

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report Combined: Phase 1 + Phase 2

ISLE OF MAN



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Isle of Man 2011

COMBINED: PHASE 1 + PHASE 2

June 2011
(reflecting the legal and regulatory framework
as at January 2011)



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Please cite this publication as:

OECD (2011), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Isle of Man 2011: Combined: Phase 1 + Phase 2*, Global Forum on Transparency and Exchange of Information for Tax Purposes: Peer Reviews, OECD Publishing.
<http://dx.doi.org/10.1787/9789264115002-en>

ISBN 978-92-64-11496-8 (print)

ISBN 978-92-64-11500-2 (PDF)

Series: Global Forum on Transparency and Exchange of Information for Tax Purposes: Peer Reviews

ISSN 2219-4681 (print)

ISSN 2219-469X (online)

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

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About the Global Forum

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The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004. The standards have also been incorporated into the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once 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 review reports, please refer to www.oecd.org/tax/transparency.

Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in the Isle of Man as well as practical implementation of that framework. The international standard which is set out in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority’s ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information partners.

2. The legal and regulatory framework for the availability of information in the Isle of Man is in place. Ownership and identity information is maintained by relevant entities and arrangements. In addition, this information is sometimes filed with governmental authorities or held by service providers pursuant to anti-money laundering rules. The general regulatory environment in the Isle of Man is comprehensive and, particularly for anti-money laundering purposes, all major financial sector industries are subject to active oversight designed to ensure that processes for customer due diligence and the maintenance of appropriate transactional information are followed.

3. The power of the Isle of Man tax authorities to obtain information for exchange of information purposes in tax matters is clear. Each exchange of information arrangement is brought into force by an order of Tynwald that provides that the arrangement shall have effect notwithstanding any other enactment, and which modifies the basic access powers contained in the *Income Tax Act 1970* to ensure that they apply for the purposes of the arrangement.

4. There are limitations on the access to information due to exceptions that apply in the case of legal privilege, the confidential communications of a tax adviser, or that relate to the work of an auditor. In practice, these exceptions have never been invoked to prevent the tax authorities from obtaining information for the purposes of an exchange of information request, and, if they did arise, the Isle of Man authorities will authenticate the validity of any

claim to these exceptions. The Isle of Man should review its policy regarding access to information held by legal advisers, tax advisers and auditors and ensure that it is compatible with effective exchange of information and record and continue to monitor requests for information where these rules are implicated.

5. The Isle of Man has been exchanging information in accordance with the international standards since its first tax information exchange agreements came into force in 2006. Although this is a relatively short period, experience to date shows that exchange of information has been effective and expeditious. The Isle of Man now has mechanisms for the exchange of information in tax matters that meet the standard in force with 17 jurisdictions and is actively engaged in negotiations for further agreements. The Isle of Man has also exchanged information with the United Kingdom through a double tax arrangement since the 1950s (though the scope of information exchanged was limited) and, in criminal tax matters, has exchanged information with any jurisdiction (regardless of the existence of an international agreement) through its domestic *Criminal Justice Acts* since the early 1990s.

6. The feedback provided by the Isle of Man's information exchange partners is very positive. The information requested is provided quickly and exchange of information partners are appreciative of the open and transparent relationship they have with the Isle of Man competent authority.

7. The competent authority is in the practice of informing the Financial Crime Unit (FCU) of the fact that an Isle of Man taxpayer (e.g. an Isle of Man record-keeper in possession of information that is the subject of an information exchange request) is the subject of a request in a criminal case. The Isle of Man authorities consider that disclosure to the FCU in these circumstances is in accordance with the terms of its exchange of information agreements. It is possible, however, that its TIEA partners may not share this interpretation. In these circumstances, and to avoid any uncertainty or misunderstanding in this regard, disclosure to the FCU should not be made without the express written consent of the partner jurisdiction.

Introduction

Information and methodology used for the peer review of the Isle of Man

8. The assessment of the legal and regulatory framework of the Isle of Man and the practical implementation and effectiveness of this framework was based on the international standards for transparency and exchange of information as described in the Global Forum’s Terms of Reference, and was prepared using the Global Forum’s Methodology for Peer Reviews and Non-Member Reviews. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at January 2011, other information, explanations and materials supplied by the Isle of Man during the on-site visit that took place on 1-3 November 2010, and information supplied by partner jurisdictions. During the on-site visit, the assessment team met with officials and representatives of the relevant Isle of Man public agencies including the Department of the Treasury, the Companies Registry and the Financial Supervision Commission.

9. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This combined review assesses the Isle of Man’s legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made regarding the Isle of Man’s legal and regulatory framework that either (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are also made concerning the Isle of Man’s practical application of each of the essential elements. As outlined in the Note on Assessment Criteria, following a jurisdiction’s Phase 2 review, a “rating” will be applied to each of the essential elements to reflect the overall position of a jurisdiction. However this rating will only be published “at such

time as a representative subset of Phase 2 reviews is completed”. This report therefore includes recommendations in respect of the Isle of Man’s legal and regulatory framework and the actual implementation of the essential elements, as well as a determination on the legal and regulatory framework, but it does not include a rating of the elements.

10. The assessment was conducted by a team which consisted of three assessors and a representative of the Global Forum Secretariat: Brian M. Harrington, U.S. Internal Revenue Service; Frederick Strauss, U.S. Internal Revenue Service; Anthony Vella Laurenti, Ministry of Finance, the Economy and Investment (Malta); and Andrew Auerbach of the Global Forum Secretariat.

Overview of the Isle of Man

11. The Isle of Man is an island with an area of approximately 572 square kilometres, located in the Irish Sea, and is virtually equidistant from Ireland and the United Kingdom. The legal system of the Isle of Man is Manx law. Manx law dates back centuries; and is enacted and administered by Tynwald, the Island’s parliament, which has been meeting continuously since 979 AD. A large part of the basis of the Manx law and legal system is the English law and legal system, including the principles of common law. The Isle of Man is a self-governing dependency of the British Crown. It is not part of the United Kingdom or the European Union, and is not represented in either the United Kingdom or European Parliaments. United Kingdom law does not extend to the Isle of Man without the consent of Tynwald. Queen Elizabeth II, referred to on the Island also as the Lord of Mann, is Head of State. A Lieutenant Governor is the Crown’s personal representative on the Island.

12. In relation to the Isle of Man, the United Kingdom is responsible for three areas: defence (for which the Isle of Man pays a fee), international relations, and ultimate good governance (that is, the United Kingdom government reserves the power to intervene directly in the Island’s affairs in certain very limited circumstances namely a grave breakdown or failure in the administration of justice or civil order). A statement as recently as November 2010 by the United Kingdom Ministry of Justice,¹ which holds the policy responsibility for the constitutional relationship with the Isle of Man, included the following comment: “*We respect the right of the Crown Dependencies to self-determination and agree that it would take a very serious circumstance indeed for the UK government to contemplate overriding these powers.*” The United Kingdom’s role in international relations has posed some challenges (e.g. where the operation of domestic tax rules have

1. The full document is at www.justice.gov.uk/gov-response-justice-select-committee-crowndependencies.pdf.

international characteristics), and over time, the Isle of Man has exercised greater control over international tax matters. There is no master agreement on how this works: rather, the process is made up of a combination of practice, ministerial letters and other international instruments.

13. The Isle of Man has a population² of 80 058 and a very low unemployment rate of 2.3 percent. The Isle of Man had a GDP of GBP³ 2.03 billion pounds in 2007/08 and a GDP per capita of GBP 24 971 pounds. The Isle of Man economy depends mainly on insurance, banking, finance and business services, as well as professional and scientific services which together account for more than 60 percent of its GDP. The financial services sector itself is made up mainly of deposit-taking institutions, fund service providers and insurance companies. Other major sectors of the economy include manufacturing, engineering, construction and the retail sector. In the last few years new economic activities have been developed, such as aircraft registration and most significantly, e-gaming and other areas of e-commerce.

General information on the legal system and the taxation system

14. The Isle of Man has its own legal system and jurisprudence. English law is not directly of application in general, but the Manx legal system is based on the principles of English common law which are shared by many Commonwealth countries. English case law may therefore be persuasive in the absence of Manx judicial precedent. Manx law is very similar to English law in areas such as crime, contract, tort and family law. In certain areas, however, although initially modelled on English law, Manx law has evolved and adapted to meet the Island's own special circumstances. This is particularly noticeable in areas such as direct taxation, company law and financial supervision. The Island has its own civil and criminal courts including court of appeal. The final right of appeal is to the Judicial Committee of the Privy Council in London. The Island's High Court judges hold the ancient office of Deemster and have jurisdiction over all criminal and civil matters. Advocates of the Manx Bar have the fused rights of solicitors and barristers.

15. Income tax and national insurance (social security) are the two significant direct levies in the Isle of Man. The Isle of Man has no capital gains tax, inheritance or estate tax, wealth tax, stamp duty or stamp duty land tax. The Island's income tax rules are completely separate from those of the UK, as the power to legislate on income tax matters lies with Tynwald. Responsibility for Isle of Man income tax lies with the Assessor of Income Tax, who is the

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2. Statistical information from *2010 Digest of Economic and Social Statistics*, Economic Affairs Division, Isle of Man Treasury.
 3. The Isle of Man currency is the pound sterling.

head of the Income Tax Division of the Isle of Man Government's Treasury Department.

16. Isle of Man income tax applies to both individuals and companies; there is no separate system of corporation tax. Resident persons are taxed on worldwide income while non-resident persons are taxed only on Isle of Man source income. A company is resident in the Isle of Man for tax purposes if the company was formed under Manx law or its mind and management are exercised in the Isle of Man. Currently, the standard rate of income tax for a resident individual is 10 percent and a higher rate of 20 percent applies to income in excess of GBP 10 500 (single person) and GBP 21 000 (married couple). Isle of Man tax law also provides for various personal allowances and tax deductions. Non-resident individuals are liable to income tax on their Manx source income except for income earned from certain approved sources, for example Isle of Man bank interest. The rate for non-residents is also 20 percent. A tax cap applies in respect of the tax liability of Manx residents. This provides for a resident's tax liability to be capped at GBP 115 000.

17. The standard income tax rate for both resident and non-resident companies is 0 percent. The standard rate generally applies to all forms of income received by all companies except:

- a. licensed banks, which are taxed at 10 percent on income from their banking business; and
- b. income derived from letting and development of real estate, mining and quarrying, of land in the Isle of Man which is taxed at 10 percent.

18. Companies are required to file tax returns regardless of the fact that no tax may be owing. Trading companies subject to Manx income tax at the standard 0 percent rate can elect to pay tax at the 10 percent rate.

Regulatory Environment

19. The Isle of Man has a wide-reaching regulatory framework that governs its financial services industry. Businesses must generally be authorised and supervised by a governmental authority, which will also provide anti-money laundering and countering terrorist financing oversight with respect to that business. Deposit takers as well as those in the investment business (such as stock brokers, asset managers and financial advisers) are required to be licensed under the *Financial Services Act 2008*, and are supervised by the Financial Supervision Commission (the FSC). There are 34 licensed banks in the Isle of Man, consisting of 20 incorporated in the Island and 14 which are branches of overseas banks. Of the 20 incorporated banks only one is not part of a wider banking group. A majority of banks are part of United Kingdom groups and there are also banks from groups based in Ireland, Spain, France, Switzerland and South Africa. Isle of Man banks have a deposit base of GBP 52 billion and

collective investment schemes managed in the Isle of Man have approximately GBP 53 billion in funds under management. Company and trust service providers are also licensed by the FSC. Trust service providers in the Isle of Man service approximately 20 000 trusts and company service providers service approximately 31 000 companies. Life insurers, non-life insurers, insurance managers and general insurance intermediaries are licensed under the *Insurance Act 2008*, and are supervised by the Insurance and Pensions Authority (the IPA).

Recent developments

20. The Isle of Man has operated measures equivalent to the EU Directive on the Taxation of Income from Savings (the EUSD) since 2005 and will be moving to full automatic exchange of information under the EUSD from 1 July 2011.

21. A *Foundations Bill 2010* came before Legislative Council (the upper branch of Tynwald) for first reading on the 25th January 2011 and contains provisions relating to the establishment of foundations, which are not otherwise provided for under Isle of Man. The Bill requires that foundations have registered agents and includes obligations in relation to the holding of ownership and accounting information. The *Foundations Bill 2010* received its third reading and was passed at a sitting of Legislative Council held on the 8th February 2011. The Bill therefore now proceeds to Royal Assent.

22. The *Companies (Prohibition of Bearer Shares) Bill* (see section on Bearer Shares below) received its third reading and was passed at a sitting of Legislative Council held on the 1st February 2011 and proceeds to Royal Assent. The effect of the legislation is to ensure that any existing companies in respect of which a bearer share is in issue must ensure that the share is converted into a registered share.

23. The Isle of Man signed a double tax arrangement (DTA) with Bahrain on 3 February 2011 and a TIEA with India on 4 February 2011.

Compliance with the Standards

A. Availability of Information

Overview

24. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If the information is not kept or it is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report describes and assesses the Isle of Man's legal and regulatory framework on availability of information. It also assesses the implementation and effectiveness of this framework.

Ownership and Identity Information

25. The identity of the owners of companies formed under Isle of Man law is ensured by the requirement for all companies to maintain an up to date register of owners. In the case of some companies this information is provided to the Companies Registry. In addition, certain companies are required to engage a corporate service provider that is subject to anti-money laundering customer due diligence rules. Nominees are subject to anti-money laundering customer due diligence rules. Bearer shares are not permitted to be issued in the Isle of Man.

26. Foreign companies that have their central management and control in the Isle of Man are resident for tax purposes in the Isle of Man and are required to file an income tax return. Where those companies have a place of business in the Isle of Man they are also required to register with the Companies Registry. However, there is no requirement to provide the Companies Registry with ownership information, and the tax return will only identify Isle of Man resident owners of such companies. There are 327 foreign companies that are resident for tax purposes in the Isle of Man, and in many cases ownership information will be available due to the application of anti-money laundering customer due diligence rules. All foreign companies that are administered by Isle of Man corporate service providers are subject to anti-money laundering rules. The corporate service provider would have to identify and verify the beneficial owners of the foreign companies. Where the anti-money laundering rules do not apply, the requirements to maintain ownership information will generally depend on the law of the jurisdiction in which the company is incorporated. Accordingly, information on the owners of foreign companies that are resident for tax purposes in the Isle of Man may not always be available and it is recommended that rules be put in place to ensure the availability of such information. However, the information gathering powers available to the Manx tax authorities will apply and so any information that the management of the company holds can be accessed for exchange of information purposes.

27. Partnerships that carry on business in the Isle of Man are required to identify their partners when filing their annual tax return. Limited partnerships must register with and provide the names of each partner to the Companies Registry. The provision of trust services is subject to anti-money laundering customer due diligence rules.

28. The creation of foundations is not currently provided for under Isle of Man law (however, see *Recent Developments* in relation to foundations). There are no other relevant entities and arrangements in the Isle of Man.

29. There are a variety of penalties under the Isle of Man's laws to ensure that information required to be maintained is, in fact, maintained. The penalties appear to be proportionate and dissuasive enough to insure compliance. During the onsite visit, the assessment team found that Isle of Man's tax authorities are able to respond to requests for ownership and identity information for all types of legal entities and arrangements. Information received from partner jurisdictions with an exchange of information relationship with the Isle of Man confirms this.

30. There is a strong regulatory mechanism in place whereby all significant industries are subject to a close oversight for compliance with the variety of laws in place in the Isle of Man. The personnel engaged for these purposes are knowledgeable and experienced. Significant efforts are made to liaise closely with record-keepers to ensure systems are in place that meet the requirements

of Isle of Man legislation. In particular, the Isle of Man tax authorities meet with record-keepers to explain the requirements under exchange of information mechanisms and what obligations these will impose on industry in responding to requests.

Accounting Information

31. Accounting information for all companies, trusts and general partnerships is available in accordance with the standards through the application of income tax and anti-money laundering requirements. Limited partnerships that do not have Isle of Man resident partners and that do not carry on a business in the Isle of Man are not subject to a specific requirement to maintain accounting records in all cases, though there is a general obligation for partners to render true accounts under partnership law. It is recommended that the Isle of Man law ensures that limited partnerships are in all cases required to maintain reliable accounting records, including underlying documentation, for at least 5 years.

Banking Information

32. Banking information must be maintained in accordance with the laws relating to financial institutions and anti-money laundering laws.

A.1. Ownership and identity information

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

Companies (ToR A.1.1)

Types of Companies

33. A company can be formed in the Isle of Man pursuant to the *Companies Act 1931*, the *Companies Act 2006* or the *Limited Liability Companies Act 1996*. The promulgation of the *Companies Act 2006* has not supplanted the *Companies Act 1931*. Professions in the Island perceived that Act had worked well, but that it was too cumbersome, as it required extensive filing with the Companies Registry, such as transfer of shares, the issuing of mortgage interests, or changes in management. For smaller businesses these events may be very infrequent, and the *Companies Act 1931* is still used for typical trading companies or other small enterprises.

34. While companies formed under the *Companies Act 2006* have fewer requirements to file information with the Companies Registry than companies incorporated under the *Companies Act 1931*, all such companies must have a registered agent who are required to maintain the same information.

Companies Act 1931

35. Under the *Companies Act 1931* it is possible to form companies limited by shares or by guarantee or unlimited companies. All companies formed thereunder are required to maintain a register that identifies the names and addresses of each member and the date on which they became or ceased to be a member (*Companies Act 1931*, s. 96).

36. The register must generally be kept at the company's registered office. Where it is kept at some other office, then the location of the register must be notified to the Companies Registry. In all cases, the register must be maintained in the Isle of Man (*Companies Act 1931*, secs. 96(1A) and (1B)).

37. The register must be open for inspection to all members, as well as to any other person, on payment of a reasonable fee (*Companies Act 1931*, s. 99). Moreover, if any person requires a part or copy of the register, it must be delivered within 10 days of the request.

38. In addition to the maintenance of a share register, every 1931 Act company must maintain certain records and make certain returns to the Companies Registry. These returns and details are a matter of public record, accessible to members of the public either at the Companies Registry or online on payment of a nominal prescribed fee. These records include:

- Register of directors and secretaries (*Companies Act 1982*, s. 21)
- Register of charges and copies of every instrument creating a charge (*Companies Act 1931*, s.79)
- Annual return (*Companies Act 1931*.109);
- Special and extraordinary resolutions of members (*Companies Act 1931*.s. 119),
- Minutes of meetings of members, and of directors (*Companies Act 1931*, s.119);
- Accounts (*Companies Act 1982*, s. 1).

39. A 1931 Act company must also submit returns (generally within 1 month of the change) as required by the Act to the Companies Registry on the occurrence of certain events such as a change in the location of the registered office, an alteration of share capital or a change of name.

Limited Liability Companies Act 1996

40. Limited liability companies (LLCs) formed under the *Limited Liability Companies Act 1996 (LLC Act)* must maintain a registered office and have a registered agent in the Isle of Man at all times (*LLC Act*, ss, 4 and 5). In order to form the LLC, a person resident in the Isle of Man must lodge the articles of organisation with the Companies Registry, indicating the name of the registered agent and the names and addresses of the members. The articles of organisation must be amended to reflect any changes in the membership of the company, and the amendment must be notified to the Companies Registry within 1 month of the change (*LLC Act*, s. 7). In addition, the company must file an annual return with the Companies Registry indicating, *inter alia*, any changes in membership (*LLC Act*, s. 10). This information is open to inspection by the public (*LLC Act*, s. 48).

Companies Act 2006

41. Under the *Companies Act 2006* it is possible to form companies limited by shares or by guarantee or unlimited companies. In all cases, the formation of the company requires that a memorandum is filed with the Companies Registry that indicates the names and addresses of each member (*Companies Act 2006*, ss. 2 and 5). Where the memorandum has been amended, the amendment must be filed with the Companies Registry within one month (*Companies Act 2006*, s.9). Regardless, all companies are required to maintain an up to date register of members (*Companies Act 2006*, s.62).

42. All companies incorporated under the *Companies Act 2006* must have a registered office and a registered agent in the Isle of Man (*Companies Act 2006*, ss. 73 and 74). The registered agent must be licensed under the *Financial Services Act 2008 (Companies Act 2006*, s. 74) and will be subject to anti-money laundering (AML) law as regulated corporate service providers. There is also a requirement to file an annual return which is to contain “such particulars as are prescribed” (*Companies Act 2006*, s. 85). The particulars required to be provided include changes in directors, registered agent, and registered office.

Protected Cell Companies and Incorporated Cell Companies

43. Companies formed under the *Companies Act 1931* or the *Companies Act 2006* may, in certain circumstances, be designated as protected cell companies (PCCs) or incorporated cell companies (ICCs). For ICCs, this is accomplished pursuant to the *Incorporated Cell Companies Act 2010*. PCCs are governed by the *Companies Act 2006 (Part VII)* and the *Protected Cell Companies Act 2004*.

44. Very generally, the assets attributable to a cell of a PCC or ICC (cellular assets) are segregated from assets attributable to any other cell of the PCC or ICC and from assets that are not attributable to any cell (non-cellular assets). A PCC or ICC may create and issue shares in respect of any of its cells.

45. For ICCs, the provisions of the *Companies Act 1931* or the *Companies Act 2006* (depending on the Act under which the company was formed) will apply to the incorporated cell itself. Therefore, the provisions regarding the maintenance of share registers in respect of the individual cells will apply as described above.

46. For PCCs that are companies formed under the *Companies Act 1931*, the definition of “share” in that Act is extended to include cell shares (*Companies Act 1931*, section 341). Consequently, the identity of the owners of cell shares is required to be entered in the register of members maintained by the company (*Companies Act 1931*, sec. 96). For PCCs that are companies formed under the *Companies Act 2006*, the definition of member includes any person in respect of which a share has been issued, including a share of a protected cell (*Companies Act 2006*, secs. 59 and 62).

Tax Law

47. All companies formed under the laws of the Isle of Man are resident for tax purposes (section 2N Income Tax Act 1970) and are therefore required to submit income tax returns. The income tax return requires disclosure of ownership information only to the extent of any Manx resident interest in the company.

48. Section 108(1) Income Tax Act 1970 provides that it is an offence to fail to make or deliver a return or to make and deliver an untrue return. The penalty for any such offence is a fine of any amount not exceeding GBP 5 000 or, in default, a term of imprisonment not exceeding six months.

49. Section 111(1)(e) Income Tax Act 1970 further provides that where a person fraudulently or negligently fails to make or deliver a return they are liable to be assessed and charged double the amount, or in the case of fraud, treble the amount of the charge which ought to have been made.

Foreign Companies

50. Companies incorporated in a foreign jurisdiction that either hold land on the Island or establish a place of business in the Isle of Man are required to register with the Companies Registry within one month from the date of the establishment of the place of business (*Companies Act 1931*, Part XI). The documents that must be delivered to the Companies Registry by a foreign company include a certified copy of the charter, statutes or memorandum and articles of the company, the details of the directors and secretaries of the

company, and the names and addresses of the Isle of Man resident persons authorised to accept service of process and any notices required to be served on the company (*Companies Act 1931*, s. 313). There is no requirement to provide information on the owners of the company.

51. Companies formed under the laws of another jurisdiction that are managed and controlled in the Isle of Man are considered resident for tax purposes, and are required under the Income Tax Acts to be registered for income tax and submit income tax returns. Ownership information must be included in an income tax return but only to the extent of any Manx resident ownership of the company.

52. There are approximately 1200 foreign companies currently registered in the Isle of Man of which 327 are resident for tax purposes. Many of these foreign companies are branches of trading companies or financial institutions. Most of the foreign companies that have an established place of business in the Isle of Man will either have a bank account or registered agent in the Isle of Man or will be regulated (for example, foreign banks or insurance companies), and thus their ownership information will be maintained under anti-money laundering law.

53. Under anti-money laundering law, a person providing corporate services to a corporation is carrying on a “relevant business” and is a “relevant person” and is therefore obligated to apply customer due diligence rules (*Proceeds of Crime (Money Laundering) Code 2010*, s. 2). The *Regulated Activities Order 2009* defines corporate services as follows:

CLASS 4 – CORPORATE SERVICES

- (3) Providing services with respect to the formation of companies.
- (4) The sale, transfer or disposal of companies.
- (5) Providing or arranging for premises for use as a registered office for a company.
- (6) Providing or arranging for accommodation address facilities for a company.
- (7) Acting as a registered agent under the Limited Liability Companies Act 1996 or the Companies Act 2006.
- (8) Acting as an officer of a company (including as director or alternate director, but excluding as secretary, of a company).
- (9) Acting as secretary of a company.
- (10) Arranging for another person to act as an officer of a company (including acting as a director, alternate director or secretary of a company).

- (11) Acting or arranging for another person to act as a nominee shareholder or nominee member of a company.
- (12) Providing administration services to a company.
- (13) Providing services with respect to the formation of partnerships.
- (14) Providing or arranging for premises for use as a place of business by a partnership.
- (15) Providing or arranging for accommodation address facilities for a partnership

54. Where the customer due diligence requirements apply, the service provider is obligated, in the case of any applicant for business (*Proceeds of Crime (Money Laundering) Code 2010*, s. 5(2)), to:

- a) identify who is the beneficial owner of the applicant;
- b) take reasonable measures to verify the identity of those persons, using relevant information or data obtained from a reliable source; and
- c) determine whether the applicant is acting on behalf of another person and, if so, identify that other person, and take reasonable measures to verify his identity using relevant information or data obtained from a reliable source.

55. There may nonetheless be circumstances where information will not be available regarding the non-resident owners of foreign incorporated companies that are resident in the Isle of Man for tax purposes. However, in these cases, the information gathering powers available to Manx tax authorities will apply (see section B.1, below).

Nominees

56. There is no requirement under Isle of Man company law relating to the provision of information as to the identity of the person on whose behalf a nominee holds shares. Shares held by a nominee are considered to be held on trust for the beneficial owner of the shares. This is a bare trust possibly created by declaration of trust. In such a case, this type of arrangement is transparent for tax purposes. Where dividends are paid in respect of the shares they are given directly to the beneficial owner, and there is no obligation for the nominee to declare ownership of the shares or the receipt of the dividends. However, a Manx resident nominee would be required to evidence to the Assessor the person to whom the dividend is paid on to and provide written evidence of the nominee arrangement in order to satisfy the Assessor that no liability to income tax arises to the nominee.

57. The Isle of Man's anti-money laundering laws cover those persons who act or arrange for another person to act as a nominee shareholder or nominee member of a company (see discussion under *Foreign Companies*, above). Where these activities are provided by way of business, then the customer due diligence rules will apply. Where a person does not provide these services "by way of business", then the obligations regarding the maintenance of identity information may not apply. The circumstances in which a nominee would not be subject to any record-keeping requirement are in any event extremely limited, and to date there have been no requests for information regarding nominee shareholders. The effect of this on exchange of information in practice should be monitored by the Isle of Man on an ongoing basis.

Bearer shares (ToR A.1.2)

58. The issuance of bearer shares is prohibited by the *Companies Act 1931* and the *Companies Act 2006*. It is noted that the *Companies Act 1931* only prohibits the issuance of bearer shares from 2004. In the case of bearer shares that were issued prior to 2004 it is necessary for holders to convert these shares to nominative shares in order to exercise their rights as shareholders (e.g. voting rights, right to receive dividends).

59. The Companies Registry reports that only 42 companies in the Isle of Man continue to have bearer shares outstanding. Moreover, a bill (*The Companies (Prohibition of Bearer Shares) Bill*) to require bearer shares to be converted to nominative shares and which makes it an offence to continue to hold bearer shares received its third reading and was passed at the sitting of Legislative Council held on the 1st of February 2011 and is currently awaiting Royal Assent (see *Recent Developments* above).

Partnerships (ToR A.1.3)

60. General partnerships and limited partnerships can be formed in the Isle of Man, which are governed by the *Partnership Act 1909* and the common law. A partnership is defined as the relationship which subsists between persons carrying on a business in common with a view to profit (*Partnership Act 1909*, s. 4(1)).

61. Limited partnerships must be registered with the Companies Registry and must provide the Companies Registry with the name of each partner (*Partnership Act 1909*, secs. 48, 50). This information must be updated within a month of any change (*Partnership Act 1909*, s. 51). Registration information on limited partnerships is publicly available (*Partnership Act 1909*, s. 58). In addition, limited partnerships must maintain a place of business and an agent for service of process in the Isle of Man (*Partnership Act 1909*, s. 48A).

62. In addition to the requirements under partnership law, the tax law applies to partnerships (whether formed under Isle of Man law or otherwise) that either derive income that is liable to tax in the Isle of Man or with respect to which one or more partners is resident in the Isle of Man. In these cases, the partnership itself is not liable to income tax, but each partner is liable to pay income tax at the appropriate rate in respect of his or her whole income, including the share of the profits of any partnership. In order to do this, income and deductions are computed at the partnership level and then allocated to the partners. Accordingly, a partnership tax return that makes such calculations must be filed, and this includes the name of each partner and the share of profits to which the partner is entitled (*Income Tax Act 1970*, s. 63).

Trusts (ToR A.1.4)

63. Trusts have been recognised in the statute law of the Isle of Man for many years and the trust concept is now well established in the Island. The principles of trust law and equity as developed in England are applied and recognised by the courts in the Isle of Man insofar as they are not contrary to any local statute or precedent. Trusts are utilised for many and various purposes and play a useful role in commercial and private client situations. The essential characteristic of a trust is that it is a legal relationship created by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.

64. A trust is not a legal entity; it is a relationship between juridical persons, namely settlor, trustee and beneficiary. The essence of a trust is that of a relationship where property is entrusted to one party to hold for the benefit of another party. All trusts are governed by the terms of the trust, which is usually reduced to writing. The property held on trust must be dealt with in accordance with the terms of the trust and the governing law. Trusts are not required to be registered (other than certain charitable trusts).

65. Under anti-money laundering law, a person carrying on a “relevant business” is a “relevant person” and is obligated to apply customer due diligence rules (*Proceeds of Crime (Money Laundering) Code 2010*, s. 2). A “relevant business” includes trust services. The *Regulated Activities Order 2009* defines trust services as follows:

CLASS 5 – TRUST SERVICES

Regulated activities

- (1) Acting as sole trustee in relation to an express trust.
- (2) Acting as trustee (other than sole trustee) in relation to an express trust.

- (3) Providing trust administration services in relation to an express trust.
- (4) Acting as a trust corporation.
- (5) Acting as a protector in relation to an express trust (that is, a person other than a trustee who, as the holder of an office created by or under the terms of the trust, is authorised or required to participate in the administration of the trust).
- (6) Acting as an enforcer (within the meaning of the Purpose Trusts Act 1996) in relation to a purpose trust.

66. Where the customer due diligence requirements apply, the trust service provider is obligated to identify the settlor and any known beneficiary of the trust (*Proceeds of Crime (Money Laundering) Code 2010*, s. 5(3)(c) and (d)). The beneficiaries that must be identified are not limited by any percentage interest. The definition of “trust services” does not distinguish between trusts formed under Isle of Man law or trusts formed under foreign law.

67. In the Isle of Man, the provision of trust services is also a regulated activity which means that those persons conducting this activity “by way of business” must generally hold a licence issued by the FSC. There are 129 licensed trust service providers in the Isle of Man, serving approximately 20 000 trusts. The FSC, in its supervisory role, conducts on-site visits to assess compliance with anti-money laundering and countering the financing of terrorism rules, including customer identification procedures, the maintenance of information on the source of funds and source of wealth, and record-keeping obligations (see below, under “*Regulatory Framework*”).

68. Under Isle of Man tax law trustees of trusts that have Isle of Man beneficiaries or that earn income from sources in the Isle of Man will be required to file a tax return. However, where a trust has no Isle of Man beneficiary and no Isle of Man source income then there will be no Isle of Man tax liability and no obligation to file a tax return, even if the trust has a trustee resident in the Isle of Man and if its assets are managed in the Isle of Man. Often, trustees will seek clearance from the tax authorities to establish that there is no liability to tax in the Isle of Man.⁴ Tax authorities report that 437 trusts have liability to Manx tax (and so have filed tax returns) and 5600 trusts have sought clearance certificates.

4. In order to obtain a clearance certificate, a copy of the trust deed must be filed and a standard trust questionnaire completed which includes the trust name, trustees names and addresses, the settlor (if Isle of Man resident), the trust type, confirmation whether the trust has Isle of Man source income, whether there are Manx resident beneficiaries or if Manx residents are excluded persons, and details of any professional agent acting for the trustees.

69. Where a person does not provide trust services “by way of business”, then the obligations regarding the maintenance of identity information under anti-money laundering laws may not apply, however, the common law will require that the trustee be able to identify the beneficiaries, and the settlor will typically be identified by the trust deed. A trustee must at all times be able to provide a beneficiary with information concerning the operation of the trust (see section A.2, below). This will include not only accounting information but other trust documents, such as the trust deed and documents relating to transfers of property made by a settlor. This has not prevented the effective exchange of information, and the effect of this on EOI in practice should be monitored by the Isle of Man on an ongoing basis. It is also conceivable that a trust could be created which has no connection with the Isle of Man other than that the settlor chooses that the trust will be governed by the laws of the Isle of Man. In that event there may be no information about the trust available in the Isle of Man.

Foundations (ToR A.1.5)

70. It is not currently possible to form foundations under Isle of Man law (see *Recent Developments* in relation to foundations).

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

Companies

71. For companies formed under the Companies Act 1931, failure to maintain the register of members (including the requirement to keep it up to date) carries a penalty of a fine not exceeding GBP 5000 on summary conviction, and a fine without limit in cases of conviction on information (see Companies Act 1931, secs. 96(2), 330). This same penalty applies to an agent who maintains the register on behalf of the company (Companies Act 1931, s. 99A). A fine of GBP 5000 also applies in the case of a failure to deliver a copy or portion of the register on request (Companies Act 1931, sec. 99(3)).

72. In respect of companies formed under the *Companies Act 2006*, failure to maintain the register of members is subject to a fine not exceeding GBP 5000 (*Companies Act 2006*, secs. 62, 78 and 223).

73. Where an LLC fails to provide the Companies Registry with its annual return (which must indicate the names and addresses of the current members), the LLC is guilty of an offence and liable to a fine not exceeding GBP 5000 and the LLC is deemed to be defunct (*LLC Act*, s. 10(3)). The same sanction applies where the LLC fails to notify the Companies Registry of a change in its registered agent (*LLC Act*, 9(2)), who will be

required to maintain information on the members of the LLC in accordance with customer due diligence rules. If the registered agent is in breach of the anti-money laundering laws this is a criminal offence that is liable, on summary conviction, to a custody term not exceeding six months or to a fine not exceeding GBP 5000, or to both, or on conviction on information, to custody not exceeding two years or to a fine, or to both (*Proceeds of Crime (Money Laundering) Code 2010*, para. 4(2)).

Partnerships

74. Failure to register as a limited partnership carries the consequence that the partnership is deemed to be a general partnership and each partner a general partner (*Partnership Act 1909*, s. 48). Therefore, limited partners would no longer have limited liability and could be held liable jointly and severally for the debts of the partnership. In addition, providing false information for the purposes of registration carries the penalty of imprisonment for a term not exceeding two years (*Partnership Act 1909*, s. 54).

75. Where a partnership (whether formed under Isle of Man law or otherwise) that either derives income that is liable to tax in the Isle of Man or with respect to which one or more partners is resident in the Isle of Man fails to file a tax return then the court may order that the person required to file the return take whatever action necessary to remedy the failure (*Income Tax Act 1970*, s. 108). In addition, the person is liable to a penalty not exceeding GBP 5000 and in default of payment to imprisonment for any term not exceeding six months (*Income Tax Act 1970*, s. 112).

Trusts

76. Where a trust service provider is in breach of the anti-money laundering laws, *i.e.* they have not complied with the customer due diligence requirements, this is a criminal offence that is liable, on summary conviction, to a custody term not exceeding six months or to a fine not exceeding GBP 5000, or to both, or on conviction on information, to custody not exceeding two years or to a fine, or to both (*Proceeds of Crime (Money Laundering) Code 2010*, para. 4(2)). In addition, if a licence holder is in contravention of any statutory provision (other than one contained in or under the *Financial Services Act 2008*) the FSC may have recourse to a number of sanctions, including revocation or suspension of a licence, issuing directions concerning the fitness and propriety of key persons of licence holders, issuing public statements or appointing a receiver or business manager (*Financial Services Act 2008*, s. 43).

Regulatory Framework

77. There is little evidence of the use of enforcement measures, whether the imposition of fines or criminal prosecution of those who contravene the various laws. However, there appears to be close oversight of all regulated businesses (*i.e.* corporate and trust service providers, financial institutions, the insurance sector and investment funds) for anti-money laundering purposes, which go through a thorough on-site review every one to three years depending on their risk profile. There is close communication between the regulatory bodies and industry, and there is an effort to work through situations where there are concerns that controls to meet rules are not in place. Overall, the high standard of regulation in the Isle of Man is well entrenched.

78. The Companies Registry is part of Department of Economic Development and is responsible for maintaining six different registries – companies formed under the *Companies Act 1931*, *Companies Act 2006*, companies formed under the *Limited Liability Companies Act 2006*, registry of business names, registry of limited partnerships, and the register of foreign companies that have established a place of business in the Isle of Man. For all of the entities registered with the Companies Registry, documents are public record and can be searched. Since 2000, documentation for every registered entity has been scanned and put on line. This includes dissolved companies. Documentation that dates from prior to 2000 are available in the archives. The competent authority encourages exchange of information partners to conduct their own searches where information is publicly available.

79. There are approximately 31 700 Isle of Man companies currently registered with the Companies Registry. These are comprised of 26 000 companies formed under the *Companies Act 1931*, 5 500 companies formed under the *Companies Act 2006*, and 200 LLCs. In addition, there are approximately 1200 foreign companies registered with the Companies Registry. It is standard practice to cross-reference filings with prior information to ensure consistency, for example, with respect to information regarding the identity of the registered agent or location of the registered office. Enforcement procedures are for the most part limited to the imposition of late filing fees. Approximately 80 percent of companies are managed/administered by a class 4 licence holder who is charged with ensuring compliance with anti-money laundering and other rules and is supervised by the Financial Supervision Commission (discussed below). The misrepresentation of companies as Manx companies, or using names that give the indication that they are engaged in a regulated industry (such as banking or insurance) where this is not the case, is taken very seriously by Manx authorities and a number of notices are issued each year warning investors of such activity.

80. The Companies Registry institutes strike off procedures where a company fails to fulfil its statutory requirements, for example where it fails to

submit an annual return or maintain a registered office, and other companies apply for dissolution. Where a company fails to file an annual return, then a first notice is sent to the company whereby it has two months to remedy the failure. Where the company does not respond, then a second notice is sent and an announcement is placed in the local paper. If no response is received to this second notice after two months then the company is struck off. Approximately 1400 companies are struck off each year.

Corporate and Trust Service Providers

81. All corporate and trust service providers (CSPs/TSPs) are supervised by the FSC, overseen by a team of 9 professionals who are charged with ensuring compliance with anti-money laundering rules as well as other regulations covering CSPs/TSPs. There are approximately 200 firms that are licensed as corporate or trust service providers, most of which hold licenses for both activities. CSP/TSP firms employ approximately 2000 people in the Isle of Man, with a typical firm employing 5-10 persons.

82. The firms in the Isle of Man tend to be full-service, that is they are not just involved in one aspect of corporate or trust services such as company formation or acting as registered agent. Indeed, the cumulative effect of anti-money laundering regulations, licensing requirements and compliance costs generally push firms to provide full service. Moreover, the FSC indicates that its licensing policy favours a full service approach.

83. Each firm is required to provide an annual compliance return signed under penalties of perjury. The FSC reviews the annual reporting documents and conducts on-site visits of each firm. On-site supervision is done on a 3-year cycle – firms that pose a higher risk for money-laundering or terrorist financing activities are subject to annual visits, while lower-risk firms are visited once every three years. Most of the corporate and trust service providers are medium to low risk. Corporate and trust service providers are also vetted to show the personnel are fit and proper, which include references and police checks. The key persons of CSPs and TSPs (as well as other licence-holders' key persons) are vetted to ensure they are fit and proper to undertake their roles. Fitness and propriety includes competency, integrity and solvency. Key persons are defined in section 48 of the Financial Services Act 2008 and include in practice directors, company secretaries, compliance officers, MLRO, controllers, and those who have significant power or responsibility with regard to regulated activities.

84. On-site visits have both formal and informal aspects and may include meetings and discussions with the firm prior to a formal supervisory visit which examines the business globally. Subsequent visits are based on a prior questionnaire, and the visits will then focus on items previously identified

and the information provided in the questionnaire. Enforcement measures can include revoking license and disqualification of directors – and these occur in a handful of cases every year – however the tendency is to work through issues with the firm concerned to ensure compliance with regulatory and statutory obligations.

Insurance

85. The insurance sector in the Isle of Man is subject to the oversight of the Insurance and Pensions Authority (IPA), which is established pursuant to the *Insurance Act 2008*. The group handling oversight consists of 14 staff members who are professionally qualified in accountancy, law, insurance, and generally have experience working in the insurance industry. In addition, the IPA has access to external expertise, for example legal, accounting or actuarial services in particular cases.

86. The insurance business was first established in the early 1980s and consists of both life and non-life insurers. The main aspect of this is captive insurance, which began with a small number of firms providing insurance to parent companies in the United Kingdom and which has grown to about 150 companies today. Captive insurance companies undertake a relatively small volume of transactions, but account for a large share of the market by monetary value. Regarding life insurance, there are a smaller number of firms, but this business is more labour intensive and so the companies tend to be larger. There are 15 active life insurance companies which employ about 2000 people. The largest single life insurance company in the Isle of Man employs approximately 350 people. By contrast, the 150 or so captive insurers employ about 150-200 people. Since these companies, in order to be licensed, must do business in the Isle of Man they will generally hire an insurance manager. Insurance managers must themselves be licensed, and there are about 7 managers in the Isle of Man that account for the majority of this business.

87. Supervision of the insurance industry is a combination of annual reporting obligations plus a program of on-site visits. All insurance companies are required to provide detailed financial returns annually. Individual circumstances then determine the scope, frequency and nature of the on-site visit. The on-site program was introduced in 2001, at which time the focus was on anti-money laundering risks, particularly in the life insurance sector. In addition to compliance with anti-money laundering rules, there is industry specific regulation under the *Insurance Act 2008*, as well as binding guidance.

88. Preparation for on-site visits commences 6 months prior to visit, where the team members (2 professionals plus a supervisor), reviews risks and issues for that particular insurer and consider events in the prior 12-18 months (for example, payments made and new business acquired). A questionnaire

is then developed, consisting of standard plus individualised questions. The intention is to focus the issues to be raised during the visit and identify precisely which individuals should be interviewed. Regardless of the type of insurance company, compliance with anti-money laundering rules is typically a focus, recognising that risks on the captive side are less pronounced. For a large insurance company the on-site visit generally takes 3-4 days; for small companies a visit last perhaps 2 days. The visit will review specific transactions, logs, and sample files.

89. In addition to formal on-site visits, there are also ad hoc visits for particular purposes. These may be on very short notice following a complaint received from the public or a request from another regulatory body.

90. The emphasis regarding enforcement for the IPA is to work with licensees to identify issues where improvement is needed. Where an issue is not fundamental then its approach is to work with the company to remedy their procedures. A case involving serious violation with Isle of Man law in this area has not arisen in last 3 or 4 years. In a large case a number of years ago there was a systemic failure in the control system at one company, the IPA employed an external auditor to produce a report which led to wholesale changes in the company's approach. The IPA takes a collaborative approach with industry, but asserts a clear dividing line between regulator and business.

Determination and factors underlying recommendations

Determination	
The element is in place	
Factors underlying recommendations	Recommendations
Information regarding the ownership of foreign companies that are resident for tax purposes in the Isle of Man may, under certain limited circumstances, not be available.	Where foreign companies are resident for tax purposes in the Isle of Man rules should be in place to ensure the availability of information on the controlling owners of such companies.
Rating	
To be completed once a representative subset of Phase 2 reviews have been completed.	

A.2. Accounting records

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

General requirements (ToR A.2.1)

91. The requirements for companies to maintain accounting records under company law are similar in the three relevant Acts, and provide that accounting records must (i) correctly explain all transactions, (ii) enable the financial position of the company to be determined with reasonable accuracy at any time, and (iii) allow financial statements to be prepared (*Companies Act 1982*, s. 1 (for companies formed under the *Companies Act 1931*), *Companies Act 2006*, s. 80, and *Limited Liability Companies Act 1994*, s. 19). Moreover, under the tax law all companies (including foreign companies that are resident in the Isle of Man for tax purposes) are liable to tax and are therefore required to maintain information “sufficient to prepare such accounts as the tax authorities may request” (*Income Tax Act 1970*, s. 62C). This requirement applies regardless of the fact that the standard income tax rate for both resident and non-resident companies is 0 percent.

92. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives (*Partnership Act 1909*, s. 30). In addition, the tax law requires that all partnerships (whether formed under Isle of Man law or otherwise) that either derive profits from business carried on in the Isle of Man or which have one or more partners resident in the Isle of Man must file a tax return (*Income Tax Act 1970*, s. 63). The obligation to file a return triggers the requirement to maintain such “records as may be necessary for making a true, correct and complete return” (*Income Tax Act 1970*, s. 80A). Moreover, any person that is obliged to prepare a return can by notice be required to “prepare (or have prepared) such accounts as the notice may require and deliver such accounts within such reasonable period as may be specified” (*Income Tax Act 1970*, s. 62B). The notice may require the accounts to be certified or audited.

The requirement to maintain accounting records is an integral part of sections 80A and section 62C (which provides for the issuing of notices requiring accounts to be prepared and produced to the Assessor). The penalty for non-compliance under Section 80A is a fine not exceeding GBP 10 000 and under section 62C a fine of up to GBP 5 000 or 6 months in default (s.62B(4)ITA).

93. Where a limited partnership formed under Manx law has no partners that are resident in the Isle of Man nor any Manx source income, there may be no tax reporting requirements placed on it. However, limited partnerships are required to have a place of business in the Isle of Man, which would either mean that it is subject to tax law (since it is carrying on business in the Isle of

Man) or, if it is being provided a place of business through a service provider (such as a registered office), then this would constitute a “corporate service” and anti-money laundering rules would apply.

94. Where anti-money laundering rules apply, a professional service provider will be required to maintain a record of all transactions carried out in the course of the business, including account files and business correspondence, and such other records as are sufficient to permit reconstruction of individual transactions (*Proceeds of Crime (Money Laundering) Code 2010*, s. 16, also see guidance rules in respect of record-keeping requirements described in section A.3, below). (Failure to maintain such records is subject to the penalties described in section A.1.6, above.) However, where the service provider is merely providing, for example, a registered office for the partnership, these records would only relate to those transactions relating to the maintenance of the registered office, and not necessarily to any other activities or transactions undertaken by the partnership. In such a case, there may be no requirement to maintain accounting records. Consequently, there is no specific requirement to maintain accounting records for limited partnerships in all cases.

95. For trusts, a trustee or any person administering assets on behalf of the trust will be subject to the record-keeping requirements pursuant to anti-money laundering requirements as described above. In addition, specific guidance has been published that applies to trust service providers pursuant to which they are expected to ensure that the trust property is clearly ascertained, and its value and nature are understood. On an on-going basis trust service providers should maintain:

- Original trust documents, including subsidiary documents, which should be held in safe custody.
- Minute book to record the decisions of the trustee.
- Details of the assets held in trust and any liabilities incurred as trustee.
- Accounts and tax records.
- Copies of relevant correspondence.
- Details of settlor, beneficial objects and protector, including full CDD as appropriate in accordance with anti-money laundering legislation.
- Any legal and taxation advice taken.

While the guidance does not have force of law, it is noted that the law does provide that a court can, in determining whether a person has complied with the record-keeping requirements imposed by the anti-money laundering law, take

into account any relevant supervisory or regulatory guidance which applies to that person and which is given by a competent authority (*Proceeds of Crime (Money Laundering) Code 2010*, s. 4(3)(a)). Therefore, these requirements will allow the preparation of accounts in accordance with the standards. This will account for the vast majority of cases, since a trustee will be subject to anti-money laundering law in any case where the trustee acts by way of business. Even in circumstances where the trustee is not acting by way of business, it is well established in English law that it is the “duty of a trustee to keep clear and distinct accounts of the property he administers, and to be constantly ready with his accounts”.⁵ If trustees default in rendering accounts, any beneficiary is entitled to have accounts taken by the court. The trustees will normally be ordered to pay personally the costs of obtaining the order, the costs of taking the account and might also be removed. Where trustees have been guilty of active breaches of trust or wilful default or omission, they may be held personally accountable for any loss.⁶ These rules would apply equally to trustees of a trust governed by Manx law since the rule in the Manx courts is that in the absence of any Manx legislation or case law to the contrary, decisions of English courts have great persuasive force when ascertaining the common law of the Island.

Underlying documentation (ToR A.2.2)

96. The requirement to maintain accounting records under the income tax law includes the obligation to maintain supporting documents such as accounts, books, deeds, contracts, vouchers and receipts (*Income Tax Act 1970*, s. 80A(4)). This will apply to all companies as well as any partnership required to file a tax return. For limited partnerships that are not required to file a tax return (because they have no resident partners nor any Manx source income), the duty in partnership law to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives (*Partnership Act 1909*, s. 30), implies a duty to substantiate such accounts by means of supporting documents such as contracts, invoices and receipts.

97. In any case where the trustee is acting by way of business, or the assets of the trusts are being managed by a service provider, anti-money laundering rules apply to the service provider. In that case, the service provider will be required to maintain a record of all transactions carried out in the

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5. *Lewin on Trusts* 17th Edition, p. 627; *Underhill and Hayton Law of Trusts and Trustees*, 15th Edition, p. 657. Trustees must be ready to cause the accounts of the trust property to be examined or audited by an independent accountant and must for that purpose produce such vouchers and give such information to him as he may require. The Trustee must allow a beneficiary to inspect the trust accounts and all documents relating to the trust. See *Halsburys Laws of England* Vol 48 4th Edition para 961 and 962.
 6. *Lewin on Trusts* 17th Edition, p. 627, 1198 and 1199.

course of the business, including account files and business correspondence, and such other records as are sufficient to permit reconstruction of individual transactions (*Proceeds of Crime (Money Laundering) Code 2010*, s. 16). For trusts in respect of which the trustee is not subject to anti-money laundering laws, there are general obligations under the common law to be able to account to the beneficiaries, which as stated above requires that the trustee maintain clear and distinct accounts. This requires that the trustee should be in a position to substantiate any transactions relating to trust assets by means of supporting documents such as contracts, invoices and receipts.

Document retention (ToR A.2.3 and A.2.4)

98. The document retention period under the tax law is 6 years and this applies to all companies (*Income Tax Act 1970*, sec. 62C) and partnerships required to file a tax return (*Income Tax Act 1970*, s. 80A(2)(b)).

99. For trusts and partnerships that are not otherwise subject to a prescribed retention period, the common law rules imply a requirement to maintain records, but does not specify a period. A trustee or partner may be required to account to a beneficiary or partner (as the case may be) at any time during the person's trusteeship or term as partner, and this period would extend to the expiry of any prescription period for actions against the trustee or partner, which is generally 6 years from the date the cause of action accrued (*Limitation Act 1984 (as amended)*, s. 2). This may be taken to mean that such records should be retained for at least the duration of the trusteeship or partnership plus 6 years. Where anti-money laundering rules apply, documents must be kept for at least 5 years (*Proceeds of Crime (Money Laundering) Code 2010*, s. 17).

Determination and factors underlying recommendations

Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
Limited partnerships are not subject to a specific requirement to maintain accounting records in all cases.	Isle of Man law should ensure that limited partnerships are in all cases required to maintain reliable accounting records, including underlying documentation, for at least 5 years.
Rating	
To be completed once a representative subset of Phase 2 reviews have been completed.	

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3. 1)

100. The Isle of Man's anti-money laundering laws apply to persons carrying on the following activities (*Proceeds of Crime (Money Laundering) Code 2010*, Schedule 1):

- Any activity carried on for the purpose of raising money authorised to be borrowed under the *Isle of Man Loans Act 1974*.
- Investment business within the meaning of section 3 of the *Financial Services Act 2008* and Class 2 of Schedule 1 to the Regulated Activities Order 2009 as if the exclusions contained within the Order or the *Financial Services (Exemptions) Regulations 2009* had not been made.
- Business carried by a society registered as a credit union within the meaning of the Credit Unions Act 1993.
- Deposit taking within the meaning of section 3 of the Financial Services Act 2008 and Class 1 of Schedule 1 to the *Regulated Activities Order 2009* ignoring any exclusions for that class contained within the Order or the *Financial Services (Exemptions) Regulations 2009* had not been made.
- Any activity carried on for the purpose of raising money by a local authority.
- The business of a *bureau de change*.
- The business of the Post Office in respect of any activity undertaken on behalf of the National Savings Bank.
- Any activity involving money (including any representation of monetary value) transmission services or cheque encashment facilities.
- The provision of safe custody facilities for cash or liquid securities on behalf of other persons.
- Lending including, but not limited to, consumer credit, mortgage credit factoring and the finance of commercial transactions.
- Financial leasing arrangements in respect of products other than consumer products.
- Any business involving the issuing and managing of means of payment (including but not limited to credit and debit cards, cheques, traveler's cheques, money orders, bankers' drafts and electronic money).

- The business of providing financial guarantees and commitments.
- Administering or managing money on behalf of other persons.

101. Consequently, banks and other financial institutions are covered by the customer due diligence and record-keeping requirements of the Isle of Man's anti-money laundering laws. This includes identifying clients and maintaining records of all transactions undertaken on the client's behalf (*Proceeds of Crime (Money Laundering) Code 2010*, secs. 6, 9, 16) whether in respect of an on-going relationship or a one-off transaction. The FSC has prepared a handbook that elaborates on the types of transactions records that must be maintained in order to satisfy the statutory requirements, which outlines that in every case transaction records must contain (AML/CFT Handbook, s. 8.2):

- a) details of the customer or counterparty, including account details;*
- b) the nature of the transaction; and*
- c) details of the transaction.*

102. The handbook further states that a license holder must ensure that a satisfactory audit trail can be established for AML/CFT purposes and that a financial profile of a suspected account or client company can be established (AML/CFT Handbook, s. 8.2.1). To satisfy these requirements, the following additional information must be sought as appropriate (based on risk), and transaction records retained of:

- a) the volume of funds flowing through the account/turnover of client company;*
- b) the origin of the funds;*
- c) the form in which the funds were offered or withdrawn, i.e. cash, cheque, etc.;*
- d) the identity of the person undertaking the transaction;*
- e) the destination of the funds;*
- f) the form of instruction and authority;*
- g) the name and address (or identification code) of the counter party;*
- h) the security dealt in, including price and size;*
- i) whether the transaction was a purchase or a sale;*
- j) the account details from which the funds were paid (including, in the case of cheques, bank name, sort code, account number and name of account holder);*

- k) *the form and destination of payment made by the business to the customer;*
- l) *whether the investments were held in safe custody by the business or sent to the customer or to his/her order and, if so, to what name and address;*
- m) *activities of the client company; and*
- n) *any large item/exception reports created in the course of transaction monitoring.*

103. While the handbook is guidance that does not have the force of law and so is not strictly binding on financial institutions, the FSC maintains that in practice the level of detail in the handbook serves as a safe harbour for financial institutions. Moreover, the courts can take notice of the guidance issued by the Regulatory authority (*Proceeds of Crime (Money Laundering) Code 2010*, sec. 4(3)). Where financial institutions are not following the handbook, then they are issued a recommendation by the FSC. There have been recommendations that banks improve their monitoring system, typically for being too manual and not sufficiently automated. Where there is a breach of the Code itself, then the action taken by the regulator will depend on the nature of the breach. In practice, breaches tend to be of a technical nature and the regulator works with the institution to resolve the issue.

104. Failure to maintain records is an offence (*Proceeds of Crime (Money Laundering) Code 2010*, s. 4(1)) and any person guilty of this offence is liable:

- (a) on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding GBP 5 000, or to both; and
- (b) on conviction on information to custody not exceeding 2 years or to a fine, or to both.

105. In addition, failure by a bank to maintain banking information, as a breach of the AML Code, is a contravention of section 43 FSA 2008 thereby allowing the Commission to take regulatory action against the bank. In these circumstances the Commission can also take action against the individuals involved.

Regulatory Environment

106. A team of 4 individuals within the FSC is dedicated to the regulatory supervision of the banking industry in the Isle of Man. There are 34 banks doing business in the Isle of Man. A range of institutions is represented, from large banking groups to small local savings banks. The industry employs approximately 2700 people. While deposits have grown over the past decade,

the number of banking licenses have reduced through mergers and consolidations. The licensing rules regarding banks were reformed in 1998 with the introduction of a new banking law and code. These rules were further updated in 2008 with the introduction *Financial Services Act 2008*.

107. Oversight of the banking industry is conducted in a similar fashion to that described in respect of CSPs/TSPs, consistent with the FSC’s published guidance. This includes a combination of annual reporting on compliance measures along with a cycle of on-site visits to ensure compliance. The standards that apply to branches are somewhat different in terms of liquidity requirements and foreign exchange rules, but record-keeping requirements and customer due diligence rules are identical whether they apply to Isle of Man banks or branches of foreign banks.

108. Supervision of banks is desk based coupled with on-site visits. On-site visits for anti-money laundering purposes have been taking place since 1998 and in 2009-2010 detailed reviews have been undertaken in connection with the introduction of the *Financial Services Act 2008*. On-site visits will subsequently be conducted on a 1 to 3-year cycle, depending on level of risk. Regardless of risk, there is an annual meeting with each bank to discuss compliance with anti-money laundering rules and each bank must complete an “annual compliance report”. Particular areas of focus within the industry have been the procedures around introduced business and the monitoring of accounts. The FSC reports excellent communication with banks on how they comply with regulatory requirements and there is no indication that there is any deficiency in the maintenance of bank records.

Determination and factors underlying recommendations

Determination
The element is in place.
Rating
To be completed once a representative subset of Phase 2 reviews have been completed.

B. Access to Information

Overview

109. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether the Isle of Man's legal and regulatory framework gives the authorities access powers that cover all relevant people and information, and whether rights and safeguards are compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice.

110. The power of the Isle of Man tax authorities to obtain information for exchange of information purposes in tax matters is clear. Each exchange of information arrangement is brought into force by an order of Tynwald that provides that the arrangement shall have effect notwithstanding any other enactment, and which modifies the basic access powers contained in the *Income Tax Act 1970* to ensure that they apply for the purposes of the arrangement. In addition to the powers available to the tax authorities under the tax law, requests for information in tax matters can also be channelled through the Attorney-General in criminal cases even in the absence of an exchange of information arrangement.

111. Authorities have sufficient power to compel production of information, including, in appropriate cases, search and seizure where there are reasonable grounds for suspecting that an offence involving fraud in connection with or in relation to income tax is being, has been or is about to be committed. In practice, the tax authorities have not had to resort to such powers, as all requests for information have been processed without any objection by the person in possession of the information.

112. There are limitations on the access to information due to exceptions that apply in the case of legal privilege, the confidential communications of a tax adviser, or that relate to the work of an auditor. In practice, these

exceptions have never been invoked to prevent the tax authorities from obtaining information for the purposes of an exchange of information request, and, if they did arise, the Isle of Man authorities will authenticate the validity of any claim to these exceptions. The Isle of Man should review its policy regarding access to information held by legal advisers, tax advisers and auditors and ensure that it is compatible with effective exchange of information and record and analyse each case where an exception to disclosure has affected its ability to provide the information requested in whole or in part.

113. There are no statutory secrecy provisions in Isle of Man law that impede effective exchange of information in tax matters. Notification rights are provided for, however, these may be lifted in appropriate circumstances. There are no rights of appeal, although there is a general right to bring a petition of *doleance*, the equivalent of judicial review, against government action. There is no indication that this right is incompatible with effective exchange of information.

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).

Bank, ownership and identity information (ToR B.1.1)

Access powers generally

114. The powers of the Assessor of Taxes to call for information are contained in sections 105C to 105O of the *Income Tax Act 1970*. These powers allow the Assessor to obtain documentary information from any person with respect to that person’s liability to tax or from any other person in respect of a taxpayer’s liability. The powers, as they are drafted for domestic purposes, do not contemplate obtaining information for the purpose of fulfilling an exchange of information request. The Isle of Man has addressed this issue by revising these powers specifically for the purpose of each exchange of information arrangement entered into. These powers are modified to allow for access to information in response to a request for information under a double tax arrangement (DTA) or tax information exchange agreement (TIEA) by means of an order under s. 19 of the *Income Tax Act 2003* (for TIEAs) or under s. 54 of the *Income Tax Act 1970* (for DTAs). Where an order has been made, then the arrangement “shall have effect notwithstanding anything in any enactment”.

115. Orders have been made in respect of all DTAs and TIEAs entered into by the Isle of Man. The orders provide for modifications to the content of

sections 105C to 105O of the *Income Tax Act 1970*, to specify that notices for the production of information may be made by the Assessor where the Assessor “believes it to be necessary for the purpose of responding to a request made by the contracting party in accordance with the applicable arrangements.” In addition, the definitions of “tax” and “taxpayer” are modified such that liability for tax under the contracting party’s laws is relevant for the purpose of exercising the Assessor’s powers under the *Income Tax Act 1970*.

116. Documentary information means any statement, fact, record or document in any form (*Income Tax Act 1970*, s. 105O). The scope of this definition provides the competent authority the power to put questions to a person when requested by an exchange of information partner. There are penalties for failure to comply or for providing information that is not true. (*Income Tax Act 1970*, sec. 105O).

117. In relation to criminal tax matters (which includes taxes of any kind) information can also be obtained and provided under the *Criminal Justice Acts (CJA) 1990 and 1991*.

118. Section 24 *CJA 1990* provides for the Attorney General, in any case in which it appears to him on reasonable grounds that there is a suspected offence involving serious or complex fraud, wherever committed, to issue a notice requiring any person whom he has reasonable ground to believe has relevant information to produce documents which appear to him to be relevant to the investigation or any documents of a specified class which appear to him to so relate. Requests for assistance under this section can be made by any person who has conduct of a criminal investigation in another country which includes the police or taxation authorities.

119. Section 21 *CJA 1991* (as substituted by Schedule 6 of the *Proceeds of Crime Act 2008*) provides that where the Attorney General receives a request for assistance from a court, tribunal or prosecuting authority in another country or territory or from any other relevant authority in obtaining evidence in the Island in connection with criminal proceedings or a criminal investigation or administrative proceedings (as defined) or an investigation into an act punishable in such proceedings the Attorney General may apply to the High Bailiff (Summary Court) to receive such evidence as may be appropriate for the purposes of giving effect to the request.

120. If it appears to the Attorney General that the request for assistance relates to a fiscal offence in respect of which proceedings have not yet been instituted, the Attorney General may not arrange for the evidence to be so obtained unless –

- a) “the request is from a country or territory which is a member of the Commonwealth or is made pursuant to a treaty to which the United Kingdom is a party and extends to the Island; or

- b) the Attorney General is satisfied that if the conduct constituting the offence were to occur in the Island, it would constitute an offence in the Island.”

121. Where information is requested in the form of deposition of witnesses, then the powers under the *Income Tax Act 1970* will not allow this. However, the *Criminal Justice Acts 1990* and *1991* allow for testimony to be taken before a judge, and a request under those acts can be made in cases of tax fraud whether or not an exchange of information arrangement is in effect. The Attorney-General’s office in the Isle of Man received more than 90 requests for information in 2009 from a variety of countries under the *Criminal Justice Act 1990* and *1991*, and have two full-time lawyers dedicated to handling such requests. It is important to note that there is no necessity that requests for information in criminal tax matters must be processed under the *Criminal Justice Acts*, as exchange in these matters can also be processed under a TIEA or DTA.

122. The access powers in the *Income Tax Act 1970* described above do not apply to personal records, journalistic material or items subject to legal privilege (*Income Tax Act 1970*, s. 105G). Journalistic material is any material created for journalistic purposes, whereas personal records refer generally to medical records (*Income Tax Act 1970*, s. 105O, as defined in the *Police Powers and Procedures Act 1998*). The term “items subject to legal privilege” is defined as (*Income Tax Act 1970*, s. 105O, *Police Powers and Procedures Act 1998*, s. 13):

- (1) *Subject to subsection (2), in this Act “items subject to legal privilege” means –*
- (a) *communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;*
 - (b) *communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and*
 - (c) *items enclosed with or referred to in such communications and made –*
 - (i) *in connection with the giving of legal advice; or*
 - (ii) *in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them.*

- (2) *Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.*

123. Subsections (b) and (c) of the definition include a concept of legal privilege that do not appear in the Model TIEA. It is important to note that the extension of legal privilege to items made in contemplation of legal proceedings or in connection with the giving of legal advice does not mean that *any* document or piece of information provided to a legal adviser in contemplation of legal proceedings becomes an item subject to legal privilege. The document or piece of information itself must have been made in contemplation of those proceedings. The same would be the case with items enclosed with communications relating to the giving of legal advice. Consequently, these rules do not allow a person to shield material from disclosure to the tax authorities by simply sending the material to a legal adviser.

124. The extension of privilege to include communications between a legal adviser and a person other than the legal adviser’s client does broaden the scope of the privilege, though not beyond the limitations inherent in the definition of “communications” and of items enclosed with such communications – that is, a “communication” would not include a transactional document such as a contract or lease or share register. If in the context of an on-going tax investigation a person were to correspond with his or her legal adviser concerning the facts of the case attaching a document detailing these facts (where the document was made for the purpose of this communication), the email and the attached document would be items subject to legal privilege. If, additionally, transaction documents were attached to the email, such as contracts or invoices that related to the facts of the case, these documents would not be items subject to legal privilege. Moreover, to the extent that a legal adviser acts in some capacity other than the giving of legal advice, for example as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and relating to any such activity would not be covered by the privilege.

125. The power to obtain information under the tax law is also restricted in the case of information held by auditors and tax advisers. Section 105G of the *Income Tax Act 1970* provides that a notice under section 105D(2) of that Act:

- a) *does not oblige a person who has been appointed as an auditor for the purposes of any enactment to deliver or make available documents which are his property and were created by him or on his behalf for or in connection with the performance of his functions under that enactment, and*
- b) *does not oblige a tax adviser to deliver or make available documents which are his property and consist of relevant communications.*

126. For these purposes, an auditor appointed for the purposes of any enactment would include an auditor appointed pursuant to an obligation to maintain audited accounts under the company law or tax law. The term “relevant communications” means communications between the tax adviser and a person in relation to whose tax affairs he has been appointed, or any other tax adviser of such person, the purpose of which is the giving or obtaining of advice about any of those tax affairs (*Income Tax Act 1970*, s. 105G(2)).

127. With respect to the limitation on access to information held by tax advisers, Isle of Man authorities emphasise that this applies only to the advice of the tax adviser, and not to any transaction document executed on the client’s behalf. For example, if the tax adviser were to execute a transaction on behalf of the client, the transaction documents themselves (such as company formation documents) would not be covered by the exception. Similarly, if the tax adviser were charged with maintaining a share register in respect of a company owned by the client, the register itself would not constitute a “relevant communication”.

128. There are limitations on the access to information due to exceptions that apply in the case of legal privilege, the confidential communications of a tax adviser, or that relate to the work of an auditor. In practice, these exceptions have never been invoked to prevent the tax authorities from obtaining information for the purposes of an exchange of information request, and, if they did arise, the Isle of Man authorities will authenticate the validity of any claim to these exceptions. The Isle of Man should review its policy regarding access to information held by legal advisers, tax advisers and auditors and ensure that it is compatible with effective exchange of information. The Isle of Man authorities maintain a register used to record all exceptions to disclosure, which would identify any cases raised by record keepers concerning communications subject to legal privilege, confidential communications of a tax adviser, or that relate to the work of an auditor. The Isle of Man authorities should include in this register an analysis of the effect that the exception to disclosure has in each case on the EOI Unit’s ability to respond to the relevant request, *e.g.* whether this has affected its ability to provide the information requested in whole or in part.

Obtaining Information in Practice

129. The Deputy Assessor of Taxes is the operational manager for information exchange. At first instance, any request that is made pursuant to a TIEA or DTA is reviewed by the Deputy Assessor together with a lawyer from the Attorney-General’s office to determine whether the information requested would be more appropriately dealt with via a request under the *Criminal Justice Acts* (for example, if there is a need to have witnesses deposed, or the request may involve a tax not covered by the TIEA or DTA).

Generally, the information that a requesting jurisdiction would provide under a TIEA or DTA should be sufficient for the purposes of a request pursuant to the *Criminal Justice Acts*, and so the requesting jurisdiction would simply need to re-send the request through the Attorney-General. If the information provided would not be sufficient, then the lawyer from the Attorney-General's office is in a position to indicate what further information would be needed. Requests have been referred back to the requesting jurisdiction on a number of occasions, and in such cases the requesting jurisdiction has been satisfied that the procedure under the *Criminal Justice Acts* was more appropriate. This process takes at most 14 days.

130. A great deal of effort is put in to ensure that the requests are properly formulated and meet the terms of the relevant exchange of information arrangement. The tax authorities encourage exchange of information partners to send draft requests, and generally to communicate about the nature of the case and the type of information required before a formal request is sent. In this regard, officials are available and ready to respond to questions from their exchange of information partners in a timely manner.

131. Within the Income Tax Division, the competent authority, supported by the compliance manager, will utilise the members of the investigation team to consider EOI requests when received and to draft the required letters and notices to obtain the requested information. Where the request proceeds under a TIEA or DTA, then the request is logged by a Senior Executive Officer and then verified for conformity with the terms of the relevant arrangement by an Executive Officer. The Deputy Assessor relies on the assistance of three executive officers for these purposes. This process also involves obtaining the view of the Attorney-General's Chambers, which is able to provide its view within 24 hours.

132. The competent authority has direct access to all direct tax records. Where information is held within those records, a response will be provided within a maximum of 30 days but normally 10 days after the request was accepted as a valid request. Where other information is required in addition to the tax records, an interim response will be provided in respect of the tax records, again within the said timeline. In practice, the Isle of Man has responded to all requests for information within 90 days (see section C.5, below).

133. Where it is necessary to obtain information from a record-keeper, then a notice is prepared, as well as a summary of the reasons for the issuance of the notice (see below under section B.2). To date there has been no difficulty in obtaining information held by record-keepers in the Isle of Man. On some occasions, the person believed to be in possession of the information by the requesting jurisdiction did not in fact possess the information, but was able to indicate the person who did possess it. In such circumstances a supplementary letter to amend the request to include the person who has

possession of the information was obtained from the requesting jurisdiction. The letter, sent by fax or email with the original by the post, did not cause any undue delay in the information gathering process. Having reviewed its DTAs and TIEAs this practice is accepted by the Isle of Man as having been overly cautious and has been discontinued. A supplementary letter in such circumstances is no longer required.

134. Explanatory sessions are delivered to all staff within the Division on the processes relating to EOI requests. Training for the staff dealing with such requests takes the form of one-to-one coaching and mentoring using documented procedures. The compliance manager has shadowed the competent authority in meetings with competent authorities of TIEA partners and now delivers the presentations and deals with Question & Answer sessions at such meetings. The internal processing of requests is shared between the competent authority and the compliance manager, with the latter drafting reports regarding the validity of requests received, as well as all required correspondence and notices. The compliance manager will also provide one-to-one coaching and mentoring to staff in the investigation team to ensure they become capable of processing requests. A total of five staff are receiving or have received this training in the last three years.

Accounting records (ToR B.1.2)

135. The access powers available to the Isle of Man's tax authorities are limited in the case of certain documents prepared by auditors (see discussion above). Although this limitation would not apply to the accounting records themselves (as these would be the property of the auditor's client), the working papers of the auditor could not be obtained.

136. The Isle of Man has provided accounting records in response to a request for information on a number of occasions and has had no difficulty in obtaining such information.

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

137. The general power of the Assessor to obtain documentary information from any person with respect to that person's liability to tax are modified where the Isle of Man has an exchange of information agreement in place to allow for access to information in response to a request for information under that agreement. The powers, as they are drafted for domestic purposes, do not contemplate obtaining information for the purpose of fulfilling an exchange of information request. The Isle of Man has addressed this issue by revising these powers specifically for the purpose of each exchange of information arrangement entered into. This is done by means of an order under s. 19 of the

Income Tax Act 2003 (for TIEAs) or under s. 54 of the *Income Tax Act 1970* (for DTAs). Where an order has been made, then the arrangement “shall have effect notwithstanding anything in any enactment”. Orders have been made in respect of all DTAs and TIEAs entered into by the Isle of Man. The orders provide for modifications to the content of sections 105C to 105O of the *Income Tax Act 1970*, to specify that notices for the production of information may be made by the Assessor where the Assessor “believes it to be necessary for the purpose of responding to a request made by the contracting party in accordance with the applicable arrangements.” In addition, the definitions of “tax” and “taxpayer” are modified such that liability for tax under the contracting party’s laws is relevant for the purpose of exercising the Assessor’s powers under the *Income Tax Act 1970*.

Compulsory powers (ToR B.1.4)

138. The High Court, on information of the Assessor, may make an order to deliver information to the Assessor where a notice for the production of documents is not complied with or there is reasonable ground for suspecting that the notice will not be complied with (*Income Tax Act 1970*, secs. 105H and 105I). The order must be complied with within 7 days (or such shorter time as may be specified) and failure to comply with the order is treated as contempt of court (*Income Tax Act 1970*, s. 105J).

139. In cases involving tax fraud, a Deemster can issue a warrant for search and seizure (*Income Tax Act 1970*, s. 105M).

140. In practice, the tax authorities have not had to resort to such powers, as all requests for information have been processed without any objection on behalf of the person in possession of the information.

Secrecy provisions (ToR B.1.5)

141. There are no statutory confidentiality provisions in Manx law relating to material held by banks or other financial institutions on behalf of their clients, nor any banking or other statutory secrecy laws. Banks may hold information subject to the common law obligation of confidence and in that respect are in no different a position to any other person to whom information is imparted in confidence. The basis for the rule is that the information imparted must have the “necessary quality of confidence” (and must, for example, not be information which is in the public domain) and must have been imparted in circumstances importing an obligation of confidence.

Determination and factors underlying recommendations

Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
The privileges attaching to certain information held by legal advisers, tax advisers and auditors are somewhat more extensive than prescribed by the standard, and could impede effective exchange of information in a given case.	The Isle of Man should review its policy regarding access to information held by legal advisers, tax advisers and auditors and ensure that it is compatible with effective exchange of information.

Rating	
To be completed once a representative subset of Phase 2 reviews have been completed.	
Factors underlying recommendations	Recommendations
The application of rules preventing access to information in respect of items subject to legal privilege, the advice of tax advisers and certain documents held by auditors on exchange of information in practice is could impede effective exchange of information in a given case.	Manx tax authorities should continue to monitor requests for information where these rules are implicated.

B.2. Notification requirements and rights and safeguards

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

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

142. Under Isle of Man law it is normally necessary to provide formal notice to the person who is the object of the request for information (that is, the record keeper) (*Income Tax Act 1970*, section 105D). The law also provides that, prior to issuing a formal notice, the person must be given a “reasonable opportunity” to provide the information, which Isle of Man tax authorities interpret as 30 days (*Income Tax Act 1970*, section 105D(3)). Where a notice is issued, it is also necessary to provide a copy of this notice as well

as a summary of the reasons for the notice to the taxpayer. The summary of reasons provides only basic facts about the nature of the request, such as the exchange of information arrangement under which the request has been made, and does not include any details of the case.

143. The notice requirement can be dispensed with if, on the application of the Assessor, two members of the Income Tax Commissioners give their written consent. Consent can only be given if both Commissioners are satisfied that the Assessor has reasonable grounds for suspecting the taxpayer of fraud (*Income Tax Act 1970*, s. 105E(8) and (9)). This process can be accomplished quite quickly. Whilst the statute is silent on timing, it has been agreed with the Chairman of the Income Tax Commissioners that a panel will be convened within 7 working days of the Commissioners receiving an application from the Assessor under Section 105E(8). The required format of an application has also been agreed by the Chairman. An application to the Commissioners will be made by the Assessor within 14 days of a request being received.

144. In addition, if the High Court is satisfied on information on oath given by the Assessor that the taxpayer concerned may have failed or may fail to comply with any provision of the laws of the DTA or TIEA partner that relate to any tax to which the relevant TIEA or DTA applies, and that any such failure is likely to have led or to lead to serious prejudice to the proper assessment or collection of tax, the court can order that the relevant documents are delivered to the Assessor (*Income Tax Act 1970*, section 105I). A person is entitled to 14 days notice of the intention to bring an order under section 105I, unless the High Court “is satisfied that this would seriously prejudice the investigation of the offence” (*Income Tax Act 1970*, section 105K(1)). An order under section 105I must be complied with within 7 days, and a failure to comply with such an order is punishable in the same manner as a contempt of court. The application to the High Court can be made within 14 days of the request being received. The hearing of the application will normally be within 21 days of the application being made.

145. There is no right of appeal against a notice issued under section 105D. The only way such a notice can be challenged is by way of petition of *doleance*. A petition of *doleance* is the Isle of Man equivalent of judicial review and is the procedure whereby an administrative action by a public body can be challenged on the grounds that it has acted unlawfully, unfairly or unreasonably. A petition of *doleance* must be presented to the Civil Division of the High Court. Such a petition can be lodged by the taxpayer under investigation in the requesting country or the person on whom the notice is served.

146. There is no precise formula for determining how long a petition of *doleance* might delay the processing of a request for information (if at all), and there is no experience with this right in practice, as no person has issued such a challenge in respect of any requests for information executed by the Isle of Man to this point.

147. Orders made under sections 1051-K Income Tax Act 1970 are orders made by the High Court and are not therefore subject to review by way of Petition of Doleance. Decisions of the High Court may be challenged by way of an appeal to the Staff of Government Division (the Appeal Division of the High Court in the Isle of Man). Where an appeal is lodged, there is no automatic stay of the order or injunction and therefore no provisions of law automatically prevent the requested information being delivered to the Assessor and thence onward to the requesting state. However, an appeal may include an application to the court, either for a stay of the High Court order or, if that order had already been complied with and the information delivered to the Assessor, for an injunction to prevent that information being transmitted to the requesting state.

148. Any appeal could only be made by the Isle of Man taxpayer against whom the order had been obtained as the subject of the investigation would be unaware of the application for the order due to the non-disclosure provisions in section 105K(2)(b). The grounds for such an appeal might be; invalid reasons for the Assessor requiring the documents which are the subject of the request, *i.e.* some perceived deficiency in the request itself and/or unreasonable grounds on the part of the Assessor for suspecting that a notice under Section 105D would not be complied with. Therefore, if the requesting State makes a valid request in accordance with the TIEA and the Assessor is satisfied that it is a valid request in accordance with the TIEA and /or the Assessor has reasonable grounds for suspecting that a notice under section 105D would not be complied with, any appeal would be dismissed.

149. The importance of fully detailed and valid requests to ensure that any appeal should not succeed is an integral part of the discussions held by the Isle of Man competent authority in meetings with his counterparts (as set out in section C.5, below).

150. In relation to criminal tax matters (which includes taxes of any kind) information can also be obtained and exchanged under the *Criminal Justice Acts (CJA) 1990 and 1991*. The requirement to provide notice does not apply in such cases.

151. Isle of Man authorities appreciate the importance of being successful in any legal challenge to a request for information in order to establish a body of precedents and build up a solid tradition in this area, particularly in respect of exchange under TIEAs, which are relatively new instruments generally. The Isle of Man authorities understand the difficulties that an adverse precedent would set in this area, and therefore consider that meticulous compliance with the terms of their exchange of information arrangements and with their own legal procedures is essential to ensuring that any information request would withstand such a challenge.

Determination and factors underlying recommendations

Determination
The element is in place.

Rating
To be completed once a representative subset of Phase 2 reviews have been completed.

C. Exchanging Information

Overview

152. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In the Isle of Man, the legal authority to exchange information derives from bilateral mechanisms (TIEAs and DTAs) as well as from domestic law. This section of the report assesses the Isle of Man’s network of EOI agreements against the standards and the adequacy of its institutional framework to achieve effective exchange of information in practice.

153. The Isle of Man has been exchanging information in accordance with the international standards since its first tax information exchange agreements came into force in 2006. The Isle of Man now has mechanisms for the exchange of information in tax matters in force that meet the standard with 17 jurisdictions and is actively engaged in negotiations for further agreements. The Isle of Man has also exchanged information with the United Kingdom through a double tax arrangement since the 1950s (though the scope of information exchanged was limited) and, in criminal tax matters, has exchanged information with any jurisdiction (regardless of the existence of an international agreement) through its domestic *Criminal Justice Acts* since the early 1990s. The Isle of Man’s network of exchange of information mechanisms covers all relevant partners.

154. The Isle of Man’s exchange of information partners view the Island as an important partner, and one that works diligently to ensure that the exchange process runs smoothly. A number of jurisdictions have commented that the practice of having Manx officials provide seminars to their staff to explain the Island’s facility to exchange information and the processes involved is very welcome and has resulted in an open and transparent relationship.

155. The competent authority is in the practice of informing the Financial Crime Unit (FCU) of the fact that an Isle of Man taxpayer (e.g. an Isle of Man record-keeper in possession of information that is the subject of an information exchange request) is the subject of a request in a criminal case. The Isle of Man authorities consider that disclosure to the FCU in these circumstances

is in accordance with the terms of its exchange of information agreements. It is possible, however, that its TIEA partners may not share this interpretation. In these circumstances, and to avoid any uncertainty or misunderstanding in this regard, disclosure to the FCU should not be made without the express written consent of the partner jurisdiction.

156. The feedback provided by the Isle of Man's information exchange partners is very positive. The information requested is provided quickly and always within 90 days. The Isle of Man competent authority has instituted strict timelines to ensure rapid response times and has adequate resources to meet these objectives.

C.1. Exchange-of-information mechanisms

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

157. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. A jurisdiction's practical capacity to effectively exchange information relies both on having adequate mechanisms in place as well as an adequate institutional framework. This section of the report assesses the Isle of Man's network of EOI agreements against the standards and the adequacy of its institutional framework to achieve effective exchange of information in practice.

158. The Isle of Man has signed and ratified agreements for the exchange of information in tax matters with 20 jurisdictions, and 17 of these are in force. The Isle of Man's agreements with Belgium, China and Portugal are awaiting those countries to take the steps necessary to bring them into force. The Isle of Man continues to negotiate with a number of jurisdictions. The Isle of Man signed a TIEA with Canada on 17 January 2011 and has other signings planned for early in 2011 (see *Recent Developments* above).

159. In relation to criminal tax matters (which includes taxes of any kind) information can also be exchanged under the *Criminal Justice Acts (CJA) 1990 and 1991*. There is no requirement to notify the person who is the subject of the request for information in such cases.

160. Section 24 of the *Criminal Justice Act 1990* provides for the Attorney General, in any case in which it appears to him on reasonable grounds that there is a suspected offence involving serious or complex fraud, wherever committed, to issue a notice requiring any person whom he has reasonable ground to believe has relevant information to produce documents which appear to him to be relevant to the investigation or any documents of a specified class which appear to him to so relate. Requests for assistance under this section can be made by any person who has conduct of a

criminal investigation in another country which includes the police or taxation authorities.

161. Section 21 of the *Criminal Justice Act 1991* as substituted by Schedule 6 of the Proceeds of Crime Act 2008 provides that where the Attorney General receives a request for assistance from a court, tribunal or prosecuting authority in another country or territory or from any other relevant authority in obtaining evidence in the Island in connection with criminal proceedings or a criminal investigation or administrative proceedings (as defined) or an investigation into an act punishable in such proceedings the Attorney General may apply to the High Bailiff (Summary Court) to receive such evidence as may be appropriate for the purposes of giving effect to the request.

162. If it appears to the Attorney General that the request for assistance relates to a fiscal offence in respect of which proceedings have not yet been instituted, the Attorney General may not arrange for the evidence to be so obtained unless –

- a) the request is from a country or territory which is a member of the Commonwealth or is made pursuant to a treaty to which the United Kingdom is a party and extends to the Island; or
- b) the Attorney General is satisfied that if the conduct constituting the offence were to occur in the Island, it would constitute an offence in the Island.

Foreseeably relevant standard (ToR C.1.1)

163. Each of the Isle of Man’s agreements for the exchange of information provide for exchange where the information is foreseeably relevant to the administration and enforcement of the requesting jurisdiction’s laws in relation to taxes covered by the agreement.

In respect of all persons (ToR C.1.2)

164. There are no restrictions in the Isle of Man’s agreements for the exchange of information regarding the persons in respect of whom information may be exchanged.

Obligation to exchange all types of information (ToR C.1.3)

165. All of the Isle of Man’s agreements for the exchange of information follow Article 26 (exchange of information) of the OECD Model Tax Convention or the OECD Model TIEA and so require the exchange of bank information, information held by a fiduciary or nominee or information concerning ownership interests in a person.

Absence of domestic tax interest (ToR C.1.4)

166. All of the Isle of Man's agreements for the exchange of information follow Article 26 (exchange of information) of the OECD Model Tax Convention or the OECD Model TIEA and so require information to be exchanged regardless of whether the requested jurisdiction has any use for the information for its own tax purposes.

Absence of dual criminality principles (ToR C.1.5)

167. All of the Isle of Man's agreements for the exchange of information follow Article 26 (exchange of information) of the OECD Model Tax Convention or the OECD Model TIEA and so require the exchange of information regardless of whether the conduct being investigated would constitute a crime under the laws of the requested party if such conduct occurred in the territory of the requested party.

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

168. All of the Isle of Man's agreements for the exchange of information follow Article 26 (exchange of information) of the OECD Model Tax Convention or the OECD Model TIEA and so provide for exchange of information in both civil and criminal tax matters.

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

169. All of the Isle of Man's agreements for the exchange of information seek to follow Article 26 (exchange of information) of the OECD Model Tax Convention or the OECD Model TIEA and so require, to the extent allowable under the domestic laws of the requested party, information to be provided in the form of depositions of witnesses and authenticated copies of original records.

170. Where a request for information is made under a TIEA or DTA it is not possible under the Isle of Man's laws to provide information in the form of a deposition. This is possible in criminal matters where a request is made to the Attorney-General under the *Criminal Justice Act 1990* or the *Criminal Justice Act 1991*. It is an inherent aspect of the Isle of Man's exchange of information procedure that requests are reviewed to determine whether a request under the criminal justice acts would be more appropriate, in view of the nature of the case and the form of information sought. In the past 3 years, there have been occasions where the use of the *Criminal Justice Acts* have proven to be a more useful and suitable method of obtaining information for tax purposes than would be possible under the terms of a TIEA or DTA.

In force (ToR C.1.8)

171. The Isle of Man has only one agreement (with Canada) that has been signed but not yet ratified by the Isle of Man. The agreement with Canada was signed on 17 January 2011. Of the remaining 20 agreements signed by the Isle of Man, all of them have been ratified by the Isle of Man and only three are awaiting the finalisation of ratification procedures by the counterparties (Belgium, China and Portugal). The Isle of Man has other signings planned for early in 2011 (see Recent Developments above).

172. The procedure to bring an exchange of information arrangement into force is quite simple. Once the text is agreed at officer level, then a memo is sent to the Council of Ministers seeking approval for signature and the text of the agreement is also sent to the Ministry of Justice (UK) for its approval under the terms of their Letter of Entrustment. Following the signature of an agreement, the procedure for ratification in the Isle of Man is quite fast, and can be accomplished in as little as 4 weeks. This involves an order under s. 19 of the *Income Tax Act 2003* (for TIEAs) or under s. 54 of the *Income Tax Act 1970* (for DTAs) being approved by Tynwald.

In effect (ToR C.1.9)

173. The domestic laws in place in the Isle of Man allow its authorities to give effect to their arrangements for exchange of information. Although the Isle of Man's network of agreements is very new, exchanges of information have taken place under most of the agreements that have effect for periods prior to 2010.

Determination and factors underlying recommendations

Determination
The element is in place.
Rating
To be completed once a representative subset of Phase 2 reviews have been completed.

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

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

174. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements

cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

175. The Isle of Man has signed and ratified agreements for the exchange of information in tax matters with 20 jurisdictions, and 17 of these are in force. The Isle of Man's agreements with Belgium, China and Portugal are awaiting those countries to take the steps necessary to bring them into force. The agreement with Canada was signed on 17 January 2011 and is awaiting ratification by both countries. The Isle of Man continues to negotiate with a number of jurisdictions. The Isle of Man has other signings planned for early in 2011 (see *Recent Developments* above).

176. The Isle of Man's network of agreements covers Ireland and the United Kingdom – its two closest neighbours – as well as major European and OECD countries such as Sweden, the Netherlands, the United States, France and Germany. The Isle of Man has not refused to enter into an arrangement for the exchange of information with any potential partner that has requested one. The Isle of Man is engaged in active negotiations for further exchange of information arrangements. The Isle of Man has been proactive in this regard – in 2009 it wrote to all OECD and EU countries with which it did not already have an exchange of information agreement and asked if they wanted to enter into negotiations. In addition, the Isle of Man will provide automatic exchange of information on savings income with its EU partners as of 1 July 2011.

Determination and factors underlying recommendations

Determination	
The element is in place.	
Factors underlying recommendation	Recommendation
	The Isle of Man should continue to develop its EOI network with all relevant partners.
Rating	
To be completed once a representative subset of Phase 2 reviews have been completed.	

C.3. Confidentiality

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

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

177. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, countries with tax systems generally impose strict confidentiality requirements on information collected for tax purposes. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests.

178. All of the Isle of Man's agreements for the exchange of information follow Article 26 (exchange of information) of the OECD Model Tax Convention or the OECD Model TIEA and so provide that information exchanged must be treated as confidential and only disclosed to persons or authorities concerned with the determination, assessment, enforcement and collection of tax or the investigation or prosecution of tax matters. All information obtained for exchange purposes is clearly stamped to indicate that the information is "furnished under the provisions of an international taxation agreement with a foreign government and its use and disclosure is governed by the provisions of that agreement". All correspondence received and responses made are held electronically by the competent authority and are inaccessible to staff other than those involved in EOI matters. Hard copies are held on separate EOI files which are regularly scanned into a secure area, again accessible only by authorised staff. No copies of EOI material are held on the tax files of persons who have been the subject of an EOI request.

179. Any person having any official duty under or in respect of the Income Tax Acts (*e.g.* the Isle of Man competent authority or any person working for him or her) has a duty of confidentiality in relation to all documents and information obtained by that person or in the discharge of that duty (*Income Tax Act 1970*, s. 106(1)). This duty is extended to any person holding information or documents on behalf of a person covered by section 106(1). There are a number of exceptions to this rule, whereby information can be disclosed to:

- the Attorney General or any officer authorised by him,
- the Chief Financial Officer,

- The Assessor
- any person engaged in the assessment or collection of income tax,
- any person who, under the direction of the Assessor, is undertaking or assisting in the assessment or collection of income tax,
- the Judgements Officer or a Coroner or Lockman,
- a person authorised to audit the accounts of the General Revenue under section 4 of the *Finance Act 1958*, who shall be entitled to examine the same for the purpose of such audit, or
- a duly authorised officer of the treasury pursuant to section 8(2) of the *Treasury Act 1985*.

180. In addition, information and documents can also be disclosed in the following cases:

- for the purpose of an objection or appeal before the Commissioners or the Staff of Government Division,
- for the purpose of proceedings connected with a matter in relation to which the Treasury, the Chief Financial Officer or the Assessor perform duties,
- if the disclosure is required or authorised by order of a court in the Island,
- for the purpose of enabling or assisting the Treasury to discharge its functions in respect of *bona vacantia*,
- if the disclosure is required or authorised by any statutory provision (including a provision in the *Income Tax Act 1970*)
- if the disclosure is made in the prescribed manner under section 5 of the *Corruption Act 2008*.

181. It is an offence to disclose or attempt to disclose documents or information in contravention of this provision, which is subject to a fine of GBP 5 000 and or six months imprisonment (*Income Tax Act 1970*, s. 112).

182. While some of the exceptions to confidentiality may not specifically conform with the TIEA or DTA requirements, it must be remembered that such instruments have effect “notwithstanding any other enactment”, and so the confidentiality rules in those instruments will trump any statutory provisions to the contrary.

All other information exchanged (ToR C.3.2)

183. The duty of confidentiality applies to all documents and information and so would also cover communications between the jurisdictions in connection with an information request.

184. The competent authority is in the practice of informing the Financial Crimes Unit of the fact that an Isle of Man taxpayer (e.g. an Isle of Man record-keeper in possession of information that is the subject of an information exchange request) is the subject of a request in a criminal case. In addition to providing the FCU with the information concerning the Isle of Man person involved, it is standard practice for the competent authority to name the taxpayer and the requesting jurisdiction. The standards are clear in that information relating to a request for information – whether received in response to a request or provided as part of making the request – is confidential and can only be disclosed to certain, specified persons or authorities (or, where the agreement provides, with the consent of the other party). Whether or not this practice is consistent with the standards depends on the composition and objectives of the FCU. While the competent authority has seconded personnel to the FCU, and the investigation of tax crimes is part of its mandate, the FCU is concerned more generally with financial crime (e.g. money-laundering) and its personnel include persons that have no connection with tax matters. The Isle of Man authorities consider that disclosure to the FCU in these circumstances is in accordance with the terms of its exchange of information agreements. It is possible, however, that its TIEA partners may not share this interpretation. In these circumstances, and to avoid any uncertainty or misunderstanding in this regard, disclosure to the FCU should not be made without the express written consent of the partner jurisdiction.

Determination and factors underlying recommendations

Determination	
The element is in place.	
Rating	
To be completed once a representative subset of Phase 2 reviews have been completed.	
Factors underlying recommendations	Recommendations
The Isle of Man’s EOI partners may not agree that disclosure of information to the FCU without consent is authorised by their EOI agreements.	Disclosure of information to the FCU should not be made without the express written consent of the partner jurisdiction

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

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

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

185. All of the Isle of Man’s agreements for the exchange of information follow Article 26 (exchange of information) of the OECD Model Tax Convention or the OECD Model TIEA and provide that the requested jurisdictions should not be obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney-client privilege or information the disclosure of which would be contrary to public policy. (See discussion under B.1 regarding attorney client privilege.)

186. The TIEAs entered into by the Isle of Man generally provide that the rights and safeguards afforded to persons under its laws continue to apply. These include notice procedures (both formal and informal) as well as a general right to issue a petition of *doleance*, the equivalent of judicial review, of government action. The Isle of Man authorities have made presentations to sectors of the Isle of Man industry implicated in exchange of information requests, such as banks, insurance companies, and corporate and trust service providers, in order to build contacts with industry and ensure that they are aware of the obligations upon them and the procedures that must be followed.

187. In practice, persons in the Isle of Man have never formally objected to providing information required under the Isle of Man’s exchange of information mechanisms. There has been one case where the record-keeper sought clarification on the requirement to produce certain documents as they were felt to be outside the scope of the request due to the specific dates of the period of the investigation. This issue was ultimately resolved by the record-keeper requesting direct contact with the EOI partner, which the competent authority arranged, and which resulted in the EOI partner being invited over to examine all the records held by the record-keeper.

Determination and factors underlying recommendations

Determination
The element is in place.
Rating
To be completed once a representative subset of Phase 2 reviews have been completed.

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

Responses within 90 days (ToR C.5.1)

188. Excluding requests in respect of Value Added Tax, the Isle of Man has received a total of 51 EOI requests from 5 different EOI partners in the three years ended 31 December 2009. In addition, in the same period a further 29 requests on criminal tax matters have also been received under the Criminal Justice Acts. Manx Tax Authorities report that they have always delivered responses to information requests in less than 90 days and this is corroborated by the peer input received. The competent authority has instituted a detailed procedure that prescribes specific timelines for handling a request for the exchange of information. Generally the process for reviewing a request, conferring with the Attorney General in criminal matters and determining the requests validity is completed within 28 days (see section B.1 above). Following the request being accepted as valid, and where the issuance of a notice under the *Income Tax Act 1970* would be required to obtain the information (*i.e.* it is not held by a governmental authority), then within five working days a written request is sent to the person that is the subject of the enquiry to give them a reasonable opportunity (30 days) to deliver or make available the documents in question. Should the documents not be produced, a formal notice is issued to the taxpayer/person/entity under section 105D(2) *Income Tax Act 1970* requiring their production within 30 days of the date of the notice. Generally, record-keepers provide the information under the precursor letter, or are prepared to provide the information immediately following the issuance of a formal notice.

189. The competent authority has direct access to all direct tax records. Where information is held within those records, a response will be provided within a maximum of 30 days but normally 10 days after the request was accepted as a valid request. Where other information is required in addition to the tax records, an interim response will be provided in respect of the tax records, again within the said timeline.

190. The United Kingdom has a long-standing exchange of information relationship with the Isle of Man dating back to the signature of a DTA in 1955. Officials in the United Kingdom feel that this relationship is excellent, although the scope for exchange under the DTA itself was limited – it only provided for the exchange of information at the disposal of the tax authorities and so, for example, would not cover information held by third party record keepers or banks. On indirect tax matters the two governments work very closely. The United Kingdom-Isle of Man TIEA came into force early in 2009 and so the scope for exchange in direct tax matters is now up to standard and

there is every expectation that the relationship will only improve as a result. Indeed, the respective competent authorities have regular contact to discuss operational issues and methods to improve co-operation generally.

Organisational process and resources (ToR C.5.2)

191. The organisational process and resources in the Isle of Man for the exchange of information are sufficient to ensure responses are provided in a timely manner, and this is the experience in practice. Isle of Man authorities are of the view that the present resources are adequate now, but note that a number of TIEAs are coming into force. The Assessor of Taxes has alerted the Minister that, depending on the volume of requests received as new arrangements come into force, there may be a need for additional resources.

192. The Isle of Man tax authorities take a systematic approach to information exchange with their partners. Following the signing of an exchange of information arrangement, Isle of Man authorities meet with the partner to describe the details of their exchange of information processes. The exchange of information partner chooses the audience for this meeting, and this will usually be composed of exchange of information personnel as well as field officers and officers from other enforcement bodies. In addition to providing an overview of the process involved in a TIEA or DTA request, a description of the possibilities to request information in criminal cases under the *Criminal Justice Acts*, which does not depend on the existence of an exchange of information arrangement, is also provided. These presentations have been very well received and a number of exchange of information partners have indicated that they were very impressed by the organisation and transparency of these meetings.

193. The Isle of Man authorities have also made the same presentation to sectors of the Isle of Man industry implicated in exchange of information requests, such as banks, insurance companies, and corporate and trust service providers, in order to build contacts with industry and ensure that they are aware of the obligations upon them and the procedures that must be followed.

194. A major point of discussion in these meetings is the nature of the information that a request should contain. For these purposes, the competent authority uses a model based on the model provided in the OECD manual on exchange of information. This model prescribes significant detail with respect to the case under investigation. Some exchange of information partners have expressed the view that the model is too burdensome. While the model follows the OECD manual, there are some aspects of it that suggest information that is not necessarily required under the Isle of Man's TIEAs or DTAs must be provided in order for a request to be processed. The Isle of Man authorities state that they follow the precise terms of the relevant exchange of information arrangement, and any additional information required by their model request is not compulsory.

195. A key aspect of the Isle of Man’s strategy for ensuring effective exchange of information is to guarantee the establishment of a solid body of information exchange in practice. An element of this is to ensure that requests are immune to a challenge from a record-keeper that the request is not in conformity with the exchange of information arrangement. The more substantial the basis for the request, the more certain the competent authority can be that they will be successful in any legal challenge to the request, and so the model request has been drafted in this light. The fact remains that any request in conformity with the arrangement will be responded to even though it does not contain all of the information specified in the model request. The Isle of Man authorities have agreed to review the model and revise it where it needs clarification in this regard.

196. A central register is maintained by the competent authority of all requests received under a DTA or TIEA. This register is accessible to the compliance manager, the Legal Officer, the Assessor of Income Tax and the other two Deputy Assessors. Requests are date-stamped on the date of receipt and passed to the competent authority. A timeline for actioning a request has been documented and agreed with the Attorney General.

197. The register sets out each stage of the TIEA and DTA request process and the competent authority diarises each step to ensure the deadlines are adhered to. The processing of requests within the agreed timelines is a constant target within the Division’s operational plan and the wider Treasury business plan. The competent authority is accountable to Treasury for delivery of these targets.

Absence of restrictive conditions on exchange of information (ToR C.5.3)

198. There are no restrictive conditions that impede the effective exchange of information.

Determination and factors underlying recommendations

Determination
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.
Rating
To be completed once a representative subset of Phase 2 reviews have been completed.

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities		
Phase 1 Determination: The element is in place	Information regarding the ownership of foreign companies that are resident for tax purposes in the Isle of Man may, under certain limited circumstances, not be available.	Where foreign companies are resident for tax purposes in the Isle of Man rules should be in place to ensure the availability of information on the controlling owners of such companies.
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements		
Phase 1 Determination: The element is in place	Limited partnerships are not subject to a specific requirement to maintain accounting records in all cases.	Isle of Man law should ensure that limited partnerships are in all cases required to maintain reliable accounting records, including underlying documentation, for at least 5 years.
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed		

Determination	Factors underlying recommendations	Recommendations
Banking information should be available for all account-holders		
Phase 1 Determination: The element is in place		
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed		
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)		
Phase 1 Determination: The element is in place	The privileges attaching to certain information held by legal advisers, tax advisers and auditors are somewhat more extensive than prescribed by the standard, and could impede effective exchange of information in a given case.	The Isle of Man should review its policy regarding access to information held by legal advisers, tax advisers and auditors and ensure that it is compatible with effective exchange of information.
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed	The application of rules preventing access to information in respect of items subject to legal privilege, the advice of tax advisers and certain documents held by auditors on exchange of information in practice is could impede effective exchange of information in a given case.	Manx tax authorities should continue to monitor requests for information where these rules are implicated.

Determination	Factors underlying recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information		
Phase 1 Determination: The element is in place		
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed		
Exchange of information mechanisms should allow for effective exchange of information		
Phase 1 Determination: The element is in place		
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners		
Phase 1 Determination: The element is in place		The Isle of Man should continue to develop its EOI network with all relevant partners.
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed		

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received		
Phase 1 Determination: The element is in place		
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed	The Isle of Man's EOI partners may not agree that disclosure of information to the FCU without consent is authorised by their EOI agreements.	Disclosure of information to the FCU should not be made without the express written consent of the partner jurisdiction
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties		
Phase 1 Determination: The element is in place		
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed		
The jurisdiction should provide information under its network of agreements in a timely manner		
Phase 1 Determination: The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		
Phase 2 Rating: To be completed once a representative subset of Phase 2 reviews have been completed		

Annex 1: Jurisdiction’s Response to the Review Report*

This annex is left blank because the Isle of Man has chosen not to provide any material to include in it.

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

Annex 2: List of all Exchange-of-Information Mechanisms in Force

	Jurisdiction	Type of EOI arrangement	Date signed	Date entered into force
1	Australia	TIEA	29/1/09	5/1/10
2	Belgium	DTC	16/7/09	Not Yet In Force
3	Canada	TIEA	17/01/11	Not Yet In Force
4	China	TIEA	26/10/10	Not Yet In Force
5	Denmark	TIEA	30/10/07	26/9/08
6	Estonia	DTC	8/5/09	21/12/09
7	Faroe Islands	TIEA	30/10/07	3/8/08
8	Finland	TIEA	30/10/07	14/6/08
9	France	TIEA	26/3/09	4/10/10
10	Germany	TIEA	2/3/09	5/11/10
11	Greenland	TIEA	30/10/07	11/4/08
12	Iceland	TIEA	30/10/07	28/12/08
13	Ireland	TIEA	24/4/08	31/12/08
14	Malta	DTC	23/10/09	26/2/10
15	Netherlands	TIEA	12/10/05	21/7/06
16	New Zealand	TIEA	27/7/09	27/7/10
17	Norway	TIEA	30/10/07	23/8/08
18	Portugal	TIEA	9/7/10	Not Yet In Force
19	Sweden	TIEA	30/10/07	27/12/08
20	United Kingdom	TIEA	29/9/08	2/4/09
21	United Kingdom	DTC	29/7/1955	1955
22	United States	TIEA	3/10/02	26/6/06

Annex 3: List of all Laws, Regulations and other Material Received

Financial Services legislation

- Financial Services Rule Book 2008
- Financial Services (Exemptions) Regulations 2008
- Financial Services Act 2008
- Financial Services Rule Book 2009
- Financial Services Regulated Activities Order 2009
- Financial Services (Exemptions) Regulations 2009

Collective Investment Schemes

- Collective Investment Schemes Act 2008
- Collective Investment Schemes (Definition) Order 2008
- Collective Investment Schemes (Prospectus) (Exemption) Regulations 2005
- Collective Investment Schemes (Prospectus) (Exemption) Regulations 2010

Other relevant financial legislation

- Industrial & Building Societies Act 1892
- Credit Union Act 1993
- Trustee Act 1961
- Trustee Act 2001

- Variation of Trusts Act 1961
- Recognition of Trusts Act 1988
- Trusts Act 1995
- Purpose Trusts Act 1996
- Perpetuities and Accumulations Act 1968
- Isle of Man Loans Act 1974
- Interpretation Act 1976
- Money Lenders Act 1991

Companies

- Registration of Business Names Act 1918
- Registration of Business Names Act 1954
- Companies Act 1931 (as amended)
- Companies Act 1961
- Companies Act 1968
- Companies Act 1974
- Companies Act 1982
- Companies Act 1986
- Companies Act 1992
- Single Member Companies Act 1993
- Limited Liability Companies Act 1996
- Companies (Transfer of Domicile) Act 1998
- Companies (Transfer of Functions) Act 2000
- Companies Act 2006
- Protected Cell Companies Act 2004
- Incorporated Cell Companies Bill 2009
- Criminal Justice (Money Laundering) Code 2008

Anti-Money Laundering

- The Guidance Notes on Anti-Money Laundering and Preventing the Financing of Terrorism – for Insurers (Long Term Business)
- Proceeds of Crime (Money Laundering) Code 2010
- Anti-money Laundering and Countering the Finance of Terrorism Handbook
- Insurance (Anti-Money Laundering) Regulations 2008
- Anti-Terrorism and Crime Act 2003

Criminal Justice

- Criminal Justice Act 1990
- Criminal Justice Act 1991
- Proceeds of Crime Act 2008

Insurance

- Insurance Regulations 1986 (as amended)
- Insurance Act 2008
- Insurance (Valuation of Long Term Liabilities) Regulations 2007
- Insurance Intermediaries (General Business) Regulations 1999 (as amended)
- Corporate Governance Code of Practice for Regulated Insurance Entities (Draft – due to come into operation 1 October 2010)
- Retirement Benefits Schemes Legislation
- Retirement Benefits Schemes Act 2000
- Retirement Benefits Schemes (Independent And Nominated Trustee Requirement) Regulations 2004
- Retirement Benefits Schemes (International Schemes) Regulations 2001
- Retirement Benefits Schemes (Domestic Schemes) (General Administration) Regulations 2004
- The Retirement Benefits Schemes (Management and Miscellaneous Provisions) Regulations 2001

Gambling

- Online Gambling Regulation Act 2001 as amended by the Gambling (Amendment) Act 2006
- Casino Act 1986
- Gambling (Amendment) Act 2006
- Gaming (Amendment) Act 1984
- Gaming, Betting & Lotteries Act 1988
- Proceeds of Crime (Money Laundering – Online Gambling) Code 2010

Other legislation

- Legal Practitioners Registration Act 1986
- The Limited Partnerships (Legal Personality) Bill
- Estate Agents Act 1975
- Advocates Act 1995
- Notaries Regulations 2000
- Partnership Act 1909

Annex 4: List of Authorities Interviewed

Assessor of Taxes, Isle of Man Treasury

Deputy-Assessor of Taxes, Isle of Man Treasury (Compliance and Policy)

Deputy-Assessor of Taxes, Isle of Man Treasury (ITD)

Attorney-General of the Isle of Man

Financial Supervision Commission, Head of Policy and Legal

Financial Supervision Commission, Head of Authorisations and Enforcement

Financial Supervision Commission, Senior Manager, Funds

Financial Supervision Commission, Senior Manager, Banking

Financial Supervision Commission, Senior Manager, Corporate/Trust Service Providers

Department for Economic Development, Companies Registry

Insurance and Pensions Authority

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, COMBINED: PHASE 1 + PHASE 2

ISLE OF MAN

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions which participate in the work of the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. "Fishing expeditions" are not authorised, but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

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Please cite this publication as:

OECD (2011), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Isle of Man 2011: Combined: Phase 1 + Phase 2*, Global Forum on Transparency and Exchange of Information for Tax Purposes: Peer Reviews, OECD Publishing.
<http://dx.doi.org/10.1787/9789264115002-en>

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