GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

MARSHALL ISLANDS

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Marshall Islands 2016

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

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(reflecting the legal and regulatory framework
as at February 2016)

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About the Global Forum

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 130 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 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 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. 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.

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 and www.eoi-tax.org.

Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information (EOI) in the Republic of the Marshall Islands (the Marshall Islands) as well as the practical implementation of that framework. The assessment of effectiveness in practice has been performed in relation to a three-year period (1 July 2012 to 30 June 2015). 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 Marshall Islands is a nation composed of five islands and a number of atolls in the central Pacific Ocean. Politically it is organised as a parliamentary democracy. The Marshall Islands has been under a compact of free association with the United States (US) since 1986. The Marshallese economy relies primarily on government employment and US funding. The Marshall Islands operates a large ship registry, the size of which has increased markedly over the past 10 years.

3. Relevant entities include domestic and foreign companies, limited liability companies, partnerships and limited partnerships. The Marshall Islands' legal framework requires that ownership and identity information for all relevant entities and arrangements is available, except where bearer shares are issued, and is supported by appropriate sanctions for a failure to maintain ownership information. However, in practice, it is not clear that ownership information is maintained by non-resident domestic entities. Further, there is no monitoring system in place to ensure that non-resident domestic entities comply with their obligations. Bearer shares may be issued by non-resident domestic corporations and mechanisms to identify the owners of such bearer shares are insufficient. Nominee shareholders are not required to keep ownership information when they act as a legal owner on behalf of any other person as long as they are not a financial institution or a cash dealer. In practice, ownership information on companies has not been exchanged in all cases where this was requested. Although the reasons for not providing the

information seem to lie primarily in deficiencies in the organisational process and use of access powers of the Marshall Islands competent authority at that time, the lack of monitoring and enforcement of the ownership information keeping obligations of non-resident domestic entities may affect the availability of this information. As such, the Marshall Islands should closely monitor whether ownership information is available in practice.

4. The legal framework of the Marshall Islands ensures that accounting records and underlying documentation must be available and retained for at least five years, in respect of all relevant entities and arrangements. The legal framework also provides that appropriate sanctions apply for a breach of these accounting record keeping obligations. However, in practice, it is not clear that accounting records are maintained by non-resident domestic entities. Further, there is no monitoring system in place to ensure that non-resident domestic entities comply with their obligations. In addition, the effectiveness of sanctions in situations where accounting records are not kept by non-resident domestic entities has not been tested in practice. In practice, accounting records have not been exchanged in any cases where this was requested. As such, the Marshall Islands should ensure that accounting records are available for EOI purposes.

5. Banking information is required to be kept by all financial institutions, and has been available where this was requested in practice.

6. The Marshall Islands' competent authority has power to access information for the purpose of responding to an information request. These powers are available regardless of any domestic tax interest, and regardless of any law relating to privilege or a contractual duty of confidentiality. During the review period, however, these access powers were ineffective in ensuring the provision of information from non-resident domestic companies. In practice, the Marshall Islands competent authority's use of access powers was, until after the on-site visit, limited to compelling the production of information from the Registrar for Non-Resident Domestic Entities. The Marshall Islands competent authority did not use its access powers to compel the provision of information from other information holders, in particular the non-resident domestic companies, as the competent authority perceived that it lacked the ability to compel the provision of information from information holders not resident in the Marshall Islands. The practice of not attempting to obtain the information from the company or other potential information holders prevented the effective exchange of information in four of the seven EOI cases. As such, the Marshall Islands should ensure that all of the access powers of its competent authority be used effectively to obtain all information included in an EOI request.

7. The Marshall Islands has signed 15 Tax Information Exchange Agreements (TIEAs), of which 14 were in force at 31 March 2016. All of the

TIEAs allow the Marshall Islands to exchange information according to the international standard. The Marshall Islands is currently in the process of negotiating a number of other TIEAs, all of which will incorporate provisions that allow the Marshall Islands to exchange information according to the international standard. The Marshall Islands' legal framework does not provide for the possibility of exchanging information under DTCs. The Marshall Islands signed the Multilateral Competent Authorities Agreement in October 2015 and made an official request to become a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the "Convention") in March 2016. The Marshall Islands is awaiting a decision on their request from the Parties to the Convention.

8. The Marshall Islands' practical experience with exchanging information is relatively limited to date. During the review period, the Marshall Islands received seven EOI requests from five partners. All seven of the EOI requests included information in respect of ownership; five of the seven EOI requests included requests for accounting information; and one of the seven EOI requests included a request for banking information. The Marshall Islands competent authority was able to provide the information requested in three of the seven EOI requests.

9. In order to respond to information requests concerning ownership and accounting information during the review period, the Marshall Islands competent authority would send a copy of the incoming request to the Registrar for Non-Resident Domestic Entities to obtain the requested information. Where the Registrar indicated that it did not have all or part of the information in its possession, the Marshall Islands competent authority would not make any further attempt to obtain the information from the company which was the subject of the request. Providing a copy of the incoming EOI request to the Registrar for Non-Resident Domestic Entities raises concern with respect to ensuring the confidentiality of EOI requests. Since the on-site visit, the Marshall Islands has changed its practice so that a copy of the incoming request will no longer be provided to the information holder. Now a request letter will be sent out to the information holder which will set out only the information necessary for the information holder to locate the information.

10. Three of the partners reported that they had difficulties during the review period in making contact with the Marshall Islands competent authority. This resulted in delays in the provision of the requested information to the partners. However, once the Marshall Islands competent authority received the EOI requests, partners received responses within 90 days.

11. The Marshall Islands has been assigned a rating for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account

the Phase 1 determinations and recommendations made in respect of the Marshall Islands' legal and regulatory framework, and the effectiveness of its exchange of information in practice. These ratings have been compared with the ratings assigned to other jurisdictions for each of the essential elements to ensure a consistent and comprehensive approach. On this basis, the Marshall Islands has been assigned a rating of Compliant for elements B.2, C.1, C.2 and C.4; Largely Compliant for elements A.3 and C.5; Partially Compliant for elements B.1 and C.3; and Non-Compliant for elements A.1 and A.2. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for the Marshall Islands is Non-Compliant.

12. A follow up report on the steps undertaken by the Marshall Islands to answer the recommendations made in this report should be provided to the PRG by June 2017 and thereafter in accordance with the process set out under the Methodology for the second round of reviews.

Introduction

Information and methodology used for the peer review of the Marshall Islands

13. The assessments of the legal and regulatory framework of the Republic of the Marshall Islands (the Marshall Islands) and the practical implementation and effectiveness of this framework were based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information for Tax Purposes* and was prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*. The assessment has been conducted across three assessments: Phase 1, carried out in 2012; a supplementary phase 1 report in 2015, and Phase 2, carried out in 2016.

14. The Phase 1 assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as of May 2012; other materials supplied by the Marshall Islands; and information supplied by partner jurisdictions. The Phase 1 report of the Marshall Islands was adopted and published by the Global Forum in October 2012.

15. The Supplementary report, which followed the Phase 1 report of the Marshall Islands, was based on the laws, regulations and exchange of information arrangements in force as at March 2015, other materials supplied by the Marshall Islands and information supplied by partner jurisdictions. The Supplementary report was prepared pursuant to paragraph 58 of the Global Forum's methodology and was adopted and published by the Global Forum in August 2015.

16. The Phase 2 assessment looked at the practical implementation of the Marshall Islands' legal framework during the three year review period of 1 July 2012-30 June 2015, as well as amendments made to the legal and regulatory framework since the Phase 1 review. The assessment was based on the laws, regulations, and EOI mechanisms in force or effect as at February 2016. It also reflects the Marshall Islands' responses to the Phase 1 and Phase 2

questionnaires, other information, explanations and materials supplied by the Marshall Islands during and after the Phase 2 on-site visit that took place in Majuro from 24-26 February 2016 and information supplied by partner jurisdictions. During the on-site visit, the assessment team met with officials and representatives of the Ministry of Finance, Marshall Islands Banking Commission, Marshall Islands Registrar for Non-Resident Domestic Entities, Marshall Islands Maritime Administrator, Domestic Financial Intelligence Unit (DFIU) and Office of the Attorney General. A list of all those interviewed during the on-site visit is attached to this report at Annex 4.

17. The Terms of Reference (ToR) 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) exchange of information. This review assesses the Marshall Islands' legal and regulatory framework against these elements and each of the enumerated aspects, as well as the practical implementation of the framework. In respect of each essential element a determination is made 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. To reflect the Phase 2 component, an assessment is made concerning the Marshall Islands' practical application of each of the essential elements and a rating of either *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. An overall rating is also assigned to reflect the Marshall Islands' overall level of compliance with the standards.

18. The Phase 1 assessment was conducted by an assessment team which comprised two expert assessors: Ms. Jasmine Wade, Antigua and Barbuda; Ms. Su-won Kim, Korea; and representatives of the Global Forum Secretariat Mr. Sanjeev Sharma, Mr. Guozhi Foo and Mr. David Moussali. The Supplementary assessment was conducted by Ms. Nicola Guffogg of the Isle of Man, Ms. Yun-Jung Seo of Korea, and Ms. Melissa Dejong from the Global Forum Secretariat. The Phase 2 assessment was conducted by Ms. Nicola Guffogg of the Isle of Man, Ms. Sunga Cho of Korea and Ms. Kaelen Onusko from the Global Forum Secretariat.

Overview of the Marshall Islands

19. The Marshall Islands is a nation of about 70 000 people living on 29 coral atolls and 5 low-lying islands in the central Pacific, mid-way between Hawaii and Indonesia. 24 of the atolls and islands are inhabited. Majuro is the capital and is located on the Majuro atoll. The official languages are Marshallese and English and the official currency is the United States Dollar (USD).

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

21. The Marshall Islands economy relies primarily on government employment and US funding, but has seen growth in its maritime registry, commercial and small-scale fisheries, aquaculture, agriculture, traditional crafts manufacturing and tourism. Its GDP is approximately USD 187 million as of 2015, driven mainly by services (86%), industry (10%) and agriculture (4%). The Marshall Islands' main trading partners are Japan, US and Australia.[1] Among international organisations, the Marshall Islands is a member of the United Nations, the Asian Development Bank (ADB) and the Pacific Islands Forum.

22. The Marshall Islands operates a large ship registry, the size of which has increased markedly over the past 10 years. As of January 2016, the Registry had a fleet size of 3 753 vessels with 130 million gross tons. The Registry's tonnage is from all around the world, including the US, Greece, Germany Norway, Italy, Turkey, Japan and other areas in Asia. The Registry has 28 offices including Hong Kong, China; Singapore; Germany; Turkey; UAE; and UK, among others. A total of 46 Marshall Islands corporations are now publicly traded on the New York Stock Exchange (NYSE) and National Association of Securities Dealers Automated Quotations (NASDAQ), as well as other smaller exchanges.

Legal system

23. In 1979, the Government of the Marshall Islands was officially established and the country became self-governing. In 1986, the Marshall Islands achieved full sovereignty and entered into the Compact of Free Association with the US. The independence procedure was formally completed under international law in 1990, when the United Nations (UN) officially ended the trusteeship status.

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

1. Sources: CIA Fact book retrieved 24 February 2016.

25. The legal system of the Marshall Islands was based originally on the former Trust Territory laws, established by the UN and administered by the US, but has subsequently been modified by common law, municipal bodies, customary law, and legislation embodied in the Marshall Islands Revised Code (MIRC). The 1979 Constitution is the supreme law of the land, and any law or treaty that contradicts it is void. The Nitijela has the power to repeal, revoke, amend, or make any law it considers necessary for carrying out its power under the Constitution. While the Cabinet is responsible for conducting the foreign affairs of the Marshall Islands, no international treaty will come into force until it has been approved by the Nitijela. The hierarchy of laws in the Marshall Islands is as follows: the Constitution is the supreme law of the land with international treaties and Acts of the Nitijela superseding any local ordinance, but any law or treaty is void if it is inconsistent with the Constitution.

26. The judiciary in the Marshall Islands is divided into four tiers: the Supreme Court, the High Court, the District and Community Courts and the Traditional Rights Courts. The Supreme Court is a superior constitutional court. The High Court has original jurisdiction over cases filed with it, appellate jurisdiction over cases originally filed in subordinate courts, and jurisdiction to review the legality of any final decision of a government agency. Tax cases are heard before the High Court. The Traditional Rights Courts are of limited jurisdiction, restricted to cases that involve title or land rights and disputes that arise from customary law and traditional practice. The Marshall Islands also has 24 Community Courts, which generally hear civil cases where the amount involved does not exceed USD 200. The Community Courts also hear criminal cases involving offences for which the maximum penalty does not exceed a fine of USD 400 or imprisonment for a term not exceeding six months, or both.

27. Generally, an international treaty comes into effect after approval by the Nitijela, which is signified by resolution. However, the Nitijela can pass legislation providing the Cabinet with the authority to enter into international agreements that, upon execution, will have the force of law. As an example, in the Tax Information Exchange Agreement (Execution and Implementation) Act 2010 (TIEA Act 2010), the Nitijela delegated to the Minister of Finance the authority to "execute and implement any and all Agreements as approved by the Cabinet pursuant to this Act." Consequently, once Cabinet grants approval for the Minister to sign a TIEA, the Minister signs the TIEA and no further steps are required to be taken in the Marshall Islands for the agreement to enter into force.

Tax system

28. The Marshall Islands raises its revenue through the collection of taxes from various sources, including taxes on personal income, gross revenue of business entities, and import of foreign goods. These taxes are levied at the national level and administered by the Ministry of Finance. The laws governing the imposition of income tax and import duties in the Marshall Islands are the Income Tax Act 1989 ("Income Tax Act 1989") and the Import Duties Act 1989, respectively. There are also a number of other smaller taxes, such as the hotel and resort tax and immovable property tax.

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

30. Non-residents pay a non-resident tax of 10% on the gross income earned from services provided or performed by such person relating to any client in the Marshall Islands. Such tax must be deducted and paid to the Government by the client.

31. With regard to personal income tax, tax is assessed, levied and collected on wages and salaries received by employees. Employees are assessed on their gross income from wages and salaries less an exemption per year. The rate is 8% per annum on the first USD 10 400 of taxable income received by the employee and 12% thereafter. There is no capital gains tax, net wealth or net worth taxes and no national tax on goods and services.

32. At the local level, the governments of Majuro and Kwajalein atolls also impose and collect sales tax. Social security contributions are required to be made to the retirement and health funds and are collected by the Marshall Islands Social Security Administration.

33. Several persons, entities and businesses are exempted from some of these taxes, including the Marshall Islands government, public utility companies, businesses operating solely for charitable, scientific educational or religious purposes, and non-resident domestic business entities.

34. In addition, the Marshall Islands government offers tax incentives for investments in selected sectors. Such incentives are equally available to both non-citizen and citizen investors and can be applied by submitting an application to the Minister of Finance. Revenue from the following export-oriented sectors may be exempted from income tax for a five-year period:

offshore or deep sea fishing; manufacturing for export; agriculture; and hotel and resort facilities. In order to qualify for the tax incentives, an investor must make an investment of at least USD 1 million and/or provide employment and wages in excess of USD 150 000 per annum to local Marshallese citizens. Tax incentives are also available for seabed hard mineral mining in the Marshall Islands' exclusive economic zone. In order to qualify for the exemption, investors must pay the government a royalty, production charge or combination of production charge and a share of net proceeds accruing from the mining activity.[2] Marshall Islands officials advise that there are only two entities that are taking advantage of this exemption. Officials also advised that these two entities do file annual returns, not including gross revenue returns, with the Ministry of Finance.

The Marshall Islands' commercial laws and financial sector

35. The Marshall Islands' financial sector is small, comprising only two commercial banks[3], three insurance companies, two foreign exchange providers (which are part of the two commercial banks), three money transmitters, three finance companies, and one retirement fund. The total asset size of the banking sector is USD 190 million as of January 2016.

36. All financial institutions are regulated by the Marshall Islands Banking Commission. The Banking Commission has the authority to both implement preventative measures under the Banking Act and the revised Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Regulations (2010), and to exercise investigative powers. The Marshall Islands is still in the process of updating the Standard Operating Procedures (SOPs) for its Domestic Financial Intelligence Unit (DFIU).[4] The SOPs currently in place, drafted in October 2000, formally establish the make-up of the DFIU, the government agency resources at its disposal, and receipt of and response to Suspicious Activity Reports or Currency Transaction Reports, including the creation of electronic databases, analysis of the original report, and the ability to obtain, where necessary, additional information from financial institutions or cash dealers. The procedures also set how the DFIU will handle non-co-operating financial institutions or cash dealers, and the method for handling requests for information from foreign jurisdictions and local jurisdictions.

2. Source: IBFD, retrieved 21 March 2012.
3. The Bank of the Marshall Islands has branches on Majuro and Ebeye. The Bank of Guam has a branch on Majuro. The Bank of Guam has one ATM located on Majuro.
4. These procedures were created with the assistance of the Asia Pacific Group (APG) on Money Laundering's Secretariat following an APG organised in-country Strategic Implementation Planning Workshop.

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

38. There are two Registrars responsible for the registration of Marshall Islands legal entities: *(1)* The Attorney General is the Registrar for resident domestic and authorised foreign corporations; resident and authorised foreign partnerships; resident and authorised foreign limited partnerships; and resident and authorised foreign limited liability companies (LLCs) (to be referred to in this report as the "Registrar for Resident Domestic Entities"); *(2)* The Trust Company of the Marshall Islands, Inc. (TCMI) has been statutorily appointed the Registrar for non-resident domestic corporations, non-resident domestic partnerships, non-resident domestic limited partnerships, non-resident domestic LLCs, and foreign maritime entities (FMEs) (to be referred to in this report as the "Registrar for Non-Resident Domestic Entities").

39. TCMI has also been statutorily appointed the Marshall Islands Maritime Administrator, and is the registered agent for non-resident domestic entities, authorised foreign entities and FMEs (s. 20(2), BCA). TCMI is a private company registered in the Marshall Islands.

40. In addition to registering with the Registrar for Resident Domestic Entities, a foreign entity must also obtain a foreign investment business license (FIBLA) from the Ministry of Finance.

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

42. Other service providers include company formation agents, lawyers, accountants, and company service providers. Once accredited, service providers are not supervised or regulated by the Banking Commission. Lawyers in the Marshall Islands are regulated by the Marshall Islands Bar Association, which has adopted the American Bar Association's Model Rules of Professional Conduct.

Recent developments

43. The Marshall Islands committed to the international standard for transparency and exchange of information in 2007. It renewed its commitment in 2009 and since then has rapidly built up its network of EOI agreements. As of 31 March 2016, it had concluded 15 EOI agreements with a total of 15 jurisdictions, of which 14 have been brought into force. The Marshall Islands is currently in negotiations to sign TIEAs with Mexico, Czech Republic and France. In addition, the Marshall Islands signed the Multilateral Competent Authorities Agreement in October 2015 and made an official request to become a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the "Convention") in March 2016. The Marshall Islands is awaiting a decision on their request from the Parties to the Convention.

Compliance with the Standards

A. Availability of information

Overview

44. 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 assesses the adequacy of the Marshall Islands' legal and regulatory framework on availability of information. It also assesses the implementation and effectiveness of this framework in practice.

45. The Marshall Islands' legal framework for companies ensures the availability of the ownership information in relation to domestic corporations, as well as foreign corporations which are required to obtain a business license under the Foreign Investment Business License Act (FIBLA). Domestic LLCs are also required to maintain ownership information in accordance with the standard. The Anti-Money Laundering and Countering the Financing of Terrorism Regulations (AML/CFT Regulations) and its corresponding customer due diligence (CDD) requirements are applicable only to *financial institutions* and *cash dealers*. Other intermediaries such as lawyers, accountants, or formation specialists are not subject to AML/CFT Regulations and are not required under the Marshall Islands' law to obtain and maintain ownership information of their clients. Nominees that are not *financial*

institutions or *cash dealers* are also not required under the Marshall Islands' law to obtain and maintain ownership information. Non-resident domestic corporations can issue bearer shares; however, insufficient mechanisms are in place to identify owners of bearer shares.

46. For domestic general partnerships and limited partnerships, information on all partners is required to be kept by the partnership. For foreign partnerships carrying on business in the Marshall Islands, information on partners is available as it is required to be kept under FIBLA.

47. The Marshall Islands recognises the concept of trust. In order to form a trust in the Marshall Islands, it would have to be registered under the provision of the Trusts Act. The statutory Registrar for trusts in the Marshall Islands is Majuro International Trust Company (MITC), which is inactive. Accordingly, no trust has ever been formed in the Marshall Islands and the Marshall Islands trust programme is non-existent. Likewise, in order to act as a trustee in the Marshall Islands, a licence is required. As the trust programme is inactive in the Marshall Islands, it is not possible to obtain a licence to do so.

48. All relevant entities and arrangements are required to keep ownership information. However, in practice, it is not clear that ownership information is maintained by all entities. There is no monitoring system in place for non-resident domestic entities and insufficient monitoring for resident domestic entities to ensure that these entities comply with their obligations. Ownership information regarding non-resident domestic entities has not always been provided in response to requests from other jurisdictions during the three-year review period. It is difficult to assess whether the ownership information was in fact available in these cases, as the reasons for not providing the information seem to lie primarily in deficiencies in the organisational process and use of access powers of the Marshall Islands competent authority at that time. As such, the Marshall Islands should closely monitor whether ownership information is available in practice. During the review period, the Marshall Islands received seven requests for ownership information. In order to respond to a request, the Marshall Islands competent authority would ask the Registrar for Non-Resident Domestic Entities to produce the requested information and the Registrar was able to provide the requested ownership information in three of the seven cases. The Marshall Islands' competent authority did not ask the relevant companies, during the review period, to provide such information, even when it could not be obtained otherwise. In the four cases where the information could not be provided by the Registrar for Non-Resident Domestic Entities because such information was not part of the Registrar's records, requesting jurisdictions were informed that such ownership information could not be provided. Following the on-site visit, the competent authority sent requests to 10 companies for the requested ownership and accounting information. At the date of this report, 7 companies have provided the requested ownership information.

49. Commercial laws oblige all domestic and foreign corporations, limited liability companies, partnerships and limited partnerships to maintain accounting records, including underlying documentation, for at least five years. However, in practice, there is no system of monitoring compliance with accounting record keeping requirements for non-resident domestic entities in place. In addition, the effectiveness of sanctions in situations where accounting information is not kept by non-resident domestic entities has not been tested in practice. As such, it is not clear that accounting records are maintained by these entities. During the review period, the Marshall Islands received seven requests, five of which requested accounting information. As provided above, in order to respond to a request, during the review period, the Marshall Islands competent authority would ask the Registrar for Non-Resident Domestic Entities to produce the requested information. The Registrar was unable to provide the requested accounting information in any of the five cases as such information is not part of the Registrar's records. The Marshall Islands' competent authority did not ask the relevant companies, during the review period, to provide such information, even when it could not be obtained otherwise. In all five cases, requesting jurisdictions were informed that such accounting information could not be provided. Following the on-site visit, the competent authority sent requests to 10 companies for the requested ownership and accounting information. At the date of this report, no companies have provided the requested accounting information.

50. AML/CFT Regulations are in place in the Marshall Islands and they apply to all financial institutions and cash dealers. Banking information including records pertaining to accounts as well as to the related financial and transactional information is required to be kept under the AML/CFT Regulations. In practice, all financial institutions are subject to detailed review in order to obtain a license. The compliance with record keeping obligations is monitored. During the review period, the Marshall Islands received one request for banking information and was able to provide the requested information.

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.

51. The relevant entities and arrangements in the Marshall Islands are companies (*ToR A.1.1*), some of which may issue bearer shares (*ToR A.1.2*), partnerships (*ToR A.1.3*), and trusts (*ToR A.1.4*). This section also deals with the enforcement provisions to ensure compliance with the laws on the ownership of relevant entities (*ToR A.1.6*).

Companies *(ToR A.1.1)*

52. There are two types of companies in the Marshall Islands – Corporations and Limited Liability Companies (LLCs). Corporations can further be classified as *(1)* resident domestic corporations, *(2)* non-resident domestic corporations, or *(3)* foreign corporations authorised to do business in the Marshall Islands (foreign corporation). LLCs can further be classified as *(1)* resident domestic LLCs, *(2)* non-resident domestic LLCs, or *(3)* foreign LLCs. Both foreign corporations and foreign LLCs can register as a foreign maritime entity (FME). Corporations and FMEs are governed by the Business Corporations Act (BCA) whereas LLCs are governed by the Limited Liability Company Act (LLCA).

53. In addition, a foreign entity, which has power to own or operate vessels and has the capacity to sue or be sued in its State of creation, can apply to the Registrar for Non-resident Domestic Entities to be registered as a FME. This registration grants the FME corporate personality in the Marshall Islands and consequently, the power to own and operate vessels. However, as FMEs are not tax resident in the Marshall Islands, and no FME has its headquarters in the Marshall Islands, they do not have a sufficient nexus with the Marshall Islands as provided in the Terms of Reference, as explained below.

54. The Marshall Islands authorities advised that there were approximately 408 resident domestic companies (including 400 corporations, 7 LLCs, 1 general partnership and 0 limited partnerships); approximately 45 000 active non-resident domestic entities (including 42 000 corporations, 900 FMEs, 2 000 LLCs, 1 or 2 general partnerships and 40 limited partnerships) and approximately 197 foreign entities (including 140 corporations, 42 LLCs, 15 general partnerships and 0 limited partnerships) registered with the Registrars as of February 2016. The Marshall Islands authorities have also advised that Marshall Islands receive approximately 5 000 to 6 000 new registrations each year with the majority of the entities registered in the maritime sector or linked to the ship registry.

Corporations

55. Under the BCA, corporations are classified as *(1)* resident domestic corporations; *(2)* non-resident domestic corporations; *(3)* foreign corporations authorised to do business in the Marshall Islands (foreign corporations); or *(4)* FMEs. The terms "resident domestic corporations" and "non-resident domestic corporations" mean corporations doing business in Marshall Islands and corporations not doing business in the Marshall Islands, respectively. Foreign corporations that are incorporated in another jurisdiction may carry out business operations in the Marshall Islands by applying with the Registrar for Resident Domestic Entities to be a foreign corporation or else may apply

to the Registrar for Non-Resident Domestic Entities for registration as an FME for the sole purpose of owning a Marshall Islands flagged vessel.

56. Any person, partnership, association or corporation, singly or jointly with others, and without regard to his or their residence, domicile, or jurisdiction of incorporation, may incorporate or organise a corporation under the BCA.

57. There are two Registrars of Corporations in Marshall Islands – the Attorney General and the Trust Company of Marshall Islands (TCMI). The Attorney General acts as the Registrar (referred to in this report as the "Registrar for Resident Domestic Entities") for *(1)* resident domestic corporations and *(2)* foreign corporations and TCMI acts as the Registrar (referred to in this report as the "Registrar for Non-Resident Domestic Entities") for *(1)* non-resident domestic corporations and *(2)* FMEs.

58. TCMI is a privately owned Marshall Islands company that has been statutorily appointed by the Marshallese government as the Registrar for non-resident domestic entities and shipping entities in the Marshall Islands (referred to in this report as the "Marshall Islands Maritime Administrator"). TCMI is overseen by the Minister of Transportation and Communications. TCMI has an office in the Marshall Islands, which consists of 20 people, and shared office facilities around the world, reflecting the location of the companies that are operating Marshall Islands' flagged vessels.

Resident domestic corporations

59. Under Section 80(2) of the BCA, resident domestic corporations are required to keep records containing the names and addresses of all registered shareholders, the number and class of shares held by each, and the dates the shareholders became the owner of the shares. These records must be retained for at least five years (s. 80(5), BCA). Such records have to be kept in the Marshall Islands.

60. The Attorney General in the Marshall Islands acts as the Registrar for resident domestic corporations.

61. In order for a resident domestic corporation to incorporate, Articles of Incorporation must be filed with the Registrar for Resident Domestic Entities (s. 27, BCA). The Articles of Incorporation contain the name of the business, the duration and purpose of the corporation, the registered address of the corporation in the Marshall Islands, the name and address of the registered agent, the number of shares to be issued including the number of shares to be issued as bearer shares, and names and addresses of the incorporator(s). There is no requirement to include ownership information in the Articles of Incorporation. Nevertheless, resident domestic corporations are required to file with the Registrar for Resident Domestic Entities an annual corporate

report (s. 8, RMI Corporate Regulations, 1995). Section 8 of the RMI Corporate Regulations, 1995 sets out the following information that must be included in the report: disclosure of the name of the corporation; the address of the registered office of the corporation in the Marshall Islands; the name and address of the corporation's registered agent in the Marshall Islands; the names and addresses of the directors and officers of the corporation. The annual report attached as a schedule to these regulations includes all of the information set out in section 8 as well as other information, such as the names and addresses of its shareholders of the corporation. The Marshall Islands officials advise that all resident domestic corporations filing these reports do provide shareholder information. Failure to file an annual report may result in de-registration of the company.

62. Resident domestic corporations are also not required to notify the Registrar when shares are transferred. Nevertheless, resident domestic corporations are required to keep records of such ownership information (s. 97, BCA).

63. In practice, all registered information for resident domestic corporations is maintained in a physical register with paper filings kept at the office of the Registrar for Resident Domestic Entities. The office of the Registrar consists of one person. All information received during the registration process is also uploaded to an electronic database. As such, all records are electronically stored but not available online. Registration is carried out in person by a representative (i.e. lawyer or agent) at the office of the Registrar. At the time of registration, the applicant must submit a complete registration form, a proof of payment of the registration fee, the Articles of Incorporation and by-laws. The Registrar will verify the completeness of the information and verify that the owner is either a resident of the Marshall Islands or has applied for a foreign investment business license. After a corporation has completed the registration process, a charter from the Registrar is issued and the corporation is considered registered and incorporated as a resident domestic corporation. It generally takes the Registrar a week to assess new applications.

64. Resident domestic corporations are required to notify the Registrar of any changes to their Articles of Incorporation by filing Articles of Amendment with the Registrar (s. 90, BCA). Any changes to the Articles of Incorporation become effective as of the filing date of the Articles of Amendment (s. 91, BCA). In addition, these changes should be included in the annual reports to the Registrar. As noted in paragraph 61, updated ownership information must be provided in the annual reports; accordingly, any changes to ownership should be identified in these reports. During the review period, 94 corporations regularly filed annual reports with the Registrar, it is not clear of these 94 corporations how many were resident domestic corporations or foreign corporations.

Non-resident domestic corporations

65. Under Section 80(2) of the BCA, non-resident domestic corporations are required to keep records containing the names and addresses of all registered shareholders, the number and class of shares held by each, and the dates the shareholders became the owner of the shares. These records must be retained for at least five years (s. 80(5), BCA). The five year retention period for ownership information would lapse once the record is no longer being updated by the corporation. This interpretation has not yet, however, been tested by the Marshall Islands courts.

66. TCMI has been statutorily appointed the Registrar for non-resident domestic corporations and is also the registered agent for non-resident domestic corporations (ss. 20(2) and 4(3), BCA).

67. In order for a non-resident domestic corporation to incorporate, Articles of Incorporation must be filed with the Registrar for Non-Resident Domestic Entities (s. 27, BCA). The Articles of Incorporation contain the name of the business, the duration and purpose of the corporation, the registered address of the corporation in the Marshall Islands, the name and address of the registered agent, the number of shares to be issued including the number of shares to be issued as bearer shares, and names and addresses of the incorporator(s). There is no requirement to include ownership information in the Articles of Incorporation. Nevertheless, the Marshall Islands authorities indicate that the filing of the names of shareholders or beneficial owners of these corporations may be made on a voluntary basis. The Marshall Islands authorities were unable to provide statistics as to how many of these corporations do voluntarily provide such information.

68. Non-resident domestic corporations are not required to file an annual corporate report with the Registrar for Non-Resident Domestic Entities. However, pursuant to the BCA, corporations are required to have an annual report prepared and available to shareholders upon request if the shareholder has held shares for at least 6 months or holds at least 5% of the shares (s. 85, BCA). Any shareholder with the statutory right to request an annual report may apply to the High Court to compel the production of the annual report. There have been no circumstances where a corporation has failed to provide a copy of its annual report upon request and an application to the High Court has never been made to enforce this right.

69. Non-resident domestic corporations are also not required to notify the Registrar when shares are transferred. Nevertheless, non-resident domestic corporations are required to keep records of such ownership information (s. 97, BCA).

70. Information filed with the Registrar for Non-Resident Domestic Entities is maintained in a physical register with paper filings kept at the

office of the Registrar in the Marshall Islands as well as an electronic register maintained inside and outside of the Marshall Islands.

71. Registration of a non-resident domestic corporation with the Registrar can be done in person at one of TCMI's offices or electronically. Most registration is done outside of the Marshall Islands. Only "*qualified intermediaries*" (i.e. lawyers, accountants, bankers or formation specialists) are permitted to submit an application for formation of a non-resident domestic corporation. Pursuant to a policy of the Registrar, in order to become a qualified intermediary, an individual would apply to the Registrar and be vetted by the Registrar through online sources, such as World-Check, to ensure that the individual is a qualified professional and is not known to be associated with any illegal activities. Qualified intermediaries may include, but are not limited to, lawyers, accountants, corporate service companies and qualified shipping companies. The Registrar keeps up-to-date records of all qualified intermediaries. Each request to become a qualified intermediary is considered on an individual basis. A *qualified intermediary* must demonstrate that he or she is subject to customer due diligence requirements. The content of the customer due diligence requirements would vary depending on the particular *qualified intermediary,* and in particular on the laws in the jurisdiction where they are resident. In the event that the Registrar becomes aware that a qualified intermediary is failing to comply with the due diligence requirements, no longer keeping updated and accurate records, or is no longer a qualified professional, that individual may be suspended from being a qualified intermediary. Further, in the event it becomes clear that a corporation is being used for illegal activities, the corporation is removed from the registry and the individuals involved are evaluated and prevented from further company formation or administration in the Marshall Islands depending on association.

72. All information received by the Registrar for Non-Resident Domestic Entities during the registration process is uploaded to an electronic database. As such, all records are electronically stored and some of the records are publicly available. At the time of registration, the applicant must submit a complete registration form, a proof of payment of the registration fee, the Articles of Incorporation and bylaws. A qualified intermediary is not required to inform the Registrar who is forming the corporation. The Registrar will verify the completeness of the information. After a corporation has completed the registration process, a charter from the Registrar is issued and the corporation is considered registered and incorporated as a non-resident domestic corporation. It generally takes the Registrar one day to assess new applications.

Tax law

73. Marshall Islands levies tax on income based on the gross revenues earned by every business[5] from activities carried on within the Marshall Islands. Every business must also pay tax quarterly and file information on revenues as required by Secretary of Finance. No ownership information is required to be filed with the tax authority by any corporations (i.e. resident and non-resident domestic corporations, foreign corporations and FMEs) under the Income Tax Act 1989.

74. Section 12 of the BCA provides that non-resident domestic corporations, foreign corporations, non-resident domestic partnerships, foreign trusts, non-resident domestic LLCs and foreign LLCs not doing business in the Marshall Islands are exempt from any corporate profit tax, income tax, withholding tax and tax reporting requirements. These provisions override any provisions of the Income Tax Act 1989 or any other law or regulation imposing taxes or fees in effect or enacted afterwards.

75. In practice, before registering with the Ministry of Finance for tax purposes, an entity is required to file an application form with the Marshall Islands Social Security Association in order to obtain an employer identification number. The application form requires disclosure of the name and address of the business, names of owners and officers and names of non-Marshallese partners (if any). There are currently 431 active employer identification numbers issued by the Social Security Association; however, the breakdown of the number of employer identification numbers issued to corporations is unclear. The Social Security Association's administration system is paper-based. It is also necessary for a corporation to obtain a business license from the local government. With this information the corporation is then able to register with the Ministry of Finance for tax purposes.

76. The tax administration has a paper-based system. There are approximately 600 businesses (individuals and entities) registered for tax purposes, of which approximately 100 are classified as "big business". Records as to the exact number of corporations registered for tax purposes are not available. The information kept by the tax administration does not contain ownership or shareholder information. In practice, the records kept by the tax administration are not compared to the records kept by the Registrars or the Social Security Association in order to ensure accuracy.

5. Section 102(a) of the Income Tax Act 1989 defines business as any profession, trade, manufacture or other undertaking and includes all activities whether personal, professional, unincorporated or incorporated carried on within the Republic of Marshall Islands.

Foreign corporations

77. All foreign entities must obtain an authorisation from the Registrar of Corporations for doing any business in the Marshall Islands (Division 12, BCA). An application has to be submitted to the Registrar (s. 109, BCA). While there is no express requirement to submit ownership information in the application to the Registrar, any foreign entity applying for authority to do business in the Marshall Islands must also comply with the provisions of the FIBLA. There are approximately 150 entities with active Foreign Investment Business Licenses in the Marshall Islands, but it is not clear how many of these entities are corporations.

78. The FIBLA requires that non-citizens must obtain a foreign investment business license to do business in the Marshall Islands. A non-citizen includes a person who is not a citizen of the Marshall Islands or any corporation, joint venture, partnership, association, or other legal entity in which a person or persons who are not citizens of the Marshall Islands own an equity interest.

79. Section 205 of the FIBLA requires every non-citizen to submit an application for business license to the Secretary of Finance which must include among other things the names, addresses, and citizenship of the initial owners and managers and proposed form of the business organisation, including the ownership and management structure.

80. Section 207 of the FIBLA requires the Secretary of Finance to maintain a register of foreign investments, which is a public document. A license holder must advise the Secretary of Finance of any changes in circumstances that necessitates a change to the data contained in the register within 30 days of the change taking place. Schedule 3 of the Foreign Investment Business License Regulations provides the details which must be entered in the Register of Foreign Investment which among other things include name, address, contact details, and citizenship of business owner. Failing to provide such information may result in a license being suspended or revoked.

81. In addition, section 207A of the FIBLA explicitly requires all grantees of a foreign investment business licence to maintain an up-to-date record of the names and addresses of all owners. These records must be retained for at least five years.

82. Once a foreign business license has been granted, the entity must register with the Registrar for Resident Domestic Entities in order to be registered in the Marshall Islands. The registration process is the same as the registration process, described above, for resident domestic corporations. As discussed in paragraph 61, there is no obligation to provide ownership information in the Articles of Incorporation filed with the Registrar for Resident Domestic Entities. However, foreign corporations, like resident domestic

corporations, are required to file an annual corporate report, with all of the information set out in paragraph 61 as well as providing information on the country under the laws of which it was incorporated, with the Registrar for Resident Domestic Entities (s. 8, RMI Corporate Regulations, 1995). During the review period, 94 corporations regularly filed annual reports with the Registrar, it is not clear of these 94 corporations how many were resident domestic corporations or foreign corporations. The annual report filed by foreign corporations contains the same information as annual reports filed by resident domestic corporations. The Marshall Islands officials advise that all foreign corporations filing annual reports do provide shareholder information. In addition, foreign corporations are required to notify the Registrar of any changes to their Articles of Incorporation by filing Articles of Amendment with the Registrar (s. 90, BCA). Any changes to the Articles of Incorporation become effective as of the filing date of the Articles of Amendment (s. 91, BCA). In addition, these changes should be included in the annual reports to the Registrar. As noted in paragraph 61, updated ownership information must be provided in the annual reports; accordingly, any changes to ownership would be identified in these reports.

83. A branch of a foreign corporation registered in the Marshall Islands for the purpose of doing business would be an authorised foreign corporation, and as such is required by the RMI Corporate Regulations, 1995 to submit an annual report. There are currently 28 active branches of foreign corporations operating in the Marshall Islands.

84. In practice, when the Ministry of Finance receives an application for a foreign investment business license, the official at the Ministry will verify the information; conduct criminal background checks; and contact other ministries within the Marshallese government, such as labour, immigration and public safety, as well as the local government to ensure that there are no records of known violations of other laws. Marshall Islands authorities indicate that it is difficult to verify the identity of foreign owners of corporations, although owners applying for a license are required to provide the Ministry with a copy of their passports. Once verification has been completed, the Ministry official will recommend that a license be issued to the entity. The office of the Attorney General will review the Ministry's recommendation and, if approved, the Ministry will grant the license. At this point, the foreign entity may commence the registration process for incorporation with the Registrar for Resident Domestic Entities.

85. The Ministry's registry for foreign investment business license information is paper-based and this information may be used to cross check that the entity is registered with the tax administration. Entities granted a foreign investment business license are required to advise the Ministry of any changes to the information, including ownership information, contained

in the Register of Foreign Investment. Marshall Islands authorities advise that foreign corporations may not provide such information and sanctions have not been imposed; however, any changes to the information may be contained in the annual report which the corporations are required to file.

Tax law

86. As provided above, Marshall Islands levies tax on income based on the gross revenues earned by every business from activities carried on within the Marshall Islands. Every business must also pay tax quarterly and file information on revenues as required by Secretary of Finance. No ownership information is required to be filed with the tax authority by any foreign corporations under the Income Tax Act 1989.

87. Section 12 of the BCA provides that foreign corporations not doing business in the Marshall Islands are exempt from any corporate profit tax, income tax, withholding tax and tax reporting requirements. These provisions override any provisions of the Income Tax Act 1989 or any other law or regulation imposing taxes or fees in effect or enacted afterwards.

88. In practice, registering a foreign corporation with the Ministry of Finance for tax purposes is the same process as described above for a resident domestic corporation.

Foreign maritime entities

89. An entity created under the laws of a foreign jurisdiction can apply to the Registrar for Non-Resident Domestic Entities to obtain authorisation for the sole and limited purpose of owning and/or operating a Marshall Islands' flagged maritime vessel (s. 119, BCA). Section 119(2) sets out the information that must be included in the application, which is the name of the entity; the legal character or nature of the entity; the jurisdiction and date of its creation; the address of the principal place of business of the entity (and, if different to the jurisdiction of incorporation, the place of business or the name and address of its legal representative in the jurisdiction of incorporation); the full names and addresses of the persons with management of the entity; and the name and address of the entity's Registered Agent in the Marshall Islands. The application must be accompanied by a certified copy of the governing document of the entity (articles, charter or other document issued by the appropriate governmental agency), and any relevant amendments thereto.

90. If the authorisation is obtained, the entity is licensed as a Foreign Maritime Entity (FME). A FME may have an office in the Marshall Islands for the purposes of doing all things necessary to the conduct of the business of ownership and operation of Marshall Islands flag vessels, but may not

conduct any other business activity in the Marshall Islands without a licence under FIBLA, described above.

91. For the purposes of the Terms of Reference, a jurisdiction is expected to ensure that ownership information is available with respect to a foreign company if the foreign company has a sufficient nexus with the jurisdiction. A sufficient nexus is stated in the Terms of Reference to include being resident for tax purposes. The Terms of Reference give an example of tax residence arising where the place of effective management of the company is located in a jurisdiction. Where tax residence is not a relevant concept in a particular jurisdiction, the peer review reports to date have accepted that a sufficient nexus may arise if the foreign company has located its headquarters in the jurisdiction. A permanent establishment has not been considered to be sufficient nexus on its own.

92. The Marshall Islands does have an income tax, which is based on a territorial system. Income earned from business activities undertaken in the Marshall Islands are subject to tax in the Marshall Islands. The function undertaken by FMEs through an office in the Marshall Islands (if any) is not considered to be a business activity for tax purposes (ss. 2, 12, BCA). As such, FMEs are not resident for tax purposes or subject to tax in the Marshall Islands. The only revenue earned by the Marshall Islands in respect of FMEs is from the initial licensing fee and annual renewal fees. An enterprise applying for FME status will, at the time of the application, have its principal place of business outside the Marshall Islands. In the event that an FME subsequently chose to relocate its principal place of business to the Marshall Islands, it would then be considered to be carrying business activity in the Marshall Islands and would be subject to tax in the Marshall Islands. In other words, the fact of having FME status will not of itself make the entity a tax resident in the Marshall Islands.

93. The only requirement on a FME in terms of its presence in the Marshall Islands is to have a registered agent in the Marshall Islands. The registered agent must be the TCMI, which is also the Registrar for FMEs (ss. 20(2) and 4(3), BCA). An FME is also authorised (but not required) to have one or more offices in the Marshall Islands for the purpose of doing all things necessary to the conduct of the business of ownership and operation of Marshall Islands flag vessels (BCA, s. 120). As noted above, an enterprise applying for FME status will, at least at the time of the application, have its principal place of business outside the Marshall Islands. As such, any office in the Marshall Islands would not be the equivalent of a headquarters in the Marshall Islands. It would be possible for a FME to subsequently relocate its principal place of business to the Marshall Islands. In order to do this, the entity would require authorisation under FIBLA. Ownership information about these FMEs that have relocated their principal place of business to the Marshall Islands will

be available in accordance with the requirements under FIBLA (described above), as well as through the registration process under section 119 of the BCA (described above), and as provided in the Registration Procedures Manual followed by the Registrar for Non-Resident Domestic Entities.

94. The Registration Procedure Manual, used by all registry personnel, explicitly states the requirement that ultimate beneficial ownership information of the entity must be obtained and vetted prior to the registration of every vessel. This includes identifying the ultimate beneficial owner, which means either a publicly traded company that owns 20% or more of the vessel or, if a company is not publicly traded, a list of all natural persons who ultimately own 20% or more of the vessel. If the required ownership information is not received for a vessel, the registration will not be completed and the vessel will not be able to fly the Marshall Islands flag. It is noted that the requirement to provide beneficial ownership information to the Registrar is a practice rather than explicitly provided in Marshall Islands statute or regulation.

95. The Maritime Administrator must be notified any time there is a change to the ownership of a vessel, in order for the vessel's registration documentation to be updated. This requires the Maritime Administrator to obtain the ownership information of the new owning entity. In addition to changes in ownership, any time there is a change in registration information, including the vessel operator, the vessel's operating status, or the vessel's name, all of the registration information is re-vetted prior to issuing the updated registration documentation. Additionally, vessels are required to periodically renew their registration, at which time the ownership information must be provided and allows the Maritime Administrator to confirm the information is current. Prior to issuing updated documentation to a vessel, any new information for the vessel will be re-vetted according to the Registration Procedures Manual. In the event that the Maritime Administrator is not notified of such a change, among the penalties would be revocation of the registration documents and removal from the Marshall Islands ship registry.

96. No FMEs currently have, or have ever had, an office conducting any activities in the Marshall Islands. Marshall Islands authorities confirm that for all FMEs to date, the only presence in the Marshall Islands is though the requirement to have a registered agent in the Marshall Islands. The registry personnel undertaking the registration process for FMEs, in part, are not located in the Marshall Islands, but in several offices around the world (reflecting the location of the companies that are operating Marshall Islands' flagged vessels). Currently there are approximately 900 FMEs registered in the Marshall Islands, a figure which has remained relatively steady over recent years (as compared with approximately 40 000 domestic companies currently registered in the Marshall Islands, and approximately 100 entities operating under a Foreign Investment Business License). The Marshall

Islands has registered more than 3 700 ships, and is the third largest open register in the world. Most of the vessels registered under the Marshall Islands flag do not call at ports in the physical territory of the Marshall Islands as they are ships trading internationally. Approximately 15 Marshall Islands' registered vessels physically call in the Marshall Islands on a regular basis, most of which are fishing vessels.

97. In conclusion, it is possible that a FME could relocate its principal place of business to the Marshall Islands and could in that scenario meet the headquarters nexus, however in that case the provisions of FIBLA would apply. As provided above, the FIBLA requires that every non-citizen submit an application for business license to the Secretary of Finance which must include among other things the names, addresses, and citizenship of the initial owners and managers. Also, all grantees of a foreign investment business licence must maintain an up-to-date record of the names and addresses of all owners. Further, the Secretary of Finance maintains a register of foreign investments which includes details such as the name, address, contact details, and citizenship of business owners. A license holder is required to advise the Secretary of Finance of any changes in circumstances that necessitates a change to the data contained in the register within 30 days of the change taking place. Marshall Islands authorities advise that foreign corporations may not provide such information; however, any changes to the information may be contained in the annual report which the corporations are required to file. According, ownership information is available with respect to such FMEs.

98. In practice, the registration procedure for FMEs is similar to the registration procedure for non-resident corporations and non-resident LLCs. However, unlike the records maintained for a corporation and a LLC, the Marshall Islands Maritime Administrator does maintain records of beneficial ownership with respect to a FME, unless the FME is a publicly traded company (as discussed above in paragraph 94). Further, the Registrar for Non-Resident Domestic Entities also maintains information with respect to whether or not a FME issues bearer shares. The Registrar for Non-resident Domestic Entities files the underlying documents of formation for all FMEs that are registering in the Marshall Islands.

Limited liability companies (LLCs)

99. Under the LLCA, LLCs are classified as *(1)* resident domestic LLCs; *(2)* non-resident domestic LLCs; or *(3)* foreign LLCs. The terms "resident domestic LLCs" and "non-resident domestic LLCs" mean LLCs doing business in Marshall Islands and LLCs not doing business in the Marshall Islands, respectively. Foreign LLCs that are established in another jurisdiction may carry out business operations in the Marshall Islands by submitting an application to the Registrar of Corporations.

100. Section 22(1) of the Limited Liability Company Act (LLCA) requires that all domestic LLCs maintain an up-to-date record of the names and addresses of all their members. LLCs must retain these records for at least five years and records must be maintained in the Marshall Islands. In addition, section 22(2) of the LLCA enables any member of an LLC to request current information as to the name and address of other members, and members may take an action in the High Court of the Marshall Islands to enforce this right.

101. Similar to corporations, there are two Registrars of Corporations for LLCs in the Marshall Islands – the Attorney General and TCMI. The Attorney General acts as the Registrar for resident domestic LLCs and foreign LLCs and TCMI acts as the Registrar for non-resident domestic LLCs.

102. Divisions 2 and 3 of the LLCA deals with formation and members of the LLCs. To form a LLC in the Marshall Islands, a Certificate of Formation, executed by one or more authorised persons, must be filed with the respective Registrar. However, there is no requirement under the LLCA for a resident or non-resident domestic LLC to include details of its members in the Certificate of Formation. There is also no express requirement under the LLCA for resident and non-resident domestic LLCs to notify the Registrar whenever there is a change in its members. Further, other than the certificate of formation no other documents are required to be filed (s. 9, LLCA).

103. The certificate of formation must contain the name and address of the registered agent for service of process. Section 5 of the LLCA requires that every domestic LLC or foreign LLC authorised to do business in the Marshall Islands must designate a registered agent in the Marshall Islands upon whom any process or notice against such LLC can be issued. The registered agent for a LLC having a place of business in the Marshall Islands must be a resident domestic corporation or a natural person, resident of and having a business address in the Marshall Islands. The registered agent for a non-resident domestic LLC is TCMI.

104. The Registrar for Resident Domestic Entities confirmed that in practice, although not legally required, one resident domestic LLC (out of seven registered resident domestic LLCs) was filing annual reports, containing the names and addresses of its members and officers, with the Registrar during the review period. Legislation to require resident domestic LLCs to file an annual report is in the process of being promulgated and the Registrar anticipates receiving annual reports from all registered resident domestic LLCs once the legislation is enacted. There is no requirement for non-resident LLCs to file an annual report with the Registrar for Non-Resident Domestic Entities.

105. As discussed above, all foreign entities must obtain an authorisation from the Registrar of Corporations for doing any business in the Marshall Islands (Division 12, BCA). An application must be submitted to the Registrar (s. 109, BCA). While there is no express requirement to submit ownership information in the application to the Registrar, any foreign entity applying for authority to do business in the Marshall Islands must also comply with the provisions of the FIBLA. In practice, the process to obtain a business license and the registration process with the Registrar for Resident Domestic Entities is similar to the one described above for foreign corporations. It generally takes the Registrar a week to assess new applications. All registered information for foreign LLCs is maintained in a physical register with paper filings kept at the office of the Registrar. There are approximately 150 entities holding an active Foreign Investment Business License in the Marshall Islands.

106. During the review period, foreign LLCs were not legally required to file annual reports with the Registrar for Resident Domestic Entities. Legislation to require foreign LLCs to file an annual report is now in place. The annual report requires disclosure of the name and country of original incorporation, the address of the registered office, the registered agent and the principle office, and the names and addresses of the directors and officers of the corporation.

Tax law

107. Businesses pay tax calculated on the basis of gross revenues earned from activities carried out in the Marshall Islands. The Income Tax Act 1989 provides the same basis of taxation for all types of persons whether incorporated or unincorporated. The taxes are payable at entity level and entities are obliged to file tax returns disclosing the gross revenue earned and tax paid. The taxation provisions for LLCs are similar to those of Corporations discussed above (s. 109, Income Tax Act 1989). No information on members is required to be filed with the tax authority by any type of LLCs (resident and non-resident domestic LLCs and foreign LLCs) under the Income Tax Act 1989.

108. Section 12 of the BCA provides that non-resident domestic and foreign LLCs are exempt from any corporate profit tax, income tax, withholding tax and tax reporting requirements. These provisions override any provisions of the Income Tax Act 1989 or any other law or regulation imposing taxes or fees in effect or enacted afterwards.

109. In practice, before registering with the Ministry of Finance for tax purposes, a LLC is required to file an application form with the Marshall Islands Social Security Association in order to obtain an employer identification number. The application form requires disclosure of the name and address of the business, names of owners and officers and names of

non-Marshallese partners (if any). As noted above, there are currently 431 active employer identification numbers issued by the Social Security Association; however, the breakdown of the number of employer identification numbers issued to LLCs is unclear. It is also necessary for a corporation to obtain a business license from the local government. With this information the LLC is then able to register with the Ministry of Finance for tax purposes.

110. The tax administration has a paper-based system. There are approximately 600 businesses (individuals and entities) registered for tax purposes. Records as to the exact number of LLCs registered for tax purposes are not available. The information kept by the tax administration does not contain ownership or shareholder information. In practice, the records kept by the tax administration are not compared to the records kept by the Registrars or the Social Security Association in order to ensure accuracy.

Ownership information held by companies

111. All companies incorporated under the BCA or LLCA (i.e. domestic corporations, foreign corporations, domestic LLCs, and foreign LLCs) are required to keep ownership information (s. 80(2) of the BCA and s. 22(1)(c) of the LLCA). However, in practice, it is not clear that ownership information is maintained by non-resident domestic entities. During the three-year review period, the Marshall Islands competent authority did receive requests from other jurisdictions for information relating to ownership information. Ownership information was provided in three of the seven requests during the three-year review period. During the review period, the Marshall Islands competent authority did not ask companies to provide such information in order to respond to an EOI request, even when it could not be obtained otherwise. It is difficult to assess whether the ownership information was in fact available in these cases, as the reasons for not providing the information seem to lie primarily in deficiencies in the organisational process and use of access powers of the Marshall Islands competent authority at that time. The use of access powers of the Marshall Islands competent authority will be examined in element B.1. Following the on-site visit, the competent authority sent requests to 10 companies for the requested ownership and accounting information. At the date of this report, 7 companies have provided the requested ownership information.

Ownership information held by financial institution and cash dealer

112. Financial institutions and cash dealers are subject to the Anti-Money Laundering and Countering the Financing of Terrorism Regulations (AML/CFT Regulations) issued pursuant to Section 180 of the Banking Act. The terms "financial institution" and "cash dealer" are defined in the Banking Act.

113. Section 102(n) of the Banking Act defines a "financial institution" to mean any person who carries on a business of:

- Acceptance of deposits and other repayable funds from the public;
- Lending, including consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions;
- Financial leasing;
- Money transmission services;
- Issuing and administering means of payment (such as credit cards, travellers' checks, and bankers' draft); guarantees and commitments; trading for own account or for account of customers in money market instruments (such as checks, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities; underwriting share issues and participation in such issues; money-brokering; portfolio management and advice; safekeeping and administration of securities; credit reference services; and safe custody services.

114. Section 102(e) of the Banking Act defines a "cash dealer" to mean:

- A person who carries on business as an insurer, an insurance broker or intermediary, a securities dealer or futures broker;
- A person who carries on a business of dealing in bullion; of issuing, selling or redeeming travellers' checks, money orders, or similar instruments, or of collecting, holding, and delivering cash as part of a business of providing payroll services;
- An operator of a gambling house, casino, or lottery;
- A person carrying on the business of currency dealer or exchanger.

115. To the extent that a corporation or an LLC uses the service of a service provider that is a *financial institution* or a *cash dealer*, the AML/CFT Regulations would apply to the corporation or LLC as customers and the service provider would be required under the AML/CFT Regulations to perform customer due diligence (CDD) and identify and determine the beneficial owner of the corporation or LLC (ss.3B and 3C, AML/CFT Regulations). For instance, under Section 3C.5 of the AML/CFT Regulations, *financial institutions* and *cash dealers* are required to identify each natural person that *(1)* owns directly or indirectly[6] 10% or more of the vote or value of an equity interest in; and *(2)* exercise management of a company. This requirement

6. Section 3C.7 of the AML/CFT Regulations set out the scope and practical application of the term "indirect".

will however not apply if there is no natural person owning directly or indirectly 10% or more of the vote or value of an equity interest in the company or where the natural person does not exercise management of the company. Section 3H of the Regulations require that financial institutions and cash dealers gather and maintain customer information on an ongoing basis and keep it up-to-date by taking reviews of existing records at appropriate times, particularly for higher risk categories of customers or business relationships.

116. The Marshall Islands' financial sector is small, comprising only two commercial banks, three insurance companies, two foreign exchange providers (which are part of the two commercial banks), three money transmitters, three finance companies, and one retirement fund. There are no offshore banks operating in the Marshall Islands.

117. In order to operate as a financial institution in the Marshall Island, it is necessary for the institution to be issued a license. Applications for a license are filed with the Banking Commissioner and disclose information such as the name and address of the registered office of the corporation, copies of the articles of incorporation, the names and addresses of shareholders holding more than 10% of the issued capital, and the names and address of directors. Once an application is received, the Commissioner will conduct an investigation to ensure that all the requirements of existing laws have been complied with, that the applicants can reasonably assure the safe and sound operations of the proposed banking operation, and that the institution can effectively serve the needs of the public. If the Commissioner is satisfied with the results of the investigation, the Commissioner, with the approval of Cabinet, will grant the license.

118. A license granted to a domestic financial institution remains valid as long as the bank pays the annual fee. A license granted to an offshore financial institution remains valid for 12 months and then the institution must file an application for renewal and pay the annual fee. Licensed financial institutions are not required to notify the Commissioner of any changes to the information contained in the application. A license may be suspended, revoked or varied for a variety of reasons as set out in the Banking Act.

119. The Banking Commission is tasked with the monitoring of licensed financial institutions and cash dealers operating in the Marshall Islands. The Commission carries out both off-site and on-site inspections. The inspections verify the documentation that the licensed banks and cash dealers must have in respect of its clients in the context of the AML/CTF Regulations.

120. During the review period, on-site inspections of two financial institutions were completed. In practice, during the three-year review period, the Marshall Islands competent authority did receive requests from other jurisdictions for information relating to ownership information. The Marshall

Islands competent authority never asked financial institutions or cash dealers to produce this type of information in order to respond to the requests, and it is unlikely that they would hold it as the overwhelming majority of companies, i.e. non-resident domestic companies do not carry on business in the Marshall Islands.

Ownership information held by other service providers

121. Pursuant to the policy of the Registrar for Non-Resident Domestic Entities, end users are prohibited from forming corporations and LLCs directly, and only "qualified intermediaries" (i.e. lawyers, accountants, bankers or formation specialists that have been vetted by the Registrar) are permitted to submit an application for the formation of non-resident domestic corporations/LLCs. The registration of "qualified intermediaries" by the Registrar is discussed above. It is noted that, in the case of a *qualified intermediary* that is a Marshall Islands resident, the AML/CFT Regulations are only applicable to *financial institutions* and *cash dealers*. Other types of service providers/intermediaries which are not *financial institutions* or *cash dealers,* such as lawyers, accountants, bankers or formation specialists are not subject to the AML/CFT Regulations.

122. The formation of resident domestic entities is generally performed through local attorneys. Lawyers and attorneys in the Marshall Islands who act as *qualified intermediaries* are also regulated by the Marshall Islands Bar. The Marshall Islands has adopted the American Bar Association's Model Rules of Professional Conduct. However, there is no customer due diligence requirement prescribed in the American Bar Associations Model Rules of Professional Conduct.

123. In practice, during the three-year review period, the Marshall Islands competent authority did receive requests from other jurisdictions for information relating to ownership information. In order to respond to an EOI request, the Marshall Islands competent authority would ask the Registrar for Non-Resident Domestic Entities to produce the requested information and the Registrar was able to provide the requested ownership information in three of the seven cases. The Marshall Islands' competent authority did not ask any other service provider to produce this type of information in order to respond to the EOI requests. In the four cases where the information could not be provided by the Registrar for Non-Resident Domestic Entities, because such information was not part of the Registrar's records, requesting jurisdictions were informed by the Marshall Islands competent authority that such ownership information could not be provided.

Nominees

124. The Marshall Islands recognises the concept of nominee ownership. For example, Section 74 of the BCA refers to shares held by a trustee which may be voted by him, either in person or by proxies, only after the shares have been transferred into his name as trustee or into the name of his nominee. To the extent that the nominee is a *financial institution* or a *cash dealer*, the AML/CFT Regulations and the corresponding CDD requirements in the AML/CFT Regulations would be applicable to the nominee.

125. Other than the AML/CFT Regulations, there is no other legislation or regulations that regulate the conduct of persons acting as nominee. However, the Marshall Islands authorities indicate that there is only one law firm in the Marshall Islands providing nominee services, and it is the policy of that firm to maintain ownership information on all clients. However, legal basis of these requirements is not clear.

126. In practice, the Marshall Islands authorities do not have information on the occurrences of nominee shareholding. During the review period, the Marshall Islands did not receive any requests from other jurisdictions that involved nominee shareholdings. The impact of this on exchange of information in practice should be monitored by the Marshall Islands on an ongoing basis. The monitoring and supervision of AML/CFT obligations is described below in section A.1.6.

Conclusion

127. The Marshall Islands' legal framework requires the availability of the ownership information in relation to domestic corporations and foreign corporations doing business in the Marshall Islands as well as domestic and foreign LLCs. Nominees that are not subject to AML/CFT requirements are not required under the Marshall Islands' law to obtain and maintain ownership information.

128. In practice, all companies are required to keep updated information identifying its owners (s. 80(2) of the BCA, s. 22(1)(c) of the LLCA and section 207A of the FIBLA). When registering with the respective Registrar, ownership information may be provided voluntarily; however, resident domestic companies and foreign companies are required to file annual reports, disclosing of ownership information, with the Registrar for Resident Domestic Entities. During the review period, 94 corporations (out of approximately 550 resident domestic corporations and foreign corporations) regularly filed annual returns with the Registrar. Although not legally required, one resident domestic LLC (out of 7 registered resident domestic LLCs) was filing annual reports, disclosing the names and addresses of members and officers, with the Registrar for Resident Domestic Entities during the review period.

Legislation to require resident domestic LLCs to file an annual report is in the process of being promulgated. Non-resident domestic companies are not required to provide ownership information to the Registrar for Non-Resident Domestic Entities or file annual reports with the Registrar. The effectiveness of these arrangements in turn depends on the compliance of the corporations and LLCs with their obligations, which is described in section A.1.6.

129. During the three-year review period, the Marshall Islands received seven requests from other jurisdictions regarding information in respect of ownership. In order to respond to these requests, the Marshall Islands competent authority would ask the Registrar for Non-Resident Domestic Entities to provide such information. In cases where the Registrar maintained such information, the Marshall Islands competent authority was able to provide a full response to the requesting jurisdiction in three of the seven requests for ownership information. As provided above, the registry contains the Articles of Incorporation which includes the name of the business, the duration and purpose of the corporation, the registered address of the corporation in the Marshall Islands, the name and address of the registered agent, the number of shares to be issued including the number of shares to be issued as bearer shares, and names and addresses of the incorporator(s). There is no requirement to provide ownership information to the Registrar; nevertheless, the Marshall Islands authorities indicated that the filing of the names of shareholders or beneficial owners of non-resident domestic corporations may be made on a voluntary basis. The Marshall Islands authorities were unable to provide statistics as to how many of these corporations do voluntarily provide such information.

130. It is difficult to assess whether the ownership information was in fact available in all cases, as during the review period, the Marshall Islands competent authority did not ask companies to provide ownership information. It is recommended that the Marshall Islands use all mechanisms at its disposal to ensure that ownership information in respect of all companies is available in practice. The Marshall Islands competent authority has, since the on-site visit, sent requests to the companies for the provision of ownership information.

Bearer shares (ToR A.1.2)

131. Section 42 provides that shares can be issued in registered or bearer form. The shares in bearer form can be issued provided the articles of incorporation prescribes the manner in which any required notice to be given to shareholders of such shares is in conformity with section 11 of the BCA. Resident domestic corporations are not allowed to issue shares in bearer form (s. 42(2), BCA).

132. Notice for meetings of shareholders must be given to bearer shareholders which should include a statement of the conditions under which

shareholders may attend the meetings and exercise their right to vote (s. 65, BCA). Section 11 of the BCA requires that any notice requiring a shareholder to take action for securing a right or privilege must be published in time to allow a reasonable opportunity for action to be taken.

133. A list of registered shareholders and of holders of bearer shares who as of the record date have qualified for voting, certified by the corporate officer responsible for its preparation or by a transfer agent, must be produced at any meeting of shareholders upon request of any shareholder at the meeting or prior to such meeting (s. 73, BCA).

134. Pursuant to Section 80(2) of the BCA, any corporation which has issued bearer shares must maintain a record of all certificates issued in bearer form, including the number, class, and dates of issuance of such certificates.

135. None of the above mechanisms ensure identification of owners of bearer shares and availability of such information in all cases.

136. The Marshall Islands' authorities have indicated that records are not available for the number or percentage of Marshall Islands non-resident domestic corporations which have issued bearer shares.

137. During the review period, the Marshall Islands did not receive any EOI requests which specifically requested ownership information regarding bearer shares. In practice, the Marshall Islands authorities do not know how many bearer shares were in existence during the review period. There was no monitoring of the regime during the review period.

Partnerships *(ToR A.1.3)*

Types of partnerships

138. There are two types of partnerships provided under Marshall Islands' law – general partnerships and limited partnerships. General partnerships are governed by the Revised Partnership Act (RPA) and limited partnerships are governed by the Limited Partnership Act (LPA).

139. Similar to corporations and LLCs, both general and limited partnerships can be further classified as resident domestic partnerships, resident domestic limited partnerships, non-resident domestic partnerships, non-resident domestic limited partnerships and foreign partnerships. The terms "resident domestic" and "non-resident domestic" mean partnerships doing business in Marshall Islands and partnerships not doing business in the Marshall Islands, respectively. Foreign partnerships established under the laws of a foreign jurisdiction may carry out business operations in the Marshall Islands by submitting an application to the appropriate Registrar.

General partnerships

140. To form a general partnership under the RPA, a Certificate of Partnership Existence must be filed with the respective Registrar. Under Section 29(1) of the RPA, there is no express requirement to include information identifying all the partners in the Certificate of Partnership Existence. Section 29(2) of the RPA provides the option to include information on the partner(s) authorised to bind the partnership to be included in the Certificate of Partnership Existence.

141. In order to register a foreign partnership in the Marshall Islands, the registration process is similar to the process described above for foreign corporations. First, all foreign partnerships must obtain an authorisation from the Registrar of Corporations for doing any business in the Marshall Islands (Division 12, BCA). An application has to be submitted to the Registrar (s. 109, BCA). While there is no express requirement to submit ownership information in the application to the Registrar, any foreign partnership applying for authority to do business in the Marshall Islands must also comply with the provisions of the FIBLA. The process for applying for a foreign business investment license is described above.

142. A person may become a partner only with the consent of all of the other partners and each partner has equal rights in the management and conduct of the partnership business and affairs (s. 35, RPA). Under the RPA, each partner and the partnership is required to provide to all partners, former partners, and legal representatives for deceased or disabled partners access to the books and records of the partnership (s. 37(1), RPA). These records include a current list of the names and last known business or residential mailing addresses of the partners (s. 37(1)(c), RPA).

143. Section 37(1)(c) of the RPA requires every domestic partnership to keep an up to date record containing the names and addresses of all partners. All domestic partnerships must retain these records for at least five years. In addition, section 37(2) of the RPA enables any current or former partner of a partnership to request current information as to the name and address of each of the partners (unless the partnership agreement explicitly provides otherwise), and partners may take an action in the High Court of the Marshall Islands to enforce this right.

144. A foreign partnership is subject to the same reporting and regulatory requirement as a foreign corporation. As such, the provisions of FIBLA which govern foreign businesses in the Marshall Islands (as described above) are also applicable to foreign partnerships operating in the Marshall Islands.

145. Pursuant to the RMI Corporate Regulations, 1995, resident domestic partnerships and foreign partnerships are required to file, with the Registrar for Resident Domestic Entities, an annual partnership report. The report

requires disclosure of the name of the partnership; the names, addresses and citizenships of all partners; location of the principal place of business in the Marshall Islands; and if the partnership was formed under the laws of a foreign jurisdiction, the name of the jurisdiction and the location of the principal place of business. Partnerships may provide the names, addresses and citizenships of the managing partners and officers.

146. There is no requirement for non-resident partnerships to file an annual partnership report with the Registrar for Non-Resident Domestic Entities.

147. In practice, the registration procedure for domestic partnerships and foreign partnerships is the same as the registration procedure for domestic corporations and foreign corporations (described above). General partnerships are considered formed once the application for registration with the appropriate Registrar has been accepted. It generally takes the Registrars one to five days to assess new applications. The information kept in the registries should contain partnership information. During the review period, the one domestic partnership and the 15 foreign partnerships did not file annual reports.

Tax

148. General partnerships which carry out business within the Marshall Islands are chargeable to tax. Partnerships are taxed at the entity level in the same manner as corporations. No information on partners is required to be filed with the tax authority by resident and non-resident domestic partnerships under the Income Tax Act 1989.

149. Section 12 of the BCA provides that non-resident domestic or foreign partnerships not doing business in the Marshall Islands are exempt from any corporate profit tax, income tax, withholding tax and tax reporting requirements. These provisions override any provisions of the Income Tax Act 1989 or any other law or regulation imposing taxes or fees in effect or enacted afterwards.

150. In practice, the tax registration procedure for resident domestic and foreign partnerships is the same as the tax registration procedure for corporations described above. There are approximately 600 businesses (individuals and entities) registered for tax purposes. Records as to the exact number of partnerships registered for tax purposes are not available. No information on partners is maintained in the tax administration's paper-based system.

Limited partnerships

151. To form a limited partnership under the LPA, one or more persons (including each of the general partners) must execute a Certificate of Limited Partnership which must be filed with the respective Registrar. Under Section 10(1)(c) of the LPA, there is an express requirement to include the name and business, residence, or mailing address of each general partner in the Certificate of Limited Partnership. However, there is no express requirement to include information relating to limited partners in the Certificate of Limited Partnership under the LPA.

152. There are no limited partnerships with active Foreign Investment Business Licenses registered in the Marshall Islands. In order to register a foreign limited partnership in the Marshall Islands, the registration process is similar to the process described above for foreign corporations. First, all foreign limited partnerships must obtain an authorisation from the Registrar of Corporations for doing any business in the Marshall Islands (Division 12, BCA). An application has to be submitted to the Registrar (s. 109, BCA). While there is no express requirement to submit ownership information in the application to the Registrar, any foreign partnership applying for authority to do business in the Marshall Islands must also comply with the provisions of the FIBLA. The process for applying for a foreign business investment license is described above.

153. Section 32(1)(c) of the LPA requires every domestic limited partnership to keep an up to date record containing the names and addresses of all partners. All domestic limited partnerships must retain these records for at least five years. In addition, section 32(2) of the LPA enables a limited partner to request current information as to the name and address of each of the partners (unless the limited partnership agreement explicitly provides otherwise), and partners may take an action in the High Court of the Marshall Islands to enforce this right.

154. A foreign limited partnership is subject to the same reporting and regulatory requirement as a foreign corporation. As such, the provisions of FIBLA which govern foreign businesses in the Marshall Islands (as described above) are also applicable to foreign limited partnerships operating in the Marshall Islands.

155. Pursuant to the RMI Corporate Regulations, 1995, resident domestic limited partnerships and foreign limited partnerships are required to file, with the Registrar for Resident Domestic Entities, an annual limited partnership report. The report requires disclosure of the name of the limited partnership; the names, addresses and citizenships of the general partners and managing partners; location of the principal place of business in the Marshall Islands; and if the limited partnership was formed under the laws of a foreign

jurisdiction, the name of the jurisdiction and the location of the principal place of business. Limited partnerships may provide the names, addresses and citizenships of the managing partners and officers. In practice, there are no resident domestic limited partnerships or foreign limited partnerships registered in the Marshall Islands.

156. There is no requirement for non-resident limited partnerships to file an annual limited partnership report with the Registrar for Non-Resident Domestic Entities.

157. In practice, the registration procedure for domestic limited partnerships and foreign limited partnerships is the same as the registration procedure for domestic corporations and foreign corporations (described above). Limited partnerships are considered formed once the application for registration with the appropriate Registrar has been accepted. It generally takes the Registrars a week to assess new applications.

Tax

158. Limited partnerships are taxed at the partnership level and tax provisions are similar to those of Corporations. No information on partners (i.e. limited and general) is required to be filed with the tax authority by either resident or non-resident domestic limited partnership under the Income Tax Act 1989.

159. Section 12 of the BCA provides that non-resident domestic or foreign limited partnerships not doing business in the Marshall Islands are exempt from any corporate profit tax, income tax, withholding tax and tax reporting requirements. These provisions override any provisions of the Income Tax Act 1989 or any other law or regulation imposing taxes or fees in effect or enacted afterwards.

160. In practice, the tax registration procedure for resident domestic and foreign limited partnerships is the same as the tax registration procedure for corporations described above. There are approximately 600 businesses (individuals and entities) registered for tax purposes. Records as to the exact number of limited partnerships registered for tax purposes are not available. The information kept in the tax administration's paper-based system does not contain information on partners.

Ownership information held by partnerships

161. Under section 37(1)(c) of the RPA, each partner and partnership is required to keep an up-to-date record containing the names and addresses of all partners. Under section 32(1)(c) of the LPA, each limited partnership and all general partners are required to keep an up-to-date record containing the names and addresses of all general partners.

162. In practice, during the three-year review period, the Marshall Islands competent authority did not receive requests from other jurisdictions for information relating to partnership information.

Ownership information held by financial institution and cash dealer

163. As explained in the section relating to corporations and LLCs, to the extent that a general partnership or a limited partnership uses the service of a service provider that is a *financial institution* or a *cash dealer*, the AML/CFT Regulations would apply to the general partnership or limited partnership as customers and the service providers would be required under the AML/CFT Regulations to perform CDD and identify and determine the beneficial owner of the general partnership or limited partnership (ss.3B and 3C, AML/CFT Regulations).

164. For instance, under Section 3C.5 of the AML/CFT Regulations, *financial institutions* and *cash dealers* are required to identify each natural person that *(1)* owns directly or indirectly 10% or more of the vote or value of an equity interest in; and *(2)* exercise management of a limited partnership or similar arrangement. This requirement will however not apply if there is no natural person owning directly or indirectly 10% or more of the vote or value of an equity interest in the limited partnership or similar arrangement or where the natural person does not exercise management of the limited partnership or similar arrangement. Section 3H of the Regulations require that financial institutions and cash dealers gather and maintain customer information on an ongoing basis and keep it up-to-date by taking reviews of existing records at appropriate times, particularly for higher risk categories of customers or business relationships.

165. As discussed above, the Banking Commission is tasked with the monitoring of licensed financial institutions and cash dealers operating in the Marshall Islands. In practice, during the three-year review period, the Marshall Islands competent authority did not receive requests from other jurisdictions for partnership information.

Ownership information held by other service providers

166. As provided above, only "qualified intermediaries" are permitted to submit an application for the formation of non-resident domestic general or limited partnerships. A *qualified intermediary* must comply with the due diligence requirements set out in the laws in the jurisdiction where they are resident. The Registrars do not have the jurisdiction to compel "qualified intermediaries" to provide information. The formation of all resident domestic entities is generally performed through local attorneys.

Conclusion

167. The Marshall Islands' legal framework requires the availability of the ownership information in relation to general partnerships, limited partnerships, foreign partnerships and foreign limited partnerships.

168. In practice, partnerships formed under the GPA and the LPA are required to maintain partnership information. Also, up-to-date partnership information on resident domestic general and limited partnerships (excluding information on limited partners) and foreign general and limited partnerships (excluding information on limited partners) should be maintained by the Registrar for Resident Domestic Entities as these partnerships are required to file an annual report with the Registrar. However, non-resident general and limited partnerships are not required to provide partnership information to the Registrar for Non-Resident Domestic Entities. The effectiveness of these arrangements in turn depends on the compliance of the partnerships and limited partnerships with their obligations, which is described in section A.1.6.

169. During the three-year review period, the Marshall Islands did not receive any requests for information in respect of partnership information.

Trusts *(ToR A.1.4)*

170. The creation of trusts in the Marshall Islands is governed by the Trusts Act, Trust Companies Act and Trustee Licensing Act. A Marshall Islands trust can be created only by registration with the Registrar of Trusts, which is the Majuro International Trust Company. By virtue of the explicit statutory requirement to register a trust with the Majuro International Trust Company, the common law regarding trust formation is excluded. Accordingly, it is not possible to create a trust under the common law in the Marshall Islands. The only possible means by which to create a trust under Marshall Islands law is pursuant to the statute law.

171. The Majuro International Trust Company has not been active since the time of its formation in 1996 and consequently cannot accept trust registrations. It is therefore impossible to register a Marshall Islands trust. This was a deliberate policy choice made in co-operation with the Registrar of Corporations, as it was considered that it was not in the best interests of the Marshall Islands to have an active trust programme. This policy choice has been continued to date, and the Marshall Islands advises that the trust programme is, and will remain, inactive. This was re-confirmed by Marshall Islands officials during the on-site visit.

172. In addition, it is not possible for a trustee to legally act in a professional capacity in the Marshall Islands, either as trustee of a domestic trust or foreign trust. This is because a professional trustee would be subject to

the obligations under the Trust Company Act to obtain a licence (s. 205, Trust Company Act). Consistent with the deliberate choice to leave the trust programme inactive in the Marshall Islands, it is impossible to obtain such a licence. This was re-confirmed by Marshall Islands officials during the on-site visit.

173. It is possible that a person resident in the Marshall Islands could act, as in a non-professional capacity, as a trustee of a foreign-law governed trust. Depending on which foreign law governed a particular trust, the trustee would have common law obligations or other ownership and identity obligations in respect of the trust. Ownership and identity information would thus be available to the extent required by the trustee's duties and the terms of the relevant foreign law. It would be expected that given the function performed by, and the duties imposed on, a trustee, the identity of the settlor and beneficiaries of the trust should be known to the trustee.

174. In this case, where the trustee formed a business relationship on behalf of the trust with a financial institution or cash dealer in the Marshall Islands, that financial institution would be subject to customer due diligence obligations. The Anti-Money Laundering and Countering the Financing of Terrorism Regulations require financial institutions to identify the settlor(s), trustee(s) and beneficiaries whose vested interest is 10% or more of the value of the trust corpus.

175. It is also possible that a person in the Marshall Islands could act as a trustee of a foreign-law governed trust in a non-professional capacity and not have a business relationship with a financial institution or cash dealer subject to customer due diligence obligations. In such case, the availability of information in respect of the foreign-law governed trust would be assured only by the relevant foreign law and common law obligations, if any, which may not cover the entire scope of ownership and identity information required by the Terms of Reference. This is considered to be a narrow gap.

176. The Marshall Islands officials advised that the Ministry of Finance, in its capacity as tax administration and Banking Commission, has never encountered cases where a resident person was found to be acting as trustee of a foreign trust in the course of domestic audits.

177. During the review period, the Marshall Islands did not receive any requests regarding trusts or similar arrangement having a trustee in the Marshall Islands.

Foundations *(ToR A.1.5)*

178. There is no provision under the laws of the Marshall Islands which provides for the establishment of foundations.

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

Corporations and LLCs

179. Availability of ownership information in the case of domestic corporations is ensured through records of shareholders. Any person who knowingly or recklessly fails to maintain ownership and identity records as required shall be liable to a fine not exceeding USD 5 000, cancellation of the formation of the entity, or both (section 80(6) of the BCA).

180. Similarly, in respect of LLCs, any person who knowingly or recklessly fails to maintain ownership and identity records as required shall be liable to a fine not exceeding USD 5 000, cancellation of the formation of the entity, or both (section 22(1)(f) of the LLCA).

181. In respect of foreign companies and foreign LLCs, section 208A of the FIBLA provides that any person that violates a provision of the Act (which includes the obligation to keep up to date ownership records under section 207A, as discussed above) is liable to a maximum fine of USD 10 000.

182. All shareholders have the right to inspect or make copies or extracts of the share register (s. 81, BCA). The members of the LLC can demand information on current members (s. 22 (1)(c), LLCA). Similar access to records is available to qualified shareholders of a foreign corporation (s. 115, BCA). If the information is not furnished to the shareholder/member, the shareholder/member may apply to the High Court to compel the corporation/LLC to provide the ownership records. If the corporation/LLC does not comply with the court order, it may be charged with contempt and is liable for penalties as the judge may determine proper.

183. The Registrar for Resident Domestic Entities reported that compliance with these obligations is not monitored and that it has no experience in applying these actions. However, the Registrar also stated that resident domestic corporations and foreign corporations are required to file an annual corporate report containing the names and addresses of the directors and officers of the corporation and the names and addresses of its shareholders. The Marshall Islands officials advise that all corporations filing these reports do provide such information. Further, not maintaining this share register would make it difficult to comply with the obligation to file annual corporate reports. Any corporation that fails to file an annual report may be de-registered. During the review period, 94 corporations (out of approximately 440 corporations) regularly filed annual reports with the Registrar. The Registrar for Resident Domestic Entities reported that during the review period, 56 corporations were de-registered. In addition, the Ministry of Finance performs tax audits of resident domestic corporations which may

help ensure that these corporations comply with the requirements to maintain ownership information. During an audit, the Ministry may examine any books, papers, records or other data which may be relevant (s. 129, Income Tax Act); however, the Marshall Islands officials advised that an audit would rarely examine shareholder information. There are approximately 600 businesses (individuals and entities) registered for tax purposes, in the Marshall Islands and during the review period, 62 businesses were audited by the Ministry.

184. The Marshall Islands authorities also advised that one registered resident domestic LLCs (out of seven resident domestic LLCs) was filing annual reports, providing the names and addresses of its members and officers, with the Registrar for Resident Domestic Entities during the review period, although these entities were not legally required to do so. Legislation to require resident domestic LLCs to file an annual report is in the process of being promulgated. Foreign LLCs were not legally required to file annual reports with the Registrar during the review period and none of the foreign LLCs did file an annual report during the review period. Legislation to require foreign LLCs to file an annual report is now in place.

185. There is no requirement for non-resident domestic companies to file an annual report with the Registrar for Non-Resident Domestic Entities. In addition, the Ministry of Finance does not perform tax audits on non-resident domestic companies as these types of companies are exempt from tax.

186. In principle, these requirements should ensure that ownership information in respect of resident domestic companies and foreign companies is available with the company and the Registrar for Resident Domestic Entities. However, there is insufficient monitoring to ensure that these companies do keep such information. In respect of non-resident domestic companies, there are insufficient mechanisms to ensure that these companies maintain ownership information and there are no monitoring and enforcement programmes in place to ensure that these companies do keep such information.

Foreign maritime entities

187. As described above, FMEs are neither tax resident nor have their headquarters in the Marshall Islands, and no FME has ever had an office in the Marshall Islands. However, it is possible that an enterprise with FME status could relocate its principal place of business to the Marshall Islands. In that case, such FMEs would be subject to the penalty provisions of FIBLA, described above. In addition, non-compliant FMEs would be subject to revocation of the registration documents and removal from the Marshall Islands ship registry.

188. In practice, no enterprise with FME status has relocated its principal place of business to the Marshall Islands.

Partnerships

189. In respect of general partnerships and limited partnerships, any person who knowingly or recklessly fails to maintain ownership and identity records as required shall be liable to a fine not exceeding USD 5 000, cancellation of the formation of the entity, or both (section 37(1)(f) of the RPA and section 32(1)(f) of the LPA, respectively).

190. Where rights are given to a qualified partner of a partnership (s. 37, RPA) and a limited partnership (s. 32, LPA) to inspect the records of the partnership and if the information is not furnished to the requesting partner, the partner may apply to High Court to compel the partnership/limited partnership to provide the records of partners. If the partnership/limited partnership does not comply with the court order, it may be charged with contempt and is liable to penalties as the judge may determine proper.

191. In respect of foreign partnerships, section 208A of the FIBLA provides that any person that violates a provision of the Act (which includes the obligation to keep up to date ownership records under section 207A, as discussed above) is liable to a maximum fine of USD 10 000.

192. The Registrar for Resident Domestic Entities reported that compliance with these obligations is not monitored and that it has no experience in applying these actions. However, the Registrar also stated that resident domestic partnerships, resident limited partnerships, foreign partnerships and foreign limited partnerships are required to file an annual corporate report containing the names and addresses of the general partners and may disclose the names and addresses of the managing partners and officers. Any partnership that fails to file an annual report may be de-registered. Not maintaining this ownership register would make it difficult to comply with the obligation to file annual partnership reports. However, during the review period, no partnership filed an annual report with the Registrar. The Marshall Islands authorities advised that the Ministry of Finance conducts tax audits of resident domestic partnerships which may help ensure that these types of entities comply with the obligations to maintain ownership information. As provided above, during an audit, the Ministry may examine any books, papers, records or other data which may be relevant; however, the Marshall Islands officials advised that an audit would rarely examine ownership information. There are approximately 600 businesses (individuals and entities) registered for tax purposes, in the Marshall Islands and during the review period, 62 businesses were audited by the Ministry.

193. There is no requirement for non-resident partnerships or non-resident limited partnerships to file an annual report with the Registrar for Non-Resident Domestic Entities.

194. In principle, these requirements should ensure that ownership information in respect of resident domestic partnerships and limited partnerships registered in the Marshall Islands is available with the entity and the Registrar for Resident Domestic Entities. However, there is insufficient monitoring to ensure that ownership information in respect of partnerships and limited partnerships is available.

Trusts

195. As noted above, it is not possible to register a trust under Marshall Islands law, and the recommendations have been removed.

Service providers subject to AML/CFT Regulations – Financial institutions and cash dealers

196. The Banking Commission is tasked with the monitoring of licensed financial institutions and cash dealers operating in the Marshall Islands to ensure that these entities are complying with their obligations under the AML/CFT Regulations (as discussed above). The AML/CFT Regulations require that financial institutions and cash dealers make available to the Banking Commissioner upon request all of the customer and transaction records the AML/CFT Regulations require them to maintain. In the event that a financial institution or cash dealer violates the requirements of the AML/CFT Regulations, that institution or dealer will be liable for a civil penalty of up to USD 10 000 per violation for wilful violations or USD 500 per violation for negligent violations (s. 7, AML/CFT Regulations). The institution or cash dealer may also be liable for criminal penalties.

197. During the first half of the review period, on-site inspections of two financial institutions were completed. On-site inspections did not take place over the second-half of the review period as a result of staff departures at the Banking Commission. The Banking Commission reported that no sanctions were applied during the review period. New staff has joined the Banking Commission and on-site inspections will resume shortly. The Banking Commissioner is in the process of making a schedule of regular inspection of banks.

Conclusion

198. In principle, requirements to file annual reports with the Registrar for Resident Domestic Entities and tax audits performed by the Ministry of Finance should ensure that ownership information in respect of resident domestic companies and foreign companies is available. However, in practice, these mechanisms are insufficient to ensure that resident domestic entities maintain ownership information. In respect of non-resident domestic entities, there are insufficient mechanisms to ensure that these entities maintain ownership information and there is no monitoring and enforcement programmes in place to ensure that these entities do keep such information. Therefore, the effectiveness of the enforcement measures with regards non-resident domestic entities in the Marshall Islands is uncertain and it is recommended that the Marshall Islands' authorities put in place effective monitoring and enforcement provisions to ensure that up-to-date ownership information is available in all instances in the Marshall Islands.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
Bearer shares can be issued by non-resident domestic corporations in the Marshall Islands. Appropriate mechanisms to allow identification of owners of bearer shares are not in place.	The Marshall Islands should ensure that appropriate mechanisms to identify owners of bearer shares are in place.
Ownership and identity information in respect of nominee shareholdings is not available in all circumstances.	The Marshall Islands should ensure that ownership and identity information is available in respect of nominee shareholdings.

Phase 2 rating	
Non-Compliant	
Factors underlying recommendations	**Recommendations**
Ownership information was not provided to requesting jurisdictions in the majority of cases. The Marshall Islands does not have effective monitoring and enforcement programmes in place to ensure that relevant entities comply with the obligations to maintain or provide ownership and identity information. This is of particular concern with regards to non-resident domestic entities.	The Marshall Islands should put effective monitoring and enforcement programmes in place to ensure all relevant entities comply with the obligations to maintain or provide ownership information.

A.2. Accounting records

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

199. The *Terms of Reference* sets out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. They provide that reliable accounting records should be kept for all relevant entities and arrangements. To be reliable, accounting records should: *(i)* correctly explain all transactions; *(ii)* enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time; and *(iii)* allow financial statements to be prepared. Accounting records should further include underlying documentation, such as invoices, contracts, *etc*. Accounting records need to be kept for a minimum of five years.

General requirements *(ToR A.2.1)**, Underlying documentation*** *(ToR A.2.2)* ***and 5-year retention standard*** *(ToR A.2.3)*

Record keeping requirements under the various Acts

Business Corporations Act

200. Under the BCA, all resident and non-resident domestic corporations are required to maintain correct and complete books and records of account, minutes of all shareholder and board of director's meetings, actions taken

by the shareholders or board of directors, and the minutes of any executive committee meetings (s. 80, BCA). Section 80(1) further states that accounting records must be sufficient to correctly explain all transactions, enable the financial position of the corporation to be determined with reasonable accuracy at any time, and allow financial statements to be prepared. Additionally, every domestic corporation is required to keep underlying documentation, such as invoices and contracts, which shall reflect all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place, all sales, purchases, and other transactions, and the assets and liabilities of the corporation. Domestic corporations must keep all accounting records and underlying documentation for at least five years. In addition, section 80(6) of the BCA provides that any person who knowingly or recklessly fails to keep, retain, or maintain accounting records and underlying documentation for at least five years is liable to a fine not exceeding USD 5 000, revocation of the corporation's articles of incorporation and dissolution, or both. For resident domestic corporations, these records are required to be maintained in the Marshall Islands. The BCA does not specify where non-resident domestic corporations are required to maintain records.

201. In respect of foreign companies doing business in the Marshall Islands, section 207A of the FIBLA requires that every foreign entity granted a business license maintain reliable and complete accounting records. Section 207A of the BCA requires that accounting records be sufficient to correctly explain all transactions, enable the financial position of the entity to be determined with reasonable accuracy at any time, and allow financial statements to be prepared. FIBLA also requires that underlying documentation for accounting records is maintained, including but not limited to invoices and contracts. Section 207A further states that this underlying documentation must reflect all sums of money received and expended and the matters in respect of which the receipt and expenditure took place, all sales, purchases, and other transactions, and the assets and liabilities of the entity. These accounting records and underlying documents must be retained for at least five years. Section 208A of FIBLA provides that any person that violates a provision of the Act is liable to a maximum fine of USD 10 000.

202. In practice, the Registrar for Resident Domestic Entities and the Ministry of Finance, in its capacity as foreign investment business licenser, do not inspect whether companies maintain accounting information as required by the BCA or FIBLA and have no experience in applying these actions. However, as discussed below, the availability of accounting records held by resident domestic corporations and certain foreign corporations is monitored by audits undertaken by the tax authorities, which fall under the authority of the Ministry of Finance. The Ministry of Finance performs tax audits which may ensure that these corporations comply with the requirements to maintain accounting information. During an audit, the Ministry

may examine any books, papers, records or other data which may be relevant (s. 129, Income Tax Act). The Marshall Islands officials advise that this would include any information, such as the entity's bank account statements, importation documents, receipts and any other records, in order to determine the entity's revenue. The Ministry's goal is to audit every business over a 3-4 year cycle. There are approximately 600 businesses (individuals and entities) registered for tax purposes in the Marshall Islands and during the review period, 62 businesses were audited by the Ministry.

203. With respect to non-resident domestic corporations, the Marshall Islands has not put in place any monitoring or supervision system under which it could ascertain that accounting records are maintained by these entities under the conditions provided by law. The law does not specify where non-resident domestic corporations are required to maintain records. Accordingly, when accounting records are outside of the Marshall Islands, it is difficult to establish whether these records are in fact kept and whether sanctions can be effectively applied as, in practice, no sanctions have been applied. It is therefore recommended that the Marshall Islands monitor the availability of accounting records to ensure that reliable accounting records are available at all times and that effective sanctions are in place.

Foreign maritime entities

204. As described in under element A.1, FMEs are neither tax resident nor have their headquarters in the Marshall Islands, and no FME has ever had an office in the Marshall Islands. FMEs are not legally required, under Marshall Islands law, to maintain accounting records.

205. As provided above, it is possible that an enterprise with FME status could relocate its principal place of business to the Marshall Islands. In that case, such FMEs would be subject to the provisions of FIBLA, and the accounting record requirements described above. In practice, no enterprise with FME status has relocated its principal place of business to the Marshall Islands.

Limited Liability Company Act

206. Section 22(1) of the LLCA requires that every domestic LLC keep reliable and complete accounting records, to include correct and complete books and records of account. Section 22(1)(a) states that accounting records must be sufficient to correctly explain all transactions, enable the financial position of the limited liability company to be determined with reasonable accuracy at any time, and allow financial statements to be prepared. Additionally, every domestic LLC is required to keep underlying documentation for accounting records, such as invoices and contracts, which shall

reflect all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place, all sales, purchases, and other transactions, and the assets and liabilities of the LLC. A domestic LLC is required to keep all accounting records and underlying documentation for at least five years. Section 22(1)(f) provides that any person who knowingly or recklessly fails to keep, retain, and maintain accounting records as required under this section shall be liable to a fine not exceeding USD 5 000, cancellation of the certificate of formation, or both.

207. In respect of foreign LLCs, the accounting record keeping requirements under FIBLA apply, as described above.

208. In practice, the Registrar for Resident Domestic Entities and the Ministry of Finance, in its capacity as foreign investment business licenser, do not inspect whether LLCs maintain accounts as required by the LLCA or FIBLA and have no experience in applying these actions. However, as discussed below, the availability of accounting records maintained by resident domestic LLCs is monitored by audits undertaken by the tax authorities, which fall under the authority of the Ministry of Finance. The Ministry of Finance performs tax audits which may ensure that these LLCs comply with the requirements to maintain accounting information. As provided above, during an audit, the Ministry may examine any books, papers, records or other data which may be relevant, including any information, such as the entity's bank account statements, importation documents, receipts and any other records, in order to determine the entity's revenue. The Ministry's goal is to audit every business over a 3-4 year cycle. There are approximately 600 businesses (individuals and entities) registered for tax purposes in the Marshall Islands and during the review period, 62 businesses were audited by the Ministry.

209. With respect to non-resident domestic LLCs, the Marshall Islands has not put in place any monitoring or supervision system under which it could ascertain that accounting records are maintained by these entities under the conditions provided by law. The law does not specify where non-resident domestic LLCs are required to maintain records. Accordingly, when accounting records are kept outside of the Marshall Islands, it is difficult to establish whether these records are in fact kept and whether sanctions can be effectively applied as, in practice, no sanctions have been applied. It is therefore recommended that the Marshall Islands monitor the availability of accounting records to ensure that reliable accounting records are available at all times and that effective sanctions are in place.

Revised Partnership Act

210. Section 37(1) of the RPA requires that every domestic partnership shall keep reliable and complete accounting records, to include correct and complete books and records of account. Section 37(1)(a) provides that accounting records must be sufficient to correctly explain all transactions, enable the financial position of the partnership to be determined with reasonable accuracy at any time, and allow financial statements to be prepared. Additionally, every domestic partnership is required to keep underlying documentation for accounting records, such as invoices and contracts, which shall reflect all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place, all sales, purchases, and other transactions, and the assets and liabilities of the partnership. These records must be retained for at least five years. Section 37(1)(f) provides that any person who knowingly or recklessly fails to keep, retain, and maintain accounting records as required shall be liable to a fine not exceeding USD 5 000, cancellation of the certificate of partnership, or both.

211. In respect of foreign partnerships, the accounting record keeping requirements under FIBLA apply, as described above.

212. In practice, the Registrar for Resident Domestic Entities and the Ministry of Finance, in its capacity as foreign investment business licenser, do not inspect whether partnerships maintain accounts as required by the RPA or FIBLA and have no experience in applying these actions. However, as discussed below, the availability of accounting records held by resident domestic partnerships is monitored by audits undertaken by the tax authorities, which fall under the authority of the Ministry of Finance. The Ministry of Finance performs tax audits which may ensure that partnerships comply with the requirements to maintain accounting information. During an audit, the Ministry may examine any books, papers, records or other data which may be relevant, including any information, such as the entity's bank account statements, importation documents, receipts and any other records, in order to determine the entity's revenue. The Ministry's goal is to audit every business over a 3-4 year cycle. There are approximately 600 businesses (individuals and entities) registered for tax purposes in the Marshall Islands and during the review period, 62 businesses were audited by the Ministry.

213. With respect to non-resident domestic partnerships, the Marshall Islands has not put in place any monitoring or supervision system under which it could ascertain that accounting records are maintained by these entities under the conditions provided by law. The law does not specify where non-resident domestic partnerships are required to maintain records. Accordingly, when accounting records are kept outside of the Marshall Islands, it is difficult to establish whether these records are in fact kept and whether sanctions can be effectively applied as, in practice, no sanctions have

been applied. It is therefore recommended that the Marshall Islands monitor the availability of accounting records to ensure that reliable accounting records are available at all times and that effective sanctions are in place.

Limited Partnership Act

214. Section 32(1) of the LPA requires that every domestic limited partnership shall keep reliable and complete accounting records, to include correct and complete books and records of account. Section 32(1)(a) further states that accounting records must be sufficient to correctly explain all transactions, enable the financial position of the partnership to be determined with reasonable accuracy at any time, and allow financial statements to be prepared. Additionally, every domestic limited partnership shall keep underlying documentation for accounting records, such as invoices and contracts, which shall reflect all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place, all sales, purchases, and other transactions, and the assets and liabilities of the limited partnership. These accounting records and underlying documentation must be retained for at least five years. Section 32(1)(f) provides that any person who knowingly or recklessly fails to keep, retain, and maintain accounting records as required shall be liable to a fine not exceeding USD 5 000, cancellation of the certificate of limited partnership, or both.

215. In respect of foreign limited partnerships, the accounting record keeping requirements under FIBLA apply, as described above.

216. In practice, the Registrar for Resident Domestic Entities and the Ministry of Finance, in its capacity as foreign investment business licenser, do not inspect whether limited partnerships maintain accounts as required by the RPA or FIBLA and have no experience in applying these actions. However, as discussed below, the availability of accounting records held by resident domestic limited partnerships is monitored by audits undertaken by the tax authorities, which fall under the authority of the Ministry of Finance. The Ministry of Finance performs tax audits which may ensure that partnerships comply with the requirements to maintain accounting information. During an audit, the Ministry may examine any books, papers, records or other data which may be relevant, including any information, such as the entity's bank account statements, importation documents, receipts and any other records, in order to determine the entity's revenue. The Ministry's goal is to audit every business over a 3-4 year cycle. There are approximately 600 businesses (individuals and entities) registered for tax purposes in the Marshall Islands and during the review period, 62 businesses were audited by the Ministry.

217. With respect to non-resident domestic limited partnerships, the Marshall Islands has not put in place any monitoring or supervision system under which it could ascertain that accounting records are maintained by these entities under the conditions provided by law. The law does not specify where non-resident domestic limited partnerships are required to maintain records. Accordingly, when accounting records are kept outside of the Marshall Islands, it is difficult to establish whether these records are in fact kept and whether sanctions can be effectively applied as, in practice, no sanctions have been applied. It is therefore recommended that the Marshall Islands monitor the availability of accounting records to ensure that reliable accounting records are available at all times and that effective sanctions are in place.

Trusts

218. As noted above at section A.1.4, it is not possible to create a Marshall Islands trust, and it is not possible for a Marshall Islands person to act as a professional trustee of a foreign trust. It is possible that a person resident in the Marshall Islands could act as a non-professional trustee of a foreign trust. Accounting records would thus be available to the extent required by the trustee's duties and the terms of the relevant foreign law. These obligations would not necessarily cover the full scope of obligations under the Terms of Reference.

Banking Act

219. All licensed banks are required to publish a balance sheet and a profit and loss account for a year in the local press as prescribed by the Commissioner (s. 132, Banking Act). All licensed banks must also appoint annually an independent financial auditor to audit the financial statements of the bank (s. 134, Banking Act). A bank licensed to do offshore banking business may be required by the Commissioner of Banking to maintain in the Marshall Islands such books, minutes, accounts, documents, vouchers or such other documents as determined by him (s. 128, Banking Act). The Marshall Islands authorities indicate that there are no offshore banks operating in the Marshall Islands.

220. In practice, the Banking Commission carries out both off-site and on-site inspections (as discussed above). During the review period, on-site inspections of two financial institutions were completed. There were no sanctions imposed during the review period. The inspections verify the documentation that the licensed banks and cash dealers must have in respect of its clients in the context of the AML/CTF Regulations.

Income Tax Act

221. The Income Tax Act 1989 requires that all entities maintain "legible and accurate business records of sales and other business transactions that are subject to tax requirements under this Act" (s. 137, Income Tax Act 1989). Further, entities are required to keep and maintain accurate records for a period of 3 years (s. 125, Income Tax Act 1989). Accordingly, entities must be able to substantiate information provided to the tax administration. Section 12 of the BCA specifically exempts all non-resident entities and foreign corporation not doing business in the Marshall Islands from income tax. Accordingly, there is no requirement under the Income Tax Act 1989 for non-resident entities and foreign corporations to maintain accounting records. Amendments to the FIBLA were made in early 2015 to require foreign corporations to maintain records. Further, entities carrying specified business are exempt from gross revenue tax (s. 121, Income Tax Act 1989). The tax holiday is available to any incorporated or unincorporated business engaged in carrying on one or more of the following businesses: off-shore or deep sea fishing; manufacturing industry for export or for both export and local use; agriculture; and hotel and resort facilities. Section 122 exempts some other entities from the gross revenue tax.

222. Pursuant to the Income Tax Act 1989, any person required to "collect, truthfully account for, and pay over any tax imposed by this [Act]" may be liable to a "penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over" (s. 141(f), Income Tax Act 1989). According to the Marshall Islands officials, as maintaining records are essential to truthfully account for taxes imposed by the Act, an entity that fails to maintain records may be liable to penalty under section 141(f) of the Act. Further, section 140 of the Income Tax Act 1989 imposes a criminal penalty, for a fine not exceeding USD 1 000 or a term of imprisonment note exceeding one year, for any person who commits an offence. In addition, a person who is subject to tax in the Marshall Islands and fails to keep records or make records available for inspection may be guilty of a misdemeanour and any existing business license may be revoked (s. 306, Tax Collection Act).

223. All resident domestic entities and foreign corporations doing business in the Marshall Islands are obliged to file income tax returns, regardless of whether they are taxable or not. Marshall Islands officials also advise that there are only two entities that are taking advantage of tax holiday and that although these entities do not file gross revenue returns with the Ministry of Finance they are required to file returns with the Ministry for any other taxes they are required to pay, such as taxes on wages and salaries. Also, the two entities are required to file annual reconciliation income forms with the Ministry. Marshall Islands officials further advised that foreign corporations that that have a short-term consulting contract with the government of the

Marshall Islands are not exempt from income tax and are required to file income tax returns.

224. In practice, the Taxation Division in the Ministry of Finance comprises of five people. The Ministry does have a tax audit programme for businesses which began in 2005. The Ministry's goal is to audit every business over a 3-4 year cycle. There are also spontaneous audits of businesses as a result of the Ministry discovering a discrepancy in a tax return. During an audit, the Ministry may examine any books, papers, records or other data which may be relevant (s. 129, Income Tax Act). The Marshall Islands officials advise that this would include any information, such as the entity's bank account statements, importation documents, receipts and any other records, in order to determine the entity's revenue.

225. During the review period, the Ministry faced many challenges, including but not limited to the departure of several audit staff, and as a result the target number of audits was not able to be met. 62 businesses were audited by the Ministry of Finance, during the review period, and based on the audits, the Ministry imposed sanctions on 23 of these businesses. It is not clear whether the sanctions imposed related to the failure to maintain accounting records.

Service providers subject to AML/CFT Regulations – Financial institutions and cash dealers

226. Section 4(e) of the AML/CFT Regulations establishes that financial institutions and cash dealers are required to retain records of all transactions for a period of six years from the date the transaction was completed. These records include the nature of the transaction, the accounts involved, the currency/negotiable instrument involved (s. 4(c), AML/CFT Regulations).

227. As discussed above, the Banking Commission is tasked with monitoring financial institutions and cash dealers. During the review period, on-site inspections of two financial institutions were completed. The inspections verify the documentation that the licensed banks and cash dealers must have in respect of its clients in the context of the AML/CTF Regulations.

Legislative amendments

228. The Marshall Islands enacted legislation during the review period to clarify its laws which require that accounting records, including underlying documentation, be available and retained for at least five years, in respect of all relevant entities and arrangements. Prior to January 2015, the laws of the Marshall Islands only provided for the express obligation for resident and non-resident domestic corporations to maintain correct and complete

books and records of account. However, the scope of books and records was not explicitly stated in the laws. There was no express obligation for foreign corporations all LLCs and all partnerships to maintain correct and complete books and records of account. Further, the various Acts of the Associations Law did not contain explicit obligations with regard to underlying documentation that had to be kept. The Marshall Islands passed legislative amendments in 2014 and 2015 to the various Acts in the Associations Law and FIBLA. The amendments require all domestic corporations, LLCs, partnerships, limited partnerships and foreign corporations keep reliable and complete accounting records. Records must be sufficient to correctly explain all transactions, enable the financial position of the entity to be determined with reasonable accuracy at any time, and allow financial statements to be prepared. Entities are also required to maintain underlying documentation, such as invoices and contracts, which reflect all sums of money received and expended and the matters in respect of which the receipt and expenditure took place, all sales, purchases, and other transactions, and the assets and liabilities of the entity. Enforcement provisions are included in the relevant law in respect of these obligations to maintain accounting information. These enactments entered into force in January 2015. The Marshall Islands should monitor the practical implementation of the newly enacted laws.

Conclusion

229. In practice, income tax audits undertaken by the Ministry of Finance should ensure that accounting information is maintained by entities that are subject to tax in the Marshall Islands. In respect of non-resident domestic entities, there are insufficient mechanisms to ensure that these entities maintain accounting information as there is no monitoring and enforcement programmes in place to ensure that these entities do keep such information. Further, it is not clear that effective sanctions may be applied against non-resident domestic entities that fail to maintain this information as sanctions have never been applied. Therefore, the effectiveness of the enforcement measures with regards non-resident domestic entities in the Marshall Islands is uncertain and it is recommended that the Marshall Islands' authorities put in place effective monitoring and enforcement provisions to ensure that up-to-date accounting records are available in all instances in the Marshall Islands.

230. During the review period, of the seven EOI requests that the Marshall Islands received, five included requests for accounting records. The information was not exchanged with the requesting jurisdictions in any of the cases. The requesting jurisdictions were informed that this information could not be provided. The Marshall Islands authorities explained, at the on-site visit, that this was caused by the practice, at that time, of the competent authority to only approach the Registrar for Non-Resident Domestic Entities to access accounting

information. As noted above, entities are not required to provide accounting information to the Registrar for Non-Resident Domestic Entities and, as such, the Registrar was unable to provide the requested accounting information to the competent authority. At the time, the Marshall Islands competent authority did not approach the companies for the accounting information. Consequently, there are no clear indications that accounting information is being kept by entities that are not subject to tax in the Marshall Islands. Following the on-site visit, the competent authority sent requests to 10 companies for the requested ownership and accounting information. At the date of this report, no companies have provided the requested accounting information.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Non-Compliant	
Factors underlying recommendations	**Recommendations**
No system of monitoring compliance with accounting record keeping requirements for non-resident domestic entities is in place, which may result in the legal obligation to keep accounting records not being enforced. A number of clarifying amendments to the accounting record keeping obligations have only been introduced recently.	The Marshall Islands should ensure that reliable accounting information for all relevant entities are available at all times.
There has been no effective enforcement of the accounting record keeping requirements during the review period.	The Marshall Islands should ensure that its enforcement powers are sufficiently exercised in practice.

A.3. Banking information

Banking information should be available for all account-holders.

231. Access to banking information is of interest to the tax administration only if the bank has useful and reliable information about its customers' identity and the nature and amount of financial transactions.

Record-keeping requirements (ToR A.3.1)

232. All financial institutions in the Marshall Islands are regulated under the Banking Act. The term "financial institution" is defined under the Banking Act to mean any person who carries on a business of:

- acceptance of deposits and other repayable funds from the public;
- lending, including consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions;
- financial leasing;
- money transmission services;
- issuing and administering means of payment (such as credit cards, travellers' checks and bankers' drafts); guarantees and commitments;
- trading for own account or for account of customers in money market instruments (such as checks, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities;
- underwriting share issues and participation in such issues;
- money-brokering;
- portfolio management and advice;
- safekeeping and administration of securities; or
- credit reference services; safe/custody services.

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

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

- name, address and occupation (or where appropriate business or principal activity) of each person: *(i)* conducting the transaction; or *(ii)* if known, on whose behalf the transaction is being conducted as

well as the method used by the financial institution or cash dealer to verify the identity of each such person;

- nature and date of the transaction;
- type and amount of currency involved;
- the type and identifying number of any account with the financial institution or cash dealer involved in the transaction;
- if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee (if any), the amount and date of the instrument, the number (if any) of the instrument and details of any endorsements appearing on the instrument;
- the name and address of the financial institution, and of the officer, employee or agent of the financial institution who prepared the report.

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

In practice

236. As described above, the Marshall Islands' financial sector is small. Financial institutions in the Marshall Islands are monitored and licensed by the Banking Commission. The Banking Commission comprises of three people. The Banking Commission carries out both off-site and on-site inspections. On-site inspections of all domestic financial sector entities are undertaken by the Banking Commission every two or three years. The inspections verify the documentation that banks must have in respect of its clients in the context of the Banking Act. Penalties can be issued by the Banking Commission, although no sanctions were applied during the review period.

237. On-site inspections of two financial institutions were completed in 2013 but no inspections have been conducted since then. The Banking Commissioner advised that the office of the Banking Commissioner was vacant for more than a year prior to the current Commissioner being appointed in July 2015. The new Commissioner is in the process of making a schedule of regular inspection of banks.

238. During the review period, the Marshall Islands received one request for banking information and was able to provide such information to the

exchange partner. The Marshall Islands authorities advised that this information was provided by the Registrar for Non-Resident Domestic Entities.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
Two on-site inspections took place during 2013; however, the office of the Banking Commissioner was vacant during a majority of the review period.	It is recommended that the Marshall Islands quickly put in place a schedule of regular inspections of financial institutions so that their compliance can be effectively monitored.

B. Access to information

Overview

239. 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. This section of the report examines whether the Marshall Islands' legal and regulatory framework gives its competent authority access powers that cover all relevant persons and information, and whether the rights and safeguards that are in place are compatible with effective EOI. It also assesses the effectiveness of this framework in practice.

240. The Marshall Islands' EOI agreements are given legal effect through the Tax Information Exchange Agreement (Execution and Implementation) Act 2010 (TIEA Act 2010) and the Tax Information Exchange Agreement (Implementation) Act (TIEA USA Act 1989). The TIEA USA Act 1989 gives legal effect to the Marshall Islands' TIEA with the US (US TIEA), while the TIEA Act 2010 gives legal effect to the other TIEAs signed by the Marshall Islands. The US TIEA specifies the Minister for Finance as the competent authority while the other TIEAs specify the Secretary for Finance as the competent authority. Both the Secretary and the Minister, as the case may be, may designate other persons to perform the functions of the competent authority.

241. The TIEA USA Act 1989, the TIEA Act 2010, and the Tax Information Exchange Agreement Regulations 2013 provide powers to the competent authority to obtain information from all persons for EOI purposes. These powers may be exercised regardless of whether there is a domestic tax interest in the Marshall Islands. Non-compliance with a request for information by the competent authority is an offence and sanctions are applicable.

242. The competent authority has power to access information regardless of any law relating to privilege or a contractual duty of confidentiality.

243. In practice, during the three-year review period, in order to obtain the information requested by its EOI partners, the Marshall Islands competent authority would send a copy of the incoming EOI request to the Registrar for Non-Resident Domestic Entities. The other potential information holders, in particular those non-resident domestic entities which were the subject of requests, were not asked to provide the requested information. This resulted in the Marshall Islands competent authority not always obtaining all information in the first instance, and no further attempts were made to obtain the remainder of the information from the entities themselves. As a result, the Marshall Islands was able to respond to only three of the seven EOI requests. Following the on-site visit, the competent authority sent requests to 10 companies for the requested ownership and accounting information. At the date of this report, 7 companies have provided the requested ownership information; no companies have provided the requested accounting information. The Marshall Islands should ensure that the access powers of its competent authority be used effectively to obtain all information included in an EOI request.

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).

Ownership and identity information (ToR B.1.1) and Accounting records (ToR B.1.2)

244. The competent authority's powers to obtain and exchange information pursuant to the Marshall Islands' EOI agreements are found in Title 41, Compact of Free Association (TIEA USA Act 1989), Title 48, Taxation, Income Tax Act 1989 and TIEA Act 2010 ("Income Tax Act" and "TIEA Act 2010" respectively), which give effect to US TIEA and other TIEAs respectively. The Marshall Islands' legal framework does not provide for the possibility of exchanging information under DTCs and the Marshall Islands has not signed any DTC to date.

245. The TIEA USA Act 1989 and TIEA Act 2010 assign the information gathering powers to the Minister of Finance. The Minister of Finance is the competent authority for the US TIEA. In respect of all other TIEAs, the Secretary of Finance is the designated competent authority. The Secretary of Finance's power to obtain and exchange information is derived through a Ministerial delegation Order under Title 1, section 510 of the Marshall Islands Revised Code. All TIEAs of the Marshall Islands are signed by the Minister

of Finance and designate the Secretary of Finance as the competent authority. This constitutes a delegation order pursuant to Title 1, section 510 of the Marshall Islands Revised Code.

246. The access powers under the TIEA USA Act 1989 and the TIEA Act 2010 are different and are considered separately.

TIEA USA Act 1989

247. Under the TIEA USA Act 1989, the competent authority has powers to access information to respond to an EOI request by directly issuing notices to the holders of information to produce the information; or using search and seizure warrants (ss. 405 and 406, TIEA USA Act 1989). These powers are applicable regardless of the type of information sought (i.e. whether it is ownership, bank, or accounting information) or the person from whom the information is sought (i.e. bank, company, individual, etc.). These powers may also be exercised independently of where the information is held, as long as it is in the possession or control of a person within the Marshall Islands' territorial jurisdiction.

248. Every valid request must be in writing and must contain, among other particulars, information indicating that *(a)* a person in the Marshall Islands has or may have the information in his possession, custody or control, *(b)* the information relates to the carrying out of the laws of the US covered in the US TIEA, *(c)* the information relates to the affairs of a taxpayer in respect of whom the request is made, *(d)* the US has a valid tax purpose in making the request, *(e)* and whether the taxpayer is a resident of the US or Marshall Islands (s. 404, TIEA USA Act 1989).

249. Upon the receipt of a valid request, the competent authority will issue a notice requiring the person who has been identified as having possession or control of the information to deliver the requested information to the competent authority (s. 405, TIEA USA Act 1989). The notice must specify the information sought and the timeframe in which the information must be delivered. The default deadline is 28 days, and may be extended at the competent authority's discretion.

TIEA Act 2010

250. The information gathering powers of the Minister of Finance under the TIEA Act 2010 are spelt out under Section 403 of the Act and reads as follows: "The Minister of Finance shall

1. execute and implement any and all Agreements as approved by the Cabinet pursuant to this Act;

2. pursuant to the terms of any Agreement executed under this Act;

    a. use all relevant information gathering measures, to the extent allowable under the laws of the Republic of the Marshall Islands, to provide any and all information requested under the authority of any Agreement executed pursuant to this Act; and

    b. obtain and provide upon request information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees; and information regarding the ownership of companies, partnerships, limited liability companies and other entities, and information on any and all persons in an ownership chain."

251. In 2013, the Marshall Islands enacted regulations pursuant to the TIEA Act 2010, the Tax Information Exchange Agreement (TIEA) Regulations 2013 ("TIEA Regulations"). Section 1(a) of the TIEA Regulations provides that the Minister of Finance has power to execute a Tax Information Exchange Agreement and the authority to use all information gathering powers to provide information requested pursuant to a TIEA.

252. Section 2 of the TIEA Regulations provide explicit information gathering powers that are available to the Minister or his authorised person for the purposes of administering the TIEA Act 2010 or meeting the obligations under a tax information exchange agreement. These include examining books and records, obtaining and providing information from financial institutions and others (notwithstanding that the person acts in an agency or fiduciary capacity), obtaining and providing information on the ownership of entities including persons in an ownership chain, summonsing a taxpayer or any other person having control, possession or custody of documents to attend to appear before the Minister or authorised person and to give testimony under oath, and to inspect and obtain copies of sales records.

253. Section 3 of the TIEA Regulations provides the Minister or authorised person with the authority, for the purpose of administering the TIEA Act 2010 or meeting the obligations under a tax information exchange agreement, to access all premises, documents and data storage devices of financial institutions, to make copies of the same, to access any documents that may be material in responding to an exchange of information request, to retain such documents and to retain a data storage device to copy the required information.

254. In addition to the EOI access powers provided in the TIEA Regulations, Marshall Islands authorities have indicated that Section 403(2)(a) of the TIEA Act 2010 gives the Minister of Finance the authority to *"use all relevant information gathering measures"*, and provides the Minister an extensive network of information gathering techniques when responding

to an EOI request. In this regard, the Minister of Finance can use, among others, information gathering powers available under the Banking Act, the Income Tax Act, and the Mutual Assistance in Criminal Matters Act. When the Minister receives an EOI request, he will assess which authority would be most effective for obtaining the information requested. The access powers under the various Acts are examined in the following paragraphs.

Access powers under the Banking Act

255. Section 138 of the Banking Act provides that the Banking Commissioner has powers to obtain information and conduct inspection for the purposes of determining that a licensed bank is in sound financial condition and that the requirements of the law have been complied with in the conduct of its business. The banks on being specified must provide all books, minutes, accounts, cash, securities, documents and vouchers relating to its business for inspection.

256. Section 167 of the Banking Act gives the Commissioner of Banking the authority and ability to obtain information for the purpose of combating money laundering, notwithstanding any secrecy or other restrictions on disclosure of information imposed by the Banking Act. This authority includes the ability to enter the premises of any financial institution or cash dealer and inspect any record, ask any question relating to the record and makes notes or copies of the whole or any part of the records. The Commissioner's authority under section 167 also allows him/her to request additional information if there are reasonable grounds for believing that the information is necessary to discovering money laundering, proceeds of crime and/or the financing of terrorism.

257. The Marshall Islands authorities explained that the tax authorities obtain information through the Banking Commissioner which in turn obtains the required information from the Banks under section 167(1)(d) of the Banking Act. Section 167(1)(d) of the Banking Act provides "The Commissioner shall send to the appropriate law enforcement authorities, any information derived from an inspection carried out pursuant to subsection (1)(c) of this Section, if it gives the Commissioner reasonable grounds to suspect that a transaction involves proceeds of a crime." While the Banking Commissioner may share the appropriate information with other law enforcement authorities, it is uncertain whether the information may be used by the tax authorities in the absence of a crime (i.e. for tax administration purposes) or for purpose of fulfilling an EOI request. During the on-site visit, the Marshall Islands authorities confirmed their interpretation of section 167(1)(d) of the Banking Act to allow the Banking Commissioner to share information with the tax authorities for tax administration purposes or for purposes of fulfilling an EOI request. This provision has been used many times by the Ministry of Finance to obtain information from

banks while auditing a taxpayer and this has never been challenged by a taxpayer or a financial institution.

Access powers under the Income Tax Act

258. Section 129(1) of the Income Tax Act 1989 provides that the Secretary of Finance has, for the purpose of *(a)* ascertaining the correctness of any return; *(b)* making a return where none has been made; *(c)* determining the liability of *any person for any tax or the liability at law or in equity of any transferee of any person in respect of any tax* (emphasis added)*;* or *(d)* collecting any such liability, the authority to:

- examine any books, papers, records, or other data which may be relevant or material to such inquiry;
- summon the person liable for tax or required to perform the act, or any officer or employee of such person or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under the oath, as may be relevant or material to such inquiry;
- take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; and
- inspect all daily sales records and to obtain correct copies of such records.

259. Section 129(2) of the Income Tax Act 1989 further empowers the Secretary of Finance to use his information gathering powers also for the purpose of inquiring into any offence connected to the administration or the enforcement of the tax laws. In this regard, it should be noted that the TIEA Act 2010 (authorising the Secretary of Finance to use appropriate information gathering powers to the extent allowable under the laws of the Marshall Islands) and the Income Tax Act 1989 (setting out information gathering powers for tax purposes) are integrated into the Marshall Islands Revised Code under Title 48 (Taxation), which gathers all taxation laws of the Marshall Islands. Consequently, the powers to obtain information would apply regardless of whether the person is liable to Marshall Islands tax (including those entities exempt from Marshall Islands taxes, see para. 74).

260. While these powers to obtain information under the Income Tax Act are worded very broadly it is uncertain as to whether the term "any tax" can be interpreted to cover foreign taxes. A contextual interpretation of the term

"any tax" would suggest that the term is limited to taxes imposed under the Income Tax Act (e.g. tax on wages and salaries, tax on gross revenue and tax on immovable properties) and probably other taxes imposed in the Marshall Islands. In this regard, the access power of the Secretary of Finance to obtain information under Section 129 of the Income Tax Act 1989 for EOI purposes may be constrained by domestic tax interest notwithstanding express provision obliging the Minister of Finance to use his information gathering powers in the absence of domestic tax interest as provided in the TIEAs. On the other hand, the integration of the TIEA Act 2010 within Title 48 of the MIRC implies that it should be considered one of the tax laws of the Marshall Islands and so the power to obtain information in respect of "any tax" (section 129(1)) or for the purposes of offences related to the administration and enforcement "the tax laws" (section 129(2)), this should include a foreign tax as provided for in the TIEAs of the Marshall Islands. However, any doubt in this regard is resolved by section 1(c) of the TIEA Regulations which specifically provides that the Minister's ability to access information is available regardless of the existence of a domestic tax interest.

Access powers under the Mutual Assistance in Criminal Matters Act

261. The Marshall Islands authorities have indicated that the Mutual Assistance in Criminal Matters Act (MACMA) enables the Marshall Islands "to cooperate with foreign countries in criminal investigations and proceedings." MACMA applies to the Marshall Islands and any foreign jurisdiction which may request assistance in criminal matters on a reciprocal basis. The Marshall Islands authorities explained that upon receiving a request from a foreign State, the Attorney General can apply to the High Court for a search warrant or an evidence-gathering order, which the court will grant if the foreign state has provided a statement to the effect that a serious offense has or may have been committed against it. An evidence-gathering order gives the Attorney General the authority to "require any person named therein to make a record from data or make a copy of a record; attend court to give evidence on oath…; [and] produce to the High Court or any person designated by the Court, anything, including any document…". The Marshall Islands authorities have explained that if the basis for an EOI request was a criminal proceeding in the requesting country, MACMA provides extensive access to information in the Marshall Islands. The scope of the MACMA only covers criminal matters and it does not allow Marshall Islands to access information in the absence of a crime.

Gathering information in practice

262. A number of peers indicated that the information received with respect their EOI requests was not complete to fulfil their request for assistance. The Marshall Islands authorities explained that this was mainly caused

by the practice during the three-year review period to only approach the Registrar for Non-Resident Domestic Entities in order to obtain the requested information. The Marshall Islands competent authority did not seek the remaining information from the other potential information holders, in particular the companies concerned, even though they were obliged to keep the information sought. This resulted in the Marshall Islands competent authority not always obtaining all information in the first instance, and no further attempts were made to obtain the remainder of the information. Following the on-site visit, the competent authority sent requests to 10 companies for the requested ownership and accounting information. At the date of this report, 7 companies have provided the requested ownership information; no companies have provided the requested accounting information. As such it is recommended that the Marshall Islands ensure that the access powers of its competent authority be used effectively to obtain all information included in an EOI request.

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

263. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes.

TIEA USA Act 1989

264. The information gathering powers of the competent authority under the TIEA USA Act 1989 are not subject to the Marshall Islands requiring such information for its own tax purposes. The TIEA USA Act 1989 specifically empowers the competent authority to obtain and exchange information pursuant to a request from the US (s. 403, TIEA USA Act 1989).

TIEA Act 2010

265. The TIEA Regulations explicitly provide that the powers to access information may be exercised regardless of the existence of a domestic tax interest (s. 1(c), TIEA Regulations).

266. No issues have been raised by peers in relation to the ability of the tax authorities to obtain information absent a domestic tax interest.

Compulsory powers (ToR B.1.4)

267. Jurisdictions should have in place effective enforcement provisions to compel the production of information.

TIEA USA Act 1989

268. The TIEA USA Act 1989 provides that every person served with a notice to produce information must do so within the timeframe specified in the notice.

269. The competent authority may, through an officer from the Department of Public Safety, make an application to a judge for an entry warrant to any premises. If the judge is satisfied that there is reasonable ground for suspecting that an offense against the TIEA USA Act 1989 has been, is being or is about to be committed by reason of which the supply of information sought by the competent authority is endangered, he may issue such a warrant. An officer that enters any premises pursuant to such a warrant is entitled to seize any material that may contain information sought by the request (s. 406, TIEA USA Act 1989).

270. The TIEA USA Act 1989 establishes offences where a person having been required to produce any information which is in his possession or under his control (s. 409, TIEA USA Act 1989):

- contravenes a notice issued by the competent authority for the production of the information;
- wilfully obstructs an officer executing an entry warrant issued under the Act;
- wilfully tampers with or alters the information such that it is false when received by the competent authority;
- without reasonable excuse destroys or damages any information which he knows that the competent authority has directed should be provided to the competent authority.

271. Offenders are liable, upon conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding USD 5 000 or both.

TIEA Act 2010

272. The access, entry and seizure powers granted for the purpose of EOI in the TIEA Regulations are set out above.

273. Under the Income Tax Act, any person that does not produce the information required by the Secretary of Finance commits an offence and may be charged with contempt and is liable to penalties as the judge may determine proper, not inconsistent with the law for the punishment of contempt in the Marshall Islands. Article 140 of the Income Tax Act provides that upon conviction a fine not exceeding USD 1 000 or in case of a natural person, a term of imprisonment not exceeding one year, or both can be

imposed. In such a case, the Attorney General may apply to the District Court or to the High Court for an attachment against him as for contempt. It is not clear how these provisions work in practice. The Income Tax Act does not spell out any specific procedure for obtaining information. As noted above, the Marshall Islands' authorities indicate that information may also be compelled pursuant to powers contained in the Banking Act or under MACMA. In the case of a request for information under MACMA, a person that refuses to provide information as requested is liable for contempt (s. 410, MACMA). Under the Banking Act, a bank that fails to provide information pursuant to a request by the Banking Commissioner shall be guilty of an offense and upon conviction is liable to a fine not exceeding USD 10 000 (s. 138, Banking Act).

274. During the review period, the Marshall Islands competent authority only approached the Registrar for Non-Resident Domestic Entities in order to obtain the requested information. The Marshall Islands authorities do not have experience in using the enforcement provisions under the TIEA Act, 2010 and TIEA Regulations.

Secrecy provisions *(ToR B.1.5)*

275. Jurisdictions should not decline on the basis of secrecy provisions (e.g. bank secrecy, corporate secrecy) to respond to a request for information made pursuant to an exchange of information mechanism.

Financial institutions

276. Banking confidentiality is governed by the Banking Act. The Banking Act stipulates that all officers and employees of all licensed banks must maintain the confidentiality of all matters relating to the affairs of the bank and its clients and must not reveal such matters except when required to do so: by a customer to whom such matters relate to; by a court of law in the Marshall Islands; in circumstances where in the interest of the bank it is necessary to reveal such information and in order to comply with the provisions of any other written law. Accordingly, banks will provide information to tax authorities pursuant to an inquiry made under the Income Tax Act 1989. This is relevant for the TIEA Act 2010, which utilises the access powers under the Income Tax Act to obtain and exchange information pursuant to EOI requests.[7]

277. In respect of the TIEA USA Act 1989, section 403(2) states that the competent authority, in performing his functions under the Act, is not restricted by any law or rule of law relating to confidentiality of information held by any person, except as expressly provided in the US TIEA (professional and trade secrets, legal privilege and information the disclosure of

7. Section 403 of the TIEA Act 2010.

which is contrary to public policy). Additionally, section 405(7) of the TIEA USA Act 1989 states that any person who follows the direction of a notice issued under the TIEA USA Act 1989 is an absolute defence to any claim brought against him.

278. Banking confidentiality therefore does not have an impact on effective EOI in the Marshall Islands. No concerns as to this issue have arisen in practice.

Professional privileges

279. Section 4 of the TIEA Regulations gives the competent authority power to access information regardless of any law relating to privilege or a contractual duty of confidentiality. No concerns as to this issue have arisen in practice.

Tax Secrecy

280. The Income Tax Act requires the Secretary of Finance and every employee of the Department of Finance to "maintain the secrecy of all information concerning individual taxpayers related to the Income Tax Act which comes to their knowledge and not communicate such information to any person except for the purpose of giving effect to the Act, the Social Security Act, or any other enactment imposing taxes or duties payable to the Government of the Marshall Islands and only with the express prior permission of the Secretary of Finance" (s. 132, Income Tax Act). It further states that "an authorized person who uses or discloses any information obtained under the Act other than for the purposes of the Act or the administration of any other tax administered by the Minister of Finance commits an offense unless the use or disclosure is with written consent of the person from whom the information is obtained or is for the purpose of legal proceedings arising out of the administration of the Act or that other tax" (s. 136, Income Tax Act). A person who commits an offense is liable to a fine of up to USD 500 and or imprisonment for up to six months.

281. However, section 4 of the TIEA Regulations gives the competent authority power to access information regardless of any law relating to privilege or a contractual duty of confidentiality. No concerns as to this issue have arisen in practice.

Conclusion

282. The Marshall Islands competent authority has legal access powers to obtain information for EOI purposes under both the TIEA USA Act 1989 and the TIEA Act 2010. There are no domestic tax interest or secrecy provisions

that would interfere with the exercise of these powers for EOI purposes. During the review period, however, these access powers were ineffective in ensuring the provision of information from non-resident domestic companies. In practice, the competent authority's use of access powers was, until after the on-site visit, limited to compelling the production of information from the Registrar for Non-Resident Domestic Entities. The competent authority did not use its access powers to ask other information holders, in particular the companies concerned, to provide the information sought. From discussions with Marshall Islands officials during the on-site visit, it was clear that unless the requested information was in the possession of the Registrar for Non-Resident Domestic Entities, the information would not be provided to the requesting EOI partner as the Marshall Islands competent authority perceived that it lacked the ability to compel the provision of information from information holders not resident in the Marshall Islands. This resulted in the Marshall Islands responding to only three of the seven EOI requests.

283. Certain issues have been identified in section A of this report, regarding the lack of practical mechanisms to ensure ownership and accounting information is maintained by non-resident domestic entities. These issues might at times adversely affect the capability of the Marshall Islands competent authority to effectively exchange information, particularly when combined with the competent authority's perceptions about the reach of its powers. Following the on-site visit, the competent authority sent requests to 10 companies for the requested ownership and accounting information. At the date of this report, 7 companies have provided the requested ownership information; no companies have provided the requested accounting information.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Partially Compliant	
Factors underlying recommendations	**Recommendations**
The Marshall Islands has powers in place to obtain information for EOI purposes but, during the review period, these access powers were ineffective in ensuring the provision of information from non-resident domestic entities.	The Marshall Islands should ensure that the access powers of its competent authority are used effectively to obtain all information included in an EOI request.

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)*

284. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

285. The competent authority is not required to notify taxpayers or other interested parties upon the receipt of an EOI request. However, the notice issued to the person, who has or may have requested information in his possession, custody or control (information holder) can be challenged by such holder of information under the provisions of the TIEA USA Act 1989 or the Administrative Procedure Act as discussed below.

286. With regard to appeal rights, the TIEA USA Act 1989 provides that where the Minister obtains any information pursuant to an issued notice, he is obliged to keep the information confidential for 20 days. The 20 days holding period can be shortened if the Minister is of the opinion that the information is needed by the US government before the expiration of the 20 days period and the "interest of justice requires the speedy transmission of the requested information." This provision has not in any way contributed to the delay in providing information in respect to any of the requests that were received in the review period.

287. Further, where the holder of information receives a notice, he may within 20 days of the receipt, challenge the notice on any appropriate basis recognised by any law or rule or law (s. 405(8), TIEA USA Act 1989). However, the fact that information was received in a confidential relationship (other than the ones described in the TIEA) is not an appropriate basis for failing to produce information pursuant to a notice. Additionally, any person aggrieved by the action of the Minister or any other person performing a function under the TIEA USA Act 1989 may challenge the performance of that function, insofar as it affects him, by seeking a review of it by the High Court (s. 411, TIEA USA Act 1989). There is no timeframe specified for the resolution of any challenge. These appeal provisions have not been tested in practice.

288. The TIEA Act 2010, which applies to the Marshall Islands' other TIEAs, does not spell out any appeal rights for taxpayers and interested parties. It is however understood that taxpayers and interested parties

nonetheless retain the right to seek a judicial review of any of the competent authority's actions pursuant to the Administrative Procedure Act. In practice, during the period of review, no appeals have been made in connection to EOI requests.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

C. Exchanging information

Overview

289. 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 examines whether the Marshall Islands has a network of information exchange agreements that meet the standard and whether its institutional framework is adequate to achieve effective EOI in practice.

290. In the Marshall Islands, the legal authority to exchange information is derived from its EOI agreements as well as from domestic law. This section examines whether the Marshall Islands has a network of information exchange that would allow it to achieve effective EOI in practice.

291. Pursuant to the Marshall Islands' EOI agreements, the competent authority for international exchange of information in tax matters is either the Secretary of Finance or the Minister for Finance (in respect of the US TIEA). They may designate other persons to carry out the functions of the competent authority.

292. As of 31 March 2016, the Marshall Islands had signed 15 EOI agreements (all TIEAs), of which 14 were in force (see Annex 2). Marshall Islands has taken all the necessary steps to bring all the remaining agreements into force. All of the Marshall Islands' EOI agreements allow the Marshall Islands to exchange information according to the international standard. The Marshall Islands is currently in the process of negotiating EOI agreements with three other jurisdictions, all of which will incorporate provisions that allow the Marshall Islands to exchange information according to the international standard. The Marshall Islands' legal framework does not provide for the possibility of exchanging information under DTCs and the Marshall Islands has not signed any DTC to date. In addition, the Marshall Islands signed the Multilateral Competent Authorities Agreement in October 2015 and made an official request to become a party to the Multilateral Convention

on Mutual Administrative Assistance in Tax Matters (the "Convention") in March 2016. The Marshall Islands is awaiting a decision on their request from the Parties to the Convention.

293. The Marshall Islands' network of EOI agreements covers most of its major trading partners. Comments were sought from Global Forum members in the course of the preparation of this report, and no jurisdiction advised that the Marshall Islands had refused to negotiate or conclude such an arrangement.

294. All of the Marshall Islands' TIEAs contain confidentiality provisions to ensure that the information exchanged will be disclosed only to authorised persons. In practice, when a request was received by the Marshall Islands competent authority, the competent authority would provide a copy of the incoming request to the Registrar for Non-Resident Domestic Entities in order to obtain the requested information. Since the end of the review period, the Marshall Islands has informed the assessment team that it has changed its practice and a copy of the incoming request will no longer be provided to any information holder.

295. The confidentiality provisions also ensure that the contracting parties are not obliged to provide information which would disclose trade, business, industrial, commercial or professional secrets or information which is the subject of legal professional privilege or to make disclosures which would be contrary to public policy. No issues in relation to the rights and safeguards of taxpayers and third parties have been encountered in practice, nor have they been raised by any of the Marshall Islands EOI partners.

296. There are no legal restrictions on the ability of the Marshall Islands' competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

297. During the review period, the Marshall Islands received seven requests from five partners. Three partners indicated that the provision of information was delayed because the partner was unable to contact the Marshall Islands competent authority. However, once the Marshall Islands competent authority did receive the request, the partners received a response within 90 days. In considering the difficulties some partners experienced in contacting the Marshall Islands competent authority, it is recommended that the Marshall Islands ensures a good level of communication with its EOI partners and that its competent authority can be reached in all instances by providing its EOI partners with updated contact information and updating information on the Global Forum's competent authority database as necessary.

298. During the review period, in order to respond to EOI requests, the Marshall Islands competent authority would provide a copy of the incoming request to the Registrar for Non-Resident Domestic Entities in order to obtain the requested information. Where the Registrar indicated that it did not have

all or part of the information in its possession, the Marshall Islands competent authority would not make any further attempt to obtain the information from other potential information holders. The practice of not attempting to obtain the information from the other potential information holders prevented the effective exchange of information in four of the seven EOI cases

299. Since the end of the review period, the Marshall Islands has informed the assessment team that it has changed its practice and a copy of the incoming request will no longer be provided to any information holder. It is recommended that the Marshall Islands monitor the practical implementation of the organisational processes of the EOI programme to ensure that it is sufficient for effective EOI in practice.

C.1. Exchange of information mechanisms

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

300. Since 2009, the Marshall Islands has been committed to implementing the international standard on transparency and exchange of information for tax purposes. The EOI network of the Marshall Islands comprises of TIEAs with 15 jurisdictions: Australia, Denmark, Faroe Islands, Finland, Greenland, Iceland, India, Ireland, Korea, the Netherlands, New Zealand, Norway, Sweden, the United Kingdom and the United States. Among these 15 TIEAs, 14 already have entered into force. The Marshall Islands is currently in negotiations to sign TIEAs with Mexico, Czech Republic and France.

301. Under the TIEA Act 2010, the Marshall Islands' Minister of Finance has the authority to "execute and implement any and all Agreements as approved by Cabinet pursuant to this Act." (ss. 403(1), TIEA Act 2010). The US TIEA specifies the Minister for Finance as the competent authority while the other TIEAs specify the Secretary for Finance as the competent authority. In practice, the competent authority leads all negotiations of TIEAs with the Office of Attorney General often present at the negotiations. All of the Marshall Islands' TIEAs follow the OECD Model TIEA. Once a draft agreement is concluded and initialled, the Minister of Finance will seek the approval of Cabinet to sign the TIEA. Once Cabinet approval is granted, the Minister signs the TIEA and no further steps are required to be taken in the Marshall Islands for the TIEA to enter into force. The TIEA comes into force after internal ratification procedure is completed in the partner jurisdiction.

Foreseeably relevant standard *(ToR C.1.1)*

302. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless, it does

not allow "fishing expeditions", i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 1 of the OECD Model TIEA, set out below:[8]

> "The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters".

303. All of the Marshall Islands' TIEAs provide for the exchange of information that is "foreseeably relevant" to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered in the TIEAs. This scope is set out in Article 1 of all of the Marshall Islands' TIEAs. In practice, no issues have arisen in this respect during the review period.

In respect of all persons (ToR C.1.2)

304. For exchange of information to be effective it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standard for exchange of information envisages that EOI mechanisms will provide for exchange of information in respect of all persons.

305. All of the Marshall Islands' TIEAs provide for EOI in respect of all persons. No concerns as to this issue have arisen in practice.

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

306. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees, or persons acting in an agency or a fiduciary capacity. The OECD Model Convention and the OECD Model TIEA, which are authoritative sources of the standards, stipulates that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

8. Article 26(1) of the Model Tax Convention contains a similar provision.

307. All of the Marshall Islands' TIEAs provide for the exchange of information held by financial institutions, nominees, and agents. All provide for the exchange of ownership and identity information.

308. In practice, no challenges have been made by information holders on the basis of secrecy.

Absence of domestic tax interest (ToR C.1.4)

309. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

310. All of the Marshall Islands' TIEAs contain provisions similar to the Article 5(2) of the 2002 Model Agreement on EOI for Tax Matters[9], which obliges the Contracting Parties to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested Party does not have a domestic interest in the requested information. The TIEA Regulations also specify that the competent authority may access information for EOI purposes, regardless of the existence of a domestic interest in the information sought (s. 1(c), TIEA Regulations). There is no domestic tax interest in the Marshall Islands that would affect the effective exchange of information. No concern regarding domestic tax interest has arisen in practice.

Absence of dual criminality principles (ToR C.1.5)

311. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested jurisdiction if it had occurred in the requested jurisdiction. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

9. Article 5(2) of the 2002 Model Agreement reads "If the information in possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for it owns tax purposes."

312. All of the Marshall Islands' TIEAs contain provisions similar to Article 5(1) of the 2002 Model Agreement on EOI for Tax Matters[10], which obliges Contracting Parties to exchange information without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Contracting Party. No concern as to dual criminality has arisen in practice.

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

313. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters").

314. All of the Marshall Islands' TIEAs provide for exchange of information in both civil and criminal tax matters. The Marshall Islands reports that processes involved in the collection of information are the same regardless of whether the request involved civil or criminal investigation.

315. During the review period, the Marshall Islands did receive a request related to the investigation of a criminal tax matter. Peer input indicates that the Marshall Islands had no difficulties in providing effective EOI assistance with regard to this request.

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

316. In some cases, a jurisdiction may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Jurisdictions should endeavour as far as possible to accommodate such requests. The requested jurisdiction may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

317. All of the Marshall Islands' TIEAs contain provisions similar to Article 5(3) of the 2002 Model Agreement on EOI for Tax Matters, which obliges Contracting Parties to provide, on request, information in the form of

10. Article 5(1) of the 2002 Model Agreement reads "The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party."

dispositions of witnesses and authenticated copies of original records to the extent allowable under domestic law.

318. This is reinforced under TIEA (USA) Act and the TIEA Regulations, which empowers the Marshall Islands competent authority to obtain information in any form, including depositions of witnesses and copies of documents.[11]

319. In practice, no concerns related to this issue were reported.

In force (ToR C.1.8)

320. Exchange of information cannot take place unless a jurisdiction has exchange of information agreements in force. The international standard requires that jurisdictions take all steps necessary to bring information agreements that have been signed into force expeditiously.

321. In the past, negotiations were generally undertaken face-to-face; however, more recent negotiations are undertaken by email exchange. It is the policy of the Marshall Islands to follow the OECD model TIEA closely. When the text is agreed in principle and initialled by the Ministry of Finance, the Minister seeks Cabinet approval to sign the agreement. Once Cabinet grants approval, the Minister of Finance signs the agreement and no further steps are required to be taken in the Marshall Islands for the TIEA to enter into force.

322. Section 3 of the TIEA Act 2010 provides that the Minister of Finance must execute and implement agreements approved by the Cabinet. The Marshall Islands authorities have indicated that no additional legislation is required for bringing the agreement into force from its side and it notifies the date of signature by the Minister of Finance to its partner jurisdiction. The agreement comes into force after internal ratification procedure is completed in the partner jurisdiction. The agreements signed by the Marshall Islands have come into force within reasonable time. The time taken to bring an EOI agreement into force generally ranges between 12 and 18 months. The Marshall Island has completed all the steps necessary on its part to bring all its EOI agreements into force. Out of the 15 EOI agreements that the Marshall Islands has concluded, 14 were in force as of 31 March 2016. In respect of the other one agreement, the Marshall Islands is awaiting its EOI partner to complete their procedures to bring the agreements into force.

Be given effect through domestic law (ToR C.1.9)

323. For information exchange to be effective the parties to an exchange of information arrangement need to enact any legislation necessary to comply with the terms of the arrangement. The EOI agreements signed by the Marshall Islands are given effect through the TIEA Act 2010.

11. Section 410 of the TIEA (USA) Act and section 2 of the TIEA Regulations.

324. The US TIEA is given effect through the TIEA USA Act 1989, which states under section 403 that it "has effect for the purpose of enforcing the giving of assistance by persons in the Republic of the Marshall Islands in connection with the performance of the obligations assumed by the Government of the Republic of the Marshall Islands under the Agreement (US TIEA)." Section 3 of the TIEA Act 2010 contains the same provision to give effect to other TIEAs.

325. In practice, the Marshall Islands process for bringing a TIEA into domestic effect is quite straightforward and efficient. After negotiations have been completed and the TIEA is initialled, the Minister of Finance seeks the approval of Cabinet to sign the TIEA. Once Cabinet approval is granted, the Minister would sign the TIEA and notification of the date of signature by the Minister of Finance is sent to its partner jurisdiction. At that point the Marshall Islands has done all that is required from its perspective to bring the TIEA into force. The agreement comes into force after internal ratification procedure is completed in the partner jurisdiction.

Conclusion

326. The Marshall Islands has a network of EOI agreements that allow for EOI on request in accordance with the international standard. The Marshall Islands has taken all practical steps available to it to bring new agreements into force. The Marshall Islands legal framework and practice does not present any issue that would compromise the effective exchange of information or otherwise frustrate the application of these EOI mechanisms, and peer input is positive in this respect.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

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

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

327. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those 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.

328. The Marshall Islands has rapidly built up its EOI network since 2009 and currently has EOI agreements with 15 jurisdictions (14 of which are in force). Out of the 15:

- 12 are OECD countries;
- 5 are G20 countries; and
- 13 are Global Forum members.

329. The Marshall Islands' EOI network covers most of its biggest trading partners, including the US and Australia. The Marshall Island has completed all the steps necessary on its part to bring all its EOI agreements into force. Out of the 15 EOI agreements that the Marshall Islands has concluded, 14 were in force as of 31 March 2016. In respect of the other one agreement, the Marshall Islands is awaiting its EOI partner to complete their procedures to bring the agreements into force. The Marshall Islands is in negotiations to conclude a TIEA with three other jurisdictions. In addition, the Marshall Islands signed the Multilateral Competent Authorities Agreement in October 2015 and made an official request to become a party to the multilateral Convention in March 2016. The Marshall Islands is awaiting a decision on their request from the Parties to the Convention.

330. Comments were sought from the jurisdictions participating in the Global Forum in the course of the preparation of this report, and no jurisdiction advised the assessment team that the Marshall Islands had refused to negotiate or conclude an EOI agreement with it.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	The Marshall Islands should continue to develop its exchange of information network with all relevant partners.

Phase 2 rating
Compliant

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)*

331. 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, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

332. All the Marshall Islands' EOI agreements have confidentiality provisions that contain all of the essential aspects of Article 8 of the OECD Model TIEA, which ensures that the information exchanged will be disclosed only to persons authorised by the agreements. Domestic tax laws of the Marshall Islands, notably the Income Tax Act 1989, contain provisions concerning confidentiality of tax information and such provisions do not allow the provision of information to authorities other than for the purpose of enforcing tax laws, including the TIEAs to which the Marshall Islands is a party. Sanctions for breaching these provisions include a fine of up to USD 500, imprisonment for up to 6 months or both.

333. In addition to the confidentiality provisions contained in the domestic tax laws, all public servants sign an employment contract when they commence employment with the Marshall Islands government. This contract contains a confidentiality provision and it subsists for the duration of a public servant's employment. It is not clear that sanctions for beaching this contract exist. In addition, all employees of the Ministry of Finance are required to sign a Code of Ethics.

334. The offices of the competent authority are located within the Ministry of Finance building which hosts all of the divisions of the Ministry except for the Banking Commission. During working hours, any visitor to the tax administration office is identified by tax administrative personnel upon entering the building and supervised at all times while on the premises. After working hours, or when no personnel are present, the external doors to the building, office doors and all cabinets containing confidential files are locked.

335. Only two people at the Ministry of Finance (i.e. the Secretary of Finance and the Assistant Secretary of Finance) have access to EOI requests. Any requests for information sent via registered mail are delivered and opened only by these two people. Paper files are stored in a locked cabinet in the

Assistant Secretary's secure office and access is limited to these two people. Any electronic records relating to EOI requests are kept on the Assistant Secretary's computer (which is password protected). The competent authority uses a public email account (i.e. Gmail account) to communicate with its EOI partners. When the competent authority has sent official responses containing confidential information to an EOI request, the competent authority has sought the EOI partner's agreement prior to sending the official response by the public e-mail and the messages were encrypted.

336. An electronic register of EOI requests is maintained in a spreadsheet, which is accessible only by the Secretary and Assistant Secretary. The Assistant Secretary updates the spreadsheet when a new EOI request is received.

337. The Marshall Islands authorities advised that standard operating procedures (SOP) for EOI were adopted in 2011 by the Ministry of Finance, which set forth the basic procedures for maintaining confidentiality, and were further updated in December 2015. To complement the SOP, the Marshall Islands has annexed a reference manual, adapted from the OECD Exchange of Information Working Manual, to the SOP to provide additional guidance. The SOP, as amended in December 2015, also provides that the Ministry of Finance does not notify a taxpayer that it has received an EOI request, except in exceptional cases as determined by the Secretary. However, a taxpayer should not be notified when the requesting jurisdiction has specified that the taxpayer should not be informed. Marshall Islands officials were unable to clarify what would constitute an exceptional case.

338. During the review period, when a request was received by the Marshall Islands competent authority, the competent authority would provide a copy of the incoming request to the Registrar for Non-Resident Domestic Entities for the purpose of collecting the requested information. Since the on-site visit, the Marshall Islands informed the assessment team that it has changed its practice and revised the SOP.

339. Under the new procedure, a copy of the incoming request will no longer be provided to the information holder. Now a request letter will be sent out to the information holder. The SOP provides a template letter to be used for requesting information from an information holder for EOI purposes. The request letter would set out only the information necessary for the information holder to locate the information.

340. The Marshall Islands authorities also advised that since several government agencies other than the tax administration, including the Registrar for Non-Resident Domestic Entities, may be involved in the collection of information relevant to an EOI request, a Memorandum of Association (MOA) was entered into in November 2015 by the Ministry of Finance, the Office of the Attorney General, the Banking Commission, and the Registrar

for Non-Resident Domestic Entities, to formalise their co-operation. Among other things, the MOA contains a confidentiality provision that applies to all EOI requests and any information gathered in response to an EOI request and requires that the information be treated with the utmost confidentiality and used solely to satisfy EOI obligations. In addition, the MOA provides that disciplinary action may be undertaken for any breaches of confidentiality. However, there is no legal basis for this confidentiality provision. As such, it is unclear what disciplinary action may be undertaken, who would undertake such action, and what the possible sanctions may be, if a breach of confidentiality occurred.

341. Providing a copy of the incoming EOI request to the Registrar for Non-Resident Domestic Entities raises concern with respect to ensuring the confidentiality of EOI requests. It is therefore recommended that the confidentiality of information contained in EOI requests is adequately protected.

All other information exchanged (ToR C.3.2)

342. 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.

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

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Partially Compliant	
Factors underlying recommendations	**Recommendations**
During the three-year period under review, the Marshall Islands provided incoming EOI requests to the Registrar of Non-Resident Domestic Entities which is not in accordance with the principle that the information contained in an EOI request should be kept confidential. The Marshall Islands has revised its policy in relation to the disclosure of information in EOI notices.	The Marshall Islands should monitor the implementation of the revised policy on disclosure of information in EOI notices to ensure that it is compliant with effective exchange of information in practice.

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)

344. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business, or other listed secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by legal professional privilege. Attorney-client privilege is a feature of the legal systems of many jurisdictions. However, communications between a client and an attorney or other admitted legal representative are, generally, only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative.

345. Where attorney-client privilege is more broadly defined it does not provide valid grounds on which to decline a request for EOI. To the extent, therefore, that an attorney acts 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, EOI resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule.

346. All of the Marshall Islands' TIEAs ensure that the Contracting Parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret, information which is subject to legal professional privilege, or information the disclosure of which would be contrary to public policy. The provisions of professional secrecy in the domestic laws of Marshall Islands are broad, but these would not affect effective exchange of information, as the provisions of TIEA have priority over domestic law. Both the TIEA USA Act 1989 and TIEA Regulations provide that the competent authority is not restricted by any law relating to confidentiality of information held by any person.

347. The scope of attorney-client privilege is defined in all of the Marshall Islands' EOI agreements and the definitions included therein are fully consistent with the international standard.

348. Legal privilege was not invoked during the three-year period under review. More broadly, no issues in relation to the rights and safeguards of taxpayers and third parties have been encountered in practice, nor have they been raised by any of the Marshall Islands EOI partners.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

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)*

349. In order for exchange of information to be effective, it needs to be provided in a timeframe which allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time, the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

350. There appears to be no legal restrictions on the Marshall Islands tax authorities' ability to respond to EOI requests within 90 days of receipt by providing the information requested or providing an update on the status of the request. All of the Marshall Islands' TIEAs contain provisions similar to Article 5(6) of the 2002 Model Agreement on EOI on Tax Matters, which obliges Contracting Parties to forward the requested information as promptly as possible to the applicant party.[12]

351. In practice, the Marshall Islands received seven requests from five EOI partners during the review period. Peer inputs were received in relation to these seven requests, showing that there were notable delays in the provision of information to three EOI partners. This was the result of an EOI partner unable to contact the Marshall Islands competent authority. However, once an EOI request was received by the Marshall Islands competent authority, EOI partners received either a response with the requested information within 90 days, or

12. Under this Article, Contracting Parties are required to confirm receipt of a request in writing to the applicant Party and notify the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request. The requested Party is also required to inform the applicant Party if it is unable to obtain and provide the information within 90 days of receipt of the request, and explain the reasons behind the delay.

were informed, within 90 days, that the Marshall Islands competent authority was unable to provide all of the requested information. With regards to the two EOI partners that did not have difficulties in contacting the Marshall Islands competent authority, the Marshall Islands was able to provide either a full response within 90 days or were informed, within 90 days, that the Marshall Islands competent authority was unable to provide all of the requested information. Following the on-site visit, the competent authority sent requests to 10 companies for the requested ownership and accounting information. At the date of this report, 7 companies have provided the requested ownership information; no companies have provided the requested accounting information. The time taken to respond to the seven requests once they were received by the Marshall Islands competent authority is as follows:

		Jul-Dec 2012		2013		2014		Jan-Jun 2015		Total	Average
		Num.	%	Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received* (a+b+c+d+e)		1	100	2	100	3	100	1	100	7	100
Full response**: <90 days		1	100	1	50	1	33	0	0	3	43
<180 days (cumulative)											
<1 year (cumulative)	(a)										
1 year	(b)										
Declined for valid reasons	(c)	0	0	0	0	0	0	0	0	0	0
Failure to obtain and provide information requested	(d)										
Requests still pending at date of review	(e)	0	0	1	50	2	66	1	100	4	57

* Marshall Islands counts each written request from an EOI partner as one EOI request even where more than one person is the subject of an inquiry and/or more than one piece of information is requested.

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

352. As provided above, in order to respond to a request, the Marshall Islands competent authority would ask the Registrar for Non-Resident Domestic Entities to produce the requested information. The Registrar was able to provide the requested information in three of the seven requests. The Registrar was unable to provide the requested information in four of the seven cases because such information was not part of the Registrar's records. The Marshall Islands' competent authority did not ask any other information holders, during the review period, to provide such information, even when it could not be obtained otherwise. In the four cases where the requested information was not provided by the Registrar, requesting jurisdictions were informed, by the Marshall Islands competent authority, that such information could not be provided. Following the on-site visit, the competent authority

sent requests to 10 companies for the requested ownership and accounting information. At the date of this report, 7 companies have provided the requested ownership information; no companies have provided the requested accounting information.

353. The provision of information was particularly delayed for three EOI partners as a result of the requests not being received by the Marshall Islands competent authority when they were originally sent by the requesting jurisdiction. Reasons for the delays are that the original requests were not sent to the correct mailing or email address; requests sent to the correct email address were never received by the Marshall Islands competent authority; and requests sent by regular mail were significantly delayed in being received by the Marshall Islands competent authority. The Marshall Islands competent authority was aware that EOI partners were attempting to send these requests. Requests were resent and were successfully received. Once the requests were received, the Marshall Islands competent authority immediately requested the information from the Registrar for Non-Resident Domestic Entities and the requested information was sent by the Marshall Islands competent authority to the requesting jurisdiction within 90 days of receipt of the request.

354. The exact reason for the failure to reach the Marshall Islands competent authority could not be deduced. However, there are a few possible explanations. First, EOI partners may not have had the correct email address for the Marshall Islands competent authority. Second, an EOI partner indicated that an email was sent to the correct email address for the Marshall Islands competent authority and when they did not receive an acknowledgement letter from the Marshall Islands, a second email request was sent to the same email address upon which an acknowledgment letter was sent. The Marshall Islands competent authority indicated that one possible reason for the disappearance of the first email request may be their use of a public email account (i.e. Gmail account). As noted in paragraph 335, the Marshall Islands competent authority used encrypted emails when communicating confidential information to its EOI partners. Finally, where regular mail was used by the requesting party, the Marshall Islands officials have advised that regular mail takes a long time to reach the Marshall Islands.

355. To address comments from peers about the difficulty to contact the Marshall Islands competent authority, it is recommended that the Marshall Islands ensures a good level of communication with its EOI partners and that its competent authority can be reached in all instances by providing its EOI partners with updated contact information and updating information on the Global Forum's competent authority database as necessary.

Organisational process and resources *(ToR C.5.2)*

356. The Marshall Islands is a small jurisdiction with a very small financial sector, has received very few EOI requests to date and has never itself requested any taxpayer information from any of its EOI partners. The Marshall Islands' competent authority for its EOI agreements is defined under its EOI agreements and is either the Secretary for Finance or the Minister of Finance (in respect of the US TIEA). The Secretary or Minister may designate other persons to carry out the functions of the competent authority. For all TIEAs (except for the US TIEA), the designated competent authority is the Assistant Secretary of Finance for the Division of Customs, Treasury, Revenue and Taxation (the "Division") or Chief of the Division.

357. In practice, there is one person working in the EOI programme at the Ministry of Finance that reports to the Secretary of Finance. This is the Assistant Secretary of Finance, who also acts as the Chief of the Division. The Assistant Secretary during the review period attended regional training events on EOI, and the current Acting Assistant Secretary and Chief has also attended meetings and workshops related to EOI on transfer pricing and transparency and base erosion and profit shifting. The current Minister of Finance has attended a regional training event on EOI. Further, representatives from the Registrar for Non-Resident Domestic Entities, who assist the Ministry of Finance with EOI requests, have been trained in EOI matters. At the on-site visit, it was apparent that representatives from the Registrar for Non-Resident Domestic Entities have received more training in EOI matters and have devoted more resources to the issue than the Marshall Islands competent authority has been able to allocate. The Marshall Islands should ensure that adequate resources and training are allocated to the staff of the EOI programme.

358. In recognition of the need to expand the EOI unit, the Ministry of Finance will be requesting additional funding from Cabinet in the next fiscal year in order to obtain additional resources for the EOI programme. The Ministry intends to hire a staff member who will work full-time on EOI matters.

359. Contact details of the competent authority are communicated during TIEA negotiations and are available on the Global Forum's competent authority database.

360. Procedures for handling EOI requests are set out in the step-by-step SOP developed by the Ministry of Finance. Attached to the SOP is the "EOI Reference Manual", an adaptation the OECD EOI Working Manual, which complements the SOP and is to be used as reference. The SOP divides the procedure that applies for responding to an EOI request into six steps: *(1)* receiving the request; *(2)* recording the request; *(3)* validating the request;

(4) gathering the information; *(5)* sending the response to the request; and *(6)* confidentiality. The SOP has been available for use since 2011.

361. EOI requests are primarily handled and maintained by the Assistant Secretary who keeps track of each EOI request that is received, sends out requests for information as required and follows up whenever the requested information has not been received. In addition to maintaining the physical files, the Assistant Secretary records the relevant information relating to EOI requests in an excel spreadsheet.

362. Requests are generally received by post addressed to the competent authority. The officer receiving the mail passes it to the Assistant Secretary. The Assistant Secretary will open the mail, read, sign a record of receipt and stamp with the date and a clearly visible confidentiality notice.

363. The Assistant Secretary will create a new record of the request, in the EOI excel spreadsheet, with the details of the request (including name of request, date the request was received, requesting competent authority, details of the type of information requested and any other relevant details). The spreadsheet is updated whenever new correspondence occurs or actions are taken. After opening a new file, the request is assigned a number which can be tracked. An acknowledgement letter is sent to the requesting jurisdiction, on behalf of the Minister or Secretary, within seven days of receiving the EOI request.

364. The Assistant Secretary will then validate the request. This involves examining the request against the requirements of the relevant TIEA and the relevant TIEA legislation. A request will be considered to be invalid, for example, if there were no agreement in force, if it related to taxable periods that are not covered by the agreement or it is not signed by an authorised person from the requesting state. If necessary, clarifications will be asked by formal letter within 60 days of receipt of the request. If the request is incomplete or unclear, the Chief or officer will work to provide as much information as possible to answer the request while waiting for further clarification from the foreign competent authority. None of the seven requests received during the review period were determined to be invalid or required clarifications from the EOI partners.

365. Once it is established that the request is valid and in order to process the request, the Assistant Secretary creates a hard copy file, which is placed in a particular folder in a secure filing cabinet in his secure office. The Assistant Secretary would note whether the requesting jurisdiction has assigned any particular urgency to the request and whether they have asked that the taxpayer not be contacted directly. Each time action is taken in respect to the EOI file, a file note would be made. Dates for follow up action are diarised by the Assistant Secretary.

366. The information relevant to the exchange of information is generally not held by the tax authorities. During the review period, the Assistant Secretary would commence his investigation by contacting the Registrar for Non-Resident Domestic Entities.

367. The requested information is delivered to the Assistant Secretary by hand. Where the Registrar indicated that it did not have all or part of the information in its possession, the Marshall Islands competent authority did not make any further attempt to obtain the information from any other potential information holder. A cover letter, signed by the Secretary of Finance, along with the information produced by the Registrar, is sent via courier to the requesting competent authority. Where the Registrar did not have all or part of the information in its possession, a standardised letter from the Marshall Islands competent authority providing that "Marshall Islands law permits, but does not require, the filing of information regarding…" would be sent to EOI partners when responding to a request.

368. The practice of seeking the accounting and ownership information requested from the relevant non-resident entities prevented the effective exchange of information in a number of cases. During the review period, the Marshall Islands was able to adequately respond to three of the seven requests.

369. Under the revised SOP, where it is necessary to contact a third party, another government agency or a bank for information, the Assistant Secretary will draft a formal letter of request using the templates provided in the SOP. Information holders are given 14 days to provide a response.

370. If no answer is received within the allotted time from a third party or government agency information holder, a follow up by phone call would be made and a further period of less than 14 days would be provided to obtain the information. If a response was still outstanding, the Secretary would decide the next steps. Possible next steps would include following up with the superiors of the person the Secretary has been in contact with at the third party or government agency, and, if necessary, applying enforcement measures.

371. If no answer is received within the allotted time from a bank, a follow up by phone call or email would be made and a further period of 28 days would be provided to obtain the information. If a response was still outstanding, the Secretary would issue a summons. If a bank fails to comply with a summons, the matter is referred to the Office of the Attorney General.

372. Further, the SOP outlines the need for the competent authority to provide interim updates, either to notify the foreign competent authority that information is not yet available, or to provide as much of the requested information as possible. Interim updates would be provided each 90 days until a final response is provided.

373. As discussed above, to facilitate the competent authority's ability to respond to an EOI request, the Secretary of Finance has entered into a MOA with two other government agencies and the Registrar for Non-Resident Domestic Entities in November 2015. These agencies have agreed to provide assistance and information in their possession, or to notify the Secretary of Finance or Assistant Secretary, within two weeks, if the information is not available.

374. Once the information needed to respond to a request has been gathered, the Assistant Secretary would verify that the information fully and accurately fulfils the request. The Assistant Secretary would draft a response to the request, for signature by the Secretary of Finance. A template and checklist would be used to guide the response letter.

375. All emails responding to a request from a foreign competent authority provide the following: "THIS INFORMATION IS FURNISHED AND REQUESTED UNDER THE PROVISIONS OF OUR EXCHANGE OF INFORMATION AGREEMENT. THE PROVISIONS CONTAINED THEREIN MUST GOVERN ITS USE AND DISCLOSURE."

376. If the preference of the requesting jurisdiction is to furnish all documentation in hard copies, the documents will be stamped "CONFIDENTIAL" and the covering letter would state "THIS INFORMATION IS FURNISHED AND REQUESTED UNDER THE PROVISIONS OF OUR EXCHANGE OF INFORMATION AGREEMENT. THE PROVISIONS CONTAINED THEREIN MUST GOVERN ITS USE AND DISCLOSURE." The date of sending the final response, and any response of the foreign competent authority, are entered into the EOI database.

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

377. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

378. There are no aspects of the Marshall Islands' domestic laws that impose additional restrictive conditions on exchange of information.

Determination and factors underlying recommendations

Phase 1 determination
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
A number of peers have had difficulty contacting the Marshall Islands competent authority.	The Marshall Islands should ensure a good level of communication with its exchanges partners and ensure that its competent authority can be reached in all instances.
The Marshall Islands put in place a new process for responding to EOI requests after the end of the review period and its effectiveness could not be adequately assessed. Further, the Marshall Islands received seven requests during the review period and its experience in handling these matters remains limited.	The Marshall Islands should monitor the practical implementation of the organisational processes and resources of the EOI program to ensure that they are sufficient for effective EOI in practice.

Summary of determinations and factors underlying recommendations

Overall Rating
Non-Compliant

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. *(ToR A.1)*		
Phase 1 determination: The element is not in place.	Bearer shares can be issued by non-resident domestic corporations in the Marshall Islands. Appropriate mechanisms to allow identification of owners of bearer shares are not in place.	The Marshall Islands should ensure that appropriate mechanisms to identify owners of bearer shares are in place.
	Ownership and identity information for nominee shareholdings is not available in all circumstances.	The Marshall Islands should ensure that ownership and identity information is available in respect of nominee shareholding.

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Non-Compliant	Ownership information was not provided to requesting jurisdictions in the majority of cases. The Marshall Islands does not have effective monitoring and enforcement programmes in place to ensure that relevant entities comply with the obligations to maintain or provide ownership and identity information. This is of particular concern with regards to non-resident domestic entities.	The Marshall Islands should put effective monitoring and enforcement programmes in place to ensure all relevant entities comply with the obligations to maintain or provide ownership information.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Non-Compliant	No system of monitoring compliance with accounting record keeping requirements for non-resident domestic entities is in place, which may result in the legal obligation to keep accounting records not being enforced. A number of clarifying amendments to the accounting record keeping obligations have only been introduced recently.	The Marshall Islands should ensure that reliable accounting information for all relevant entities are available at all times.
	There has been no effective enforcement of the accounting record keeping requirements during the review period.	The Marshall Islands should ensure that its enforcement powers are sufficiently exercised in practice.
Banking information should be available for all account-holders. *(ToR A.3)*		
Phase 1 determination: The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Largely Compliant	Two on-site inspections took place during 2013; however, the office of the Banking Commissioner was vacant during a majority of the review period.	It is recommended that the Marshall Islands quickly put in place a schedule of regular inspections of financial institutions so that their compliance can be effectively monitored.
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(ToR B.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Partially Compliant	The Marshall Islands has powers in place to obtain information for EOI purposes but, during the review period, these access powers were ineffective in ensuring the provision of information from non-resident domestic entities.	The Marshall Islands should ensure that the access powers of its competent authority are used effectively to obtain all information included in an EOI request.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
Phase 1 determination: The element is in place.		The Marshall Islands should continue to develop its exchange of information network with all relevant partners.

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Partially Compliant	During the three-year period under review, the Marshall Islands provided incoming EOI requests to the Registrar of Non-Resident Domestic Entities which is not in accordance with the principle that the information contained in an EOI request should be kept confidential. The Marshall Islands has revised its policy in relation to the disclosure of information in EOI notices.	The Marshall Islands should monitor the implementation of the revised policy on disclosure of information in EOI notices to ensure that it is compliant with effective exchange of information in practice.
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Largely Compliant	A number of peers have had difficulty contacting the Marshall Islands competent authority.	The Marshall Islands should ensure a good level of communication with its exchanges partners and ensure that its competent authority can be reached in all instances.
	The Marshall Islands put in place a new process for responding to EOI requests after the end of the review period and its effectiveness could not be adequately assessed. Further, the Marshall Islands received seven requests during the review period and its experience in handling these matters remains limited.	The Marshall Islands should monitor the practical implementation of the organisational processes and resources of the EOI program to ensure that they are sufficient for effective EOI in practice.

Annex 1: Jurisdiction's response to the review report[13]

The Republic of the Marshall Islands ("RMI") would like to thank the Assessment Team and the Peer

Review Group ("PRG") for their time and effort during the RMI's Phase 2 review and the drafting of the Phase 2 Peer Review Report ("Report"). The RMI does, however, strongly disagree with and does not accept the non-compliant rating it has been assigned for element A.2, and the resulting overall rating of Non-Compliant. The RMI does not believe these ratings are an accurate assessment of its exchange of information ("EOI") program in practice, and argues that assigning the RMI non-compliant rating for element A.2 is inconsistent with how other, comparable jurisdictions were rated. The RMI maintains that for equality and consistency in ratings, it should receive a rating of partially compliant for element A.2, and therefore an overall rating of Partially Compliant.

The RMI should receive a partially compliant rating for element A.2 both because of its specific circumstances and because of how other jurisdictions with similar circumstances have been rated. As background, during its Phase 1 Review, the RMI initially received a rating of "not in place" for element A.2 due to the determination that the existing requirements to keep accounting records was not sufficient to ensure reliable accounting records were kept. The RMI introduced amendments to bring the existing requirements in line with the international standard in January of 2015. These amendments were passed very late in the review period, and therefore the RMI did not have sufficient time to test the amendments in practice or apply sanctions for non-compliance. It was concluded in the Report that it was uncertain whether the RMI could effectively enforce the accounting records requirement as sanctions had not yet been applied. Uncertainty does not mean accounting records were not being kept or sanctions cannot be applied, it just means conclusive evidence is not yet readily available as the amendments were only recently passed.

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

Considering the underlying circumstances, to assign the RMI a rating of non-compliant for element A.2 is also inconsistent with the rating assigned to another, similarly situated jurisdiction. Like the RMI, that jurisdiction had only introduced the requirement to keep reliable accounting records in line with the international standard late in the review period and there was no practical mechanism in place to ensure the records were being kept. These circumstances are nearly identical to those of the RMI, except that in that case the jurisdiction received a partially compliant rating. Considering these similarities, and in order to ensure consistency and equality in the peer review process, the RMI should have received a partially compliant rating as well.

While the RMI does not accept the outcome of its Phase 2 review, the RMI will continue to work to develop and improve its EOI program and will work to address the recommendations contained in the Report. The RMI remains committed to the important work of the Global Forum and to the effective and efficient exchange of information in furtherance of tax transparency.

Annex 2: List of all exchange-of-information mechanisms

Bilateral agreements

List of Tax Information Exchange Agreements (TIEAs) signed by the Marshall Islands as at 24 February 2016.

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
1	Australia	TIEA	12-May-2010	25-Nov-2011
2	Denmark	TIEA	28-Sep-2010	3-Dec-2011
3	Faroe Islands	TIEA	28-Sep-2010	28-Nov-2014
4	Finland	TIEA	28-Sep-2010	2-Dec-2011
5	Greenland	TIEA	28-Sep-2010	19-Mar-2015
6	Iceland	TIEA	28-Sep-2010	30-Aug-2014
7	India	TIEA	18-Mar-2016	Not yet in force
8	Ireland	TIEA	2-Sep-2010	10-Feb-2015
9	Korea	TIEA	31-May-2011	9-Mar-2012
10	Netherlands	TIEA	14-May-2010	8-Nov-2011
11	New Zealand	TIEA	4-Aug-2010	9-Apr-2015
12	Norway	TIEA	28-Sep-2010	19-Jun-2011
13	Sweden	TIEA	28-Sep-2010	1-Aug-2015
14	United Kingdom	TIEA	20-Mar-2012	7-May-2014
15	United States	TIEA	14-Mar-1991	14-Mar-1991

Annex 3: List of all laws, regulations and other material received

Administrative procedures laws

Administrative Procedures Act

Anti-money laundering laws

Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Regulations

Banking laws

Banking Act

Financial Management Act

Commercial laws

Associations Law (Consequential Amendment) Act 2015

Business Corporations Act

Foreign Investment Business License Act

Foreign Investment Business Licence Amendment Act 2015

Limited Partnership Act

Limited Liability Company Act

Revised Partnership Act

Trust Act

Trust Companies Act

Trustee Licensing Act

Republic of the Marshall Islands Corporate Regulations 1995

Taxation Laws

Income Tax Act 1989

Tax Collection Act

Tax Information Exchange (Execution and Implementation) Act 2010 (TIEA Act 2010)

Tax Information Exchange Agreement (Implementation) Act 1989 (TIEA USA Act 1989)

Tax Information Exchange Agreement Regulations 2013

Annex 4: List of authorities interviewed

Domestic Financial Intelligence Unit

Marshall Islands Banking Commission

Marshall Islands Maritime Registry

Ministry of Finance

Office of the Attorney General

Registrar for Non-Resident Domestic Entities, the Trust Company of Marshall Islands

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: MARSHALL ISLANDS

This report contains a "Phase 2: Implementation of the Standards in Practice" review, as well as revised version of the "Phase 1: Legal and Regulatory Framework review" already released for this country.

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 130 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.

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