GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

MARSHALL ISLANDS

2019 (Second Round)

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Marshall Islands 2019 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

November 2019
(reflecting the legal and regulatory framework as at August 2019)

Please cite this publication as:
OECD (2019), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Marshall Islands 2019 (Second Round): Peer Review Report on the Exchange of Information on Request*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, *https://doi.org/10.1787/89b5f984-en*.

ISBN 978-92-64-64992-7 (print)
ISBN 978-92-64-34172-2 (pdf)

Global Forum on Transparency and Exchange of Information for Tax Purposes
ISSN 2219-4681 (print)
ISSN 2219-469X (online)

Photo credits: Cover © Pykha, inspired by an image @ Syda Productions/Shutterstock.com.

Corrigenda to OECD publications may be found on line at: *www.oecd.org/about/publishing/corrigenda.htm*.

Table of contents

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 150 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

2010 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum in 2010
2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015
2016 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
BCA	Business Corporations Act
CDD	Customer Due Diligence
EIN	Employer identification number
EOIR	Exchange Of Information on Request
FATF	Financial Action Task Force
FME	Foreign Maritime Entities
FIBLA	Foreign Investment Business Licence Act
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
LLCA	Limited Liability Companies Act
MISSA	Marshall Island Social Security Administration
MOA	Memorandum of Agreement
Multilateral Convention (MAC)	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010

PRG	Peer Review Group of the Global Forum
SOP	Standard Operating Procedure.
TCMI	Trust Company of The Marshall Islands, Inc. Registrar for non-resident domestic entities and the registered agent for all non-resident domestic entities
TIEA	Tax Information Exchange Agreement

Executive summary

1. This report analyses the implementation of the international standard of transparency and exchange of information on request in the Marshall Islands on the second round of reviews conducted by the Global Forum against the 2016 Terms of Reference. It assesses both the legal and regulatory framework as at 12 August 2019 and the practical implementation of this framework, in particular in respect of EOI requests received and sent during the review period from 1 April 2015 to 31 March 2018. This report concludes that The Marshall Islands is rated overall **Largely Compliant** with the international standard. The first round of review ended in 2016 with the adoption of the Phase 2 report which concluded that The Marshall Islands was non-compliant with the standard. The mentioned report noted material deficiencies in exercise of access powers by the Competent Authority, lack of supervision on the non-resident domestic entities and absence of enforcement measures in case of non-compliant entities or arrangements. In addition, the Marshall Islands underwent a special Fast-Track review in 2017, which included a provisional assessment in respect of their legal framework and practical implementation. That report provided that The Marshall Islands would likely be assigned an overall rating of "Partially Compliant" should it undergo a peer review under the 2010 Terms of Reference at that stage (see Annex 3). The standard was strengthened since then and the present full review of implementation led to the results below.

Compared ratings in First and Second Round Reports

Element		First Round Report (2016)	Second Round Report (2019)
A.1	Availability of ownership information	NC	PC
A.2	Availability of accounting information	NC	PC
A.3	Availability of banking information	LC	LC
B.1	Access to information	PC	LC
B.2	Rights and Safeguards	C	C
C.1	EOIR Mechanisms	C	C
C.2	Network of EOIR Mechanisms	C	C

Element		First Round Report (2016)	Second Round Report (2019)
C.3	Confidentiality	PC	C
C.4	Rights and Safeguards	C	C
C.5	Quality and timeliness of responses	LC	LC
	OVERALL RATING	NC	**LC**

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

Progress made since previous review

2. Since the 2016 Supplementary Report, the Marshall Islands have made significant progress towards compliance with the international standard on exchange of information on request (EOIR) by amending both their laws and procedures.

3. On the front of availability of ownership information, the Marshall Islands amended the Associations Law to:

- compel non-resident domestic (offshore) corporations to make all reasonable efforts to obtain the identity of any holders and beneficial owners of bearer shares issued by these companies
- ensure that identity information for nominee shareholdings be available with the company, due to the requirement to maintain beneficial ownership information
- provide the Registrar of Corporations responsible for non-resident domestic entities with enforcing and monitoring powers. These new powers take the form of a requirement to lodge annual record attestation directly with the Registrar. In addition, the single registered agent for non-resident domestic entities now has power to request information from non-resident domestic companies. Finally, failure to provide information is more severely punished.

4. The new powers granted to the registered agent to demand records have been used in practice in few instances for EOI purposes, as The Marshall Islands received only a single valid request during the review period. All entities that failed to produce information as required have been forcibly dissolved. Audits on a proactive rather than reactive basis have not yet been fully implemented.

5. On the front of exchange of information, the Marshall Islands has 15 TIEAs currently in force and signed the Multilateral Convention which came in force on 1 April 2017, hence enabling The Marshall Islands to exchange information with 128 jurisdictions. Simultaneously, the TIEA Act

2010 was amended to clarify the Competent Authority's access and exchange powers for the purpose of the Multilateral Convention. The number of EOI relationships increased towards the end of the review period (2015 to 2017), and thus The Marshall Islands only received one valid request during the period and made none.

6. In practice, since The Marshall Islands has only received one valid request during the review period, it is impossible to conclude on the timeliness and effectiveness aspect of EOI. However, having regards to the low number of requests received, the organisational structure and procedures of the Competent Authority seems currently adequate to respond to incoming requests in a timely and effective manner. An amended Standard Operation Procedure and EOI Reference Manual set out the procedures on the handling of requests and confidentiality rules.

Key recommendation(s)

7. Since the 2016 report, the Marshall Islands has made several changes to its legal framework. The changes have contributed to a certain extent to improving the requirement on availability of ownership information on bearer shares holders and nominees. However, limited supervision has been conducted since then to ensure that the new legal provisions are effective and ensure that legal ownership information is maintained in practice. The same issue is noted for accounting information. Since most information on non-resident domestic companies is maintained offshore, the monitoring tools and enforcing powers granted to the authorities in the Marshall Islands should be used to ensure that legal obligations are effectively implemented in practice. In the given circumstances, it is difficult to assess the efficiency of these enforcement and monitoring powers on both ownership and accounting information.

8. In respect of the new aspects of the 2016 ToR, Marshall Islands' legal framework is in line with the standard with the exception of the obligation to maintain records on ownership and accounting information for a period of at least five years after a company ceased to exist. It is therefore recommended that The Marshall Islands ensure that such records are kept in accordance with the transparency standard.

9. In practice, except in the case of corporations issuing bearer shares, the only source of beneficial ownership information may be the non-resident domestic entity itself. For corporations issuing bearer shares, up-to-date legal and beneficial ownership information must be recorded with the registered agent for non-resident domestic entities in the Marshall Islands for the shares to become and remain valid. Beneficial ownership information for other non-resident domestic entities may be voluntarily recorded with the registered

agent in a Declaration of Incumbency (nearly 30 000 were recorded during the review period). This type of entity does not have any presence in the Marshall Islands and does not have any representative in physical control of this information. Supervision to ensure that the beneficial ownership information was kept in practice has been conducted but is in its initial stages. It is therefore recommended that The Marshall Islands continue to supervise the implementation of the new provisions and ensure that identity information is available to the competent authority when requested.

10. Finally, the Marshall Islands have only received one request during the review period. Access powers have been used but sanctioning powers have not been used to their full extend, particularly, no sanctions have been imposed by the competent authority on the registered agent when this former would not provide the information. In addition, lack of compliance with regards to provision of the requested information was not due to issues relating to resources and organisational structure since a response was provided within 90 days. Since the experience of The Marshall Islands remains limited, it is recommended that The Marshall Islands monitor the practical implementation of the organisational processes and resources of the EOI programme to ensure they are sufficient at all times for effective EOI in practice.

Exchange of information practice

11. The Marshall Islands has received one request on ownership and accounting information concerning two entities. One of the entities' had no nexus with the Marshall Islands and the other one had been dissolved due to failure to respond to a request received in the previous review period.

Overall rating

12. The Marshall Islands has made improvements in the areas of availability of information and ownership information on bearer shares holders through two major legal amendments, which implementation has produced positive effects on the pending requests of the first round of review.

13. However, the recent start of supervision programmes which follows a staged approach has not provided enough results yet to allow any conclusion on its effective implementation in practice. It is therefore recommended that The Marshall Islands ensure that all relevant entities comply with their obligations.

14. The Marshall Islands has in place appropriate legislation requiring availability of all relevant information, including beneficial ownership information, of relevant entities and arrangements as required under the standard

as strengthened in 2016, except for the companies that have ceased to exist. Although Marshall Islands' legal framework seems adequate, enforcement measures taken against non-compliant entities have not resulted in providing the information to the treaty partner during the review period. The supervision measures taken to ensure that the legal ownership and accounting information is available in practice have only started and could not be assessed. Over the reviewed period, the Marshall Islands has received only one valid request, which is not enough to fully evaluate the implementation of exchange in practice.

15. In view of all the above, an overall rating of Largely Compliant is assigned to the Marshall Islands.

16. This report was approved by the Peer Review Group of the Global Forum on 30 September 2019 and was adopted by the Global Forum on 8 November 2019. A follow-up report on the steps undertaken by The Marshall Islands to address the recommendations made in this report should be provided to the PRG no later than 30 June 2020 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determinations and Ratings	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place but certain aspects of its legal implementation need improvements.	Ownership and identity information in respect of nominee shareholdings is not available in all circumstances.	The Marshall Islands should ensure that ownership and identity information is available in respect of nominee shareholdings.

Determinations and Ratings	Factors underlying recommendations	Recommendations
	During the review period, there were no explicit legal requirements to ensure that entities which have ceased to exist remain bound by their obligations to keep records nor was there any provision putting an end to these obligations. The Associations Law (Amendment) Act, 2019, which entered into force in March 2019, ensures that companies and partnerships are compelled to maintain records for 5 years after they have been dissolved or otherwise ceased to exist. However, the responsibility to maintain such information even once a company or partnership ceases to exist is on the entity or the partnership itself. The sanction applicable in case of non-compliance is likely to be inefficient since a company or the partnership that ceased to exist would not have any capacity to be fined or liquidated a second time.	It is recommended that The Marshall Islands ensure that ownership information be available on all entities and partnerships that have ceased to exist for 5 years after the date the entity or the partnership ceased to exist.

Determinations and Ratings	Factors underlying recommendations	Recommendations
	Customer Due Diligence procedures to identify the beneficial owner(s) are described under the Guidance on Beneficial Ownership requirements of the Republic of The Marshall Islands Association Law, which is not binding. The law is not clear on the fact that the natural person who exercises control through other means is not an equal alternative to the managing person but should be identified each time a beneficial owner through the ownership chain is not identified or in case of doubts on this first step. In addition, the entity which is in charge of maintaining the record of its beneficial owners does not have any obligations to verify the accuracy and adequacy of the information provided by the shareholders, causing doubts on the quality of the information collected from the shareholders or beneficial owners themselves. For the resident domestic entities which have engaged an AML person, beneficial ownership information in line with the standard may not be available since the notion of indirect ownership is not clear and control through other means is missing.	It is recommended that The Marshall Islands take the necessary steps to ensure that the beneficial ownership information is maintained in line with the standard.

Determinations and Ratings	Factors underlying recommendations	Recommendations
Partially Compliant	The Marshall Islands have not fully implemented an effective monitoring and enforcement programme to ensure that relevant entities and partnerships comply with the obligations to maintain or provide ownership and identity information. This is of particular concern with regards to non-resident domestic entities and partnerships. Although some progress has been noted from the 2016 report, the fact that the information on beneficial owners with regards to the non-resident domestic companies and partnerships is most of the time kept outside of The Marshall Islands and should only be produced on demand increased the requirement for a strong supervision. Although not fully in line with the standard, the law on beneficial ownership requirement is recent and therefore no outcome of its implementation is available yet.	The Marshall Islands should fully implement effective supervision and enforcement programmes to ensure that all relevant entities and partnerships comply with the obligations to maintain or provide identity information, as well as legal and beneficial ownership information.
	Although The Marshall Islands have made some efforts in seeking to ensure the availability of ownership information relating to bearer shares, the absence of supervision on ensuring that the sanctions are effectively enforced in practice to act as a deterrent on holders of bearer shares to declare their identity results in uncertainties on the availability of bearer share holder ownership information in all cases. In addition, the total number of bearer shares that were issued before the entry into force of the law is unknown.	It is recommended that the Marshall Islands supervise the proper implementation of the law and have a full knowledge of the number of bearer shares still in circulation.

Determinations and Ratings	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 but certain aspect of its legal implementation need improvements.	The Associations Law (Amendment) Act, 2019 introduced an obligation for all companies that ceased to exist to maintain their records even after the liquidation. However, since the requirement is on the company that no longer exists, there are no effective sanctions in case of failure to keep the records.	It is recommended that The Marshall Islands take legal measures to ensure that the accounting information of companies that ceased to exist is maintained in line with the standard.
Partially Compliant	Since the only source of accounting information for non-resident domestic entities and non-resident domestic partnerships is the entities or partnerships themselves, strong supervision is crucial to ensure that the information is available. The new measures imposed are a good start, however, the level of supervision that is currently applied is not enough to ensure that the accounting information is kept in practice. Supervision on the content of the attestation and sample checks have not been tested in practice since the law is recent. The number of audits on domestic entities is also low.	It is recommended that the level of supervision exercised by The Marshall Islands be adequate enough to ensure that entities and partnerships maintain reliable accounting information at all times.

Determinations and Ratings	Factors underlying recommendations	Recommendations
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place	Beneficial ownership information in line with the standard may not be available on all account holders since the notion of control through means other than ownership is missing. However, since it is the policy of the Banking Commission in practice, not to allow non-resident domestic entities to have a bank account in the Marshall Islands, the chances of receiving a request on banking information are very low, and the identified issue has very limited impact on exchange.	It is recommended that the Marshall Islands take the necessary steps to ensure that the beneficial ownership information is accurate and adequate and that underlying documents on beneficial owners is maintained accordingly.
Largely Compliant	The amendment brought to the AML regulations which came into force in May 2019 and which clarified what "indirect ownership" means is recent and its implementation in practice has not been monitored yet. However, since it is the policy of the Banking Commission in practice not to allow non-resident domestic entities to have a bank account in the Marshall Islands, the chances of receiving a request on banking information are very low, and the impact on exchange is limited.	It is recommended that the Marshall Islands monitor the effective implementation of the recent amendments in practice.
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.		

Determinations and Ratings	Factors underlying recommendations	Recommendations
Largely Compliant	The enforcement provisions are used in practice by the Registrar for non-resident entities; however these sanctions are unlikely to be effective to compel the production of information. No information available could demonstrate the effectiveness of these sanctions in compelling the production of the requested information. In addition, the Competent Authority has not applied any sanctions against the Registrar when it did not provide the information requested.	The Marshall Islands should monitor the use of sanctions in a view to obtaining the information requested by EOI partners.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place.		
Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place.		
Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place.		
Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place.		
Compliant		

Determinations and Ratings	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.		
Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework:	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	
Largely Compliant	The Marshall Islands received one valid request during the review period. Although the new process for responding to EOI requests after the end of the previous review period and its effectiveness were tested in practice on the pending requests from the previous report, the Marshall Islands' experience is still limited.	The Marshall Islands should monitor the practical implementation of the organisational processes and resources of the EOI program to ensure that they are sufficient at all times for effective EOI in practice.

Overview of the Marshall Islands

17. The Marshall Islands is an archipelago nation of about 53 000 people in central Pacific, mid-way between Hawaii and Indonesia.

18. The Marshall Islands entered into a compact of free association with the United States (US) in 1986. Under this agreement, the Marshall Islands, the Marshall Islands has sovereignty in domestic and foreign affairs, while the US is responsible for defence. The official currency is the United States Dollar (USD).

19. The Marshall Islands' economy relies primarily on government employment and US funding, but has seen growth in its maritime registry, commercial and small-scale fisheries, aquaculture, agriculture, traditional crafts manufacturing and tourism. Its GDP is approximately USD 187 million as of 2019, driven mainly by services (86%), industry (10%) and agriculture (4%). The Marshall Islands' main trading partners are Japan, United States and Australia. Among international organisations, the Marshall Islands are a member of the United Nations, the Asian Development Bank (ADB) and the Pacific Islands Forum.

20. The Marshall Islands operate a large ship registry, the size of which has increased markedly over the past 10 years. As of April 2019, the Registry had a fleet size of 4 560 vessels with 166 million gross tons. The Registry's tonnage is from all around the world, including the United States, Greece, Germany, Norway, Italy, Turkey, Japan and other areas in Asia. The Registry has 28 offices including Hong Kong, China; Singapore; Germany; Turkey; United Arab Emirates and United Kingdom.

21. 41 Marshall Islands shipping companies, excluding FME,[1] are publicly traded on the New York Stock Exchange (NYSE) or National Association of Securities Dealers Automated Quotations (NASDAQ).

1. FME are companies formed and existing under the laws of a foreign jurisdiction. They are registered in the Marshall Islands solely for the purposes of owning a Marshall Islands registered vessel.

Legal system

22. In 1979, the Marshall Islands became self-governing. In 1986, the Marshall Islands achieved full sovereignty and entered into the Compact of Free Association with the United States.

23. The Marshall Islands is a parliamentary democracy. The parliamentary system comprises two legislative chambers – (i) the Council of Iroij, which is comprised of 12 tribal chiefs, serves as an advisor to the Presidential Cabinet and reviews legislation affecting customary law or any traditional practice; and (ii) the Nitijela, which is comprised of 33 senators elected by 24 electoral districts, and elects the President from among its members for a four-year term. The Nitijela has the power to repeal, revoke, amend, or make any law it considers necessary for carrying out its power under the Constitution. The President appoints a Cabinet of 6 to 10 members with the approval of the Nitijela, and serves both as chief of state and head of government.

24. The legal system of the Marshall Islands was based originally on the former Trust Territory laws, established and administered by the United States, but has subsequently been modified by common law, municipal bodies, customary law, and legislation embodied in the Marshall Islands Revised Code. The hierarchy of laws in the Marshall Islands is as follows: the Constitution is the supreme law of the land with international treaties and Acts of the Nitijela superseding any local ordinance, but any law or treaty is void if it is inconsistent with the Constitution.

25. The judiciary in the Marshall Islands is divided into four tiers: the Supreme Court, the High Court, the District and Community Courts and the Traditional Rights Courts. The Supreme Court is a superior constitutional court. The High Court has original jurisdiction over cases filed with it, appellate jurisdiction over cases originally filed in subordinate courts, and jurisdiction to review the legality of any final decision of a government agency. Tax cases are heard before the High Court.

Tax system

26. The Marshall Islands raise revenue through the collection of taxes from various sources, including taxes on personal income, gross revenue of business entities, import of foreign goods, hotel and resort and immovable property. These taxes are levied at the national level and administered by the Ministry of Finance. The main tax laws are the Income Tax Act 1989 and the Import Duties Act 1989. There is no capital gains tax, net wealth or net worth taxes and no national tax on goods and services.

27. The Marshall Islands operate a territorial system of taxation. Tax on gross revenue is imposed on persons who carry out business within the Marshall Islands. Under the Income Tax Act 1989, a person means an individual, firm, partnership, company or corporation, whether incorporated or unincorporated. The tax rate is of USD 80 per year on the first USD 10 000 of gross revenue and 3% on amounts above that threshold.

28. Non-residents other that non-resident domestic entities (entities operating exclusively offshore) pay a non-resident tax of 10% on the gross income earned from services provided or performed by such person relating to any client in the Marshall Islands. Such tax must be deducted and paid to the Government by the client.

29. With regard to personal income tax, tax is assessed, levied and collected on wages and salaries received by employees (less an exemption per year). The rate is 8% per annum on the first USD 10 400 of taxable income and 12% thereafter.

30. There are two types of exemption in the Marshall Islands – the traditional ones, that exempt The Marshall Islands government, public utility companies, businesses operating solely for charitable, scientific, educational or religious purposes and the exemptions provided as an incentive to attract certain type of businesses, particularly the non-resident domestic entities. Such incentives are equally available to both non-citizen and citizen investors and can be applied by submitting an application to the Minister of Finance. Revenue from the following export-oriented sectors may be exempted from income tax for a five-year period: offshore or deep sea fishing; manufacturing for export; agriculture; and hotel and resort facilities. In order to qualify for the tax incentives, an investor must invest at least USD 1 million and/or provide employment and wages in excess of USD 150 000 per annum to local Marshallese citizens. Tax incentives are also available for seabed hard mineral mining in the Marshall Islands' exclusive economic zone. In order to qualify for the exemption, investors must pay the government a royalty, production charge or combination of production charge and a share of net proceeds accruing from the mining activity. The Marshall Islands officials advise that there are only two entities that are taking advantage of this exemption as at February 2019.

Company and financial services sector

31. The Marshall Islands' financial banking sector is small, comprising only two commercial banks (which also offer foreign exchange services), one development bank, three insurance companies, two money transmitters, four money lenders, and one credit union. The total asset size of the banking sector is USD 190 million as of January 2019. There are no offshore banks operating in the Marshall Islands.

32. All financial institutions involved in banking sector are regulated by the Marshall Islands Banking Commission, which has the authority to both implement preventative measures under the Banking Act and the revised Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Regulations (2010), and exercise investigative powers.

33. In addition to the financial banking sector, the Marshall Islands also have a non-banking financial sector. For a population of 53 000, the Marshall Islands count 353 resident domestic and authorised foreign entities and 45 000 offshore entities (called non-resident domestic entities), with approximately 5 000 to 6 000 new registrations each year.

34. The Marshall Islands Associations Law establishes two Registrars of Corporations: one responsible for resident domestic entities and authorised foreign entities (Registrar for resident domestic entities) housed in the Office of the Attorney General, and the other responsible for non-resident domestic entities and foreign maritime entities (Registrar for non-resident domestic entities). The Trust Company of the Marshall Islands, Inc. (TCMI), a privately owned the Marshall Islands company, has been statutorily appointed by the Marshallese Government as both the Registrar for non-resident domestic entities and the registered agent for all non-resident domestic entities. TCMI is also statutorily appointed as the Marshall Islands Maritime Administrator. TCMI is overseen by the Ministry of Transportation and Communication, is headquartered in the Marshall Islands, and operates through offices in many places where the Marshall Islands flagged vessels operate. The registered agent is one of the authorities responsible to request information relevant for EOI to the entities it supervises, and enforce sanctions if the entities do not comply.

35. The Marshall Islands Associations Law is contained in Title 52 of the Marshall Islands Revised Code. The Associations Law includes the Business Corporations Act (BCA) (governing corporations), the Revised Partnership Act, the Limited Partnership Act and the Limited Liability Company Act. These statutes provide the forms and regulations for the establishment and operation of all resident domestic entities and non-resident domestic entities. Under the BCA, corporations may be classified as resident domestic corporations, non-resident domestic corporations, foreign corporations authorised to do business in the Marshall Islands, or foreign maritime entities (FME). Resident domestic corporations are those doing business in the Marshall Islands, while non-resident domestic corporations are those not doing business in the Marshall Islands. Foreign corporations that are incorporated in another jurisdiction can register either to do business in the Marshall Islands or as an FME for the sole purpose of vessel ownership.

36. In addition to registering with the Registrar for Resident Domestic Entities, a foreign entity must also obtain a foreign investment business licence from the Ministry of Finance.

37. The Marshall Islands provide for the formation and administration of trusts under the Trust Act of 1994, the Trust Companies Act of 1994, and the Trustee Licensing Act of 1994. The creation of trusts is under the exclusive control and at the discretion of the Registrar of Trusts. While the Registrar of Trusts has the authority to accept or deny any trust application, it is currently inactive. Due to the fact that the Registrar of Trusts has not accepted any trust applications to date, there are currently no trusts or licensed trustee companies in existence in the Marshall Islands.

38. Other service providers include company formation agents, lawyers, accountants, and company service providers. Once accredited, these other service providers are not supervised or regulated by the Banking Commission. Lawyers in the Marshall Islands are regulated by the Marshall Islands Bar Association, which has adopted the American Bar Association's Model Rules of Professional Conduct. For non-resident domestic entities, registration may only be requested by a qualified intermediary, such as a foreign attorney, accountant, corporate services company, or qualified shipping company, that has been successfully vetted by the Registrar for non-resident domestic entities (TCMI). For resident domestic entities, registration may be requested by any person, but in practice, the formation is vetted through a face to face interview with the Registrar where information on ownership and beneficial ownership details are obtained and documented.

AML framework

39. The latest Mutual Evaluation Report of the Marshall Islands' AML/CFT framework was adopted by the Asia/Pacific Group on Money Laundering (APG) in July 2011 (www.apgml.org/members-and-observers/members/member-documents.aspx?m=38e5eb19-a643-4bfd-bf13-15838814df87). Since the report was adopted, the Marshall Islands have remained on the regular follow-up with the APG requiring annual reports. The access to legal and beneficial ownership information on legal persons and legal arrangements was rated non-compliant with the FATF standard in 2011, though the Marshall Islands have made significant legal changes since that time. The next mutual evaluation report is scheduled for 2020-21.

Recent developments

40. The Marshall Islands authorities have indicated that legislation imposing AML obligations on designated non-financial businesses and professions in accordance with FATF standards is currently in discussion before the National Assembly.

Part A: Availability of information

41. 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.

42. The 2016 report found that the legal framework in the Marshall Islands did not ensure that ownership information was available at all times, mainly because the Competent Authority could not identify holders of bearer shares and the person for whom nominees could act. In addition, the report noted the lack of supervision of entities, particularly non-resident domestic entities, which may have resulted in the legal requirements not being enforced. The element was determined not in place and the rating was Non-Compliant.

43. Since then, legal amendments were made in order to address these deficiencies. Entities that have issued bearer shares now must take all reasonable measures to obtain and maintain up-to-date identity information on the holders and beneficial owners of each bearer share. Legal and beneficial ownership information must be recorded with the registered agent for non-resident domestic entities, and unless up-to-date information is recorded, the bearer share is legally invalid and the holder of the share has no rights or privileges (e.g. cannot vote, receive dividends, or otherwise act as a shareholder). These requirements applied immediately to bearer shares issued after 14 November 2017 and for bearer shares issued before 14 November 2017, this information was required to be disclosed to the registered agent by 9 November 2018. Non-compliant bearer shares have to be cancelled within 180 days from the date the said company does not obtain the bearer shares holder and beneficial owner identity. Once invalidated or cancelled, there is no legal basis for any benefits to be enjoyed by the shareholder. As of 10 July 2019, 689 non-resident domestic companies have provided the name of the holders and beneficial owners of each of the bearer shares they have issued

– these bearer shares represent the only valid bearer shares in the Marshall Islands.

44. The loss of rights and privileges is an immediate consequence of the invalidity of shares for which the bearer shares information is not registered with the registered agent for non-resident domestic companies. All bearer shares issued before 14 November 2017 for which the required legal and beneficial ownership details were not disclosed to the corporation and recorded with the registered agent on or before 9 November 2018 had to be cancelled by May 2019. As of date, the Marshall Islands authorities have not sanctioned any of the companies for failure to cancel bearer shares. According to the authorities, cancellation of shares although legally required, is not necessary since the immediate invalidation of the shares and its legal consequences is sufficient to ensure that bearer share holders are penalised by not disclosing their identity.

45. On 30 March 2017, the Marshall Islands passed legislative amendments providing clearer rules and additional tools for the monitoring and enforcement of non-resident domestic entities' compliance with their obligations to keep ownership information. While these new tools are an improvement, the Marshall Islands have just started implementing the audit programme to prevent non-compliance. It is therefore recommended that the Marshall Islands continue to fully implement the audit programme to ensure compliance with the legal obligations to maintain ownership information.

46. The 2016 Terms of Reference requires jurisdictions to avail of beneficial ownership information on legal entities and arrangements. The legal framework offers two sources for the resident domestic entities – the AML/CFT framework and Association Law and one source for the non-resident domestic companies – Association Law. Although guidance exists on the cascade approach, these are not binding and the analysis of the legal framework shows some gaps, particularly with regards to maintaining underlying documents on the steps taken to verify the identity of the beneficial owners. It is therefore recommended that the Marshall Islands amends their legal framework in order to ensure that the accurate beneficial ownership information is kept.

47. In practice, the implementation of the new requirements on beneficial ownership is recent and could not be assessed. The Marshall Islands have not yet implemented compliance strategies and have little experience in implementing the beneficial ownership requirements under the Association and AML laws. The Marshall Islands is recommended to supervise the implementation of the new requirements on beneficial ownership information both under the AML/CFT and the Associations Law frameworks, to ensure adequate, accurate and up-to-date beneficial ownership information is available on companies and legal arrangements in all cases.

48. Regarding entities that cease to exist, the requirement to maintain the records for five years after the entity has ceased to exist was not clear until 2019. The amendment does not require that a custodian be appointed to maintain the records and the obligation remains on the company itself despite the fact it no longer exists. It is recommended that the Marshall Islands ensure that ownership information be available on entities that have ceased to exist for five years after the date the entity ceased to exist. During the current peer review period (April 2015-March 2018), the Marshall Islands received one request for ownership and identity information. The peer did not receive the information due to the failure to respond by the entity about which the request was made. The same entity was the subject of a duplicate EOI request by the same peer in the previous review period (2014); it failed to provide information, and was forcibly dissolved. Having already been forcibly dissolved after failing to provide information in response to the 2014 request, the information was requested again by the competent authority but the corporation again failed to respond. The matter was discussed with the peer on a bilateral basis, and the peer is satisfied with the Marshall Islands' reply.

49. Professional trustees are legally permitted to administer domestic or foreign trusts in the Marshall Islands only if they obtain a licence issued by the Commissioner of Trust Companies. The Commissioner of Trust Companies has not issued any licences during the review period, and the Marshall Islands confirmed that it is not the policy intention of the jurisdiction to allow any licences to be issued. There are currently no professional trustees in the Marshall Islands.

50. In light of the above, the legal and regulatory framework on the availability of ownership and identity information (element A.1) is in place but certain aspects of the legal implementation of the element need improvement. Due to the legal gap and the three recommendations on supervision and enforcement, element A.1 is rated Partially Compliant with the transparency standard.

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

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified	Ownership and identity information in respect of nominee shareholdings is not available in all circumstances.	The Marshall Islands should ensure that ownership and identity information is available in respect of nominee shareholdings.

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
	During the review period, there were no explicit legal requirements to ensure that entities which have ceased to exist remain bound by their obligations to keep records nor was there any provision putting an end to these obligations. The Associations Law (Amendment) Act, 2019, which entered into force on March 2019, ensures that companies and partnerships are compelled to maintain records for 5 years after they have been dissolved or otherwise ceased to exist. However, the responsibility to maintain such information even once a company or partnership ceases to exist is on the entity or the partnership itself. The sanction applicable in case of non-compliance is likely to be inefficient since a company or the partnership that ceased to exist would not have any capacity to be fined or liquidated a second time.	It is recommended that the Marshall Islands ensure that ownership information be available on entities and partnerships that have ceased to exist for 5 years after the date the entity or partnership ceased to exist.
	Customer Due Diligence procedures to identify the beneficial owner(s) are described under the Guidance on Beneficial Ownership requirements of the Republic of The Marshall Islands Associations Law, which is not binding. The law is not clear on the fact that the natural person who exercises control through other means is not an equal alternative to the managing person but the second step of the cascade approach. In addition, the entity in charge of maintaining the record of its beneficial owners does not have any obligations to verify the accuracy and adequacy of the information provided by the shareholders causing doubts on the quality of the information collected from the shareholders or beneficial owners themselves. For the resident domestic entities that have engaged an AML person, beneficial ownership information in line with the standard may not be available since the notion of indirect ownership is not clear and control through other means is missing.	It is recommended that the Marshall Islands take the necessary steps to ensure that the beneficial ownership information is maintained in line with the standard.
Determination: The element is in place but certain aspect of the legal implementation of the element need improvement.		

Practical Implementation of the standard		
Deficiencies identified	Underlying Factor	Recommendations
	The Marshall Islands have not fully implemented an effective monitoring and enforcement programme to ensure that relevant entities and partnerships comply with the obligations to maintain or provide ownership and identity information. This is of particular concern with regards to non-resident domestic entities and partnerships. Although some progress has been noted from the 2016 report, information on beneficial owners of non-resident domestic entities and partnerships is typically kept outside of the Marshall Islands and is provided only on demand. This increases the requirement for strong supervision, which is still lacking, since the law on beneficial ownership requirements is recent.	The Marshall Islands should implement effective supervision and enforcement programmes to ensure that all relevant entities and partnerships comply with the obligations to maintain or provide identity information, as well as legal and beneficial ownership information.
	Although the Marshall Islands have made some efforts in seeking to ensure the availability of ownership information relating to bearer shares, the absence of supervision on ensuring that the sanctions are effectively enforced in practice to act as a deterrent on holder of bearer shares to declare their identity results in uncertainties on the availability of bearer share holder ownership information in all cases.	It is recommended that The Marshall Islands supervise the proper implementation of the law and have a full knowledge of the number of bearer shares still in circulation.
Rating: Partially Compliant		

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

52. The 2016 report analysed the legal framework with regard to company formation in the Marshall Islands and concluded that the legal framework was not in place due to the impossibility to obtain ownership information when bearer shares or nominees were involved. The rest of the legal framework was in place.

53. There are two types of companies in the Marshall Islands – Corporations governed by the Business Corporations Act (BCA and its supporting corporate regulations as amended in August 2018) and Limited

Liability Companies (LLCs) governed by the Limited Liability Company Act. Both can be further classified as:

- resident domestic corporations or LLCs which are domestic corporations or LLCs doing business in Marshall Islands
- non-resident domestic corporations or LLCs which are domestic corporations or LLCs not doing business in Marshall Islands
- foreign corporations or foreign LLCs authorised to do business in the Marshall Islands.

54. In addition, foreign corporations and foreign LLCs which have power to own or operate vessels and the capacity to sue or be sued in their state of creation can apply to the Trust Company of The Marshall Islands (TCMI) – the Registrar for non-resident domestic entities to be registered as a Foreign Maritime Entity (FME). This registration solely grants the FME the power to own and operate vessels with the Marshall Islands' flag. An FME may have an office in the Marshall Islands for the purposes of doing all things necessary to the conduct of the business and operation of The Marshall Islands flag vessels, but may not conduct any other business activity in the Marshall Islands without a foreign investment business licence. As FMEs are not tax resident in the Marshall Islands, and no FME has its headquarters therein the Marshall Islands, they do not have a sufficient nexus with the Marshall Islands as provided in the Terms of Reference; they are therefore not in the scope of this review as concerns the availability of information. However, should there be a request on an FME, certain ownership information of a Marshall Islands flagged vessel would be available (see para. 89, 94, 95 and 97 of the 2016 report), and should the FME relocate its place of effective management or headquarter in the Marshall Islands, then ownership information would be available in the same way as for the foreign authorised entities (see paragraphs 67 to 70).

55. The Marshall Islands authorities advised there were 354 resident domestic entities, 45 464 active non-resident domestic entities and approximately 1 400 FMEs registered with the Registrars as of 31 March 2018. The Marshall Islands authorities have also advised that The Marshall Islands receive approximately 5 000 to 6 000 new registrations each year, with the majority of the entities registered in the maritime sector or linked to the ship registry. From 2016 to 2018, around 15 000 non-resident domestic corporations have been struck off by the Registrar and in the majority of cases, for failure to pay the fees.

Number of entities at the end of the review period

	Number of non-resident domestic entities on 31 March 2018	Number of resident domestic entities on 31 March 2018
Corporations	43 000	340
LLC	2 400	13
General partnerships	4	1
Limited Liability Partnerships	60	0
Total	45 464	354

56. The following table shows a summary of the legal requirements to maintain legal ownership information in respect of companies:

Legislation regulating legal ownership of entities

Type	Company law	Tax law	AML law
Resident domestic corporations	All	Some	Some
Non-resident domestic corporations	All	None	Some
Authorised Foreign corporations (tax resident)	All	Some	Some

Legal ownership and identify information requirements

57. Legal ownership information is available in the Marshall Islands with the Registrars for domestic entities through some filing obligations, with the entities themselves, and with the Ministry of Finance and The Marshall Islands Social Security Administration (MISSA) through tax obligations.

Information held by the Registrars

58. There are two Registrars in Marshall Islands:

1. The Attorney General's office is the Registrar for resident domestic entities and authorised foreign entities (i.e. corporations, LLC and partnerships).
2. The Trust Company of The Marshall Islands, Inc. (TCMI), which is a private company registered in the Marshall Islands, has been statutorily appointed as the Registrar for non-resident domestic entities and FMEs.

Information held on Resident domestic Corporations and LLC

59. The availability of ownership information with the Registrar for resident domestic entities is legally ensured through the obligation for the resident domestic corporations and LLCs to file an annual corporate report (Corporate Regulations 1995, Amended, Part II, s. 3 and Part IV, s. 2, in accordance with the forms prescribed under schedules 2 and 4). These forms clearly require the name of shareholders and members. It is the main source of ownership information available with the Registrar for resident domestic corporations and LLCs. During the first year of existence of a corporation or LLC, it is unlikely that the Registrar would have any ownership information on it. However, the Marshall Islands explained that in practice, at formation, ownership information is obtained and documented by the Registrar through a face to face interview. This information is as follows:

- The articles of incorporation of resident domestic corporations, which must be filed upon incorporation, are not required to contain any ownership information, but they contain some information that may be relevant to a requesting partner such as the number of shares authorised to be issued and name and addresses of the incorporators.
- To be legally created, an LLC has to file a certificate of formation with the Registrar for resident domestic entities. This certificate is not required to contain any ownership information and it is the annual corporate report that would ensure legal ownership information is available with the Registrar for resident domestic entities.

60. The information available in either the annual corporate report and/or articles of incorporation, and directly available with the Registrar for resident domestic entities, includes:

- name, duration (i.e. expected lifespan) and purpose of the corporation/LLC
- registered address of the corporation/LLC in the Marshall Islands
- names, addresses and citizenships of the directors and officers/managers or managing members of the corporation/LLC
- names, addresses and citizenships of all shareholders/members of the corporation/LLC.

61. Failure to provide annual report results in a fine of USD 50 per day of non-compliance or de-registration. Should the annual report be incomplete, the Registrar for resident domestic entities does not file the annual report and the corporation or LLC is considered in breach of its filing obligation and subject to penalties.

62. In practice, registered information is maintained in a physical register with paper filings kept at the office of the Registrar for resident domestic entities. All information received during the registration process is also uploaded to an electronic database (not available online). Registration is carried out in person or by a representative (i.e. lawyer or agent) at the office of the Registrar. The Marshall Islands authorities advised that the registration process is made in person.

63. At the time of registration, the Registrar verifies that the owner is a resident of the Marshall Islands or has applied for a foreign investment business licence. It generally takes the Registrar a week to assess new applications. There is currently one person working for the Registrar division of the Attorney General's office.

64. Despite the fact that resident domestic corporations/LLCs are not required to immediately notify the Registrar when shares are transferred, they are required to keep records of such ownership information (ss. 80(3) BCA and 22(1)(c) LLCA) and to provide updated ownership information in the annual reports (Corporate Regulations 1995, Amended). Up-to-date ownership information on resident domestic companies is therefore legally ensured.

65. During the review period, around 146 resident domestic corporations filed annual reports out of a total of 264 active ones. For the 12 LLCs, the requirement to file an annual report came into effect in August 2018 through amendment to the Corporate Regulations 1995. LLCs have one year after the effective date of the amendment before they need to file an annual report with the Registrar. Entities that have failed to file annual reports receive a notification letter as a reminder and warning. The Registrar noted that generally the entities address the situation after having received the letter. In case no response is received from the entity, the Registrar starts the procedure of sanction. During the review period, the Registrar imposed no sanctions, but the Registrar engaged non-complying entities on a compliance plan where an agreement on payment of fees and filing of annual returns is settled.

66. The Marshall Islands Registrar for resident domestic entities has indicated that compliance and payment of fees increased from 30% (October 2015 to September 2016) to 34% (October 2016 to September 2017) and 41% (October 2017 to September 2018).

Information held on foreign corporations and foreign LLC

67. All foreign corporations and LLCs (including their branches) that plan on doing business in the Marshall Islands must apply to the Registrar for resident domestic entities in order to obtain approval (Division 12, BCA). While there is no express requirement to submit ownership information in the application, any applicant must comply with the provisions of the

Foreign Investment Business Licence Act (FIBLA), which requires that non-citizens[2] apply to the Secretary of Finance (designated Registrar for Foreign Investment) to obtain a foreign investment business licence. The application includes the following:

- the names and addresses of the owners of the corporation
- citizenship of the initial owners and managers
- proposed form of the business organisation, including the ownership and management structure.

68. Section 207 of the FIBLA requires the Registrar for Foreign Investment to maintain a public register of foreign investments which includes the name, address, contact details, and citizenship of the business owners. A licence holder must advise the Registrar for Foreign Investment of any changes to these data. Therefore, the Registrar for Foreign Investment should have up-to-date ownership information on all 77 foreign entities allowed to perform business in the jurisdiction.

69. In practice, when the Registrar for Foreign Investment receives an application for a foreign investment business licence, the identity of the foreign owner is verified on the basis of the copy of the passport to be submitted by the foreign owner. The Registrar for Foreign Investment's registry for foreign investment business licence information is paper-based and this information may be used to cross check that the entity is registered with the tax administration.

70. It is only once the Registrar for Foreign Investment grants the licence that the Registrar for resident domestic entities considers an application for incorporation. The authorised foreign entity is subject to the same obligations applicable to the resident domestic corporations as described above with regards to the annual corporate report, including the address of the place of office in the country the foreign corporation/LLC was incorporated. Up-to-date ownership information on foreign corporations/LLC is also legally ensured through the requirements of the Corporate Regulations 1995, Amended, as described in paragraph 64.

Information held on non-resident domestic corporations and LLC

71. The registration requirements applicable to non-resident domestic corporations and LLCs remain the same as described in the 2016 Report, except that a record keeping attestation is now required upon formation

2. A person who is not a citizen of The Marshall Islands or any corporation, joint venture, partnership, association or other legal entity in which person(s) who are not citizens of the Republic own an equity interest.

pursuant to the April 2017 Associations Law amendment. Ownership information is available directly with the non-resident domestic corporations and LLC, and generally not with the Registrar for non-resident domestic entities (TCMI). Non-resident domestic entities are not required to file an annual corporate report with the Registrar for non-resident domestic entities.

72. Nonetheless, non-resident domestic entities may voluntarily record information with the registered agent for non-resident domestic entities, including ownership and identity information and director and officer information, by submitting a Declaration of Incumbency signed by an authorised person and executed either before a notary or under penalties of perjury. During the review period, nearly 30 000 such declarations were recorded with the registered agent for a total of 43 000 companies. For corporations issuing bearer shares, up-to-date legal and beneficial ownership information must be recorded with the registered agent in the Marshall Islands for the shares to become and remain valid.

Information held by the entities themselves

73. All relevant entities (all corporations, all LLC and foreign authorised entities) are required to maintain records and produce these upon request. The requirements vary depending on the type of entities.

74. In accordance with section 80(3)(a) of the Business Corporation Act and section 22(1)(c)(i) of the Limited Liability Company Act (LLCA) and the Corporate Regulations 1995, Amended, all resident domestic and non-resident domestic corporations, authorised foreign entities and LLC must keep an up-to-date record containing the names and addresses of all registered shareholders, members or owners, the number and class of shares held by each and the dates when they respectively became the owners of shares thereof.

75. Section 80(5) of the BCA and section 22(1)(e) of the LLCA and the Corporate Regulations 1995, Amended, require all records, including ownership records, be maintained for a minimum period of five years. Failure to produce or maintain these records result in a fine not exceeding USD 50 000, and dissolution. Before April 2017, corporations and LLCs were liable to a fine of USD 5 000. The decision to increase the fine was intended to modernise the law and to enhance deterrence.

76. In addition, section 28(l) of the BCA requires that "the articles of incorporation must set a statement affirming that "the corporation will comply with all applicable provisions of the Republic of The Marshall Islands Business Corporations Act, including retention, maintenance, and production of accounting, shareholder, beneficial owner, and director and officer records in accordance with Division 8 of the Republic of The Marshall Islands Business Corporations Act". This statement must, by force of law, be deemed

to be included in the articles of incorporation of all corporations, including those incorporated prior to the effective date of this law." Failing to include elements required by section 28 of the BCA would result in legally inadequate articles of incorporation that may result in rejection by the Registrar or that may otherwise affect the existence of the corporation. A director, officer or shareholder who fails to abide by the articles of incorporation may be subject to personal liability for the failure. Section 9(1)(d) of the LLCA includes an equivalent requirement for LLCs' certificates of formation.

77. Finally, resident and non-resident domestic corporations are required to have an annual report prepared and available to shareholders upon request if the shareholder has held shares for at least six months or holds at least 5% of the shares (s. 85, BCA). Section 22(2) of the LLCA enables any member of a resident or non-resident domestic LLC to request current information as to the name and address of other members.

78. Any shareholder with the statutory right to request an annual report or a member of an LLC may apply to the High Court to compel the production of the annual report or information requested. The authorities indicate that there have been no circumstances where a corporation or an LLC have failed to provide a copy of its annual report or information upon request and an application to the High Court has never been made to enforce this right. One lawsuit has been brought to enforce the right to inspect a corporation's books and records under section 84 of the BCA, and the High Court in that case upheld the right of inspection.

Information held by Social Security Authorities

79. The Marshall Islands Social Security Association (MISSA) holds information obtained when taxpayers file an application form with MISSA to obtain an employer identification number. This information is updated at the request of the taxpayers. The application form requires disclosure of the name and address of the business, names of owners and officers and names of non-Marshallese partners (if any). There are currently 927 active employer identification numbers issued among which 133 are issued to corporations/entities. It is also necessary for a corporation to obtain a business licence from the local government to be allowed to operate locally. For instance, the Majuro Atoll Local Government requires, among other things, full name, address, foreign investment business licence number, employer identification number (EIN), passport number, and nationality.

Information held by AML obliged persons

80. Ownership information may be available on clients of financial institutions and cash dealers, which are the only two types of AML obliged

persons covered under the Anti-Money Laundering and Countering the Financing of Terrorism Regulations (AML/CFT Regulations) issued pursuant to section 180 of the Banking Act. The registered agent for non-resident domestic entities is not an AML obliged person.

81. However, since the Banking Commission's policy prohibits offshore entities from opening a bank account in the Marshall Islands, ownership information that could be available with an AML obliged financial institution in the Marshall Islands is restricted to resident domestic entities and foreign authorised entities that use the services of a financial institution. The Marshall Islands authorities point out that non-resident domestic entities are allowed to use the services of a The Marshall Islands AML-obliged cash dealer, in which case ownership information could be available. However, it is unclear in which circumstances an offshore entity would use the services of a local cash dealer. Similarly, registration of non-resident domestic entities may only be requested by a qualified intermediary, such as a foreign attorney, accountant, corporate services company, or qualified shipping company that has been successfully vetted by the Registrar for non-resident domestic entities. The Marshall Islands explained that intermediaries must submit information and documentation demonstrating that they are subject to CDD requirements in the jurisdiction in which they are located. The Registrar maintains an up-to-date record of all qualified intermediaries, and if it becomes aware that a qualified intermediary no longer meets or complies with this requirement, the authorisation to act as a qualified intermediary may be suspended or revoked. However, there is no ongoing monitoring to ensure that these qualified intermediaries are complying with the CDD requirements in their jurisdiction of residence. In addition, there is no legal mean to compel a qualified intermediary to provide information he/she could be in possession of. This cannot therefore be considered as available information.

Legal ownership information – Enforcement measures and oversight

82. For resident domestic companies, supervision exercised by the Registrar for resident domestic entities and audits conducted by the Ministry of Finance and MISSA are too low to ensure that information is available and of quality.

83. In the Marshall Islands, the entities which are likely to be subject to an EOIR request are the non-resident domestic companies which are not liable to tax. Their supervision is undertaken by TCMI, the Registrar for non-resident domestic entities and registered agent for non-resident domestic entities.

84. The Registrars and the registered agent for non-resident domestic entities do not have a lot of experience in auditing and monitoring that the entities they supervise abide by their obligations since they only recently started their respective audit programmes.

Supervision of resident and foreign entities

85. The Registrar for resident domestic entities supervises resident domestic entities (corporations and LLC) and authorised foreign entities. The main act of supervision performed by the Registrar for resident domestic entities is the control of the filing of annual reports.

86. During the review period, around 35 authorised foreign entities filed annual reports out of a total of 77 active entities. For entities that failed to file annual reports during the peer review period, a notification letter was sent as a reminder and warning. If no response is received from the entity, the Registrar will start the procedure of sanction. During the review period, the Registrar imposed no sanctions, but the Registrar engaged non-complying entities on a compliance plan (see also "inactive entities" below).

87. In addition, the Registrar for resident domestic entities started an exercise and contacted randomly 31 companies in order to verify their compliance with the record keeping requirements. They were requested to provide annual reports, including reports from previous years. Out of the 31 companies checked, no breach of retention obligations was found.

88. During the review period, 146 resident domestic corporations and 35 authorised foreign entities regularly filed annual reports with the Registrar for resident domestic entities. Authorities have indicated that compliance with the requirement to file annual reports increased from 45% to 53% during the review period.

89. Although the scope of the audits conducted during the review period is limited, the selected companies that were requested to provide information provided it. The exercise started in 2017 and The Marshall Islands authorities should implement their audit programmes in order to ensure that ownership information is available with all resident domestic entities (see Annex 1).

90. The little supervision conducted by the Registrar for resident domestic entities is supplemented by supervision activities conducted by MISSA and the Ministry of Finance.

91. With regards to MISSA, an audit team was set up in 2005. There are currently five auditors, including one manager. During an audit, MISSA may examine and copy all books, accounts, and records of all employers or self-employed workers for the purpose of determining their liability to pay contributions. MISSA focuses also on the ownership records keeping

obligation since they need it to ensure that all registration information is up-to-date in their system. There are currently 133 entities registered with MISSA. Between 2015 and 2018, MISSA conducted 59 audits among which 5 corporations and 15 on sole proprietors, government and non-governmental organisation groups.

92. Although non-resident domestic companies are not compelled by law to obtain an EIN, some have applied and therefore followed the procedures of registration, including submitting the legal ownership information required. There are three non-resident companies that have applied for an EIN with MISSA during the review period.

93. Sanctions for failing to allow MISSA to examine and copy books, accounts, records and other information is an offence punishable by a fine up to USD 5 000, imprisonment for up to one year or both. During the review period, a total of 29 cases have been filed with the Court, for failure to comply with an assessment issued by MISSA. MISSA advises that there has been no failure to keep records during the review period.

94. In addition, audits performed by the Ministry of Finance can ensure that information on the taxpayers that are not registered by MISSA is maintained by the taxpayers. Upon launching of an audit, audited taxpayers are given a checklist of records (including ownership information) that they need to submit before or during the audit. The information received is checked against the information the tax administration has in file (registration files that are gathered from the MISSA database and information from the tax returns). From 2015 to 2017, 19 businesses were audited. This is three times less than during the former review period (2012-14). The authorities explained that this was due to lack of staff. This issue was already noted in the 2016 report. New staff has been recruited in 2017 and 2018 but since they joined only recently, performance is still low.

95. According to the Income Tax Act, a taxpayer that does not provide the information requested during an audit or does not file its tax-return is liable to a fine of USD 1 000 or imprisonment of one year, or both (section 140). During the review period, no sanctions were applied for failure to provide ownership information because ownership information was provided in all cases. In addition, sanctions have been imposed in two instances for failure to provide tax returns.

Supervision of non-resident domestic entities by the Registrar and registered agent

96. Contrary to the Registrar for resident domestic entities, the Registrar for non-resident domestic entities (TCMI) may have limited ownership information on the entities it registers and does not receive any annual reports

from them. Therefore, an audit programme is important to ensure entities abide by their obligation to identify and record their legal owners.

97. The 2016 report concluded that the effectiveness of the legal requirements that non-resident domestic entities had was difficult to assess in practice since the authorities had never conducted any audits or requested any non-resident domestic entities information. This situation has changed mainly through the enactment of an amendment to the BCA and LLCA that grants the registered agent for non-resident domestic entities (TCMI) powers to audit ownership and identity recordkeeping requirement and demand records as per the request of the Competent Authority. The amendments came in force in April 2017. There are 15 persons working in the compliance division. In October 2018, the audit manual was finalised, which sets the procedures of audit that the registered agent should follow. As part of the risk analysis and audit process, the Marshall Islands Authorities advise that the registered agent conducted a thorough audit of its internal records. The audit determined that nearly 30 000 Declarations of Incumbency were recorded with the registered agent during the review period. These declarations are a way for entities to voluntarily record legal and beneficial ownership information with the registered agent. To be recorded, a declaration must be signed by an authorised person before a notary or under penalties of perjury and must be submitted by a qualified intermediary.

98. Through the April 2017 amendment to the BCA and LLCA, non-resident domestic corporations and LLCs have to make an annual attestation to be filed yearly with the Registrar for non-resident domestic entities that confirms that they are either complying, not complying or partially complying, with ownership records keeping requirements. No ownership information is disclosed in the annual attestation. Failure to do so is liable to a fine of USD 50 000, forcible dissolution, or both.

99. The Registrar for non-resident domestic entities supervises compliance with the requirement to make an annual attestation that ownership and identity information is or is not being maintained (wholly or partially). Entities that fail to make an attestation are notified of their failure to adhere to BCA or LLCA requirements, while being given an opportunity to rectify the failure. If the failure is not rectified, enforcement measures are applied. In late January 2018, the Registrar implemented a programme by which notice of the requirement to make an annual attestation is systematically provided to each non-resident domestic entity upon formation and annually thereafter. Between January and July 2019, notices have been sent to over half of all non-resident domestic entities (in total, over 27 000 entities). The Marshall Islands reported that responses to the notices regarding the annual attestation requirement are systematically tracked and that almost 85% of entities receiving the annual notice so far in 2019 (approximately 23 000 in total)

have made an attestation. As of 14 February 2019, 523 non-resident domestic entities have been forcibly dissolved after failing to make an attestation in 2018 – each had been given more than 180 days to comply and received repeated warnings in advance of dissolution. However, it is not clear what would be the consequences for an entity to file an annual attestation stating that the information is partially or not maintained. To date, the Registrar has received confirmation that records are maintained as required or that they are not maintained. No reports of partial compliance have been received. The authorities explained that if an entity reported in the attestation that information was partially or not maintained, the Registrar would red-flag the said entity and contact it to ensure compliance. Entities that indicate records are not being maintained are provided notice of the information required by law to be kept, are given time to cure the deficiency, and if the deficiency is not cured, they are sanctioned.

100. The Registrar for non-resident domestic entities does not require registered entities to provide information or records to check the accuracy of the attestation received or to check the keeping of any documents required to be kept by law. According to The Marshall Islands authorities, attestations are cross-checked against proactive audits by the registered agent for non-resident domestic entities, which started in 2019. However, they also explained that due to the recent start of the audit programme which follows a staged approach, it has not provided enough results yet to allow any conclusion on its effective implementation in practice. The enforcement of the obligations therefore remains very weak.

Information available on inactive companies

101. The concept of inactive company is not defined in any of the Marshall Islands laws. Pursuant to the Associations Law, resident and non-resident domestic entities and authorised foreign entities are each subject to annual legal obligations (pay an annual registration fee and maintain a registered agent in the Marshall Islands). In case of failure, the Registrar concerned causes a notice of revocation to be sent to the company through its last recorded registered agent. If within 90 days from the date the notice of revocation was sent, no actions have been taken by the company concerned, it is systematically forcibly dissolved or its authorisation to do business in the Marshall Islands is revoked, as the case may be, in accordance with section 104 (domestic entities) and section 112 (foreign entities) of the BCA and section 46 of the LLCA.

102. Forcible dissolution entails a 90-day period within which the entity may address the situation. If nothing is done during these 90 days, the entity is forcibly dissolved and a three year period starts running for the winding up of the company. During this period, the company continues as a body

corporate solely for the purpose of liquidating/winding up its affairs and not for the purpose of continuing its business. During the winding-up period, the non-compliant entity may request for reinstatement which is at the discretion of the Registrars. In order to consider a request for reinstatement, the Registrars advised they would ensure the entity has complied with any outstanding information request and paid the penalties. Within these three years, the company is not allowed to do any business and is identified as forcibly dissolved in the records of the Registrars. After three years, companies, which have not been reinstated, cease to exist, i.e. the liquidation is final.

103. In addition, a practical consequence for a resident domestic company to be determined as inactive is that the company cannot claim any tax refund anymore. The Registrar for resident domestic entities establishes a list of inactive companies that is then shared with the tax administration which then de-registers the said companies.

104. There were 383 inactive entities out of 737 entities registered with the Registrar for resident domestic entities, i.e. 52%. Sanctions are adequate, but they are not always applied in practice. The Registrar for non-resident domestic entities reported that there are no inactive entities in the register since all have been forcibly dissolved (around 15 000 during the review period) but do not have a breakdown of how many had been forcibly dissolved in sanction to failure to abide by their annual obligations. The Marshall Islands should fully implement effective supervision and enforcement programmes to ensure that all relevant entities comply with the obligations to maintain or provide identity information, as well as legal and beneficial ownership information.

Information available on entities that ceased to exist

105. For an entity to cease to exist, it needs to be liquidated/wound up. This process starts immediately when the entity voluntarily dissolves itself, or upon forcible dissolution. The liquidation is definitive after the expiry of the three years the entity has to reinstate (i.e. at the end of the three-year winding up period).

106. During the review period, there were no explicit legal requirements to ensure that anyone remained bound by obligations to keep records on entities which have ceased to exist. The Associations Law (Amendment) Act, 2019 which entered into force in April 2019 ensures that dissolved companies are compelled to maintain records for five years after they have been dissolved or otherwise ceased to exist. It is not clear who has the responsibility to maintain such information even once the company ceased to exist.

107. According to The Marshall Islands, the requirement to maintain records would fall to the directors or to the court-appointed receiver (if any)

after a company ceases to exist in accordance with section 105(2) of the BCA.[3] There are no obligations in this provision which explain that trustees have the obligation to maintain the records of the company once the company is dissolved. In addition, this section seems to imply that the trustee functions cease once the settlement of the unfinished business of the corporation is final.

108. According to The Marshall Islands, another mean of obtaining records after a company has ceased to exist is through the company's qualified intermediary. If this one fails to comply with due diligence requirements or is no longer keeping updated and accurate records, the qualified intermediary's authorisation to act as a qualified intermediary may be suspended or revoked by the Registrar for non-resident domestic entities (see paragraph 81). This penalty was enforced by the Registrar during the review period. There are however no clear legal requirements that allow the Registrar to obtain and use the information from the qualified intermediary who is subject to the legal rules of another jurisdiction.

109. It is recommended that The Marshall Islands ensure that ownership information be available on entities that have ceased to exist for five years after the date the entity ceased to exist.

Conclusion

110. The laws that grant new monitoring tools to the two Registrars and the registered agent for non-resident domestic entities, the main supervisory authorities in the Marshall Islands, came in force in April and November 2017 and August 2018. Some measures were implemented in 2018. Although positive results are found, since compliance seems to have increased, the scope of the supervision remains limited and does not ensure that the information provided is accurate and of quality. The recommendation therefore remains.

111. Whilst resident domestic companies are unlikely to be the companies on which EOI requests would be made, supervision conducted by MISSA and the Ministry of Finance is also insufficient to counter the little supervision

3. (2) "Trustees. Upon the dissolution of any corporation, or upon the expiration of the period of its corporate existence, the directors shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property, real and personal, as may be required by the laws of the country where situated, prosecute and defend all such suits as may be necessary or proper for the purposes aforesaid, distribute the money and other property among the shareholders after paying or adequately providing for payment of its liabilities and obligations, and do all other acts which might be done by the corporation, before dissolution, that may be necessary for the final settlement of the unfinished business of the corporation.".

exercised by the Registrar for resident domestic entities. Hence, the availability of ownership information may not be ensured in all cases. The Marshall Islands should fully implement effective supervision and enforcement programmes to ensure that all relevant entities and partnerships comply with the obligations to maintain or provide identity information, as well as legal and beneficial ownership information.

Availability of legal ownership information in practice in relation to EOI

112. The Marshall Islands has been asked for ownership information in one instance during the review period. In addition, four requests for ownership information from the previous review period, involving ten non-resident domestic corporations, were still pending. To date, no requests are pending with the Marshall Islands Competent Authority. However, the ownership information could only be provided for eight out of the ten non-resident domestic corporations. The one valid request received during the review period could not be replied to due to failure by the non-resident domestic corporation to respond. The request concerned two corporations. One which had no nexus with the Marshall Islands and another one on which information had been requested in a previous EOI request in 2014 – it failed to provide information, was forcibly dissolved, and the authority of the qualified intermediary for the corporation was permanently revoked by the Registrar for non-resident domestic entities. The Competent Authority still requested that the registered agent again demand the production of the information to the non-resident domestic corporation. Having already been forcibly dissolved after failing to provide information in response to the 2014 request, the corporation did not reply to the 2018 request. There was no alternative source of information, and therefore the information could not be provided. However, for eight of the ten corporations for which requests were pending during the last review period, the ownership information was provided to the treaty partners.

Availability of beneficial ownership information

113. A new requirement of the EOIR standard since 2016 is that beneficial ownership information on companies should be available. In Marshall Islands, this aspect of the standard is met through amendments to the Associations Law made in late 2017. Therefore that have been in force for less than one third of the review period. Since these obligations are recent, the Marshall Islands is recommended to supervise their effective implementation to ensure the availability of beneficial ownership in practice. The AML regime is an alternative source of beneficial ownership information for resident domestic entities and foreign authorised entities. Each of these legal regimes is analysed below.

Legislation regulating beneficial ownership information of companies

Type	Company law	Tax law	AML law
Resident domestic corporations	All	None	Some
Resident LLC	All	None	Some
Non-resident domestic corporations	All	None	Some
Non-resident LLC	All	None	Some
Foreign entities	None	None	Some

Company law requirements

114. Beneficial ownership information on all domestic companies is available since November 2017 through the amendments that were brought to the BCA and LLCA.

115. Section 80 of the BCA and section 22 of the LLCA require every domestic corporation and limited liability company, except publicly-traded companies,[4] to use all reasonable efforts to obtain and maintain an up-to-date record of its beneficial owners. All such records must be maintained for a minimum of five years. These beneficial ownership recordkeeping requirements apply immediately to entities formed after 14 November 2017. Entities formed on or before this date had a 360-day phase-in period to collect the requisite information, i.e. until 9 November 2018. Guidance to assist non-resident domestic entities with the beneficial ownership requirements of the Associations Law is available through TCMI acting as the Registrar for non-resident domestic entities.

Beneficial ownership definition

116. "Beneficial owner" is defined under section 80(3)(f) of the BCA and section 22(1)(c)(v) of the LLCA that apply to both resident and non-resident domestic corporations and LLCs. The definition reads as follows:

> "Beneficial owner" means the natural person(s) who ultimately owns or controls, or has ultimate effective control of, a legal entity or arrangement, whether directly or indirectly, or on whose behalf such interest in such legal entity or arrangement is held. For a domestic corporation other than a publicly-traded company, the natural person(s) who exercises control over such corporation through direct or indirect ownership of more than 25% of the shares or voting rights in such corporation shall be regarded as

4. 41 The Marshall Islands shipping companies are publicly traded on the New York Stock Exchange (NYSE) or National Association of Securities Dealers Automated Quotations (NASDAQ).

> the beneficial owner(s); if no natural person exerts control through such an ownership interest, the natural person(s) who exercises control over such corporation through management of the corporation or other means shall be regarded as the beneficial owner(s).

117. The first sentence of the definition is generally in line with the standard since it captures the concept of ultimate control and ownership, whether the participation is direct or indirect. The ultimate control through ownership interest is determined according to a threshold of participation set at 25%, which is in line with the standard.

118. The last terms of the provision raise two issues: First, it is not clear whether the notion of control through other means of the corporation is used when no natural person could be identified in the first step only. This does not capture the situation where the company has doubts over the identified beneficial owners, which is in contravention of the standard. Second, it is not clear whether the control through management is the fall back step of the cascade approach or if it should be interpreted as one mean of control through other means. Regardless of which interpretation is retained, this would not be in line with the standard. In the first instance, the control through other means step has the same priority in order than the fall-back position. This could mean that the corporation would have the legal right to choose which one is more convenient between the person who is senior manager and the person with a form of control. In the second instance, when no natural person with control through other means can be identified, including control through management, there is no fall back provision where despite not having control, the senior manager could be the beneficial owner. This could result in no beneficial owner identified. This is also not in line with the standard. However, the guidance issued by the Registrar, which although not binding on the entities, provides for the position of the supervisory authority and adopts the FATF cascade approach from the FATF Guidance on Transparency and Beneficial Ownership. The first step requires identification of natural persons with a controlling ownership interest; the second step, where there is doubt or no natural person exerts control through ownership interests, required the identification of natural persons exercising control through other means. The final step requires that where no natural person is identified under the first step and second step, senior managing officials must be identified. This guidance has been posted on the official website of The Marshall Islands (https://www.register-iri.com/wp-content/uploads/Guidance-Beneficial-Ownership-Requirements-of-the-RMI-Associations-Law.pdf) but it is not certain how the guidance are applied by the non-resident domestic corporations and in any event, the guidance is not binding. Due to the recentness of the entry into force of the amendment to the Association Law, and limited supervision of the implementation of this new law, the legal framework cannot be considered as in place.

119. The information must be updated (Section 80 of the BCA and section 22 of the LLCA). However, there is no specific timeframe within which the beneficial owner should be updated. The Marshall Islands explained that a company must update the information as soon as the change occurs, as both the BCA and LLCA expressly require "up-to-date" beneficial ownership information.

Company record of beneficial owners

120. Companies must use "all reasonable efforts" to obtain and maintain an up-to-date record of names and addresses of all their beneficial owners. There is no obligation to identify the beneficial owner, but only to obtain and maintain up-to-date records. Companies have the power to require updated information from legal and beneficial owners at any time pursuant to section 80(3)(e) of the BCA. These obligations are reinforced by the requirement in section 28(1) of the BCA to make retention, maintenance and production of beneficial ownership information part of the foundational documents of the company, violations of which may result in personal liability. These obligations are further enforced through the penalty provisions in section 80(6) of the BCA, which apply to "[a]ny person" who fails to produce records as required or who wilfully produces false or misleading records. The Guidance provides additional details on how these requirements are to be applied in practice. Further, the BCA requires every company to use "all reasonable efforts to notify its shareholders and beneficial owners of their obligation to provide the information required to be kept by the corporation". The law sets that a company can meet this "reasonable efforts" requirement by sending at least an annual request by written notice to the members and managers to provide the information required to be maintained (section 80(3)(d) of the BCA). Should the information not be provided, but the reasonable efforts standard met, the entity will not be sanctioned. In practice, the law is recent and the supervision is limited since the Registrar only checks that the company has made an attestation certifying the BO information is available. According to The Marshall Islands authorities, almost 85% of entities receiving the annual notice so far in 2019 (approximately 23 000 in total) have made an attestation. As of 14 February 2019, 523 non-resident domestic entities have been forcibly dissolved after failing to make an attestation in 2018.

121. According to sections 80(3)(c) and (d), the company may rely on the information provided by the actual shareholder or the beneficial owner him/herself.

> For the purpose of identifying the beneficial owners, a corporation is entitled to rely, without further inquiry, on the response of a person to a written notice sent in good faith by the corporation, unless the corporation has reason to believe that the response is misleading or false.

122. The law does not specify any requirements to be followed to comply with the obligation to identify the beneficial owner in case there are doubts on the response received by the actual shareholders/beneficial owners. There are also no express requirements to maintain any underlying documents to demonstrate how the beneficial owner was identified (name and address) by the person reporting the beneficial owner and no stated requirement on the company to maintain these documents. The Beneficial Owner Manual does not provide guidance on how this should be implemented. However, according to the Marshall Islands authorities, to be able to properly apply the cascade approach, a company must be able to understand and document its ownership structure throughout the chain of owners in all cases. In the absence of express legal requirements, it is uncertain, how corporations have interpreted their obligations and it is recommended that The Marshall Islands take the necessary steps to ensure that the beneficial ownership information is maintained in line with the standard.

123. The concept of third party reliance also does not exist, since all obligations are carried on by the company itself and the law does not permit the company to use any service providers that would conduct the CDD on its behalf.

124. Since November 2017, section 80(3)(g) extends the annual attestation requirement to include beneficial ownership information. Every non-resident domestic corporation is required to make an annual attestation to the Registrar for non-resident domestic entities that records of beneficial ownership are being maintained as required or, if applicable, that such records are not being maintained (wholly or partially). Should the attestation confirm that the entity is not maintaining information, the Registrar indicates that it follows up and takes sanctions, should the shortfall not be addressed.

125. Under the Corporate Regulations, since August 2018, resident domestic corporations and authorised foreign corporations are liable to submit the name of the beneficial owner in their annual reports to the Registrar for resident domestic entities. The form has been used by corporations since 2005, and a new form for LLCs was adopted in August 2018.

126. The companies that ceased to exist are compelled by law to keep all their records for five years from the date the company ceased to exist. This legal requirement applies as well to the records on beneficial owners. However, as explained in paragraphs 105 to 109 of this report, there are shortfalls that The Marshall Islands need to address to ensure that records on beneficial owners are available to the competent authorities in all instances.

Beneficial ownership information – Enforcement measures and oversight

127. The amendments came in force in November 2017 and supervision has only started in 2018.

128. Under the Associations Law, the entities that do not comply with the legal requirement to use all reasonable efforts to obtain and maintain up-to-date records of beneficial owners for five years are liable to a fine not exceeding USD 50 000 and to forcible dissolution. However, an entity can demonstrate it has used all reasonable efforts and that the information could still not be obtained, in which case it is not penalised. In order to demonstrate this, the entity should prove it has sent written notices in the format prescribed to its members and managers asking for provision of the information at least once per year. This threshold is too low to provide comfort on the availability of beneficial ownership information in all cases.

129. The Registrar for non-resident domestic entities advised that should the written notice not be sufficient to obtain the information, the entity would not be considered as complying with the reasonable efforts, as up-to-date information is required. This remains to be tested in practice. During the onsite visit, the Registrar confirmed that the monetary fine is not deterrent enough and thus the authorities preferred the revocation and the dissolution of non-compliant entities. The preliminary steps to the audit programme started in 2019, a year after the enactment of the law due to the necessary education (internal and external). In October 2018, the audit manual was finalised, which sets the procedures of audit that the registered agent for non-resident domestic entities should follow. Marshall Authorities advised that as part of the risk analysis and audit process, the registered agent conducted an audit of its internal records. The audit determined that nearly 30 000 Declarations of Incumbency were recorded with the registered agent during the review period. These declarations are a way for entities to voluntarily record legal and beneficial ownership information with the registered agent. Being self-declarations, the accuracy of the declarations is uncertain but the authorities explained that to be recorded, a declaration must be signed by an authorised person before a notary or under penalties of perjury and must be submitted by a qualified intermediary which could mitigate risks. In addition, in November 2018, the BO Manual was published and disseminated to all entities. Information on the legal changes and their consequences was also disseminated via phone calls, letters and by notices published online. Although is it difficult to ascertain the quality of audits and how efficient these are since few were performed at the time of the onsite visit, the trend is showing that the authorities are supervising the entities and sanctions are applied. As of date, there have been two entities that have been dissolved for failure to provide records on BO during an audit.

130. The Registrar for resident domestic entities has not performed any education campaigns, but the Registrar is scheduled to publish guidance on beneficial ownership requirements by the end of August 2019. Controls have started in the meantime. During the onsite visit, the Registrar for resident domestic entities had requested two entities to produce records of beneficial

owners. The two entities produced the records. It seems that the Registrar for domestic companies performs checks on the accuracy of the information produced since in one case, inconsistencies existed between beneficial ownership information filed and content of the article of incorporation (the shareholders were natural persons) and explanations were requested and information verified.

AML requirements

131. Beneficial ownership information on resident domestic entities and foreign authorised entities may be found in the Marshall Islands through the financial institutions or cash dealers (the only two types of AML obliged persons in the Marshall Islands) that these companies engage. It is prohibited by the Banking Commission's policy to open a bank account for the non-resident domestic entities. Therefore, there is no banking information, including beneficial ownership information, maintained by banks in the Marshall Islands on non-resident domestic entities as they do not hold accounts. Non-resident domestic entities are not prohibited under the Marshall Islands law from using the services of a Marshall Islands cash dealer. To the extent they did so, the cash dealer's AML requirements would apply (but the relationship, provided it exists, may not be continuous in which case no regular updates would be done).

132. The analysis on availability of beneficial ownership information of bank accounts is described under part A.3. The same requirements apply to cash dealers. However, in practice, it would be very unlikely that a non-resident domestic company would engage a cash dealer.

Conclusion

133. The standard requires that beneficial ownership information should be adequate, accurate and up-to-date. The definition of the beneficial owner as provided under the BCA and LLCA and which applies to all domestic entities is in line with the standard. However, there are no binding requirements that set the cascade approach in line with the standard since the natural person who exercises control through other means is equal alternative to the managing person. This gap does not have any consequences in practice as it is captured by a bigger gap, since the entity which is in charge of maintaining the record of its beneficial owners does not have the means to verify the accuracy and adequacy of the information provided by the shareholders, except by requesting for updated information at any time. *A fortiori*, the only information that can be submitted to the Competent Authority is the record of names and addresses of the beneficial owners but no underlying documents demonstrating how the beneficial owners were actually identified

134. This system relies heavily on the compliance of beneficial owners or shareholders to report the beneficial ownership information and to keep it up to date. Enforcement of this obligations may pose challenges since it is unlikely that the beneficial owners or shareholders of non-resident domestic corporations be resident of the Marshall Islands. It also remains to be tested whether enforcement measures are effective to ensure compliance in practice, In addition, the implementation of the law on beneficial ownership is recent in the Marshall Islands and supervision is only starting. It is therefore difficult to ascertain the positive results of the supervision conducted so far. The resources at the Registrars and the registered agent for non-resident domestic entities seem adequate and the authorities have not raised any concerns on this. Although some progresses have been noted from the 2016 report, the fact that a significant portion of the information on beneficial owners with regards to the non-resident domestic companies is kept outside of the Marshall Islands and should only be produced on demand increased the importance of strong supervision. The Marshall Islands should fully implement effective supervision and enforcement programmes to ensure that all relevant entities comply with the obligations to maintain or provide identity information, as well as legal and beneficial ownership information.

Availability of beneficial ownership information in Practice in relation to EOI

135. During the current review period, no EOI requests were made on beneficial ownership of companies registered in Marshall Islands. However, the Marshall Islands received a number of information requests under other, non-EOI international exchange mechanisms following the 2017 legal changes. The process for obtaining information under these mechanisms is the same as used for EOI. Using the new access powers granted under the April 2017 Associations Law amendment, the Marshall Islands produced the requested beneficial ownership information for non-resident domestic entities in 14 out of 18 requests. All entities that failed to produce information as required have been forcibly dissolved.

Nominees

136. The 2016 report found that ownership information was not always available in the Marshall Islands when a person was using nominee services, except when the nominee was an AML obliged person. During the first round, the Marshall Islands authorities indicated that there was only one law firm in the Marshall Islands providing nominee services. This is still the case. Lawyers are not AML obliged persons but the authorities affirmed that it was the policy of that firm to maintain ownership information on all clients.

137. An amendment to the Associations Law was brought in November 2017 to require all the domestic entities to keep information on the nominee but also of the beneficial owners of the shares. Through this amendment, the Marshall Authorities advised that the identity of the nominator would be known since the entity would have to identify and maintain the information of all beneficial owners and the nominee would not meet this requirement. The non-binding Guidance on Beneficial Ownership Requirements published by the Registrar for non-resident domestic entities specifically states that "[s]hares held by a nominee on behalf of another person must be treated as belonging to that other person, not the nominee."

138. Part A.1.1 explained the issues found with regards to the beneficial ownership legal and supervisory requirements for ownership information. These deficiencies will also apply in relation to nominees. In addition, since the beneficial owner potentially would only be identified if s/he holds at least 25% of the ownership interest, the nominee with less than 25% would not be looked through to find the beneficial owner. In addition, due to lack of binding requirements, the deficiencies found with regards to control through other means (that is only an alternative to the senior manager step) if the nominee is an individual, it is unclear whether any further checks will be done to find who the beneficial owner is.

139. In practice, no additional data on the occurrences of nominee shareholding in the Marshall Islands can be provided. During the review period, the Marshall Islands did not receive any requests from other jurisdictions that involved nominee shareholdings. The Marshall Islands should ensure that ownership and identity information is available in respect of nominee shareholdings.

A.1.2. Bearer shares

140. Bearer shares may be issued by the 43 000 non-resident domestic corporations if their articles of incorporation so allow.[5] The Marshall Islands advised that as of 10 July 2019, 689 non-resident domestic corporations have issued "valid" bearer shares (those recorded with the registered agent), and for each share, detailed legal and beneficial ownership information is held by the registered agent for non-resident domestic entities in the Marshall Islands. According to the new law, any bearer shares not recorded with the registered agent is not valid. However, because the total number of bearer shares issued before the entry into force of the new law is unknown, it is difficult to assess whether the corporations have complied and cancelled the shares for which they could not obtain ownership information.

5. Resident domestic companies are not allowed to issue shares in bearer form (s. 42, BCA).

141. New requirements for bearer shares were implemented via amendments to the BCA in November 2017. The amendments require the holders and beneficial owners of bearer shares to be recorded with the registered agent for non-resident entities in the Marshall Islands. The validity of bearer shares, including any transfer, and the rights and privileges of their holders are conditional on this recordation. (s. 39(2), 42(2) and 80(3)(c), BCA; Guidance on Beneficial Ownership Requirements). Thus, under the amendments, the registered agent now maintains the official centralised register of all holders and beneficial owners of valid bearer shares.

Legal framework on the abolition of bearer shares

142. The 2016 report noted that there were no mechanisms in place that enabled the holders of bearer shares to be identified, since the shareholding and beneficial ownership information was filed with the registered agent by the non-resident domestic corporations only on a voluntary basis.

143. Amendments to the BCA have enhanced the record keeping obligations of entities that issue bearer shares.

- Under section 80(3)(c):

  > (c) Every domestic corporation which issues bearer shares after the effective date of this law [i.e. November 2017] shall, in addition to the shareholder records required under paragraph (a) of this subsection, use all reasonable efforts to obtain and maintain an up-to-date record of the names, addresses, nationalities, and, in the case of natural persons, dates of birth of all holders and beneficial owners of such bearer shares and a record of any subsequent transfer, including the date of transfer and the names, addresses, nationalities, and, in the case of natural persons, dates of birth of all new holders and beneficial owners of the transferred bearer shares. In order to maintain the validity of any such bearer shares, including any and all rights and privileges of a holder of such shares, the records required under paragraph (a) and this paragraph (c) for the issuance and any subsequent transfer of such bearer shares must be recorded with the registered agent for non-resident domestic entities. For all bearer shares issued on or before the effective date of this law, every domestic corporation shall comply with the requirements of this paragraph (c) within 360 days of such date.

- Under section 39(2) of the BCA:

  > (2) Rights of subscriber on full payment. When the consideration for shares has been paid in full and, in the case of bearer shares, the subscriber and each beneficial owner have provided to the

> corporation their names, addresses, nationalities, and, in the case of natural persons, dates of birth, and these have been recorded in accordance with section 80 of this Act, the subscriber shall be entitled to all rights and privileges of a holder of such shares and to a certificate representing his shares, and such shares shall be deemed fully paid and non-assessable.

- Under section 42(2) of the BCA:

  > (2) Registered or bearer shares. … The transfer of bearer shares shall be by delivery of the certificates and valid upon recordation of such transfer in accordance with section 80 of this Act. The validity of bearer shares, including any and all rights and privileges of a holder of such shares and the exercise thereof, is conditional upon all records of shareholders and beneficial owners being provided to the corporation by the shareholder and/or beneficial owner and recorded and maintained in accordance with section 80 of this Act upon issuance or any subsequent transfer. …

- Under the Guidance on Beneficial Ownership Requirements:

  > … Bearer shares are subject to additional recordkeeping requirements, but these requirements are straightforward: the holders and beneficial owners of bearer shares must be recorded with the registered agent for non-resident domestic entities ("Registered Agent") in the Marshall Islands. The validity, rights, and privileges of bearer shares and any transfer of bearer shares are conditional on this recordation. "Beneficial owner" has the same meaning as specified above (see Who is a "beneficial owner"? and Who is <u>not</u> a "beneficial owner"?), but here the Business Corporations Act refers to the "beneficial owners of [the] bearer shares" rather than the "beneficial owners of the corporation."…

144. A corporation (new and existing) must use "all reasonable efforts" to obtain and maintain an up-to-date record of the names, addresses, nationalities, and dates of birth of the holders and beneficial owners of all bearer shares issued by the corporation. Up-to-date legal and beneficial ownership information must be recorded with the registered agent in the Marshall Islands for a bearer share to be valid. This is an ongoing obligation. By operation of law, non-compliant shares are immediately invalid and any rights or privileges of the holder (e.g. voting, receipt of dividends, or any other shareholder rights) are immediately suspended. If the non-compliance is not cured within the 180-day period specified by law, the non-compliant shares must be cancelled by the corporation. These requirements applied immediately to bearer shares issued after the amendment (14 November 2017), and for bearer shares issued before that date, the required information was required to be

recorded with the registered agent by 9 November 2018. Further, as with registered shares, every corporation is required to notify the legal and beneficial owners of bearer shares at least annually of their obligations to provide the information required to be provided to and kept by the company. Companies must notify shareholders in the manner designated in their articles of association, and, where none is designed or possible, the notification can be published in a publication of general circulation in the Marshall Islands or in a place of business of the corporation (s. 80(3)(d) and 11). The authorities report that no notices have been published by any companies.

145. For the issuance or transfer of a bearer share to be valid, the corporation must provide up-to-date records on shareholders and beneficial owners to the registered agent (section 42(2) of the BCA).In case of transfer, the transfer is not valid and the transferee has no rights or privileges as a holder of the share until all required legal and beneficial ownership information is recorded. If the non-compliance is not cured within the 180-day period specified by law, the non-compliant shares must be cancelled by the corporation.

146. Should the information not be obtained and not be recorded with the registered agent as required despite all reasonable efforts of the corporation, the sanction provided is that the share would not be valid, the holder of the bearer share certificate would lose any rights or privileges as a shareholder, and if not remedied within the 180 days provided by statute, the already-invalid shares must be cancelled. For all bearer shares issued before the amendment on 14 November 2017, there was a 360-day phase-in period for the new requirements, ending on 9 November 2018. Those not in compliance as of that date immediately became invalid and were subject to cancellation of the share within 180 days from 9 November 2018 (i.e. 8 May 2019; sections 80(3)(c) and 80(3)(h)(i)).

147. The consequence of such immediate invalidation is that the holder of the shares is not entitled to any voting rights, to claim any benefits from the distribution of the dividends and cannot transfer the shares. Cancelled shares revert to the status of authorised but unissued shares (s. 46, BCA). The Registrar for non-resident domestic entities advises that upon cancellation, the certificate for the affected share is void and the share no longer has a holder and is owned by no one. This process is carried out by the corporation's board of directors – it does not require a vote of the shareholders.

148. The law only states that the shareholder or the beneficial owner of the corporation has the obligation to provide the information requested by the corporation. Failure to do does not seem to trigger any other sanctions than immediate deprivation of their rights and privileges related to the shares and possible cancellation of the shares. According to the Marshall Islands, they are further enforced through the penalty provisions in section 80(6) of the BCA, which apply to "[a]ny person" who fails to produce records as required

or who wilfully produces false or misleading records. The Marshall Islands interpret this section as applicable to natural persons such as shareholders and beneficial owners. In case where the director is outside of the Marshall Islands, which is likely to be the case for non-resident domestic companies, these sanctions will not be enforceable.

149. Under the new system, corporations can still issue bearer shares, but the issuance is not valid until all required legal and beneficial ownership information is recorded with the registered agent. For non-compliant shares, the corporation then have 180 days to cancel the invalid shares.

150. A holder of bearer shares that fails to provide information, resulting in cancellation of his/her shares, is no longer a shareholder. A share could be reissued to the person in bearer form, but the issuance again would not be valid until all required legal and beneficial ownership information was recorded with the registered agent. If not recorded within the 180 days prescribed by the BCA, the invalid shares again must be cancelled by the corporation. Again, bearer shares have no validity until up-to-date legal and beneficial ownership information is recorded with the registered agent in the Marshall Islands.

151. The sanction for failure to take reasonable measures to obtain and maintain the bearer shares records, as required under section 80 are the same as for registered shares (a fine of not more than USD 50 000, revocation of articles of incorporation and dissolution or both). However, unless the company has not done anything to obtain the information, it might be difficult for the authorities to establish that the action taken by the company is not "reasonable" enough.

152. The amendments brought in 2017 permit effective identification of bearer shares holders through the immediate invalidation of the rights and privileges of the bearer shareholders and the cancellation of the share which does not allow the bearer shares to request for the reinstatement of the share at a later stage. In addition, pecuniary sanctions exist and apply on both the non-compliant corporation failing to cancel the shares, and on the non-compliant shareholders or beneficial owner.

Bearer shares in practice: supervision and enforcement

153. In order to ensure that all corporations were aware of their obligations to obtain and report the identity of holders and beneficial owners of all bearer shares in order to maintain share validity, the Registrar for non-resident domestic entities issued notices that were published on the official website, newsletters, publication on blogs, highlighted footers in all communications with the corporations, meetings in person and phone calls. In addition, the BO Manual was published and disseminated to all entities in November 2018.

154. The registered agent for non-resident domestic entities reported that as of 10 July 2019, 689 corporations had recorded legal and beneficial ownership information for bearer shares with the registered agent. This information is accessible by the competent authority. However as mentioned above, no further statistical information was provided. In particular, the registered agent did not report the total number of new or existing bearer shares cancelled and no checks of the articles of incorporation to measure the total number of bearer shares have been undertaken. However, the continued validity of any bearer share in the Marshall Islands is dependent on the holder and beneficial owner of that bearer share being recorded with the registered agent. Therefore, according to the law, no valid bearer shares exist in the Marshall Islands other than those issued by these 689 corporations, and for each valid bearer share, up-to-date legal and beneficial ownership information is held by the registered agent in the Marshall Islands.

155. According to the Marshall Islands, enforcement operates automatically by force of law. By law, to maintain the validity of a bearer share and the rights and privileges of the holder and any transferee (e.g. voting, receipt of dividends, or any other shareholder rights), up-to-date legal and beneficial ownership for the share must be recorded with the registered agent for non-resident domestic entities in the Marshall Islands. Thus, as of 9 November 2018 (the date the phase-in period ended for bearer shares issued before the November 2017 amendment), no valid bearer shares exist in the Marshall Islands except those with detailed ownership information recorded with the registered agent.

156. Bearer shares that become non-compliant have a 180-day statutory window to remedy non-compliance, and if not remedied, the corporation must cancel the shares. The Authorities interpret the law as meaning that these shares remain invalid during this period. The onus is fully borne by the corporations that have to self-declare the name of their bearer share holders and cancel the shares of the holders that do not comply. Failure to do so results in a fine of up to USD 50 000, forcible dissolution, or both. The Marshall Islands Authorities are of the opinion that an annual attestation to the Registrar for non-resident domestic entities that all records are being maintained as required is an additional layer of monitoring and enforcement on corporations issuing bearer shares. In practice though, since no audits have been done to measure how corporations comply with their obligations, it is difficult to ascertain how the above mentioned sanctions will apply. In addition, since checks of the content of the attestation only started recently but are not followed up with onsite visits or requests for information as a proactive way to ensure the information is maintained, there is no certainty that this would have any effect on compliance.

157. Although the Marshall Islands have amended the law in order to ensure the availability of ownership information relating to bearer shares, the absence of supervision on ensuring that the sanctions are effectively enforced in practice to act as an incentive on holders of bearer shares to declare their identity results in uncertainties on the availability of bearer share holder ownership information in all cases. It is therefore recommended that the Marshall Islands supervise the proper implementation of the law and have a full knowledge of the number of bearer shares still in circulation.

A.1.3. Partnerships

158. There are two types of partnerships provided under Marshall Islands' law – general partnerships and limited partnerships. General partnerships are governed by the Revised Partnership Act (RPA) and limited partnerships are governed by the Limited Partnership Act (LPA). Foreign partnerships established under the laws of a foreign jurisdiction may carry out business operations in the Marshall Islands by submitting applications to the Registrar for Foreign Investment, the Registrar for resident domestic entities, MISSA, and the local government in which it will be doing business. There are 5 general partnerships and 60 limited partnerships registered in the Marshall Islands. There are no foreign partnerships.

159. Similar to corporations and LLCs, both general and limited partnerships can be further classified as "resident domestic" if doing business in the Marshall Islands and "non-resident domestic" if not doing business in the Marshall Islands.

Partners' identity information

160. The main sources of identity information on partners of partnerships are the same as for the corporations and LLCs, with the shortfalls as identified under A.1.1 on Availability of ownership information, except that limited partnerships are required to set forth the names and addresses of each general partner in their certificates of limited partnership.

Information available with the Registrars

161. There are no obligations for general partnerships to include information on the partner(s) authorised to bind the partnership to be included in any registration documents. However, the partners have the option of disclosing it.

162. Foreign partnerships in the Marshall Islands are subject to the same registration and reporting obligations as foreign corporations and LLCs. Ownership information will be available from the registration documents

filed with the Registrar for Foreign Investment in accordance with the FIBLA as described above.

163. Pursuant to the Corporate Regulations 1995, Amended, resident domestic partnerships and foreign partnerships are required to file, with the Registrar for resident domestic entities, an annual partnership report. The report requires disclosure of the name of the partnership; the names, addresses and citizenships of all partners; location of the principal place of business in the Marshall Islands; and if the partnership was formed under the laws of a foreign jurisdiction, the name of the jurisdiction and the location of the principal place of business. Partnerships may provide the names, addresses and citizenships of the managing partners and officers. During the review period, the one resident domestic partnership had a compliance rate of 100%.

164. There is no requirement for non-resident domestic partnerships to file an annual partnership report with the Registrar for non-resident domestic entities. However, similarly to the non-resident domestic corporations and LLCs, the requirement to file annual attestation also applied to non-resident domestic partnerships. There are currently four non-resident domestic general partnerships, and they had a compliance rate of 100%.

165. Information on resident domestic limited partnerships can be found with the Registrar for resident domestic entities in the Certificate of Limited Partnership and in the annual limited partnership report. This information includes the names, citizenships of the general partners and managing partners, location of the principal place of business in the Marshall Islands, residence or mailing address of each general partner. Information on foreign limited partnerships is available with the Registrar for Foreign Investment in accordance with similar corporation rules as explained in paragraph 67 above.

166. There is no requirement for non-resident domestic limited partnerships to file an annual limited partnership report with the Registrar for non-resident domestic entities. However, non-resident domestic limited partnerships are required to include name and the business, residence or mailing address of each general partner in their Certificates of Partnership. Also, they are required to provide an annual attestation to confirm that ownership information is kept. There are 60 non-resident domestic limited partnerships in the Marshall Islands. Three are currently in warning status for a delayed attestation, and follow-up by the Registrar is underway. Otherwise, the compliance rate is 100%.

Information available from the partnerships themselves

167. Under section 37(1)(c) of the RPA, each partner and partnership is required to keep an up-to-date record containing the names and addresses of all partners since a legal obligation exists on the current partners to provide to all partners, former partners, and legal representatives for deceased or disabled partners access to the books and records of the partnership.

168. Under section 32(1)(c) of the LPA, each limited and general partnerships are required to keep an up-to-date record containing the names and addresses of all partners. Sanctions are the same as for corporations.

Information available from tax requirements

169. From a tax requirement point of view, no ownership information is lodged in the tax return and is therefore available with the tax administration. Non-resident domestic limited partnerships are exempt and do not lodge any information either.

Information available from AML requirements

170. The same rules as described under the part A.1.1 apply.

Conclusion

171. Laws and regulations require maintaining identity information on partnerships in the Marshall Islands. However, the Marshall Islands should implement effective supervision and enforcement programmes to ensure that all partnerships comply with the obligations to maintain or provide identify information in line with the standard.

Beneficial ownership

172. Beneficial ownership information on all partnerships is available since November 2017 through the amendments that were brought to the RPA and LPA.

173. The AML legal framework also provides for beneficial ownership information where resident domestic partnerships or authorised foreign partnerships have a bank account with a financial institution in the Marshall Islands or use the services of a cash dealer in the Marshall Islands. Non-resident domestic partnerships may also use the services of a Marshall Islands cash dealer.

174. Articles 37(1) of the RPA and 32(1) of the LPA require every domestic partnership and foreign partnership, except publicly-traded partnership, to use all reasonable efforts to obtain and maintain an up-to-date record of its beneficial owners. All such records must be maintained for a minimum of five years. These requirements apply immediately to partnerships formed after 14 November 2017. For partnerships formed on or before this date, there is a 360-day phase-in period to collect the requisite information. Guidance to assist non-resident domestic partnerships with the beneficial ownership requirements is available through the Registrar for non-resident domestic entities.

175. "Beneficial owner" is defined under the section 37(1)(c)(iv) of the RPA and section 32(1)(c)(v) of the LPA and applies to both the resident and non-resident domestic partnerships:

> "beneficial owner" means the natural person(s) who ultimately owns or controls, or has ultimate effective control of, a legal entity or arrangement, whether directly or indirectly, or on whose behalf such interest in such legal entity or arrangement is held. For a domestic [limited] partnership other than a publicly-traded company, the natural person(s) who exercises control over such [limited] partnership through direct or indirect ownership of more than 25% of the partnership interests or voting rights in such [limited] partnership shall be regarded as the beneficial owner(s); if no natural person exerts control through such an ownership interest, the natural person(s) who exercises control over such [limited] partnership through management of the [limited] partnership or other means shall be regarded as the beneficial owner(s).

176. Under the AML Regulations, the definition of beneficial owner of a partnership (including limited partnership) is the one that applies for legal persons. Therefore the conclusions under part A.1.1 are the same here. Because the performance of the CDD depends on the level of risk, it is not certain how updated the beneficial ownership information is. Finally, for existing customers, the CDD, which must be performed on the basis of materiality and risk, has to be conducted on existing relationships at material time. The Marshall Authorities interpret "Material times" to mean that CDD must be conducted promptly following any change in beneficial ownership. It is recommended that the Marshall Islands ensure that beneficial ownership information is kept up-to-date, in line with the standard (see Annex 1).

177. The deficiencies found for the definition applicable to corporations and LLCs are similar for partnerships. The standard requires that beneficial ownership information should be adequate, accurate and up-to-date. The definition of the beneficial owner as provided under the RPA and LPA is in line with the standard. However, the CDD to identify the beneficial owner is not fully in line, since the natural person who exercises control through other

means is equal alternative to the managing person. However, the guidance issued by the Registrar, which is not binding on the entities and provides for the position of the supervisory authority, adopts the FATF cascade approach from the FATF Guidance on Transparency and Beneficial Ownership that conforms to the standard.[6] but due to the recentness of the entry into force of the amendment to the Association Law, and due to limited supervision of the implementation of this new law, it is not certain how the guidance are applied by the non-resident domestic partnerships. A bigger gap exists since the partnership does not have any obligations to verify the accuracy and adequacy of the information provided by the partners. A fortiori, the only information that can be submitted to the competent authority is the record of names and addresses of the beneficial owners but no underlying documents demonstrating how the beneficial owners were actually identified. For the partnerships which have engaged an AML person, beneficial ownership information in line with the standard may not be available since the step of control through other means is missing. It is therefore recommended that the Marshall Islands take the necessary steps to ensure that the beneficial ownership information on partnerships is maintained in accordance with the standard.

Oversight and enforcement

178. The same enforcement provisions and oversight procedures as described under Element A.1.1 on companies are applicable in the case of partnerships. During the review period, there were no explicit legal requirements to ensure that partnerships which have ceased to exist remain bound by their obligations to keep records nor was there any provision putting an end to these obligations. The Revised Partnership Act and the Limited Partnership Act have been amended in March 2019 and now ensure that partnerships are compelled to maintain records for 5 years after they have ceased to exist. However, the responsibility to maintain such information even once a partnership ceases to exist is on the partnership itself. The sanction applicable in case of non-compliance is likely to be inefficient since a partnership that ceased to exist would not have any capacity to be fined or to be dissolved a second time. It is recommended that the Marshall Islands ensure that identity information be available on partnerships that have ceased to exist for 5 years after the date the entity or partnership ceased to exist.

Availability of partnership information in EOI practice

179. In practice, the Marshall Islands have not received any request on identity or beneficial ownership information on a partnership.

6. https://www.register-iri.com/wp-content/uploads/Guidance-Beneficial-Ownership-Requirements-of-the-RMI-Associations-Law.pdf.

A.1.4. Trusts

180. Since the 2016 report, the situation has not changed. A trust can be created only by registration with the Registrar of Trusts. Consequently the common law regarding trust formation is excluded. The Registrar of Trusts still does not accept any trust registration. The policy decision not to launch into such type of business is deliberate and authorities confirmed the Marshall Islands have no intention of changing this policy.

181. In addition, it is not possible for a trustee to legally act in a professional capacity for domestic or foreign trusts. However, the law does not prohibit that a person acts as a trustee of a trust in a non-professional manner. The interpretation that was taken in the 2016 report remains unchanged and the foreign law principles will apply with regards to identity information in respect of the trust. In addition, no domestic tax audits conducted revealed the existence of a resident person to be acting as non-professional trustee of a foreign trust.

182. When the trustee has opened a bank account in the Marshall Islands or used the services of a cash dealer in the Marshall Islands, the definition of beneficial owner of the trust in force during the review period did not enable the identification of all beneficiaries as required under the standard, since only those with a vested interest of 10% or more of the value of the trust corpus were identified.

183. Should the trustee engage an AML obliged person, the definition of the beneficial owner which is in line with the standard reads as following from 16 May 2019:

> 3C.6 With respect to a trust or similar arrangements, identification should be made of the settlor(s), trustee(s), protector (if any), all of the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust.

184. Non-professional trustees do not have to engage an AML person in the Marshall Islands and therefore, beneficial ownership information will only be available through the legal requirement of the law of the country under which the trust is established.

185. This represents a small gap and the Marshall Islands are recommended that non-professional trustee managing a foreign trust in the Marshall Island should maintain beneficial ownership information on the trust in line with the standard (see Annex 1). The supervision for AML purposes is the same as explained for companies, however the authorities confirmed that there are no bank accounts opened on behalf of any trust currently.

Availability of trust information in practice

186. In practice, the Marshall Islands has never received requests concerning ownership identity of beneficial ownership information of trusts.

A.1.5. Other relevant entities

187. There are no foundations in Marshall Islands. Non-profit associations are prohibited to carry out an economic activity. Marshallese associations therefore do not fall under the scope of the work of the Global Forum and will not be analysed further.

A.2. Accounting records

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

188. Although the 2016 report found that all relevant entities and arrangements have to keep relevant accounting records, there was no system in place for monitoring compliance with accounting record keeping requirements for non-resident domestic entities. This resulted in legal obligations to keep accounting records not being enforced.

189. In order to address these deficiencies, the Marshall Islands amended the Association Law on 11 April 2017 to provide TCMI acting as the registered agent for non-resident domestic entities with direct access power on accounting information to be maintained by non-resident domestic entities. The entities are now required to produce on demand all accounting records and underlying documentation to the registered agent. In addition, the amendment provides for an additional basis for the competent authority to require the registered agent to demand the production of such records and documentation from the entities and such demand is compulsory. The amendment also grants the registered agent with auditing powers. The materiality of the issue being more significant on the non-resident domestic entities, which are more numerous and risky for exchange of information, additional requirements were imposed on them in order to facilitate and improve compliance. The new law requires them to produce an attestation every year to confirm that accounting information is fully, partially or not kept. The Corporate Regulations 1995 were amended in August 2018 to require resident domestic entities and authorised foreign entities to produce on demand all accounting records and underlying documentation to the Registrar for resident domestic entities.

190. The main source of accounting information is found under the Associations Law and Income Tax Act. The oversight is therefore mainly carried out by TCMI acting as the Registrar and registered agent for

resident domestic entities on non-resident domestic companies and by the Tax Administration and Registrar for resident domestic entities on resident domestic companies and authorised foreign companies. In practice, the oversight activity carried out has been low.

191. Supervision of non-resident domestic entities by TCMI acting as the Registrar for non-resident domestic entities consisted mainly in notifying the said entities every year automatically to provide the attestation and in checking that the entities lodged annual attestation. The checks are not focusing on the quality of the information yet, and the law, which came in force on 11 April 2017, is too recent in its application to draw conclusions on its effectiveness since it actually produced its first effect in January 2018. The Marshall Islands explained that to respond to accounting record requests not EOI-related, they have used the new access powers, and produced the requested accounting records for non-resident domestic entities in two out of three requests.

192. Since the only source of accounting information for non-resident domestic entities is the entity itself, the quality of supervision is crucial to ensure that the information is available. It is recommended that the authorities supervise that all the Marshall Islands entities comply with their obligations to maintain records of accounting information in line with the standard.

193. The 2016 Terms of Reference requires that accounting records be kept for five years from the moment a company has ceased to exist. The Associations Law (Amendment) Act, 2019 clarified the obligation for all companies that ceased to exist to maintain their records even after the liquidation. However, as explained in paragraphs 105 to 109, it is not clear who has the responsibility to maintain such information even once the company ceased to exist. It is recommended that the Marshall Islands ensure that accounting information be available on entities that have ceased to exist for five years after the date the entity ceased to exist.

194. The Marshall Islands have received one request for accounting information during the review period – a repeat of a request sent by the same partner in 2014. The entity had already been forcibly dissolved after failing to comply with the 2014 request. During the previous review period, the Marshall Islands had received four requests on accounting information. At the time, none were responded to. Since then, the competent authority continued to seek to obtain the information from the entities, including exercising new access powers granted by amendments. All entities did not produce the required information within 60 days and were therefore forcibly dissolved, and this information was communicated in a final response to the treaty partners. The entities which all did not respond were related entities. In addition, the authority of the qualified intermediary for the entities was permanently revoked by the Registrar for non-resident domestic entities. In addition to the one request on accounting records received during the review period,

the Marshall Islands explained they have received a number of information requests under other, non-EOI international exchange mechanisms and that the process for obtaining information under these mechanisms is the same as used for EOI. Using the new access powers granted under the April 2017 Associations Law amendment, the Marshall Islands reported they produced the requested accounting records for non-resident domestic entities in two out of three requests.

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

Legal and Regulatory Framework		
Deficiencies identified	**Underlying Factor**	**Recommendations**
	The Associations Law (Amendment) Act, 2019 introduced an obligation for all companies that ceased to exist to maintain their records even after the liquidation. However, since the requirement is on the company that no longer exist, there is no effective sanction in case of failure to keep the records.	It is recommended that the Marshall Islands take legal measures to ensure that the accounting information of companies that ceased to exist is maintained in line with the standard.
Determination: The element is in place, but certain aspects of its legal implementation need improvement.		
Practical Implementation of the standard		
Deficiencies identified	**Underlying Factor**	**Recommendations**
	Since the only source of accounting information for non-resident domestic entities and non-resident domestic partnerships is the entities or partnerships themselves, strong supervision is crucial to ensure that the information is available. The new measures imposed are a good start, however, the level of supervision that is currently applied is not enough to ensure that the accounting information is kept in practice. Supervision on the content of the attestation and sample checks have not been tested in practice since the law is recent. The number of audits on domestic entities is also low.	It is recommended that the level of supervision exercised by the Marshall Islands be adequate enough to ensure that entities and partnerships are maintaining reliable accounting information at all times.
Rating: Partially Compliant		

A.2.1. General requirements to maintain accounting records and underlying documents

196. The same record keeping requirements are set out under the act ruling each entity type, such as the BCA, the LLCA, the RPA, the LPA, the Corporate Regulations 1995, as amended, and FIBLA. Tax requirements also apply to some entities.

Record keeping obligations under company law

197. All domestic entities, including partnerships, and authorised foreign entities must keep reliable and complete accounting records, to include correct and complete books and records of account. Accounting records must be sufficient to correctly explain all transactions, enable the financial position of the corporation to be determined with reasonable accuracy at any time, and allow financial statements to be prepared.

198. Additionally, all must keep underlying documentation for accounting records maintained, such as invoices and contracts, which must reflect all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; all sales, purchases, and other transactions; and the assets and liabilities of the corporation. These records have to be kept for five years.

199. Failure to comply with this requirement to maintain accounting records is a fine of not more than USD 50 000, revocation of article of incorporation, dissolution in the case of corporations or LLCs, cancellation of certificate of general partnerships or limited partnership only for partnerships. Section 208A of FIBLA provides that any person that violates a provision of the Act is liable to a maximum fine of USD 10 000.

Companies that ceased to exist

200. As outlined under Part A.1.1, in Marshall Islands, an entity ceases to exist when it is liquidated, whether following a voluntarily dissolution or forcible dissolution for failure to pay annual fees or to comply with requirements of the Associations Law. During the review period, there were no clear requirements on the obligation to maintain accounting information once an entity has ceased to exist. The Associations Law required information to be maintained for five years but was silent as to whether the five-year period continued after an entity ceased to exist.

201. The Associations Law (Amendment) Act, 2019 clarified the obligation for all entities that ceased to exist to keep their records for five years after the company ceased to exist. However, since the requirement is on the company that no longer exist, there is no effective sanction in case of failure

to keep the records. It is recommended that the Marshall Islands take the legal measures in order to ensure that accounting information on entities that have ceased to exist is available in line with the standard.

Supervision and enforcement of non-resident domestic entities by TCMI acting as the Registrar and registered agent

202. The Marshall Islands were recommended in 2016 to exercise a level of supervision that would be adequate enough to ensure that entities and partnerships are maintaining reliable accounting information at all times.

203. Legal amendments made in April 2017 to the Associations Law grant powers to the registered agent to request accounting records including underlying documentation to non-resident domestic entities:

> Upon demand of the registered agent for non-resident domestic entities in connection with the performance of its audit functions or pursuant to a valid governmental request made to the registered agent for non-resident domestic entities, every non-resident domestic corporation shall produce all accounting records and underlying documentation required to be maintained pursuant to this subsection to the registered agent for non-resident domestic entities in the Republic.

204. The registered agent faces a practical problem in exercising supervision: the accounting records do not have to be kept in the Marshall Islands and in practice are not kept in the Marshall Islands. It is therefore difficult for the Marshall Islands to do onsite inspections.

205. Supervision of non-resident entities by the Registrar for non-resident domestic entities has consisted mainly in notifying non-resident domestic entities to provide an attestation that accounting records and underlying documentation required to be maintained are being maintained or, if applicable, that such records are not being maintained (wholly or partially) to the Registrar. According to the Marshall Islands, a proactive audit programme started in July 2019, results of which are for the time being unknown.

206. Upon formation, or in the case of an entity existing prior to April 2017, the entity had until end of March 2019 to file the first attestation. Excluded from these requirements are the publicly-traded companies since the authorities consider that they are already subjected to strict recordkeeping and financial reporting requirements by regulators in the jurisdiction they are listed.

207. Annual notice of the attestation requirement is systematically provided to non-resident domestic entities, and attestations are tracked by the Registrar. To date, the Registrar has received confirmation that records are

being kept as required or that they are not being kept. No reports of partial compliance have been received. The authorities explained that if an entity reported in the attestation that information was partially or not maintained, the Registrar would red-flag the said entity and contact the entity to ensure compliance. Entities that indicate records are not being maintained are provided notice of the information required by law to be kept, are given time to cure the deficiency (generally at least 90 days), and if the deficiency is not cured, they are sanctioned. As of 14 February 2019, 523 non-resident domestic entities had been forcibly dissolved after failing to make an attestation in 2018 (most probably because they had not kept any records either) – each had been given more than 180 days to comply and received repeated warnings in advance of dissolution. However, for those which reported that they have maintained records, no checks were done to verify if this was indeed the case.

208. In parallel with the new legislative tools, the registered agent for non-resident domestic entities, with the support of the Competent Authority, has recently started implementing a system of monitoring and auditing of such entities. An audit manual was published in October 2018 and started being implemented in the beginning of 2019. The registered agent selects entities for auditing from a pool of all non-resident domestic entities that have not been audited within the last five years. Since the power to audit only exists from 2017, the current pool comprises all non-resident domestic entities. The Marshall Islands authorities explained that entities are selected at random and on the basis of risk analyses of prior audit results (until enough audits have produced results) and other risk factors. As part of the risk analysis and audit process, the registered agent conducted a thorough audit of its internal records and audited entities presenting high-risk factors. Selected entities are sent requests for accounting records and underlying documentation. Failure to produce the records within 60 days, the provision of incomplete, false or misleading records, or the knowing or reckless failure to keep, retain or maintain records will be penalised by the registered agent with a fine up to USD 50 000, revocation of the entity's formation documents and dissolution, or both (section 80(6) of Business Corporations Act, as amended, and analogous sections of the other acts of the Associations Law). Audit results will be periodically provided to the Competent Authority.

209. However, since April 2017, the Registrar focused on the obligation to file annual attestation, and the current audit by the registered agent as described in the manual has been performed in limited cases to date. In total, the Registrar has reported that nine companies were forcibly dissolved during the review period after failing to provide information for EOI requests, all in response to requests received in the previous review period. From audits conducted on high-risk targets, two failed to provide the records and they were forcibly dissolved. The TCMI has started proactive audits, but the number of the high risk targets audited so far has not been provided. Monitoring is to

ensure compliance, with the ultimate goal to be able to provide information when requested for EOI purposes. The sanction in case of non-compliance, as a result of the non-provision of the information, should remain an exception. The recommendation therefore remains.

Trusts

210. As noted under Part A.1.4, even if permitted by law, it is neither practically possible to create a Marshall Islands trust, nor to act as a professional trustee of a foreign trust. However, a person may act as a non-professional trustee of a foreign trust, though none of the domestic audits finalised revealed the existence of a resident person to be acting in such capacity. Accounting records would thus be available to the extent required by the trustee's duties and the terms of the relevant foreign law. These obligations would not necessarily cover the full scope of obligations under the Terms of Reference. The Marshall Islands should ensure that accounting information be available, including on terminated trusts for a period of five years at least, when a non-professional trustee manages a foreign trust in the Marshall Islands (see Annex 1).

Tax obligations and supervision

211. Due to tax exemptions applicable on non-resident domestic entities and certain businesses (e.g. some fishery, hostelry), only a minority of relevant entities and arrangements is subject to tax accounting records requirements.

212. The Income Tax Act requires that entities maintain "legible and accurate business records of sales and other business transactions that are subject to tax requirements under this Act" for three years to be able to substantiate information provided to the tax administration (s. 125, Income Tax Act 1989).

213. During an audit, the tax administration may examine any books, papers, records or other data which may be relevant (s. 129, Income Tax Act); the Marshall Islands auditor interviewed during the onsite visit explained that accounting information is requested each time there is an audit, since the accuracy of the tax return can only be checked with the accounting records to be maintained. There have been 19 audits in three years and in all cases accounting information was requested and provided. The number of audits has decreased since the last review because of the loss of experienced staff in 2016 who were replaced only in 2018. The performances are therefore still low. Authorities reported that they plan to audit entities every three or four years, unless discrepancies are found from the filed returns.

214. According to the Income Tax Act, a taxpayer that does not provide the information requested during an audit is liable to a fine of USD 1 000 or imprisonment of one year, or both (section 140 of the Income Tax Act). During the review period, sanctions have been applied 19 times and the Marshall Islands collected a total amount of USD 159 307. Two of these cases involved sanctions for breaches in relation to accounting records, and 17 were in relation to under-reporting of gross revenue.

215. Since the accounting records are not to be filed with the tax returns, the rate of compliance with the filing of tax return is not relevant. However, the compliance rate with filing tax returns shows the trend of tax compliance in the Marshall Islands. During the review period, approximately 70% of tax returns were filed on time, 20% were marginally delayed, and the remaining 10% were late and incurred sanctions.

216. Marshall Island Social Security Administration (MISSA) may also audit all books, accounts, and records of all employers or self-employed workers for the purpose of determining their liability to pay contributions. They have conducted 59 audits among which 5 corporations and 15 "others" (sole proprietors, government and non-governmental organisation groups). Only 2 of the 59 audits involved a failure to keep or provide accounting records (a compliance rate of 96.6%). Sanctions were not applied in these two cases because the assessments themselves were significant and satisfactory for collection.

217. Supervision undertaken by the tax administration and MISSA is still low compared to the total businesses operating in the Marshall Islands, particularly with the significant decrease in the audits conducted by the tax administration on resident domestic entities. Although this decrease is explained by the loss of staff, this issue was already noted during the former review period and was acted upon only recently. The Marshall Islands authorities stated that auditor vacancies are difficult to fill. Combined with the supervision conducted by the Registrar for resident domestic entities which is also low, the availability of accounting information may not be ensured in all cases. The supervisory activities on resident domestic entities should be strengthened to cover a large scope of entities and apply penalties when these entities fail to abide by the law (see Annex 1).

A.2.2. Availability of accounting information in EOIR practice

218. In practice, the Marshall Islands has received one request for accounting records during the review period. The information was not available due to the failure of the entity to produce it. In this one request, information was requested about a corporation which had no nexus with the Marshall Islands, and on a corporation which had been forcibly dissolved in 2014 for failure to provide information in the scope of another request. The

authority of the qualified intermediary for the corporation was permanently revoked by the Registrar for non-resident domestic entities. The matter was discussed with the peer on a bilateral basis, and the peer is satisfied with the Marshall Islands' reply (see C.5).

219. The Marshall Islands has implemented the new provisions mentioned in para. 203 above, with regards to the older outstanding requests on accounting information and contacted 9 entities through letters of request giving them 60 days to comply. All these entities did not produce the required information within 60 days and were therefore forcibly dissolved, and this information was communicated in a final response to the treaty partners. In addition, the authority of the qualified intermediary for these entities was permanently revoked by the Registrar for non-resident domestic entities. The Marshall Islands indicated that in the period after the review, another request for accounting information was received and the Marshall Islands responded. Also, the Marshall Islands received a number of information requests under other, non-EOI international exchange mechanisms following the 2017 legal changes. The process for obtaining information under these mechanisms is the same as used for EOI. Using the new access powers granted under the April 2017 Associations Law amendment, the Marshall Islands produced the requested accounting records for non-resident domestic entities in two out of three requests. The one entity that failed to produce information as required has been forcibly dissolved.

220. In all EOI requests received by the Marshall Islands, the competent Authority decided to request the registered agent to request the information from the non-resident domestic entity which is outside of the Marshall Islands. For the EOI requests from the previous review period, the competent authority also requested accounting records directly from the entities. Strong supervision requirements are therefore crucial. The Marshall Islands have only recently begun in depth audits to ensure that non-resident domestic entities abide by their legal requirements. Where the resident domestic companies are less material for the purpose of EOI, the audits conducted by the tax administration are also very low. It is recommended that the level of supervision exercised by the Marshall Islands be adequate enough to ensure that entities and partnerships maintain reliable accounting information at all times.

A.3. Banking information

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

221. The 2016 Report concluded that the legal and regulatory framework for the availability of banking information was in place. No changes were made to the legal framework of the Marshall Islands since then. However, there were some issues on the supervisory side, since the position of the Banking Commissioner, the authority in charge of supervising the banking sector in the Marshall Islands, was vacant. The position has since been filled in.

222. The EOIR standard now requires that beneficial ownership information (in addition to legal ownership) in respect of accountholders be available. In Marshall Islands, this is guaranteed through the AML framework.

223. The definition of beneficial owner in the AML regulation is in line with the standard. However, prior to May 2019, the beneficial owner of a trust was the person who had a 10% interest in the trust. This did not have any material consequences since it would be possible only for a non-professional trustee to open a bank account for a foreign trust in the Marshall Islands. The CDD requirements gaps identified under A.1.1 apply and therefore it is recommended that the Marshall Islands take the necessary steps to ensure that the beneficial ownership information is maintained in line with the standard.

224. The level of supervision seems adequate. During the period under review, the Financial Institution Supervision (FIS) Department of the Banking Commission has supervised the largest bank. It also conducted since 2018 several trainings to ensure correct implementation in practice of the new definition of beneficial owner. However, an amendment brought to the AML regulations which came in force in May 2019 and which clarifies what indirect ownership means is recent and its implementation in practice has not been monitored yet. It is recommended that such monitoring takes place.in the Marshall Islands although the chances of receiving a request on banking information are very low, and the impact on exchange limited since non-resident domestic entities, on which all requests received so far related, cannot have a bank account in the Marshall Islands.

225. During the review period, the Marshall Islands received no bank information request, however MISSA has asked for banking information in three instances for domestic purposes and received the information.

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

Legal and Regulatory Framework		
Deficiencies identified	**Underlying Factor**	**Recommendations**
	Beneficial ownership information in line with the standard may not be available on all account holders since the notion of control through means other than ownership is missing. However, since it is the policy of the Banking Commission in practice not to allow non-resident domestic entities to have a bank account in the Marshall Islands, the chances of receiving a request on banking information are very low, and the identified issue has very limited impact on exchange.	It is recommended that the Marshall Islands take the necessary steps to ensure that the beneficial ownership information is maintained in line with the standard.
Determination: The element is in place		
Practical Implementation of the standard		
Deficiencies identified	**Underlying Factor**	**Recommendations**
	The amendment brought to the AML regulations which came into force in May 2019 and which clarified what "indirect ownership" means is recent and its implementation in practice has not been monitored yet. However, since it is the policy of the Banking Commission in practice not to allow non-resident domestic entities to have a bank account in the Marshall Islands, the chances of receiving a request on banking information are very low, and the impact on exchange is limited.	It is recommended that the Marshall Islands monitor the effective implementation of the recent amendments in practice.
Rating: Largely Compliant		

A.3.1. Record-keeping requirements

General record keeping requirements

227. All financial institutions are required to maintain accounts in the name of the account holder and are prohibited from opening or keeping anonymous accounts or accounts which are in fictitious or incorrect names. They must record and verify the identity, domicile, legal capacity, occupation or business purpose, as well as other identifying information of all clients, through the use of documents providing evidence of their legal existence and the powers of their legal representative, or any other official or private documents. Such identification and verification must be done when opening new accounts, entering into fiduciary transactions, renting safe deposit boxes or performing cash transactions over USD 10 000 (s. 168, Banking Act).

228. Financial institutions must retain records for all transactions relating to an account, and for six years after the account has been closed. These records must contain details sufficient to identify in respect of each transaction (s. 169, Banking Act):

- name, address and occupation (or where appropriate business or principal activity) of each person: (i) conducting the transaction; or (ii) if known, on whose behalf the transaction is being conducted, as well as the method used by the financial institution to verify the identity of each such person
- nature and date of the transaction
- type and amount of currency involved
- the type and identifying number of any account with the financial institution involved in the transaction
- if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee (if any), the amount and date of the instrument, the number (if any) of the instrument and details of any endorsements appearing on the instrument
- the name and address of the financial institution, and of the officer, employee or agent of the financial institution who prepared the report.

229. Financial institutions (including their employees, officers or directors) that wilfully violate the record keeping requirements are liable to a fine of not more than USD 2 000 000 or imprisonment for not more than 20 years, or both (s. 170, Banking Act). Financial institutions that do not conduct the necessary customer due diligence for account holders are liable to a fine not exceeding USD 10 000 for each offence (s. 181, Banking Act).

Beneficial ownership information on account holders

230. The Banking Commissioner is the authority in charge of administering and enforcing the provisions of the Banking Act and the AML/CFT Regulations 2002. The Financial Institutions Supervision (FIS) Department is in charge of conducting examinations and ensuring that the AML obliged persons abide by their AML obligations. The Domestic Financial Intelligence Unit (DFIU) is the lead agency for detection and prevention of Money laundering and terrorist financing.

231. The AML/CFT regulations are the source of the obligations pertaining to the identification and verification of beneficial owners of customers. According to the definition in the regulations, beneficial owner means the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes

those persons who exercise ultimate effective control over a legal person or arrangement. This general definition meets the standard.

232. The requirement on AML obliged persons to identify the beneficial owner(s) of a customer is set out under the section 3A1(a). Section 3C.4 provides for the determination of beneficial owner.

233. For customers that are legal persons or legal arrangements, the financial institution and cash dealer must take reasonable measures to understand the ownership and control structure of the customer, including the ultimate natural person(s) who owns or controls a legal person including natural persons with a controlling interest as described in this Section.

234. The AML/CFT Regulations sets out that each natural person that owns directly or indirectly 10% or more of the vote or value of an equity interest in, or exercises management of, the company have to be identified and will constitute beneficial owners in the sense of the regulations (section 3C.5).

235. The notion of indirect ownership under the standard implies that a chain of corporate vehicles is not an obstacle to the determination of the level of ownership interest a natural person may have in a particular entity. During the review period, the Marshall Island definition of indirect ownership did not entirely capture this aspect. However, as amended on 16 May 2019, the regulations clarify that ultimate ownership/control refers to situations in which ownership/control is exercised through a chain of ownership or by indirect means. This amendment captures the chain of ownership in line with the standard. It is recommended that the Marshall Islands monitor the effective implementation of the beneficial ownership legal requirements.

236. In addition, the cascade approach is not in line with the standard since the natural person who may exercise control through other means does not have to be identified, should the person with 10% ownership interest not be identified. Instead, banks have to identify each natural person who owns directly or indirectly 10% or greater equity interest and each natural person who exercises management. Therefore, when a natural person cannot be identified with 10% ownership interest, then the person who exercises managing functions would most of the time be deemed to be the beneficial owner, even if this person does not ultimately own or control the entity. This is not fully in line with the standard.

237. The AML obliged person has to apply CDD on a risk basis, and can therefore apply enhanced CDD for higher risk customers and politically exposed persons, and simplified CDD for lower risk customers (sections 3A.2 and 3A.3). Simplified CDD may be applied when the risk of money laundering and terrorist financing is lower and where information on the identity of the customer and the beneficial owner of the customer is publicly available,

or where adequate checks and controls exist in national systems. In such circumstances, section 3L.2 allows the financial institutions to apply simplified or reduced CDD measures when identifying and verifying the identity of the customer or beneficial owner. Although there is no definition of what entails the simplified CDD, the law still requires the identification and verification of the beneficial owner. In order to apply simplified CDD, approval needs to be granted by the Banking Commission. As of date, there has never been any request. Because the performance of the CDD depends on the level of risk, it is not certain how updated the beneficial ownership information is. Finally, for existing customers, the CDD which must be performed on the basis of materiality and risk, have to be conducted on existing relationships at material times. Particularly, the financial institution must identify and verify the identity of the customer at any time that the person applies for a business relationship and where doubts have arisen as to the veracity or adequacy of previously obtained identification data on the person. The Marshall Islands should ensure that beneficial ownership information is kept as up-to-date as possible, in line with the standard (see Annex 1).

238. A financial institution that does not perform the CDD in accordance with the regulations is liable to a fine of up to USD 10 000 per violation. To date no sanctions have been applied.

239. Third party reliance is allowed under section 3F of the AML/CFT regulations. The reliance on third parties is only allowed if approved by the Banking Commissioner. Permission will be granted only if the financial institution and cash dealer presents a plan of internal policies and practices that comply with the legal requirements. When the relied party is non-resident, the approval is subject to the fact that the third party is adequately regulated and supervised and has measures in place to comply with CDD requirements in the Regulations. If it is required that even when the financial institution relies on a third party, the beneficial owner and customer information should be made immediately available by the third party. Section 3F.6 of the AML/CFT Regulations states that the ultimate responsibility lays on the financial institution in the Marshall Islands. As of date, there has never been any request for approval and none of the financial institutions in the Marshall Islands rely on any third party (resident or non-resident).

240. Any documentation on the relevant identification data, account files, and business correspondence must be retained by the AML obliged person for at least six years following the termination of an account or business relationship. The Banking Commission may request that the information be kept for longer depending on the nature of the information to be kept (suspicious activity reports have to be kept for 15 years). Failure to establish and maintain records for 6 years is punishable by a fine of up to USD 2 million and up to 20 years of imprisonment, or both. No such sanctions have been applied in practice.

Supervision of financial institutions

241. The Financial Institution Supervision (FIS) Department is the body in charge of monitoring that the AML obliged persons comply with their obligations under the Banking Act and AML/CFT regulations. There is one manager and three examiners. All of them have attended training on beneficial ownership standard organised by the Global Forum in March 2017 and FATF in September 2018.

242. A financial institution that does not perform the CDD in accordance with the regulations is liable to a fine of up to USD 10 000 per violation. To date no sanctions have been applied. Failure to establish and maintain identification records, account files, business correspondence, records regarding transactions, or records in connection with currency transaction reports for 6 years is punishable by a fine of up to USD 2 Million and up to 20 year imprisonment, or both. No such sanctions have been applied in practice.

243. During the review period, the FIS department has scheduled regular off-site and on-site examinations of the AML obliged persons and evaluated the compliance with the AML/CFT regulations. There is a schedule in place for inspection of financial institutions and cash dealers every two years, but flexibility is maintained to perform inspections if and when needed (e.g. in the case of high risk). During the year 2017, the FIS conducted three AML/CFT supervisory examinations of financial institutions and cash dealers in Marshall Islands. From these inspections, minor infractions were noted and financial institutions and cash dealers were given action plans with set timeframes within which deficiencies had to be addressed. The FIS department has planned its next round of examinations to follow up on these action plans. Since end of 2017 no other AML/CFT examinations have been conducted due to resources constrains with the upcoming National Risk Assessment. Prior to 2017, three examinations were conducted in 2016. The FIU plans to start new examinations in 2020 (October 2019 to September 2020). It is recommended that the Marshall Islands monitor the effective implementation of the beneficial ownership legal requirements.

244. In order to ensure that banks comply, the Banking Commission decided to educate them on their legal requirements. It trains financial institutions and cash dealers on their AML/CFT requirements under the Banking Act and AML/CFT Regulations, including recordkeeping requirements, red flags for suspicious activity, and beneficial ownership information. The Beneficial Owner Guide is currently in drafting stage. However, interactions with the representative of the largest bank in the Marshall Islands confirmed that internal policies exist to ensure that beneficial ownership information is kept and relevant staff have received training from the compliance officer in order to ensure that all policies are correctly disseminated on the beneficial owners' identification requirements. It is recommended that the Banking

Commission issue its guide on the new beneficial ownership requirements and strengthen its audits on that aspect in order to ensure that accurate, up-to-date and adequate beneficial ownership information is available with the Marshall Islands banks (see Annex 1).

Exchange of bank information in practice

245. The Marshall Islands received no banking information request during the review period. However domestically banks have been asked to provide ownership information from MISSA for the purpose of their audits and they have responded. The bank association representatives confirm they were aware of the obligation to provide the information and that should the Competent Authority request for information, they had the obligation to submit the information, whether it was a criminal or civil case, if the request comes from the tax authority.

246. In addition, the Banking Commission entered into a memorandum of understanding with the Competent Authority to exchange information when there is a request for EOI and abide by procedures described under part B.

Conclusion

247. Banking information is generally available in the Marshall Islands and in line with the standard except for the shortfall in relation with beneficial ownership information since the notion of indirect ownership is not clear and control through other means is missing. It is recommended that the Marshall Islands take the necessary steps to ensure that the beneficial ownership information is maintained in line with the standard.

248. Taking into account the fact that the Banking Commission's policy is not to allow non-resident domestic entities to have a bank account in the Marshall Islands, the chances of receiving a request on a banking information are very low, and so this small issue has very limited impact on the ability of the Marshall Islands to implement the standard.

Part B: Access to information

249. 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).

250. The 2016 Report concluded that the Marshall Islands had power to access information in line with the standard. Access powers are based on provisions of the Tax Information Exchange Agreement (Execution and Implementation) Act 2010 (TIEA Act 2010) and the Tax Information Exchange Agreement (Implementation) Act (TIEA USA Act 1989).[7] They respectively grant the Secretary of Finance and the Minister for Finance the power to obtain and exchange information with treaty partners. These powers can be used directly or indirectly on the person holding the information. In case of indirect access, it is a third party (Banking Commission or TCMI, i.e. the registered agent for non-resident domestic entities) that will use their own gathering powers to access the information. However a restriction exists – third parties' powers can only be used to the extent that the purpose of collection of the information is in line with the law under which these third parties use their gathering powers.

7. The TIEA USA Act 1989 gives legal effect to The Marshall Islands' TIEA with the US (US TIEA), while the TIEA Act 2010 gives legal effect to the other TIEAs and the Multilateral Convention signed by The Marshall Islands.

251. The necessary sanctions were also deemed available to ensure compliance when accessing information with the holder of the information in the Marshall Islands. However, during the previous review period, the competent authority had not obtained information in four instances since it had not used fully its access powers as it gathered information only from the Registrar for non-resident domestic entities. Out of the seven requests received, the competent authority provided information in the three cases where information was maintained by the Registrar for non-resident domestic entities. The other potential information holders (including the corporations or LLCs) were not requested to provide information, despite the fact they were liable to maintain the requested information. At the time of the onsite visit, the competent authority had changed its practice and requested information directly to the corporations. Out of the ten requested corporations, eight provided legal ownership information but none provided the accounting information requested. This showed a deficiency in the availability of the accounting information though and was handled in the part A.2 of the report.

252. Following amendments brought to the Association Law in April and November 2017, the competent authority has now a new avenue to obtain ownership and accounting information on non-resident domestic entities. The competent authority, because it has no regular contact with the non-resident domestic entities, uses TCMI, the single registered agent for all non-resident domestic entities, to access information from the companies directly. The registered agent is granted with enforcing powers (sanctions) to ensure that the information is provided. All entities that did not produce the required information within 60 days were forcibly dissolved (nine related companies out of ten due to failure to provide accounting information) and this information was communicated in a final response to the treaty partners. In addition, since these companies all had the same qualified intermediary, this former was permanently revoked by the Registrar for non-resident domestic entities (TCMI). The Registrar itself was not sanctioned.

253. In practice, during the new review period, the Marshall Islands received one request which was on a non-resident domestic entity. In order to respond, the competent authority did not use its direct access power, but instead made use of the new procedure under the Association Law, and the information was therefore accessed through the registered agent. The Marshall Islands was not able to provide the information to the treaty partner because of the non-availability of information.

254. During the review period, no requests were received on resident domestic entities. The Competent Authority did not have to request banking information directly to the financial institutions either. However, it seems that in practice, the Competent Authority would use the Banking Commission to access banking information rather than use its direct access power. Legally

speaking though, the Banking Commission is allowed to collect information directly from financial institutions only when the information is needed for its functions. Collecting information to respond to an EOIR request is not part of the functions of the Banking Commission, but the Banking Commission is a signatory to a multilateral memorandum of agreement that requires all signatories to assist the Competent Authority in answering EOI requests.

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

Legal and Regulatory Framework		
Determination: The element is in place		
Practical Implementation of the standard		
Deficiencies identified	**Underlying Factor**	**Recommendations**
	The enforcement provisions are used in practice by the Registrar for non-resident entities; however these sanctions are unlikely to be effective to compel the production of information. No information available could demonstrate the effectiveness of these sanctions in compelling the production of the requested information. In addition, the Competent Authority has not applied any sanctions against the Registrar when it did not provide the information requested.	The Marshall Islands should monitor the use of sanctions in a view to obtaining the information requested by EOI partners.
	Rating: Largely Compliant	

B.1.1. Ownership, identity and banking information

256. Since the last report, the Marshall Islands brought some amendments to adapt the legislation to the ratification of the Multilateral Convention (see Part C)[8] and in order to make the access powers of the competent authority more efficient. The Assistant Secretary of Finance has been delegated competent authority powers.

8. The domestication of the Multilateral Convention was made through an amendment made in 2018 under the TIEA Act, 2010. Consequently, the access powers that exist under the Income Tax Act, 1989 to respond to requests made under the TIEA Act, 2010, cover the requests of information received under the Multilateral Convention. The TIEA Regulations 2013 were amended in June 2016 to add confidentiality provisions applicable to every person carrying out the provisions of or having any official duty under a TIEA and to add a penalty for confidentiality violations (see section C.3 below).

Accessing information generally

257. No substantial changes have occurred in the legal framework concerning the general access powers compared to what was explained under the former report (see paragraphs 244 to 254 of the 2016 report).

258. Under the TIEA Act 2010, the TIEA USA Act 1989 and the TIEA Regulations 2013, the Competent Authority can use all available information gathering powers to provide information requested pursuant to an EOI instrument. The regulations provide the Competent Authority with among others, the power to examine any books and records, obtain and provide information from any persons that act in an agency or fiduciary capacity, access premises, retain such information.

259. The technique most commonly used by the Competent Authority is the use of gathering powers available under the Banking Act, the Income Tax Act, and the Mutual Assistance in Criminal Matters Act. When the Competent Authority will receive an EOI request, the most effective authority to access the information is determined.

Accessing information in the hands of the tax authorities

260. There are no barriers between the Competent Authority and the information that is kept in the database of the Ministry of Finance such as tax returns, audit files, accounting records which would have been requested during the course of an audit and kept in the audit file, registration information, including ownership information. The Competent Authority also has access to the database maintained by MISSA and which contains ownership information for registration.

261. This process is confirmed within the standard operating procedures for EOIR, that was last updated on 3 December 2018 and which states under section IV – "Gathering the information" that the Competent Authority should identify whether the requested information is held within the Ministry of Finance, or another government agency.

262. In practice, since none of the requests concerned resident domestic entities, there has never been any need for the Competent Authority to use internal data. However, the Competent Authority confirmed that if they receive a request on a foreign authorised entity or resident domestic entity, they would first check whether the information is available internally.

Accessing information from another government agency and TCMI in its capacities of registered agent for all non-resident domestic entities and Registrar of non-resident domestic entities

263. The co-operation between the Competent Authority and other governmental agencies is authorised by section 403(2)(a) of the TIEA Act 2010 which empowers the Minister of Finance to use all relevant information gathering powers, including the Banking Act, the Income Tax Act, and the Mutual Assistance in Criminal Matters Act, 2002, to the extent allowable under the Marshall Islands law, for the purpose of fulfilling its obligation under the TIEA Act 2010. Section 2 of the TIEA Regulations 2013 defines the gathering information powers of the Competent Authority for the purposes of administering the TIEA Act 2010 or meeting the obligations under a relevant agreement. This includes obtaining information from persons having control, possession or custody of documents. These persons may be an agency of the government.

264. In order to facilitate the co-operation with the other government agencies, the Competent Authority has entered into a multilateral memorandum of agreement (MOA) with the Banking Commission, the Registrar for non-resident domestic entities and the Registrar for resident domestic entities. This MOA entered into force in November 2015 (and was amended in 2016); it requires that all signatories assist the Competent Authority in answering EOI requests.

265. In order to request the information, the Competent Authority issues a request letter which should include the minimum information from the requesting State's letter necessary for the third party or government agency to identify and provide the information and/or documents sought. The Marshall Islands confirmed that if disclosure of certain details is not necessary to obtain the information, those details are not revealed. The requested agency is given two weeks to respond.

266. If not response is received within two weeks, a follow-up letter is sent giving two more weeks to reply. If there is still no response, the Secretary of Finance should advise that sanctions be taken.

267. In practice, the main agency to whom the Competent Authority will request information is TCMI in its capacity as the Registrar for non-resident domestic entities and, following the April and November 2017 Associations Law amendments, and in its capacity as the registered agent for non-resident domestic entities, since they are deemed to be in control of the information on non-resident domestic entities and all requests received so far have been on non-resident domestic entities. The procedure is the same as the one followed for accessing information with government agencies. The practice would not be for the Competent Authority to also send a letter request to the

entity (though the Competent Authority has power to do so and has done so in some cases) but to wait for an answer from the Registrar and registered agent. Provision of the information depends eventually on the availability of the information with the entity and the willingness of the entity to provide it.

268. When the information is not available with TCMI as the Registrar (i.e. the requested information is not ownership information included in a (non-mandatory) Declaration of incumbency) and the TCMI as the registered agent cannot access the information, the Competent Authority will then assess the need for any further action. TCMI as the registered agent is liable upon conviction to financial penalties, possible imprisonment, or both in accordance with the Income Tax Act and other penalties provision. The Marshall Islands advise that the registered agent has never refused to co-operate with a request by the Competent Authority. However, during the review period, the entity did not provide the information. The registered agent had already enforced the powers it had and, acting jointly with the Registrar, dissolved the entity after it failed to respond to the 2014 request. This action was notified to the Competent Authority, which did not take any further actions.

269. The enforcement provisions are used in practice; however these sanctions are unlikely to be effective to compel the production of information. No information available could demonstrate the effectiveness of these sanctions in compelling the production of the requested information. The Marshall Islands should monitor the use of sanctions in a view to obtaining the information requested by EOI partners.

Accessing information from a taxpayer or third party

270. The Competent Authority can request from the taxpayer, or any third party that is in control of the information according to the same provision of the Income Tax Act.

271. Given the nature of the person on whom information is requested, the Competent Authority has not used accessing powers with any taxpayers or third party yet. It is very unlikely that it will do so since all the requests received so far have been on non-resident domestic entities.

Accessing beneficial ownership information

272. Beneficial ownership information is mainly available with the entities themselves or with banks when the account holder is a resident domestic entity or foreign authorised entity with a bank account in the Marshall Islands. General access powers and access powers for banking information will also apply for accessing beneficial ownership information with such persons.

273. Where this information is available with a non-resident domestic entity, the Competent Authority issues a letter of request to TCMI as the Registrar for non-resident domestic entities and the registered agent for non-resident domestic entities, which may hold the information (particularly in the case of bearer shares or if voluntarily filed or recorded) and the latter of which is in charge of requesting for the information. When it is on a resident domestic entity, the Registrar for resident domestic entities will have the obligation to request the information to the entity.

274. In practice, the Competent Authority never had to use these powers as no EOI requests concerning beneficial owners have been made by a treaty partner. There has been some domestic practice in gathering beneficial ownership information pursuant to non-EOI international exchange mechanisms (requests from financial intelligence units under the Egmont Group and for Mutual assistance in criminal matters) following the 2017 legal changes. Using the new access powers granted under the April 2017 Associations Law amendment, the Marshall Islands report they have produced the requested beneficial ownership information for non-resident domestic entities, in 14 out of 18 requests they obtained the information from entities themselves.

Accessing banking information

275. Nothing has changed in the legal framework with regards to access to bank information (see 2016 report, paragraphs 255-257). There were no deficiencies found under these access powers and the conclusion according to which the legal framework is in place remains.

276. In practice, the standard operating procedures for EOI and the EOI reference manual state the procedure to be followed in case of banking information requests. The staff member handling the EOI request should check that sufficient information has been received to identify the account holder and the bank or financial institution. If the request is incomplete, the staff member will contact the foreign Competent Authority immediately to ask for the missing information. As no request for banking information has ever been received, the Competent Authority has never had to decide on what constitutes sufficient identifying information.

277. If the bank does not reply to a request from the Banking Commission within the period specified, a summons should be prepared by the staff member, to be signed by the Secretary or his delegated representative, and then delivered to the bank by registered mail. If the bank fails to comply with the summons, the matter should be referred to the Office of the Attorney-General. At the same time, the requesting partner should be notified that the bank has failed to provide the information requested and that the matter has been referred to the Attorney-General for enforcement action.

278. The Marshall Islands did not receive any requests for banking information from its treaty partners during the review period. This is explained by the fact that the materiality of the requests received are on non-resident domestic entities, which are not allowed to open bank account in the Marshall Islands. Therefore, it will only be in the unlikely event that a request would be received on a resident domestic company or an individual that this power would effectively be used by the Competent Authority.

279. It is worth noting that the Marshall Islands Competent Authority prefers not to use its direct access powers in most cases, and should there be a request for banking information, will generally choose to go to the Banking Commission for assistance rather than go directly to the bank in possession of the information. This practice has some limits. The legal framework restricts the Banking Commission to access information only when the information is needed for its functions, in particular when there are reasonable grounds to suspect that a transaction involved proceeds of crime. Collecting information to respond to an EOI request is not part of the functions of the Banking Commission. However, the Banking Commission is a signatory to the MOA that requires all signatories to assist the Competent Authority in answering EOI requests.[9]

280. For domestic purposes, the use of these direct powers is efficient since MISSA already accessed directly information with banks in three instances.

281. Although it is very unlikely that a bank request would be received from an international partner, the Marshall Islands should use the direct access powers it has been granted, should it be necessary (see Annex 1).

B.1.2. Accounting records

282. The powers described in section B.1.1 are also used to obtain accounting information. Particularly, the registered agent for non-resident domestic entities will be requested to demand the production of accounting records to the non-resident domestic entity. In practice, in the one EOI request for accounting information received during the review period, the accounting information was not provided. The request concerned two corporations, one which did not have any nexus with the Marshall Islands and one which had been forcibly dissolved for failure to provide information to another EOIR.

9. The Marshall Islands indicate that information may also be compelled pursuant to powers contained in two other laws. Under the Banking Act, a bank that fails to provide information pursuant to a request by the Banking Commission shall be guilty of an offence (s. 138). Under MACMA, a person that refuses to provide information is liable for contempt (s. 410).

The authority of the qualified intermediary for the corporation was permanently revoked by the Registrar. Having already been forcibly dissolved after failing to provide information in response to the 2014 request, the information was requested again by the Competent Authority but the corporation again failed to respond. The matter was discussed with the peer on a bilateral basis, and the peer is satisfied with the Marshall Islands' reply.

283. The new procedure was also tested in cases still outstanding from the prior review period, and the Competent Authority issued request letter to the registered agent which requested information to the entity. All entities that did not produce the required information within 60 days were forcibly dissolved, and this information was communicated in a final response to the treaty partners. In addition, the authority of the qualified intermediary for the entities was permanently revoked by the Registrar for non-resident domestic entities. The effectiveness of the registered agent's power to demand records was also tested through non-EOI international exchange mechanisms. For non-EOI requests, the Marshall Islands produced the requested accounting records for non-resident domestic entities in two out of three requests. The one entity that failed to produce information as required has been forcibly dissolved.

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

284. The 2016 Supplementary report concluded that the provision on access power in force in 2016 allowed the Competent Authority to access information even if the Marshall Islands would not need it for its own tax purposes. The TIEA Regulations 2013 explicitly provide the Competent Authority with the power to use information gathering measures for EOI purposes absent a domestic tax interest.

285. In practice, for one valid request during the review period on a non-resident domestic entity, the Competent Authority used its access power and there was no legal challenge. However, it did not provide the information. The issue was an issue of availability of information and not absence of domestic interest.

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

286. Two situations are to be distinguished.

287. First, the TIEA USA Act 1989 provides that every person served with a notice to produce information must do so within the timeframe specified in the notice. The Competent Authority may request a judge for a warrant to enter any premises when there are grounds for suspecting that the provision of the information is endangered and seize any material that may contain

information sought (s. 406 TIEA USA Act 1989). Furthermore, it is an offence for a person having been required to produce any information which is in his possession or under his control not to produce the information (s. 409, TIEA USA Act 1989). Offenders are liable, upon conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding USD 5 000 or both.

288. Second, for other EOI cases, the provisions under the Income Tax Act apply and any person that does not produce the information required by the Secretary of Finance commits an offence and may be charged with contempt and is liable to penalties as the judge may determine proper. Article 140 of the Income Tax Act provides that upon conviction a fine not exceeding USD 1 000 or in case of a natural person, a term of imprisonment not exceeding one year, or both can be imposed. Section 3 of the TIEA Regulations 2013 grant powers to enter and search, including access to any document that may be material in responding to an EOI request.

289. In practice, the Competent Authority has never imposed any penalties under the Income Tax or TIEA Acts; in particular, the Competent Authority has never sanctioned the TCMI as registered agent of an entity that failed to provide information.

290. For all requests, the 2017 amendments to the Associations Law provides that a non-resident domestic company which fails to provide the requested information within 60 days from the date the registered agent requests the information to the non-resident domestic entity is liable to a fine of USD 50 000, forcible dissolution or both.

291. However, the TCMI as registered agent for non-resident domestic entities, acting jointly with TCMI as the Registrar for non-resident domestic entities, forcibly dissolved nine companies during the review period due to failure to provide the information in response to requests received in the previous review period. The authorities explained that although fines exist, dissolution seems to be a better deterrent since non-resident domestic entities are outside of the Marshall Islands and a fine could remain unpaid. However, this deterring effect could not be demonstrated due to the low number of audits on non-resident domestic entities. It is arguable in the Marshall Islands situation that dissolution would actually not produce any deterring effect since the assets that belong to the company dissolved are not transferred to the Marshall Islands authorities and can be transferred to another entity before dissolution in or outside of the Marshall Island, resulting therefore in the beneficial owner of the asset not to suffer this loss. The Marshall Islands authorities explained that all parties associated with a company that has been forcibly dissolved for failing to produce information, in some cases including the qualified intermediary, are red-flagged in the Registrar's system and are denied future services. Although some of these measures could contribute making the dissolution a more effective deterrent, it is unlikely that it will

ensure production of the information to the Competent Authority as demonstrated in practice.

292. Where the five years retention period for records has expired, the taxpayer is not responsible to maintain the information and the provision of the information generally depends on the availability of the information in the internal systems and databases of the Marshall Islands Authorities. The Marshall Islands Competent Authority explained they would also ask the concerned entity for information even if the retention period has elapsed. However, in case the requested information is available with a governmental agency, the requested information is provided. No requests have been received for information more than 5 years old, but the Registrar and registered agent for non-resident domestic entities are able to get information older than 5 years from their databases for exchange.

293. The enforcement provisions are used in practice; however these sanctions are unlikely to be effective to compel the production of information. No information available could demonstrate the effectiveness of these sanctions in compelling the production of the requested information. In addition, the Competent Authority has never imposed any sanctions on the registered agent when failing to provide the information. The Marshall Islands should monitor the use of sanctions in a view to obtaining the information requested by EOI partners.

B.1.5. Secrecy provisions

Bank secrecy

294. Bank secrecy is not an issue in the Marshall Islands. While the Banking Act requires that all officers and employees of all licensed banks must maintain the confidentiality of all matters relating to the affairs of the bank and its clients and must not reveal such matters, an exception to this principle exists if it is to comply with the provisions of any other written law. Accordingly, banks will provide information to tax authorities pursuant to an inquiry made under the Income Tax Act 1989.

295. The representatives of the Banking Association in the Marshall Islands confirmed that should a request for information come from the Competent Authority or tax administration, they would not oppose the request based on bank secrecy. Banking secrecy therefore would not have an impact on effective EOI in the Marshall Islands.

Professional secrecy

296. The scope of professional secrecy is in line with the standard. Section 4 of the TIEA Regulations 2013 gives the Competent Authority power to access information regardless of any law relating to privilege or a contractual duty of confidentiality. No concerns as to this issue have arisen in practice.

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.

297. The 2016 Report found that there were no notification procedures (pre-notification or post notification) applicable in the Marshall Islands.

298. Under the TIEA USA Act 1989, the notice to request information to the taxpayer or the interested parties served by the Competent Authority could be subject of a judicial review. This TIEA has not been used during the period under review.

299. The TIEA Act 2010, as amended in 2018 to clarify that the scope of this Act includes the Multilateral Convention, does not provide any appeal rights. However, the Administrative Procedure Act allows that information holder to seek for a judicial review against any actions of the Competent Authority. The authorities have reported that no such applications have been made during the review period.

300. Since no changes were brought to the legal framework and procedures that existed during the previous review period, which found that there was no issue, the same conclusion is reached. The table of determination and rating is as follows:

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

Part C: Exchanging information

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

C.1. Exchange of information mechanisms

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

302. Since the 2016 report, the Marshall Islands has been committed to implementing the international standard on transparency and exchange of information for tax purposes. The EOI network of the Marshall Islands comprises TIEAs in force with 15 jurisdictions.

303. During the previous review period, the Marshall Islands were in negotiations to sign TIEAs with three other jurisdictions. One of these has subsequently been signed and the exchange of information with the other two jurisdictions is now possible with the entry into force of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters as amended (MAC) on 1 April 2017. To date, the Marshall Islands have EOI Relationships to the standard with 128 jurisdictions.

304. The Marshall Islands' experience in exchange of information is limited but the interpretation of "foreseeable relevance" is in line with the standard in law and practice.

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

Legal and Regulatory Framework
Determination: The element is in place

Practical Implementation of the standard
Rating: Compliant

Other forms of exchange of information

306. The Marshall Islands exchanges information on request, and exchange automatically financial account information on a non-reciprocal basis according to the Common Reporting Standard since September 2018.

C.1.1. Foreseeably relevant standard

307. The Marshall Islands' TIEAs provide for the exchange of information that is "foreseeably relevant" to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered in the TIEAs. This scope is set out in Article 1 of all of the Marshall Islands' TIEAs.

308. The Marshall Islands follow the OECD Model Tax Convention. The EOI reference manual states that "the term 'foreseeably relevant' is intended to provide for information to be exchanged to the widest possible extent". Nevertheless, it does not allow for 'fishing expeditions' or requests that are unlikely to be relevant to the tax affairs of a given taxpayer". The Marshall Islands indicated that they apply the commentary of the Article 26 to determine whether a request meets the foreseeable relevance standard. This is confirmed in their manual that was published in 2015 and amended in December 2018.

309. The Marshall Islands does not have a template for incoming requests. They accept requests coming in in the form the requesting party may decide. However, the request needs to meet the standard, including background information that is relevant to Marshall Islands.

310. During the review period, the Marshall Islands did not refuse to answer any EOI requests on the basis that the request lacked foreseeable relevance and there were no cases where it requested clarification on belief that the request was overly broad or vague, as confirmed by peers.

Group requests

311. The Marshall Islands did not receive group requests during the review period. However, the Marshall Islands covers group requests in Chapter 1.1 of their EOI reference manual, as amended in December 2018, which defines "group request" and provides the requirements for establishing foreseeable relevance based on the guidance provided in the 2012 Commentary on Article 26 of the OECD Model Tax Convention. The

Marshall Islands indicate that they would follow the standard as and apply the commentary on foreseeable relevance when it concerns the group requests.

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

312. For exchange of information to be effective it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. The Marshall Islands' TIEAs and the Multilateral Convention provide for EOI in respect of all persons.

313. The Marshall Islands declined a request based on the fact that there was no TIEA or other EOI mechanism in force with the requesting jurisdiction. This is in line with the standard.

C.1.3. Obligation to exchange all types of information

314. The Marshall Islands' TIEAs and the Multilateral Convention provide for the exchange of information held by financial institutions, nominees, and agents. All provide for the exchange of ownership and identity information. Since there have not been any requests made on domestic resident entities, this provision could not be tested in practice.

C.1.4. Absence of domestic tax interest

315. The Marshall Islands' TIEAs and the Multilateral Convention oblige the Contracting Parties to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested Party does not have a domestic interest in the requested information.

316. The TIEA Regulations 2013 also specify that the Competent Authority may access information for EOI purposes, regardless of the existence of a domestic interest in the information sought (s. 1(c)).

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

317. The Marshall Islands' TIEAs and the Multilateral Convention oblige Contracting Parties to exchange information in civil tax matters and in criminal tax matters without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Contracting Party. The request received during the review period related to civil case.

C.1.7. Provide information in specific form requested

318. The Marshall Islands' TIEAs and the Multilateral Convention oblige the Contracting Parties to provide, on request, information in the form of dispositions of witnesses and authenticated copies of original records to the extent allowable under domestic law. The implementing legislation empowers the competent authority to obtain information in any form including deposition of witnesses and copies of documents (s. 410 of the TIEA USA Act, 1989 and s. 2 of the TIEA Regulation 2013). In practice, the Marshall Islands have never received a request to provide the information in a specific form.

C.1.8. Signed agreements should be in force

319. The 2016 report noted that the Marshall Islands had ratified all the 15 TIEAs but one was not in force. This TIEA has now been ratified and entered into force on 6 December 2018. Since the last report, the Marshall Islands have deposited the instruments of ratification of the Multilateral Convention in December 2016. It entered in force on 1 April 2017. As a result, all of the EOI relationships of the Marshall Islands are covered by the Multilateral Convention and to the standard.

C.1.9. Be given effect through domestic law

320. The EOI agreements, including the Multilateral Convention signed by the Marshall Islands are given effect through the TIEA Act 2010 in the same manner as described in paragraphs 323 to 325 of the 2016 report. The Marshall Islands has in place the legal and regulatory framework to give effect to its EOI mechanisms.

Conclusion

321. The Marshall Islands has a network of EOI agreements that allow for EOI on request in accordance with the international standard.

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

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

322. The 2016 report found that Marshall Islands' network of EOI instruments was in place and covered most of the biggest trading partners such as the United States and Australia. The Marshall Islands was in negotiation with three jurisdictions at the time. In 2016, the Marshall Islands signed the Multilateral Convention which came into force in April 2017.

The three partners with which negotiations were ongoing are covered by the Multilateral Convention. However, one partner wished to continue the negotiations and these were concluded with the entry into force of a TIEA on 6 December 2018.

323. The Marshall Islands has since then an extensive EOI network covering 128 jurisdictions since all its TIEAs are covered under the Multilateral Convention. The Marshall Islands has never refused to enter into an EOI agreement, as confirmed by absence of peer concerns on this matter.

324. It is recommended that the Marshall Islands continue to conclude EOI agreements with any new relevant partner who would so require.

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

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

C.3. Confidentiality

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

326. The applicable treaty provisions and statutory rules on confidentiality that apply to officials with access to treaty information are in accordance with the standard.

327. The 2016 report found that the practice by the competent authority to seek information from information holders in possession or control of the information in the Marshall Islands was putting at risk the confidentiality requirement. The Marshall Islands have changed this practice before the review period and have been implementing new rules during the period. The recommendation is therefore removed and the rating is upgraded to compliant.

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

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

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

329. One of the corner stones of exchange of information is that information exchanged remain confidential. The legal framework has not changed and, as found in the 2016 report (paragraphs 331 to 336), is in place. Information exchange instruments of the Marshall Islands contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used.

330. The 2016 report noted that instead of issuing a request letter to the information holders with the required information to enable the holder of the information to respond, the Competent Authority was actually forwarding a copy of the actual foreign request of information. This practice was significantly threatening the confidentiality of the information exchanged.

331. The SOP, which set forth the basic procedures for maintaining confidentiality, was amended in December 2015 and April 2016 in order to expressly provide that such letters should not include the original letter from the requesting jurisdiction. The enhancements also included explicit guidance on the confidentiality requirements applicable to EOI requests. The Competent Authority has abandoned its past practice of providing the EOI request itself to potential information holders.

332. In June 2016, the Tax Information Exchange Agreement (TIEA) Regulations 2013 were amended to add confidentiality provisions applicable to every person carrying out the provisions of, or having any official duty under an EOI agreement, including persons outside the Ministry of Finance who participate in the process of obtaining and providing information to the Ministry pursuant to an EOI request. Violation of these provisions is punishable as a criminal offence with a fine of USD 5 000, imprisonment for up to one year, or both.

333. These amendments complement the pre-existing general provisions on the confidentiality of tax information. They also address the lack of clarity noted in the 2016 report on the existence of sanctions for persons who violate their public service contractual confidentiality duties. They also provide a clear basis for the confidentiality provisions included in the Memorandum of Association (MOA) as amended in 2016 to ensure confidentiality, between the Ministry of Finance, the Registrar of resident domestic entities, the Banking Commission and TCMI as Registrar for non-resident domestic entities, which formalises their co-operation with respect to EOI requests.

334. The revised practices discussed above were applied by the competent authority with respect to four EOI requests still outstanding at the time of the Phase 2 review, all during the current review period. Request letters were sent to TCMI as Registrar and registered agent for non-resident domestic entities using the standard letter included in the SOP and only the information

necessary for the information holder to locate and produce the requested information was stated in the letter. The Marshall Islands authorities confirmed this during the onsite visit, including the Registrar and registered agent receiving the request letters.

335. It is therefore considered that the recommendation has been implemented.

336. The number of requests being still low, the procedures have not evolved towards more automation. The files are kept in a locked cabinet in the Assistant Secretary's office and access is limited to the Competent Authority and the Assistant Secretary for Finance (pursuant to the letter delegating authority). However, the competent authority explains that if information is to be transmitted by electronic means, the information should be encrypted or sent via a secure platform. Prior to the review period, the competent authority has sent official responses containing confidential information to an EOI request, and sought the EOI partner's agreement prior to sending the official response by email and the messages were encrypted. This practice has not changed for the review period.

337. The Competent Authority does not notify a taxpayer that it has received an EOI request, except in exceptional cases as determined by the Competent Authority. There still has not been any clarification of what exceptional cases can be. However, the authorities confirmed that this exception would not apply, should the requesting jurisdictions require that the taxpayer is not informed. In practice, this exception was never applied. The Terms of Reference clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI agreement provides for the authority supplying the information to authorise the use of information for purposes other than tax purposes where tax information may be used for other purposes in accordance with their respective domestic laws. Such wording is contained in the Multilateral Convention to which the Marshall Islands is a Party. In the period under review the Marshall Islands reported that there were no requests where the requesting partner sought the Marshall Islands' consent to utilise the information for non-tax purposes.

C.3.2. Confidentiality of other information

338. The confidentiality provisions in the agreements and in Marshall Islands' domestic law do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the

requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction. In practice, the Marshall Islands does not draw any distinction either.

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.

339. Nothing has changed since the 2016 report which concluded that this element was in line with the standard. All of the Marshall Islands' TIEAs ensure that the Contracting Parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret, information which is subject to legal professional privilege, or information the disclosure of which would be contrary to public policy.

340. The provisions of professional secrecy in the domestic laws of the Marshall Islands are broad, but these would not affect effective exchange of information, as the provisions of TIEA and the Multilateral Convention have priority over domestic law. In addition both TIEA USA Act 1989 and TIEA Regulations 2013, which cover the Multilateral Convention, provide that the competent authority is not restricted by any law relating to confidentiality of information held by any person.

341. In practice, the Marshall Islands never had to apply these provisions during the period under review.

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

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

C.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.

343. The 2016 report found that there were no legal restrictions on the Marshall Islands tax authorities' ability to respond to EOI requests within 90 days of receipt by providing the information requested or providing an update on the status of the request. The Marshall Islands' TIEAs and the

Multilateral Convention oblige Contracting Parties to forward the requested information as promptly as possible to the applicant party.

344. The Marshall Islands received one valid request during the review period, i.e. from 1 April 2015 to 30 March 2018. The EOI request was responded to within 90 days and the treaty partner was informed that the information could not be provided because the information was not available with the entity which had been previously dissolved for failure to provide information to the authorities.

345. The incapacity to respond was not caused by weaknesses in the organisation or procedures of the competent authority but more to do with a problem of availability of information. However, the experience of the Marshall Islands remains limited. It is recommended that the Marshall Islands monitor the practical implementation of the organisational processes and resources of the EOI programme to ensure they are sufficient at all times for effective EOI in practice.

346. The 2016 report found that it was difficult for peers to contact the Competent Authority of Marshall Islands. In order to remedy this issue, the Competent Authority has updated the Competent Authority portal and got in touch with all their treaty partners to inform them of whom would be the Competent Authority. The Competent Authority has gained in experience with the new procedures that have been applied since 2017 on the pending requests from the previous review period, and during the review period and improved the line of communication with their treaty partners. The recommendation is therefore considered addressed.

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

Practical Implementation of the standard		
Deficiencies identified in the implementation of EOIR in practice	**Underlying Factor**	**Recommendations**
	The Marshall Islands received one valid request during the review period. Although the new process for responding to EOI requests after the end of the previous review period and its effectiveness were tested in practice on the pending requests from the previous report, the Marshall Islands experience is still limited.	The Marshall Islands should monitor the practical implementation of the organisational processes and resources of the EOI program to ensure that they are sufficient at all times for effective EOI in practice.
Rating: Largely Compliant		

C.5.1. Timeliness of responses to requests for information

348. Over the period under review, the Marshall Islands received one valid request for information. The information requested related to (i) ownership information and (ii) accounting information.

349. This one valid request concerned two corporations. One was on a corporation which had no nexus with the Marshall Islands, since the corporation on which information was requested was neither a resident of Marshall Islands nor a Marshall Islands entity. The other one was a corporation which had been struck off already following failure to provide information on a previous request. For these years, the Marshall Islands answered within 90 days to the request it received and the Marshall Islands contacted the peer concerned to explain the reasons for not providing the information. The peer was satisfied with the explanations provided.

350. The Marshall Islands declined one request, which was based on the fact that there was no valid EOI instrument in force with the Marshall Islands.

351. The SOP on exchange of information contains clear deadlines for each step to be followed when handling an EOI request. The first step is logging the request. It is at this stage that the request is acknowledged and the Excel spreadsheet is completed in order to enter manually the details of the request received. The second step is the validation of the request. If following this analysis, the Competent Authority finds that the request is not complete (clear, specific and relevant), additional information will be requested immediately. While waiting for clarification, the EOI officer would work to gather as much information as possible to answer the request. The validation generally does not take more than three days. The third step is the gathering of information which should not be more than 4 weeks or 60 days for the request made through the registered agent for non-resident domestic entities. Finally the last stage is the response to the request. The Competent Authority confirmed that this will be done in less than 30 days, ensuring that the whole process will take not more than 90 days. An alert system ensures that deadlines are followed up if they are not abided by.

352. The registered agent for non-resident domestic entities is liable to produce the requested information to the Competent Authority. However, during the review period, it failed to do so because it could not access it from the entity itself as the entity had already been forcibly dissolved after failing to respond to a previous EOIR request during the previous review period.

353. The requests pending at the end of the previous review concerned also ownership information and accounting records (4 cases, involving 10 non-resident domestic corporations). They could not be responded to due to lack of use of access powers by the Competent Authority, but the new

procedure described under Element B was afterwards successful since ownership information was provided immediately to the treaty partners for 8 out of the 10 corporations. 9 of the companies to which accounting records were asked failed to respond and were forcibly dissolved. They were all related entities and were all under the authority of the same qualified intermediary who was revoked.

354. The Marshall Islands' competent authority sought information directly from the corporations themselves, and once the law of 2017 became operational also exercised the option where the registered agent for non-resident domestic entities uses its direct access power. The registered agent grants a period of 60 days to provide the information requested. This has been working in practice since from the time the information was requested, all responses including those where the information was not provided, was received within 60 days and reply sent to the requesting jurisdiction within 90 days. No request is currently pending.

Status updates and communication with partners

355. The Marshall Islands indicated that they introduced the process of sending status updates when unable to answer an EOI request within 90 days in April 2017. In practice, there was no need to send any status update to the requesting jurisdiction. A sample interim 90 day Reply to EOI Request is available in the EOI reference manual and the Competent Authority confirmed that it would use it in practice when the case arises. In addition, when a new request is received, the manual notes that an acknowledgement should be sent to the requesting partner, either by phone, fax, or email within seven days. This has been done in practice.

356. The Competent Authority is clearly identifiable to Marshall Islands' EOI partners through contact information appearing on the Global Forum portal dedicated to Competent Authority. In addition, the Marshall Islands took other steps to ensure that they are more reachable through the development of a website for EOI and through networking when the Marshall Islands Authorities attend meetings organised by the Global Forum.

C.5.2. Organisational processes and resources

Organisation of the Competent Authority

357. According to the TIEA USA Act 1989, the Minister of Finance is the Competent Authority. Under the TIEA Act 2010, the Competent Authority is the Secretary of Finance. Both competent authorities may delegate their powers. The Assistant Secretary of Finance has therefore been delegated the powers of the Competent Authority.

358. The handling of exchange of information is centralised in a single unit called the Exchange of Information (EOI) unit, which falls under the direct authority of the Assistant Secretary of Finance. To date, there is one officer to handle the requests. His main responsibility is dealing with EOIR; however, he is also involved in AEOI and related tasks. Seeing the limited amount of requests received, this resource is sufficient for the time being. A proposal to increase the number of officers working within the EOI unit has not been decided on yet. The Marshall Islands should monitor the practical implementation of the organisational processes and resources of the EOI programme to ensure that they are sufficient at all times for effective EOI in practice.

Resources and training

359. The EOI unit is equipped with the needed technical material and the person handling the request received four trainings during the review period. Representatives of the Marshall Islands also attend the Global Forum plenary meeting.

360. During the peer review period, the Competent Authority used its standard operating procedures complemented by the "EOI reference manual" defining the administrative procedures detailing the treatment of incoming and outgoing EOI requests. This manual is available to the EOI officer and Competent Authority. This manual has also been disseminated outside the EOI Unit to auditors.

Incoming requests

Competent Authority's handling of the request

361. When a request is received, it is addressed to the Minister or Secretary and should be passed directly to the Chief of the Division of Customs, Treasury, Revenue and Taxation, who handles EOI requests. The Chief passes it on to the staff member opening the request. After stamping the request, the same officer will handle the request. All requests should be signed by the staff member handling EOI requests as a record of receipt.

362. The validation of the request consists in checking that the request:

- is covered by an international tax agreement in force
- deals with periods and taxes covered by the agreement
- is sent by the competent authority of the requesting jurisdiction.

363. The completeness of the request is also checked. If the information is not complete, the requesting jurisdiction will be informed by letter, within

maximum 60 days from the date of the receipt of the request. If it is partially incomplete, the part of the request which is clear will be worked on. However, this never occurred in practice.

364. The gathering of the information then starts. The Competent Authority is proactive, if no answer is received, the preferred way of communicating is by phone and reminders might be sent.

365. Once all information is received, the response letter is prepared and signed by the Competent Authority. Where not possible to obtain the information despite all efforts, a response should be sent as soon as possible to the requesting jurisdiction. The Competent Authority informs the requesting party the reason why the information cannot be provided and the actions that have been taken as sanctions. There is in the EOI reference manual a checklist of elements that should be included in the response.

366. All documents should be labelled with the following wording: "This information is furnished and requested under the provisions of our exchange of information agreement. The provisions contained therein must govern its use or disclosure.". The cover letter should also state that the information is being exchanged in accordance with the obligations imposed by the relevant legal instrument.

Practical difficulties the Marshall Islands experienced in obtaining the requested information

367. During the period under review, the main difficulty faced by the Marshall Islands competent authority was the access to information to be maintained by non-resident domestic entities which were subjected to limited supervision during the review period. Nevertheless, the trend is encouraging since the Marshall Islands have been able to provide complete (accounting and ownership) information retrospectively to answer previous requests as well as complete information for requests received after the period under review.

Outgoing requests

368. During the review period, the Marshall Islands did not send any EOI requests to its treaty partners. The authorities explained that they have a territorial tax system and therefore do not need to request information. In addition, the nature of the businesses operating in the Marshall Islands is not turned to export or geographically mobile activities.

369. The EOI reference Manual, sets appropriate procedures for making outgoing EOI Requests, including a template to follow and internal checks before sending requests.

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

370. There are no other factors or issues identified that could unreasonably, disproportionately or unduly restrict effective EOI in the Marshall Islands.

Annex 1: List of in-text recommendations

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

- **A.1.1**: Information on entities that may have a bank account in the Marshall Islands may not be up to date since the identification requirements of the beneficial owner depend on the level of risk. Marshall should ensure that beneficial ownership information is kept up-to-date, in line with the standard.
- **A.1.1**: The audit exercise started in 2017 and Marshall Authorities are recommended to implement their audit programmes in order to ensure that ownership information is available with all resident domestic entities.
- **A.1.1**: Supervision undertaken by the tax administration and MISSA is still low compared to the total businesses operating in the Marshall Islands. It is therefore recommended that the supervisory activities on resident domestic entities be strengthened to cover a large scope of entities and apply penalties corresponding when these entities fail to abide by the law.
- **A.1.3**: Because the performance of the CDD depends on the level of risk, it is not certain how updated the beneficial ownership information is. It is recommended that the Marshall Islands ensure that beneficial ownership information is kept up-to-date, in line with the standard.
- **A.1.4**: Although it is expected that given the function performed by, and the duties imposed on, a trustee, the identity of the settlor and beneficiaries of the trust should be known to the trustee, a small gap

remains. The Marshall Islands are recommended that non-professional trustee managing a foreign trust in the Marshall Island should maintain beneficial ownership information on the trust in line with the standard.

- **A.2.1**: Accounting records would be available to the extent required by the trustee's duties and the terms of the relevant foreign law. These obligations would not necessarily cover the full scope of obligations under the Terms of Reference. The Marshall Islands should ensure that accounting information be available, including on terminated trusts for a period of five years at least, when a non-professional trustee manages a foreign trust in the Marshall Islands.
- **A.2.2**: Supervision undertaken by the tax administration and MISSA is still low compared to the total businesses operating in the Marshall Islands. It is therefore recommended that the supervisory activities on resident domestic entities be strengthened to cover a large scope of entities and apply corresponding penalties when these entities fail to abide by the law.
- **A.3**: It is recommended that the Banking Commission issue its guide on the new beneficial ownership requirements and strengthen its audits on that aspect in order to ensure that accurate, up to date and adequate beneficial ownership information is available with the Marshall Islands banks.
- **A.3**: Information on entities that may have a bank account in the Marshall Islands may not be up to date since the identification requirements of the beneficial owner depend on the level of risk. The Marshall Islands should ensure that beneficial ownership information is kept as up-to-date as possible, in line with the standard.
- **A.3**: When receiving a request for banking information, although this is very unlikely to happen, the Marshall Islands should use the direct access powers it has been granted, where necessary.
- **B.1.1**: Although it is very unlikely that a bank request would be received from an international partner, the Marshall Islands should use the direct access powers it has been granted, should it be necessary.
- **C.2**: It is recommended that the Marshall Islands continue to conclude EOI agreements with any new relevant partner who would so require.

Annex 2: List of the Marshall Islands' EOI mechanisms

1. Bilateral agreements

List of Tax Information Exchange Agreements (TIEAs) signed by the Marshall Islands as at 12 August 2019.

	EOI partner	Type of agreement	Signature	Entry into force
1	Australia	TIEA	12 May 2010	25 November 2011
2	Denmark	TIEA	28 September 2010	3 December 2011
3	Faroe Islands	TIEA	28 September 2010	28 November 2014
4	Finland	TIEA	28 September 2010	2 December 2011
5	Greenland	TIEA	28 September 2010	19 March 2015
6	Iceland	TIEA	28 September 2010	30 August 2014
7	India	TIEA	18 March 2016	6 December 2018
8	Ireland	TIEA	2 September 2010	10 February 2015
9	Korea	TIEA	31 May 2011	9 March 2012
10	Netherlands	TIEA	14 May 2010	8 November 2011
11	New Zealand	TIEA	4 August 2010	9 April 2015
12	Norway	TIEA	28 September 2010	19 June 2011
13	Sweden	TIEA	28 September 2010	1 August 2015
14	United Kingdom	TIEA	20 March 2012	7 May 2014
15	United States	TIEA	14 March 1991	14 March 1991

2. 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). The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

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

The Multilateral Convention was signed by the Marshall Islands on 12 May 2017 and entered into force on 1 September 2017 in Marshall Islands. The Marshall Islands can exchange information with all other Parties to the Multilateral Convention.

As of 9 August 2019 the Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus,[10] Czech Republic, Denmark, Dominica, El Salvador, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension

10. 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.

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), Kazakhstan, Korea, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Peru, Poland, Portugal, Romania, Qatar, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, 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: Armenia, Burkina Faso, Dominican Republic (entry into force on 1 December 2019), Ecuador (entry into force on 1 December 2019), Gabon, Kenya, Liberia, Mauritania, Morocco (entry into force on 1 September 2019), North Macedonia, Paraguay, Philippines, Serbia (entry into force on 1 December 2019), United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

Annex 3: Methodology for the review

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

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 12 August 2019, Marshall Islands' EOIR practice in respect of EOI requests made and received during the three year period from 1 April 2015 to 31 March 2018, Marshall Islands'responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Marshall Islands' authorities during the on-site visit that took place from 19 to 22 February 2019 in Majuro.

List of laws, regulations and other materials received

Anti-money laundering laws

Anti-Money Laundering Regulations, 2002

Anti-Money Laundering Regulations Amendment, 2019

Banking Act, 1987

Commercial entities laws

Republic of the Marshall Islands Associations Law, as amended in 2017

- Part I: Business Corporations Act
- Part II: Revised Partnership Act
- Part III: Limited Partnership Act
- Part IV: Limited Liability Company Act

Foreign Investment Business Licence Act 1990

Republic of the Marshall Islands Corporate Regulations, 1995 amended in 2018

Trusts

Trust Act of 1994

Trust Companies Act of 1994

Trustee Licensing Act of 1994

Tax laws

Tax Collection Act

Income Tax Act, 1989

Social Security Act, 1990

Exchange of Information confidentiality Act, 1989

Miscellaneous

Guidance on Beneficial Ownership Requirements of the Republic of the Marshall Islands Associations Law

Memorandum of Agreement on Exchange of Information

Audit Manual

EOIR reference manual and SOP

Public Service Regulations of the Marshall Islands

Authorities interviewed during on-site visit

Officials from the Competent Authority

Officials from the Tax Authority, Ministry of Finance

Officials from the Registrar of resident domestic corporations

Officials from the Registrar/registered agent of non-resident domestic corporations

Officials from The Marshall Islands Social Security Administration

Officials from the Banking Commission (Commissioner, FIS Department and DFIU)

Officials from the Registrar of Foreign Investment

Current and previous reviews

This report is the fourth review of the Marshall Islands conducted by the Global Forum. The Marshall Islands previously underwent a review of its legal and regulatory framework (Phase 1) originally in 2012 and a supplementary review (Phase 1) in 2015 and the implementation of that framework in practice (Phase 2) in 2016. The 2016 Report containing the conclusions of the first review was first published in July 2016 (reflecting the legal and regulatory framework in place as of February 2016).

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

Information on each of Marshall Islands' reviews are listed in the table below.

Review	Assessment team	Period under review	Legal Framework as of	Date of adoption by Global Forum
Round 1 Phase 1	Ms Jasmine Wade of Antigua and Barbuda, Ms Su-won Kim of Korea, and Mr Sanjeev Sharma, Mr Guozhi Foo and Mr David Moussali from the Global Forum Secretariat	n.a	May 2012	October 2012
Round 1 Supplementary	Ms Nicola Guffogg of the Isle of Man, Ms Yun-Jung Seo of Korea and Ms Melissa Dejong from the Global Forum Secretariat	n.a	March 2015	October 2015
Round 1 Phase 2	Ms Nicola Guffogg of the Isle of Man, Ms Sunga Cho of Korea and Ms Kaelen Onusko from the Global Forum Secretariat	1 July 2012 to 30 June 2015	February 2016	July 2016
Round 2	Mr Neil Cossins of Australia, Mr Abdul Haris Muhammadi of Indonesia and Ms Aurore Arcambal from the Global Forum Secretariat	1 April 2015 to 31 March 2018	August 2019	8 November 2019

Annex 4: The Marshall Islands' response to the review report

The Marshall Islands is grateful for the time and effort of the assessment team and the Peer Review Group in assessing the Marshall Islands' implementation of the international standard of exchange of information on request as set out in the 2016 Terms of Reference. We agree with the overall rating and believe it accurately reflects the significant and important progress the Marshall Islands has made, including substantial enhancements to both our legal framework and our exchange of information practices.

As demonstrated by our ongoing efforts, the Marshall Islands remains committed to the effective and efficient exchange of information in furtherance of tax transparency. We have taken note of the recommendations set forth in this report and have already begun to take appropriate action to address them. We look forward to reporting our continued progress to the Global Forum in our first follow-up report.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

OECD PUBLISHING, 2, rue André-Pascal, 75775 PARIS CEDEX 16
ISBN 978-92-64-64992-7 – 2019

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request MARSHALL ISLANDS 2019 (Second Round)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 150 jurisdictions participate on an equal footing.

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

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

This report contains the 2019 Peer Review Report on the Exchange of Information on Request of the Marshall Islands.

Consult this publication on line at ***https://doi.org/10.1787/89b5f984-en***.

This work is published on the OECD iLibrary, which gathers all OECD books, periodicals and statistical databases.
Visit ***www.oecd-ilibrary.org*** for more information.

ISBN 978-92-64-64992-7

OECD*publishing*
www.oecd.org/publishing