the United States and Parties to the amended Convention that are not OECD or Council of Europe members, as is the case for El Salvador.

Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference and conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and amended in December 2020, and the Schedule of Reviews.

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 19 November 2021, El Salvador's responses to the EOIR questionnaire and subsequent follow-up exchanges, as well as input from partner jurisdictions, to the extent relevant to a Phase 1 review.

List of laws, regulations and other materials reviewed

Constitution of El Salvador

Laws

Tax Code (*Código Tributário*), law no. 230 of 2000

Income Tax Law (*Ley de Impuesto sobre la Renta*), law no. 134 of 1991

Code of Commerce (*Código de Comercio),* law no. 671 of 1970

Law of the Commercial Registry (*Ley de Registro de Comercio*), law no. 271 of 1973

Anti-Money Laundering Law (*Ley Contra el Lavado de Dinero y Activos*), law no. 498 of 1998

Law of Banks (*Ley de Bancos*), law no. 697 of 1999

Law of Supervision and Regulation of the Financial System (*Ley de Supervisión y Regulación del Sistema Financiero*), law no. 592 of 2011

Law of the Superintendence of Commercial Obligations (*Ley de la Superintendencia de Obligaciones Mercantiles*), law no. 825 of 2000

Law on the Registry and Special Control of Taxpayers to the Treasury (*Ley del Registro y Control Especial de Contribuyentes al Fisco*), law no. 79 of 1972

Law of Administrative Procedures (*Ley de Procedimientos Administrativos*), law no. 856 of 2018

General Law on Cooperative Associations (*Ley General de Asociaciones Cooperativas*), law no. 339 of 1986

Law of Co-operative Banks and Savings Societies (*Ley de Bancos Cooperativos y Sociedades de Ahorro y Crédito*), law no. 849 of 2000

Non-Profit Associations and Foundations Law (*Ley de Asociaciones y Fundaciones sin Fines de Lucro*), law no. 984 of 1996

Bitcoin Law (*Ley Bitcoin*), law no. 57 of 2021

Intellectual Property Law (*Ley de Fomento y Protección a la Propiedad Intelectual*), law no. 604 of 1993

Criminal Code (*Código Penal*), no. 1030 of 1997

Code of Criminal Procedure (*Código Procesal Penal*), law no. 733 of 2009

Civil Code (*Código Civil)* of 1859

Notary Law (*Ley de Notariado*), law no. 218 of 1962

Civil Service Law (*Ley de Servicio Civil*) law no. 507 of 1961

Law on the Organisation and Functioning of the Court of Appeal of Internal Taxes and Customs (*Ley de Organización y Funcionamiento del Tribunal de Apelaciones de los Impuestos Internos y de Aduanas*), law no. 135 of 1991

Law of Uniform Procedures for the Presentation, Processing and Registration or Deposit of Instruments in the Registries of Real Property and Mortgages, Social Property, Commerce and Intellectual Property (*Ley de Procedimientos Uniformes para la Presentación, Tramite y Registro o Deposito de Instrumentos en los Registros de la Propiedad Raíz e Hipotecas, Social de Inmuebles, de Comercio y de Propiedad Intelectual*), law no. 257 of 2004

Law of the Goods of the Family (*Ley sobre el Bien de Familia*), law no. 74 of 1933

Regulations

Regulations of the Anti-Money Laundering Law, Presidential Decree No. 2 (*Reglamento de la Ley contra el Lavado de Dinero y de Activos*), 31 January 2000

Technical Norms on Anti-Money Laundering, Central Bank, NRP-08 (*Normas Técnicas para la Gestión de los Riesgos de Lavado de Dinero y de Activos, y de Financiamiento al Terrorismo*), November 2013

FIU Instructive for the Prevention of Money and Asset Laundering, Agreement 085 of the Public Prosecutor's Office of the Republic (*Instructivo de la Unidad de Investigación Financiera para la Prevención del Lavado de Dinero y de Activos, Acuerdo 085, Fiscal General de la República*), July 2013

Regulations of the Bitcoin Law, Presidential Decree No. 57 (*Reglamento de la Ley Bitcoin*), June 2021

Technical Rules to Facilitate the Participation of Financial Entities in the Bitcoin Ecosystem, Central Bank, NRP-29 (*Normas Técnicas para Facilitar la Participación de la Entidades Financieras en el ecosistema Bitcoin*), September 2021

Guidelines for the Authorisation of the Functioning of the Platform of Digital Wallets for Bitcoin and US Dollars, Central Bank, CD-29/2021 (*Lineamientos para la Autorización del Funcionamiento de la Plataforma de la Billetera Digital para Bitcoin y Dólares*), September 2021

Norms on Information on Deposits and their Holders, Superintendence of the Financial System, NPB4-32 (*Normas sobre Información de Depósitos y de sus Titulares*), November 2001

Norms for the Generation of Information on Monetary Deposits and their Holders, Superintendence of the Financial System, NPB4-44 (*Normas para la Generación de Información de los Depósitos Monetarios y sus Titulares*)

Technical Rules for the Registration, Obligations and Operation of Entities that Perform Money Sending or Receiving Operations through Subagents or Subagent Administrators, Central Bank, NRP-19 (*Normas Técnicas para el Registro, Obligaciones y Funcionamiento de Entidades que Realizan Operaciones de Envío o Recepción de Dinero a Través de Subagentes o Administradores de Subagentes*), September 2019

Practical documentation

Internal Procedure Manual for the Exchange of Information, DGII, EOI Unit (*Manual interno de Procedimientos para el intercambio de Información)*

Work Instructive on the Clearing of Requests and Responses in relation to the Exchange of Information in application of Treaties concerning Tax Matters, DGII, EOI Unit (*Instrucción de Trabajo Evacuación de Solicitudes y Respuestas sobre Intercambio de Información en Aplicación de Convenios con Incidencia en Materia Tributaria)*, August 2020

Orientation Guide for the Preparation and Sending of Requests for Exchange of Information on Request in Tax Matters, DGII No. DG-003/2020 (*Guía de Orientación para la Preparación y Envio de Solicitudes de Intercambio de Información a Requerimiento en Material Fiscal*), September 2020

Current and previous reviews

Summary of reviews

Review	Assessment team	Period under review	Legal framework as at	Date of adoption by Global Forum
Round 1 Phase 1	Mr Lars Aarnes, Senior Advisor, Directorate of Taxes, Norway; Ms Margarette Edwards, Field Auditor, Inland Revenue Division, Trinidad and Tobago; and Ms Mary O'Leary from the Global Forum Secretariat	n.a.	December 2014	March 2015
Round 1 Phase 2	Mr Lars Aarnes, Senior Advisor, Directorate of Taxes, Norway; Ms Ann O'Driscoll, International Tax Division of the Office of the Revenue Commissioners, Ireland; and Ms Mary O'Leary from the Global Forum Secretariat	January 2012 to December 2014	December 2015	March 2016
Round 2 Phase 1	Mr James Marshall, Policy Adviser, Exchange of Information, Her Majesty's Revenue and Customs, United Kingdom; Mr Abdulrahman B. Almutairi, Exchange of Information Section Head, Competent Authority for EOI, Kingdom of Saudi Arabia; and Ms Natalie Limbasan from the Global Forum Secretariat	1 October 2017 to 30 September 2020	November 2021	March 2022

Annex 4: El Salvador's response to the review report[83]

El Salvador is thankful for the extraordinary cooperation and the good work performed by the Assessment Team, as well as the Global Forum Secretariat, during the review and the preparation of the report, recognizing the excellent support shown during the whole entire process.

El Salvador is completely committed to the implementation of the international standard for transparency and exchange of information for tax purposes, and for this reason changes have been implemented at the legislative level, such as the abolition of bearer shares, as well as the entry into force of the Convention on Mutual Administrative Assistance in Tax Matters.

The Government of El Salvador's will is to continue working in the best possible way for the legal ordering and its implementation to comply with the applicable international standard. Accordingly, it will take into account the recommendations made in the report, relying on the continued support of the Global Forum, so as to achieve the proposed objectives of fighting tax evasion and tax avoidance.

83. 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 EL SALVADOR 2022 (Second Round, Phase 1)

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 publication contains the 2022 Second Round Peer Review Report on the Exchange of Information on Request of El Salvador. It refers to Phase 1 only (Legal and Regulatory Framework).

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