

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard
in Practice

SAINT LUCIA



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Saint Lucia 2014

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

August 2014
(reflecting the legal and regulatory framework
as at May 2014)



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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 120 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 in Saint Lucia 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 2010 through 30 June 2013).

2. 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 whether that information can be effectively exchanged with its exchange of information (EOI) partners. In 2005, Saint Lucia committed to implementing the international standards of transparency and information exchange, and since then has taken significant steps towards developing its legal framework and network of information exchange agreements in line with that commitment. Notwithstanding the progress already made, the report identifies some areas, particularly with respect to obligations to maintain reliable accounting information and accessing information in practice, where improvements are needed to more effectively implement the international standard.

3. Relevant entities and arrangements are generally subject to requirements to keep relevant ownership and identity information, with the exception of companies formed in the Caribbean Community (CARICOM) or members of the Organisation of East Caribbean States (OECS) which are carrying on business in Saint Lucia. For entities linked to the international financial services sector namely International Business Companies (IBC), International Partnerships and International Trusts, there are not binding obligations to maintain all relevant accounting records, for a minimum 5 year period. Recommendations are made for Saint Lucia to address these shortcomings, and the essential element of the international standard concerning accounting information is found to be not in place. Bank information is required to be kept as a result of the obligations found in Saint Lucia's anti-money laundering (AML) regime.

4. In practice, the obligations in place to ensure the availability of ownership and identity information, as well as banking information for account holders, are accompanied by appropriate penalties for non-compliance. However, it is noted that the lack of a comprehensive system of monitoring by the Registrars and the regulators may not ensure that complete ownership information is being maintained in respect of all legal entities in Saint Lucia.

5. Over the review period, accounting information was unable to be provided in those cases where it was requested. It is recommended that on the implementation of accounting record requirements to the standard, Saint Lucian authorities should monitor the practical implementation of these requirements to ensure the availability of accounting information for all entities.

6. Saint Lucia's access powers are set out under its Income Tax Act, which at the time of the Phase 1 review were identified as being subject to a possible domestic tax interest. Saint Lucia enacted the International Tax Cooperation Act (ITC Act) in August 2012 which clarifies the Minister's powers to access all types of information for EOI purposes. Saint Lucia also amended the Income Tax Act in January 2014 to clarify that its access powers can be used to gather information for the exchange of information under one of its international agreements. Saint Lucia has advised that its powers under the ITC Act take precedence for all EOI related processes.

7. Under the ITC Act, the Minister or his duly appointed representative have broad powers to obtain relevant information from any person within the jurisdiction who has relevant information in his possession, custody or under his control. The Act also grants the power to search premises and seize information, via judicial procedure, where there is a reasonable doubt that relevant information is endangered. The Minister's access powers are predominantly exercised by the issue of a notice to a third party requesting the production of information. Although penalties are set out under the Income Tax Act for not providing the information, it is noted that there is currently no penalty for not providing the requested information to the Minister under the ITC Act. A recommendation has been made for Saint Lucia to address this omission. Therefore, access to information by the competent authority for EOI purposes is found to be in place.

8. In practice, the competent authority was unable to access IBC ownership information from registered agents in two cases and was unable to access IBC accounting information for all cases over the review period in which it was requested. It is noted that the access powers in force under the Income Tax Act at that time were subject to a potential domestic tax interest and in practice were not sufficient for the competent authority to successfully access information in all cases. Further, in regards to accessing IBC accounting information, it was the practice of the competent authority at the time to

only issue a notice to produce the information on the registered agent who was under no obligation to maintain the information, and not on the entity itself. Saint Lucia should ensure that its access powers are used effectively to obtain all information requested for EOI purposes.

9. Appeal rights and safeguards apply in Saint Lucia and are compatible with effective information exchange. However, under the ITC Act there is an obligation on the Minister to delay providing the information to an EOI partner where judicial redress is sought by the taxpayer or another interested person and a recommendation is made for Saint Lucia to address this issue. Element B.2 is found to be in place.

10. The ITC Act came into force in August 2012 and clarifies the procedures for accessing information for EOI purposes. The Act provides Saint Lucia with the power to obtain any information held by any person believed to be in possession or control of that information whether or not it is required for domestic tax purposes. Due to the delayed scheduling of some of its EOI agreements to the ITC Act, during the review period, all information provided to treaty partners was accessed under the Income Tax Act. Therefore, the powers to access information under the ITC Act are untested in practice and the implementation of the ITC Act should be monitored by Saint Lucia to ensure that it allows it to access all information pursuant to an EOI request.

11. Saint Lucia's network of EOI agreements includes tax information exchange agreements, bilateral and multilateral tax agreements. In total, the network of in force agreements covers 32 jurisdictions. The terms of Saint Lucia's agreements are generally in line with the international standard, including the CARICOM agreement due to many member jurisdictions having amended their domestic laws to permit for exchange of information to the standard. Saint Lucia's network of EOI agreements covers all of its relevant partners and confidentiality requirements in its agreements and domestic law protect the information exchanged.

12. Saint Lucia has been exchanging information in accordance with the international standards since 2010. During the review period, Saint Lucia received four requests from two different jurisdictions. In all cases Saint Lucia sent an immediate acknowledgment of the request and in the two cases where information was provided, it was provided within 180 days. Previously, there was no formal EOI process in place in Saint Lucia. Since 2013, a formal EOI procedure has been implemented whereby there are four officials within the office of the Comptroller responsible for the processing of EOI requests who act as the EOI Unit. The practice of the EOI Unit over the review period to only issue a notice on the registered agent of the entity to access information may have resulted in not all of the requested information being made available. Saint Lucia has since taken measures to improve their processes for processing EOI requests, such as the adoption of a comprehensive EOI

manual and the use of model templates. The processes of the EOI Unit should be monitored in practice to ensure that Saint Lucia can process all EOI requests in an efficient and effective manner.

13. The main gap where Saint Lucia's legal and regulatory framework is found not to be in place, relates to the availability of accounting information. International business companies, International Partnerships and International Trusts are not required to maintain adequate accounting records. While these entities and arrangements are required to have AML-regulated Service Providers who are obliged to maintain accounting information relating to these entities, these obligations do not meet the full requirements under the international standard. The main issue relating to the implementation of the standard in practice relates to the accessing of information for EOI purposes as the access powers at the disposal of the competent authority over the review period were not sufficient to successfully access all the requested information. Although the powers to access information have now been clarified with the enactment of the ITC Act and an amendment to the Income Tax Act, the new laws are untested in practice. Further, over the review period it was the practice of the EOI Unit to only issue notices to the registered agent and not the entity itself in those cases where information was not provided.

14. Saint Lucia 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 any recommendations made in respect of Saint Lucia's 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, Saint Lucia has been assigned the following ratings: Compliant for elements A.3, B.2, C.1, C.2, C.3 and C.4, Largely Compliant for element A.1 and C.5, Partially Compliant for element B.1 and Non-Compliant for element A.2. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Saint Lucia is Partially Compliant.

15. A follow-up report on the steps undertaken by Saint Lucia to answer the recommendations made in this report should be provided to the PRG within six months after the adoption of this report.

Introduction

Information and methodology used for the peer review of Saint Lucia

16. The assessment of the legal and regulatory framework of Saint Lucia was 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*.

17. The assessment has been conducted in two stages: Phase 1, performed in 2012, assessed Saint Lucia's legal and regulatory framework for the exchange of information, while Phase 2, performed in 2014, looked at the practical implementation and effectiveness of this framework in the three year review period of 1 July 2010 to 30 June 2013, as well as any amendments made to the legal and regulatory framework since the Phase 1 review. This assessment is therefore based on the laws, regulations, and exchange of information mechanisms in force or effect as at 20 May 2014, other materials supplied by Saint Lucia, and information supplied by partner jurisdictions.

18. The Phase 2 assessment is based on Saint Lucia's responses to the Phase 2 questionnaire, supplementary questions and other materials supplied by Saint Lucia, information supplied by exchange of information partners and explanations provided by Saint Lucia during the onsite visit that took place from January 13-16 2014 in Castries, Saint Lucia. During the onsite visit, the assessment team met with officials and representatives of the Ministry of Finance, the Inland Revenue Department and the Audit Unit of the Inland Revenue Department, officials from the Financial Services Regulatory Authority, the Companies and IBC Registrars, the Financial Intelligence Authority and the Attorney General's Office. A list of all those interviewed during the onsite visit is attached to this report at Annex 4.

19. The *Terms of Reference* break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information;

(B) access to information; and (C) exchange of information. This review assesses Saint Lucia’s legal and regulatory framework against these elements and each of the enumerated aspects as well as the practical implementation of that 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. A summary of the findings against those elements is set out on page 117 of this report.

20. The Phase 1 assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Ms. Maria Graça Pires, Tax Officer of the International Relations Department, Ministry of Finance of Portugal; Mr. Graham Hunt Senior Policy Analyst, Inland Revenue Department of New Zealand; and Caroline Malcolm from the Global Forum Secretariat.

21. The Phase 2 assessment was conducted by an assessment team, which consisted of two expert assessors and one representative from the Global Forum Secretariat: Ms. Maria Graça Pires, from the International Relations Department, Ministry of Finance of Portugal, Ms. Nicola Guffogg, the Assessor for the Isle of Man; and Ms. Mary O’Leary from the Global Forum Secretariat. The assessment team assessed the practical implementation and effectiveness of the legal and regulatory framework for transparency and exchange of information and relevant EOI arrangements in Saint Lucia.

Overview of Saint Lucia

Governance, economic context and legal system

22. Saint Lucia is an island located in the south-eastern Caribbean, in the Eastern Caribbean Sea. It is part of the Lesser Antilles and is located northeast of the island of Saint Vincent, northwest of Barbados, and south of Martinique. It covers a land area of 616 km² and has an estimated population of 163 362 (July 2014 est.).¹ English is the official language in Saint Lucia and its capital is Castries. The currency is the East Caribbean Dollar (ECD)². The Country is a member of the Eastern Caribbean Currency Union (ECCU) whose members are Anguilla, Antigua and Barbuda, Dominica, Grenada, Montserrat, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines. Saint Lucia is also a member of the Caribbean Community (CARICOM), with the other 14 members being Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica,

1. <https://www.cia.gov/library/publications/the-world-factbook/geos/st.html>.

2. As at May 2014, ECD 1 = USD 0.37, www.xe.com.

Montserrat, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

23. Through the 17th and 18th centuries, Saint Lucia was alternately under British and French control. In 1814, it was declared a British colony; in 1967, it was granted self-government; and, in 1979, Saint Lucia became independent. Today, Saint Lucia remains a member of the Commonwealth.

24. Saint Lucia is a constitutional monarchy whose written constitution establishes a parliamentary democracy system of governance modelled on the Westminster system of England. The constitution guarantees each individual's fundamental rights and provides for the separation of powers between the executive, the parliament, and the judiciary. Reflective of its history, Saint Lucia's legal system has been described as hybrid, although shares more similarities with other common law jurisdictions, with the legal framework consisting mainly of common law (including English common law) complemented by legislation enacted locally by Saint Lucia's Parliament.

25. The Head of State is the British Monarch who is represented in the island by the Governor General. The head of the government is the Prime Minister who is appointed by the Governor General. The Prime Minister usually is the leader of the majority party or coalition. The Deputy Prime Minister is also appointed by the Governor General. With other key members of the executive branch of government, they form part of the cabinet.

26. The legislature is composed of a bicameral Parliament. The upper chamber is the Senate, made up of 11 seats (six members appointed on the advice of the Prime Minister, three on the advice of the leader of the opposition, and two after consultation with religious, economic, and social groups). The lower chamber is the House of Assembly composed of 17 seats. Members of the Senate and the House of Assembly are appointed for five year terms.

27. Saint Lucia's legal system is based on English common law with the United Kingdom's Privy Council being the final court of appeal. Below the Privy Council, the legal system has a three-tiered judiciary set out in hierarchical order as follows: (i) the Eastern Caribbean High Court; (ii) the Eastern Caribbean Court of Appeal; (iii) the Court of Summary Jurisdiction; and (iv) the Magistrates' Courts.

28. The Eastern Caribbean Supreme Court (comprising the High Court and Court of Appeal) is a superior court of record for the Organisation of Eastern Caribbean States (OECS) with unlimited jurisdiction in each member State. The nine members of the OECS are: Anguilla, Antigua and Barbuda, British Virgin Islands, Commonwealth of Dominica, Grenada, Montserrat, Saint Lucia, St. Kitts and Nevis, and St. Vincent and the Grenadines. The headquarters of the ECSC are in Castries, Saint Lucia.

29. In addition to the ECSC, the Caribbean Court of Justice (CCJ), established in 2003, is the judicial institution for CARICOM. In its original jurisdiction, the CCJ interprets and applies the treaty of Chaguaramas (which establishes the Caribbean Community).

30. Deriving from the English legal system, Saint Lucia's legal framework is predominantly a common law system (including English common law) and relevant legislation is enacted by Saint Lucia's parliament. The interpretations and precedents of English courts have persuasive authority in Saint Lucia, but yield to decided authority made by Saint Lucia's own judicial system. The legal system is unitary and is subject to Saint Lucia's Constitution, which is the supreme law of the country. After the Constitution, the hierarchy of legislation in Saint Lucia is ordered as follows: the Acts passed by parliament, including ordinances such as the Civil Code Ordinance and international agreements which are given effect through parliamentary approval; and subsidiary legislation, which can be in the form of regulations, statutory rules or orders.

31. Saint Lucia has a GDP of USD 1.32 billion, which equates to USD 7 800 per capita at December 2012. The services sector (mainly tourism-related) is the greatest contributor to GDP at 76.7%, of which the financial services sector makes up 8%. At December 2012, Saint Lucia had 180 regulated financial services entities, which includes insurance companies, mutual funds, banks and registered agents. In addition to services, the key economic sectors are industry (18.35%) and agriculture (4.9%). Predominantly, the country has remained an agricultural centre, dedicated to producing tropical commodities, and most notably bananas. Apart from export that has played an important role in the country's economic growth since the second half of the twentieth century, tourism is today Saint Lucia's main source of income. After a decade of decline, in 2010 Saint Lucia experienced an upturn in tourism, with stay-over visitors reaching record numbers, at 305 937 people for the year. At the same time, international financial services have continued to develop.

32. Saint Lucia's main trading partners are the United States, the United Kingdom and the other CARICOM countries, in particular Trinidad and Tobago. External direct investments in Saint Lucia (that is, from countries outside CARICOM and the ECCU) derive mainly from Canada, the United States and the United Kingdom.

Overview of commercial laws and other relevant factors for exchange of information.

33. In Saint Lucia, companies can be formed under either the Companies Act or the International Business Companies Act (IBC Act). For the purposes

of carrying out international insurance business only, an IBC can be formed as an Incorporated Cell Company (s4, International Business Companies Amendment Act 2006). Each Incorporated Cell Company is an IBC which is “linked” to individual cells, and each cell itself considered to be an IBC (s3, International Business Companies (Amendment) Act 2006).

34. Partnerships may be formed and registered under either the Civil Code, or the International Partnerships Act. Trusts can be formed under the common law which is recognised in the Civil Code (art. 916A) or created as an International Trust and registered under the International Trusts Act.

35. As at January 2014, in Saint Lucia there were:

- 9 629 domestic companies formed under Saint Lucia’s laws;
- 2 989 international business companies;
- 130 external companies carrying on business in Saint Lucia;³
- 44 partnerships registered under the Commercial Code;
- 0 International Partnerships; and
- 98 International Trusts.

36. IBCs and international partnerships are not permitted to carry on business with persons resident in Saint Lucia, or to hold any interest (other than the lease of an office) in immovable property situated in Saint Lucia. International trusts may not be settled by a person who is resident of Saint Lucia at the time of creation of the trust, or at any time the settlor contributes further property to the trust.

37. IBCs formed under the IBC Act include as at January 2014; 53 International Insurance Companies which includes six International Incorporated Cells companies, 11 Incorporated Cells (each of which is considered as a separate IBC), nine international Banks, 10 Private Mutual Funds, eight International Public Mutual Funds, four International Public Fund Administrators/Managers, 17 Registered Agents, and four Registered Trustees.

3. An “external company” is any firm or other body of persons, whether incorporated or unincorporated, that is formed under the laws of a country other than Saint Lucia or another member State of the Caribbean Community (CARICOM) or the Organisation of Eastern Caribbean States (OECS) (s551, Companies Act).

There are 60 entities which are carrying on business in Saint Lucia and which are formed under the laws of one of the member states of CARICOM or the OECS.

Overview of the financial sector and relevant professions

38. St. Lucia's financial services sector is regulated by the Financial Sector Regulation Authority (FSRA, previously known as the Financial Sector Supervision Unit or FSSU). The FSRA is part of the network of Eastern Caribbean regulators within the Eastern Caribbean Currency Union (ECCU). The enabling legislation creating the FSRA has been enacted, with the commencement order passed. On the appointment of the Board of Directors in April 2013, and the appointment of an executive director in August 2013, the FSRA assumed full authority from the FSSU, for the regulation of the financial services sector. As of January 2014, a Director and six other staff had already being appointed to the FSRA with staffing arrangements for a total of 23 staff to be finalised by the end of May 2014. As of June 2014, the total value of assets held by the banking sector in Saint Lucia is ECD 7.6 billion (approximately USD 2.8 billion).

39. The commercial banking sector and credit institutions across the ECCU are regulated and supervised on a day-to-day basis by the Eastern Caribbean Central Bank (ECCB). In Saint Lucia these obligations are implemented under the Banking Act 2006. The non-banking financial sector is regulated and supervised by the relevant national regulators, although efforts to harmonise these areas in the ECCU region continue.

40. The FSRA will have responsibility for licensing and supervision of the financial services sector, which includes insurance, international banking, international mutual funds, registered agents, and trustees as well as other money services businesses.

41. The regulatory legislation does not itself impose ownership and identity obligations; however some relevant accounting record obligations are specified. On the other hand, Saint Lucia's anti-money laundering (AML) regime establishes obligations on regulated financial service entities as well as on persons carrying on certain other business activities to retain ownership, identity, and accounting information in respect of the persons with whom they do business.

42. The obligations of the AML regime are regulated and supervised by the Financial Intelligence Authority (FIA) which is established under the Money Laundering (Prevention) Act (MLPA). Persons subject to the AML requirements ("AML Service Providers") are described in Schedule 2 of the MLPA and include:

- All regulated financial service entities including
 - international mutual funds,
 - international banks,

- international and domestic insurance companies,
- registered agents (including persons acting as nominee directors, shareholders or company officers), and
- trustees.
- Company formation and management service providers;
- Custody service entities;
- Securities broking companies;
- Lawyers; and
- Accountants.

43. The MLPA, the Money Laundering (Prevention) (Guidance Notes) Regulations and the Proceeds of Crime Act are the key elements of the AML framework in establishing obligations for AML Service Providers to keep ownership, identity, and accounting information.

General information on the taxation system

44. The Saint Lucian tax system includes both direct and indirect taxes, with income tax being the most significant tax in terms of amount levied. Indirect taxes include custom duties, hotel accommodation tax and travel tax. Capital gains are not taxed and a value-added tax was introduced in Saint Lucia in 2012 and became fully operational in October 2012. Stamp duty on property transfers and property taxes are also levied. The Inland Revenue Department, a department of the Ministry of Finance, is in charge of the administration and collection of the majority of taxes and duties. Revenue from taxes and duties represents 22.8% of Saint Lucia’s GDP (2014 estimate).

45. The Income Tax Act governs the administration of income tax and defines the scope of persons “chargeable to tax”, all persons to whom chargeable income has accrued, covering persons tax-resident in Saint Lucia on their worldwide income, and non-residents in respect of Saint Lucian source income accrued directly or indirectly. The corporate tax rate is equivalent to the highest personal income tax rate at 30%.

46. Tax residence for entities and arrangements is defined in section 2 of the Income Tax Act:

- Companies will be tax resident if they are either incorporated in Saint Lucia, or controlled and managed from Saint Lucia;
- A partnership is not a taxable entity, and partners are taxed on the basis of their tax-residence.

- Trusts will be tax resident if they are “established in Saint Lucia”. Saint Lucia has advised that this means a trust “expressed to be subject to the laws of Saint Lucia” which is also the definition applied in section 51(3) of the International Trust Act. For such trusts, the trustee will be taxable on income accrued to the trust, in the event there are no presently-entitled beneficiaries.

47. However under section 51(5) of the International Trusts Act, there is an exemption to the provisions of the Income Tax Act in respect of International Trusts and trusts established in Saint Lucia. The same exemption from the provisions of the Income Tax Act applies to International Partnerships (s101, International Partnerships Act). Where the trust has a qualifying trustee (an IBC or person registered under the Registered Agent and Trustee Licensing Act) wherever resident, the provisions of the Income Tax Act shall not apply to any property which is the subject of the Saint Lucia trust, or the income or gains thereon, or to the trustees of the Saint Lucia trust, or to the non-resident settlors or beneficiaries thereof except income or gains arising or derived from Saint Lucia or property situate in Saint Lucia.⁴

48. There are also exemptions from tax for certain types of entities. Under s109 of the IBC Act, an IBC can elect to be tax-exempt, or to pay tax at a rate of 1%. Electing to pay income tax at the rate of 1%, allows the IBC to benefit from the provisions of the CARICOM agreement. Electing to be tax-exempt, the IBC is relieved of any obligation to file an annual information return under the Income Tax Act. International Partnerships and International Trusts are tax exempt, as are any distributions made to non-resident partners or beneficiaries. International Partnerships are also tax-exempt, under section 101 of the International Partnerships Act. For International Trusts to obtain tax-exempt status, the terms of the International Trust deed must expressly prohibit the ownership of real property situated in Saint Lucia and expressly exclude residents as beneficiaries (s51, International Trusts Act). However, where an International Trust accrues income from sources inside Saint Lucia other than ordinary bank interest or income from portfolio securities investments, that income will be subject to tax (s51, International Trusts Act).

49. Under section 2 of the Income Tax Act, a permanent establishment is defined to mean “a fixed place or premises through which the business of

4. For these purposes, the following items are not considered to be income or gains arising or derived from Saint Lucia nor considered to be property situate in Saint Lucia: shares in an international business company; dividends, distributions, payments or other transfers from an international business company; rights or property of an international business company; or property transferred from another Saint Lucia trust.

a person is wholly or partly carried on” and includes a place of management, a branch, or an office. A person is defined to include an individual, a trust, the estate of a deceased person, a company, a partnership, and every other juridical person.

50. Even where a person is not liable to tax in Saint Lucia, they may still be subject to the obligations imposed by the Income Tax Act to file an annual return and/or to keep certain information including accounting records.

51. Free trade zones (FTZs) may be created in Saint Lucia, pursuant to the Free Zones Act No.10 of 1999. Presently, one FTZ has been created, in Vieux Fort, which is managed by Saint Lucia’s Air and Sea Ports Authority. In the FTZ, investors may establish business and conduct trade and commerce outside of the national customs territory, and such businesses are also granted a 5-year income tax holiday. Business activities can be conducted entirely within the FTZ, or between the FTZ and other countries. The laws pertaining to the FTZ do not allow for the establishment of any types of entities or arrangements other than those provided for generally under Saint Lucia’s laws.

52. A VAT regime was introduced in Saint Lucia and became fully operational in October 2012. The standard rate is set at 15% with a reduced rate of 10% for goods and services provided by hotels.

International exchange of information for tax purposes

53. In Saint Lucia, the exchange of information for tax purposes (EOI) is governed principally by the terms of the tax information exchange agreements (TIEAs) which Saint Lucia has concluded with its EOI partners, the legislation which incorporates those agreements into domestic law, and the Income Tax Act which grants, in section 60, the Minister of Finance with the power to conclude such agreements.

54. In December 2005, Saint Lucia committed to meeting the international standards of transparency and exchange of information for tax purposes. Its network of signed agreements that include EOI provisions now covers 32 jurisdictions, with all of the agreements in force. This includes TIEAs, a double tax convention with Switzerland as well as the multilateral CARICOM tax treaty, which it has signed together with ten other CARICOM member states.

Recent developments

55. The International Tax Cooperation Act, which is a single act outlining the procedures and access powers relevant to Saint Lucia's exchange of information under its EOI agreements, was passed by parliament in May 2012 and entered into force in August 2012. This Act is discussed further in the body of the report. Further, the International Tax Cooperation (Amendment) Act 2014 was enacted on 06 June inserting a penalty for the non-provision of information under the Act and a discretion for the competent authority to send the requested information even in the case that an obligation has been made by an interested party within the 20 day holding period.

56. An amendment to the Companies Act has been drafted to clarify the registration requirements for companies formed in an OECS or CARICOM member state that carry on business in Saint Lucia. This bill is to be presented at the next parliamentary sitting in 2014.

Compliance with the Standards

A. Availability of Information

Overview

57. 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 such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report describes and assesses Saint Lucia's legal and regulatory framework for availability of information.

58. The legal bases to ensure the availability of relevant information in Saint Lucia are found in commercial laws, tax laws and the linked regulatory and anti-money laundering regimes. In respect of companies, the companies formed under Saint Lucia's laws as well as foreign companies with a connection to Saint Lucia and nominees acting on behalf of other people in Saint Lucia are subject to obligations to keep ownership information. However, for companies formed under the laws of a CARICOM or OECS member state and carrying on business in Saint Lucia, there are no obligations for ownership information on those entities to be kept. For partnerships, the Income Tax Laws as well as the anti-money laundering regime establish requirements for all partnerships to keep identity information on their partners. This is similarly the case for International Trusts. Trustees of ordinary trusts are subject to common law fiduciary duties which will extend to a requirement

to keep information on the identity of settlors, trustees and beneficiaries. Overall, element A.1 on ownership and identity information is found to be in place, and a recommendation is made in respect of companies carrying on business in Saint Lucia which are formed under the laws of a CARICOM or OECS member state.

59. Enforcement measures consisting of fines and imprisonment are set out under the income tax law, acts governing the relevant entities and arrangements and regulatory laws to ensure compliance with the information keeping requirements. In practice, there is some monitoring of entities ownership information obligations carried out by the Inland Revenue Department and by the regulator for licensed entities via desk-top audits and occasional onsite inspections. However, the lack of a comprehensive system of oversight by the Registrars and the regulators may not ensure that complete ownership information is being maintained in respect of all entities.

60. In respect of accounting information, the income tax law establishes obligations to keep accounting records, including underlying records for a minimum six year period, for all persons carrying on business in Saint Lucia. However, some tax-exempt entities are also exempt from these record-keeping obligations, namely International Business Companies (IBCs), International Partnerships and International Trusts. In respect of those three types of entities and arrangements, the legal framework does not establish binding obligations for all relevant accounting records to be kept. There are 2 989 IBCs operating in Saint Lucia as at January 2014 and 98 International Trusts and there is a recommendation made to ensure that accounting records and underlying information is kept for a minimum of five years. Element A.2 on accounting records is found to be not in place as a result of these deficiencies.

61. Where certain accounting information requirements do exist such as under the Income Tax Act, enforcement measures consisting of fines and imprisonment are set out to address the risk of non-compliance with these obligations. However, there is no system of oversight in place by the Inland Revenue Department to ensure compliance with these requirements. While the regulator (Financial Services Regulatory Authority) (FSRA) carries out some oversight of licensed entities in the form of desk-top audits and onsite inspections, this does not ensure that accounting records in line with the standard are being maintained in the case of all entities. It is therefore recommended that on implementing accounting record requirements to the standard for all entities, Saint Lucian authorities should ensure that there is a regular system of oversight put in place and enforcement powers are sufficiently exercised in practice to ensure the availability of accounting information in the case of all entities.

62. Finally, financial institutions carrying on banking activities are regulated, and subject to Saint Lucia's anti-money laundering regime. This ensures that there are sufficient requirements in respect of account information, including related financial and transaction information for all account holders. Element A.3 is therefore found to be in place. A system of oversight of financial entities is in place by the FSRA and the Eastern Caribbean Central Bank (ECCB) whereby offsite and onsite inspections are regularly conducted. Part of the inspections of commercial banks includes monitoring of customer due diligence requirements. In practice, compliance with customer due diligence requirements is found to be high.

63. Over the three year review period 1 July 2010-30 June 2013 (review period), Saint Lucia received a total of four requests; four of the requests concerned company identity and ownership information and three requests concerned accounting information. Saint Lucia was able to provide ownership information in two cases and in the other two cases ownership information was unable to be provided as it was not produced by the registered agent. Accounting information was unable to be provided in the three cases where it was requested over the review period. It is not clear if the information was unavailable due to the lack of sufficient accounting record obligations for all entities or due to a potential domestic tax interest in the access powers used by the competent authority over the review period. To date, no requests relating to banking information have been received.

A.1. Ownership and identity information

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

Companies (ToR⁵ A.1.1)

64. Saint Lucian law provides for the creation of companies under either the Companies Act (domestic companies), or the International Business Companies Act (IBC Act). The types of companies which can be formed are:

- Companies with share capital. A type of domestic company formed under the Companies Act, these can be either ordinary or public companies. As of January 2014, there were 9 629 domestic companies with share capital in Saint Lucia.
- Companies without share capital (non-profit). A type of domestic company which is formed under the Companies Act, with the

5. *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.*

permission of the attorney-general and for a socially useful purpose. As of January 2014, there were 360 domestic companies without share capital in Saint Lucia.

- International business companies. Formed under the IBC Act, IBCs must be created for the purpose of carrying out business outside of Saint Lucia, and can elect to pay income tax at 1% or be tax-exempt. As of January 2014, there were 2 989 active IBCs in Saint Lucia.

65. The Companies Act also provides for the registration of external companies which are carrying on business within Saint Lucia. When the Companies Act was first introduced in 1996, external companies were defined as “any firm or body of persons, whether incorporated or unincorporated, that is formed under the laws of a country other than Saint Lucia”. Therefore, at that time, all companies incorporated outside of Saint Lucia, including in one of the member states of the CARICOM or the OECS, were registered as external companies. The Companies (Amendment) Act 2008 provided an exception for registration requirements for companies which are carrying on business in Saint Lucia incorporated in one of the member states of CARICOM or OECS. An “external company” is now defined as any firm or other body of persons, whether incorporated or unincorporated, that is formed under the laws of a country other than Saint Lucia or another member State of the Caribbean Community (CARICOM) or the Organisation of Eastern Caribbean States (OECS) (s551, Companies Act). In this context, “carrying on business” means (s338, Companies Act):

- business is regularly transacted from an office in Saint Lucia established or used for that purpose;
- the company establishes or uses a share transfer or share registration office in Saint Lucia; or
- the company owns, possesses or uses assets situated in Saint Lucia to obtain or seek to obtain profit or gain from such assets, whether directly or indirectly.

66. There is no registration requirement for companies which are carrying on business in Saint Lucia incorporated in one of the member states of CARICOM or OECS. Saint Lucia has advised that under the Caribbean Community (Movement of Factors) Act, such companies shall enjoy a right of establishment in Saint Lucia, and accordingly such companies may incorporate as domestic companies. Officials from the Saint Lucian Registrar have reported that in practice, incorporation by such companies as a domestic company does not occur often.

Information required to be provided to government authorities

67. The Companies and Intellectual Property Office is the Companies Registrar. It is responsible for maintaining a register of every company that is incorporated or registered under the Companies Act. This will include domestic companies and external companies, but not IBCs (which have a dedicated register, described below). The Companies Registrar must keep all documents received for a minimum of 6 years from receipt (s515, Companies Act). In practice, the Registrar has reported that all documents are kept indefinitely.

68. For incorporation, domestic companies must submit their articles of incorporation to the Registrar; however these are not required to include shareholder identity information. Domestic companies are required to submit an annual return to the Registrar (s194, Companies Act) in the prescribed form found in Schedule 3 of the Companies Act (Form 28, Schedule 3, Companies Act). The form requires a list of persons holding shares (legal owners) in the company as at 31 December, and of persons who have held shares in the company at any time since the date of the last return or (in case of the first return) of the incorporation or continuance of the company, including their names and addresses and an account of the shares so held.

69. The Registrar of International Business Companies (IBC Registrar) maintains a register of companies formed under the IBC Act. Under that Act, the IBC's registered agent must submit the IBC's memorandum and articles of incorporation to the Registrar. These documents include the name and address of the registered agent, but do not require the provision of identity information regarding the shareholders. An IBC is required to maintain a registered agent and registered office in Saint Lucia at all times, and to notify the Registrar of any changes thereto (ss38-41, IBC Act). However, all IBCs will be subject to a requirement to maintain a register of shareholders, including their names and addresses and the dates on which they became and ceased to be a member. In practice, the IBC Registrar has reported that there are often changes made to the registered agent whereby the IBC must file an amendment to the memorandum of association which is done by the newly appointed registered agent. Since the introduction of IBCs in Saint Lucia in 2001, approximately 5 200 IBCs have been registered, of which approximately 40% have been stuck off due to being dissolved, not paying the renewal fee and in a very small amount of cases (at least two) the registered agent no longer wished to act for the IBC.

70. External companies are required to register with the Registrar of Companies before commencing business in Saint Lucia (s340, Companies Act). The information required to be provided upon registration does not include any shareholder identification information (s344, Companies Act). However, an external company is required to file an annual return (s356,

Companies Act). The prescribed form (Form 24, Schedule 3 Companies Act) requires the same information as for the domestic companies' annual information return: a list of persons holding shares (legal owners) in the company as at 31 December, and of persons who have held shares in the company at any time since the date of the last return or (in case of the first return) of the incorporation or continuance of the company, including their names and addresses and an account of the shares so held.

71. By order published in the Gazette, the Attorney-General may exempt external companies from their obligations under the Companies Act (s339, Companies Act). The office of the Attorney General of Saint Lucia has advised that if such an order were to be made, it would have to be reflected in the consolidated index of the laws of Saint Lucia. Having consulted this index, the office of the Attorney General has confirmed that there has never been an order made exempting external companies from their obligations under the Companies Act. Therefore, no such exemptions have been granted to date and officials from the Attorney General's department have indicated that it is not foreseen for any such exemptions to be granted in the future.

72. There is no clear requirement for companies carrying on business in Saint Lucia which were incorporated in one of the member states of CARICOM or OECS, to submit ownership information to the Registrar of Companies. As above outlined, prior to the Companies (Amendment) Act 2008, all companies carrying on business in Saint Lucia which were incorporated in another jurisdiction, including in one of the member states of CARICOM or OECS, were registered as external companies. Such companies continue to be subject to the obligation to file an annual return and the provision of ownership information. The Registrar has reported that there are currently 60 such companies registered in Saint Lucia. However, since the amendment to the definition of external companies in 2008, there is the possibility that such companies could carry on business in Saint Lucia without a requirement to register or to comply with any ownership information requirements.

Registration of companies in practice

73. Currently, all company registrations (local and external) are carried out in person by a member of the company (such as a director) at the offices of the Registrar of Companies which is a government body under the portfolio of the Attorney General's Chambers. The registration process may be commenced online but all fees have to be paid in person at the offices of the Registrar. On receipt of a company registration application, the Registrar carries out a name search, usually taking one day, and once the name has been approved, the company must then submit their articles of incorporation, notice of address, registered office address, a list of directors and a statutory

declaration of compliance. Upon receipt of these documents and payment of the registration fee of ECD 850 (approximately USD 315) the company is then issued a certificate of incorporation in Saint Lucia.

74. Within one month of registration, all local and external companies must submit a “return of allotments” (s. 18(2), Companies Act, Schedule 3, Form 31) to the Registrar which contains the name, address and nationality of each of the shareholders as well as the class and number of shares they have been allotted. The Registrar has stated that there is high compliance with this obligation. The Registrar has also stated that as a certificate of good standing is needed by companies in order to open a bank account and there is strong motivation for local and external companies to send in the return of allotments containing the shareholder register once they commence doing business. In the event that it is noticed that a company has not filed all the relevant documentation (such as in the course of filing further documents or an application for a certificate of good standing), the Registrar will then proceed to write a letter to the company informing them that they are in contravention of this requirement. In the majority of cases where the return of allotments has not been submitted, this is attributable to these companies not having yet commenced business.

75. There is a requirement to update the Registrar of changes that take place in the ownership of the company such as share transfers within 30 days of them taking place. Further, all domestic registered companies must file an annual return by April 1 every year which the Registrar then cross checks with the information on file in order to ensure that changes in details such as share transfers have been submitted. Companies are reminded of their obligation to file an annual return by announcement in the official gazette as well as media announcements. In the latter half of 2013, the Registrar launched a project whereby two staff members have been dedicated solely to verifying compliance with the annual return obligation for the years 2009-11. In the course of these investigations it has been found that compliance over these years has been about 70%. Once all entities have been checked for compliance with their annual return filing obligation, the next phase of the project will entail publishing the names of those registered companies who have not yet filed an annual return in the official gazette of Saint Lucia in order to notify the companies and give them 30 days within which to correct this omission. In the event that a company continues to not submit an annual return, it is intended to strike these companies off the register. The Registrar intends to implement this system of monitoring compliance with annual filing requirements as a general practice to be completed annually. In the event of those entities that are struck off, the Registrar has advised that it maintains all entity information, including ownership information, indefinitely.

Registration of IBCs in practice

76. IBCs can only be registered via a registered agent who has been issued a financial and corporate service providers licence from the Financial Services Regulatory Authority (FSRA). The process for registration is similar to that of domestic companies, except that IBCs are registered with the IBC Registrar. At the time of registration the IBC's memorandum and articles of association must be submitted. However, there is no requirement to submit a shareholder register or any ownership information. Although IBCs have the option to file a shareholder register, officials from the IBC Registrar have reported that this rarely occurs in practice except on occasion such as where the IBC been requested to do so by a lending agency. As at May 2014, there were 2 989 IBCs with registered status in Saint Lucia and of these, 10 had elected to file a shareholder register. Similar to that for domestic companies, in the event of IBCs being struck from the register, the IBC Registrar has advised that it maintains all filed information indefinitely.

77. All registered IBCs must file an annual return by the end of January every year along with payment of the renewal fee. However, no ownership information on the IBC needs to be provided. If the return has not been received they are usually sent a notice in October in which they are given a 90 day period to submit the return and the annual payment fee. A late filing fee of 50% of the registration fee is also applied. In the event of continued non-compliance with the requirement to file an annual return, the names of those IBCs are then published in the official gazette as being struck off from the IBC Registry. Since 2001 when IBCs were introduced in Saint Lucia, 2 020 IBCs have been struck from the Register for non-compliance with the requirement to file an annual return and pay the annual renewal fee and over the review period 1 330 IBCs were struck off for non-compliance with this requirement. In the event that an IBC requests to be restored to the registry within three months of being struck off, there is a charge of ECD 810 (USD 300). In the event that more than three months has lapsed then a fine of ECD 1 620 (USD 600) will be applied.

78. The IBC Registrar maintains a list of all registered IBCs (stating the name, registration number, and address of the registered office), which is publicly accessible online. All documents submitted to the IBC Registrar are archived and maintained indefinitely. It is possible for any person to obtain copies of any documents filed for a payment of USD 100 per company file and photocopies (certified or non-certified) of all documents can also be requested. Documents in PDF format may also be downloaded electronically for a fee from the IBC Registry website.

79. All IBCs must be registered via a registered agent or trustee licensed under the Registered Agent and Trustee Licensing Act (RATLA), as supervised by the FSRA. As there are no annual filing requirements in respect of

ownership information regarding IBCs, the IBC Registrar does not oversee any of the ownership and identity information that must be maintained by the IBC and in practice oversight of the information keeping obligations by IBCs is carried out by the regulators under the regulatory laws and the AML regime as applicable to the registered agents (see section *Regulation of entities in practice*).

80. During the review period, officials from the IBC Registrar reported that it has been contacted directly by officials from two separate EOI partners asking whether particular entities were registered as IBCs in Saint Lucia. In both cases the Registrar was able to inform the EOI partner that the particular entities were not registered as IBCs in St. Lucia. In another case where the EOI request was received by the competent authority, the competent authority referred to the IBC website in order to confirm whether or not an IBC was registered in Saint Lucia.

Ownership information required to be held by companies

81. The name of every person incorporating a domestic company must be entered in the company's register of members upon the company's registration. All domestic companies must maintain a register of shareholders which includes the name and last known address of the shareholder (s177, Companies Act).

82. The definition of a shareholder in section 105(1)(c) provides that a shareholder includes:

“a person in whose favour a transfer of shares has been executed but whose name has not been entered in the register of members of the company or, if 2 or more such transfers have been executed, the person in whose favour the most recent transfer has been made”

83. This possibility is also envisaged under s195(5) which concerns transfers of shares, and section 195(4) states that beneficial ownership of the share transfers on the delivery of the written transfer and the transferor's share certificate, and not on the registration of the transferee's interest in the register of shareholders.

84. These provisions may suggest that it is possible for a person to be a shareholder, even when not named on the register of members maintained by the company. However, there is a specific provision that for the purpose of giving notice of shareholders meeting and exercising voting rights at that meeting, share transfers must be registered (s123, Companies Act). On balance, given that domestic companies are required to indicate the name of

their shareholders in their annual return to the Companies Registrar, they must in practice keep such information.

85. Also, for domestic public companies, there is a requirement to maintain a register identifying persons who have a “substantial shareholding” in the company, under s184 of the Companies Act. A person is considered to have a substantial shareholding if they hold, by themselves or by their nominee, shares in the company which entitle them to exercise at least 10% of the unrestricted voting rights at any general meeting of shareholders.

86. In practice, the Companies Registrar has confirmed that a transfer of shares will not be recognised by any company until such time as this transfer, along with all the details of the new shareholder, is entered in the share register. In the event that the transferee’s name has not yet appeared in the share register, this person would not be recognised by the company and therefore not be entitled to any of the rights associated with being a shareholder such as the receipt of dividend payments. The administration of the IBC Act, including the obligation to update the share register by all companies is presided over by the Registrar. However, in practice, the monitoring of this obligation lies with the regulators (see section *Regulation of entities in practice*).

87. Non-profit companies are subject to the provisions of the Companies Act that apply to domestic companies with regards to incorporation, management, membership, record keeping, and financial disclosure obligations (s326, Companies Act).

88. IBCs are required to maintain a register of shareholders, including their names and addresses and the dates on which they became and ceased to be a member. An IBC can elect to file the shareholder register with the Registrar of Companies (and once filed, must continue to update the Registrar’s record of the shareholders), but are not required to do so (s119, IBC Act). While IBCs are permitted to delete from the share register information on persons who are no longer shareholders (s28, IBC Act), the registered agent of the IBC will be subject to the AML regime and required to keep ownership information for the IBC for a minimum period of seven years.

89. However, as mentioned above, the IBC Registrar has confirmed that it is not normal practice for IBCs to file the shareholder register. Of the 2 989 IBCs with registered status with the Registrar, 10 of these have elected to file a shareholder register.

90. For external companies, there are no obligations under the Companies Act for the company itself to maintain a list of shareholders, however to comply with the obligations to file an annual return of information with the Registrar of Companies, which includes identity information on shareholders this information would need to be kept.

91. Companies formed in a CARICOM or OECS member state and carrying on business in Saint Lucia are not subject to any clear requirements to keep information on their owners. Previously, all companies carrying on business in Saint Lucia, which were incorporated in another jurisdiction, including in one of the member states of CARICOM or OECS, were registered as external companies. Such companies continue to be subject to the obligation for all external companies to file an annual return which includes the provision of updated ownership information. The Registrar has reported that there are currently 60 such companies registered in Saint Lucia. Since the Companies (Amendment) Act 2008 companies carrying on business in Saint Lucia, which were incorporated in one of the member states of the CARICOM or the OECS are no longer required to register or to any ownership information requirements.

Income tax law

92. Companies must nominate a principal person who is responsible for meeting their obligations under the Income Tax Act (sections 93, Income Tax Act). All persons, including domestic and external companies that are chargeable to tax under the Income Tax Act must register with the Comptroller of Inland Revenue and file an annual return of income. However, the annual income tax return does not require companies to identify their owners.

93. Under section 109 of the IBC Act, IBCs may elect either to pay 1% income tax, or to be exempt from income tax. Where they have elected to be exempt from income tax, they are not required to register with the Comptroller or to file a return of income.

94. The Inland Revenue Department is responsible for administering and overseeing compliance with the Income Tax Act. Officials from the Inland Revenue Department have reported that for those entities that are subject to tax filing requirements, there is a compliance rate of approximately 80%. The end of the financial year is December with company tax returns due by March of the following year. There is the option for companies to select a different year end but the filing obligation remains the same, i.e. within 3 months of end of financial year. In the event of non-compliance with this obligation the Inland Revenue Department will write to those entities reminding them of their obligation to file a return. In the event of continued non-compliance, the Inland Revenue Department will proceed to calculate their tax liability based on their previous return. There are also a number of penalties at their disposal. (see section A.1.6 Enforcement provisions to ensure availability of information).

Regulatory Laws

95. The FSRA has responsibility for licensing and supervision of the financial services sector, which includes all entities in the insurance sector, banking (with the exception of commercial banks and credit institutions who are licensed by the FSRA but under the supervision of the ECCB), mutual funds, registered agents, and trustees (see also section A.3 *Banking information*). It is a requirement that all entities issued a license to carry out such business are in compliance with the obligations set out under the AML regime which establish clear obligations on regulated financial service entities as well as on persons carrying on certain other business activities to retain ownership, identity, and accounting information in respect of the persons with whom they do business. As of December 2013, there were a total of 144 entities regulated by the FSRA; 17 registered agents, 4 registered trustees, 53 international insurance companies, 9 international banks, 4 money services business, 26 domestic insurance companies, 13 insurance brokers and 18 insurance agents.

Anti-Money Laundering regime

96. Saint Lucia's anti-money laundering (AML) regime establishes obligations on regulated financial service entities as well as persons carrying on certain other business activities to retain ownership, identity, and accounting information in respect of the persons with whom they do business. The persons subject to the AML requirements ("AML Service Providers") are set out in Schedule 2 to the Money Laundering (Prevention) Act (MLPA) and are described in the Introduction to this report.

97. Certain types of entities and arrangements are required to engage an AML Service Provider, namely a registered agent. This includes IBCs, International Partnerships, as well as any entity regulated as an international mutual fund, international bank, or international insurance company under the laws of Saint Lucia. Professional trustees, including all trustees of International Trusts, and also professional nominees are also subject to the AML regime.

98. The Financial Services Unit is responsible for ensuring compliance by AML Service Providers with the MLPA. In addition, AML Service Providers which are regulated financial service entities are subject to a licensing regime managed by the Financial Services Regulatory Authority, whose licensing obligations require compliance by the licensee with their obligations under the AML regime.

99. The obligations to maintain relevant ownership, identity and accounting information under the AML regime are described in the Money Laundering (Prevention) Act (MLPA). Pursuant to section 15, AML Service

Providers are required to take “reasonable measures” to determine the true identity of the person seeking to or carrying out a transaction. Relevant transactions are those involving the formation of a business relationship; a one-off transaction (or series of transactions) involving ECD 10 000 (USD 3 700) or more; or where there is knowledge or suspicion of money laundering (s15(c), MLPA). Where satisfactory evidence is not produced, the AML Service Provider must not proceed further with the transaction.

100. Where the account holder appears to be acting on behalf of another person, as a trustee, nominee, agent or otherwise, reasonable measures shall be taken to verify the identity of that other person (s15(f-g), MLPA). However, in the case of an accountholder whose identity has already been established, there is no ongoing obligation to verify their identity in the course of further transactions (s15(j), MLPA).

101. Additional client identity verification measures are required in some circumstances and are described in section 17 of the MLPA. There is no ongoing obligation to verify their identity in the course of further transactions (s15(j), MLPA) except where there is doubt about the veracity of previously obtained identity information. Section 16(h) of the MLPA requires all records to be kept in a legible, retrievable form, and a person who fails to comply with that obligation commits an offence, with fines ranging from ECD 100 000 (USD 37 037) to ECD 500 000 (USD 185 185), or imprisonment for 7-15 years.

102. Best practice in respect of the AML obligations is described in the AML Guidelines in the Schedule to the Money Laundering (Prevention) (Guidance Notes) Regulations (MLPGNR). Although certain parts of the AML Guidelines note that they are not “mandatory or exhaustive” (see for example paragraph 118). However there appear to be enforcement measures for non-compliance although it would be beneficial if Saint Lucia clarified the binding status of the guidelines and the relationship with the penalties in the Regulations. Regulation 2(2) of the MLPGNR provides that failure to adhere to the provisions of the AML Guidelines gives rise to liability for a fine not exceeding ECD 1 million. These are supported by the provisions of the principal Act, the MLPA, which requires in section 16 that an AML Service Provider comply with any guidelines issued by the FIA, which includes the AML Guidelines.

103. The AML Guidelines describe the “know your client” obligations at paragraph 70 and following, the specific identity information measures to be taken are described:

- for individuals, they should include the full name and actual residential address of the person.
- for corporate entities: the most recent annual return filed with the Registrar of Companies (which includes shareholder identity

information for domestic companies and registered foreign companies, but not necessarily for IBCs), the names and addresses of “the beneficial owner/s and/or the person/s whose instructions the signatories to the account are empowered to act”; and identification documents from at least two corporate directors and account signatories.

104. Once a business relationship is established, the AML Service Provider should keep all relevant identity and transaction records for a minimum seven-year period (paragraph 170).

105. In summary, AML Service Providers are required to keep relevant ownership and identity information in respect of companies for whom they act.

Regulation of entities in practice

106. The FSRA is the body responsible for monitoring licensed entities’ compliance with the requirements under the regulatory acts. The FSRA is also the body responsible for monitoring the know your client obligations as set out under the AML regime. At present, there are seven full-time employees at the FSRA. The FSRA has reported that they are currently in the recruitment process for additional full-time staff. All current staff members are involved in the monitoring of licensed entities which over the review period was mostly performed via desk top audits. The FSRA conducts due diligence inspections annually on all licensed entities when they request for their license to be renewed in order to ensure their continued compliance with their regulatory obligations. During this process they also derive a risk rating for each entity.

107. In terms of desktop monitoring, all registered agents are obliged to submit an annual return each year to the FSRA for each client which they manage in which they are obliged to provide details of all compliance reviews they have undertaken of the entities they act for that throughout the year. The FSRA has advised that the compliance reviews undertaken by the registered agent include the verification of updated client ownership information and a risk review of certain factors, such as the type of activity the client engages in, for AML purposes. Details of the arrangements in place for conducting due diligence checks and all findings arising from these reviews must also be submitted with the annual return.

108. The FSRA has also carried out some onsite inspections over the review period, mainly based on their risk rating. Once an entity has been selected for an onsite inspection, they usually receive notice of approximately 2-3 weeks. In the course of the onsite inspection, and in particular in the case of the 15 registered agents and 4 registered trustees, the FSRA has confirmed that it will check all aspects of their compliance with the obligations under the AML regime such as maintaining ownership information for the clients for

which they act. In regards to the maintenance of IBC ownership information, this is conducted via a random selection of IBC files which are examined to ensure that they comply with the requirement to maintain updated shareholder information. The onsite inspections usually take between 1-3 days and on the final day the FSRA holds an exit meeting with company representatives to explain any deficiencies they have come across in the course of the visit and outlining the recommendations to address these deficiencies. Licensees are then allocated a period of time (usually one month) in which they have to address any deficiencies and send a report outlining these to the FSRA. In the event that the FSRA does not receive an update from the company, it is usual practice to send a recommendation letter for the company to do so at their earliest convenience (see also section A.1.6 *Enforcement of penalties in practice*).

109. The FSRA has reported that it regularly interacts with licensed entities via information sessions during which they remind entities of their regulatory obligations and as a result, in the course of onsite inspections, they have seen much higher compliance rates (including ownership maintenance obligations) in recent years. Further, officials have reported that as the FSRA is now fully operational, they intend to put in place a formal inspection programme in the latter half of 2014.

110. In regards to commercial banks and credit institutions, onsite inspections are carried out by officials from the head office of the ECCB in Saint Kitts and Nevis who visit the premises of the commercial bank or credit institution in Saint Lucia (see also section A.3 *Availability of banking information in practice*). The onsite inspection usually takes 3-5 days depending on the entity. On completion of an onsite inspection of any Saint Lucian entity, the ECCB prepares a summary report for the Minister of Finance which is added to the file of the licensee as maintained by the FSRA.

111. Over the three year review period, there was a total of six onsite inspections of licensed entities carried out by the FSRA. The FSRA has reported that the relatively low number of onsite inspections was due to the internal restructuring of the financial regulator during which time the FSSU was reconstituted as the FSRA. Further, over the review period there were only three onsite inspections undertaken of registered agents. As there is high reliance on the registered agents and trustees for ownership information to be maintained, the lack of monitoring may impact the extent to which ownership information is being maintained by corporate entities and may therefore negatively impact the effective exchange of information in practice. Now that the restructuring of the financial regulator has been completed, Saint Lucia has reported that it will be increasing its number of onsite visits. Nevertheless, Saint Lucia is recommended to improve its programme of onsite visits to ensure that they are regularly inspecting all entities and ensuring that they are complying with their ownership information requirements.

112. The Financial Intelligence Authority (FIA) (an independent statutory body created under the MLPA) is responsible for issuing guidelines for all entities to ensure compliance with the AML regime and also performs investigations based on risk reports they receive from other agencies and government bodies as well as from foreign FIUs. There are currently four staff comprised of three financial investigators and one junior analyst. The FIA has reported that it operates as a form of hybrid unit having both a law enforcement and regulatory function.

113. In the context of their law enforcement function, the FIA has reported that over the review period, they have carried out a limited number of onsite inspections, chosen on the receipt of suspicious transaction reports where they will also assess the general adequacy of compliance with the AML regime including customer due diligence procedures. Inspected entities have included banks, car dealers, jewelers, and money remitters. However there have been no onsite inspections of registered agents as yet and the FIA has reported that in practice they have little interaction with the registered agents.

114. Over the review period there were two cases where the Inland Revenue Department was unable to provide IBC ownership information. However, it is not clear if this was due to a domestic tax interest in accessing this information (see also section B.1 *Competent Authority's ability to obtain and provide information*) or due to the information not being available. At the time, it was the practice of the competent authority to issue a notice to produce the information on the registered agent only and in the case of information not being provided, the competent authority did not use any other powers, such as its search and seizure powers, or enforce any penalties on the registered agent in a further attempt to access the information.

Ownership information held by nominees

115. Persons carrying out a business of providing nominee services (that is, professional nominees) are regulated under Saint Lucia's AML regime and are subject to the obligations described above in respect of relevant transactions. Consequently, a nominee shareholder is required to take reasonable measures to determine the true identity of the persons for whom they act.

116. A nominee that is not acting by way of business is not subject to the AML regime. It is not clear whether such nominees, who would comprise primarily of persons performing services gratuitously or in the course of a purely private non-business relationship, are significant in terms of numbers or the assets they hold.

117. In addition to the requirements of the AML regime, each person with a substantial shareholding (defined as having at least 10% of the unrestricted

voting rights) in a domestic company, whether directly or through nominees, is to give notice in writing to the company stating his name and address and giving full particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder (s181, Companies Act). That person is required to do so within 14 days after they become aware that they are a substantial shareholder. When they cease to be a substantial shareholder, the person must give notice in writing to the company stating their name and the date on which they ceased to be a substantial shareholder of the company. The company is required to keep a register of all such filings. As the obligation here rests on the substantial shareholder themselves however, it is not clear whether these provisions will consistently ensure the availability of identity information for substantial shareholders.

118. Therefore, professional nominees are required to know the identity of the person for whom they act. Also, where a shareholder of a domestic company (which does not include IBCs) holds a “substantial” shareholding, they will be required to notify the company which will include providing the name of the nominee.

119. Nominees acting in a professional capacity will be subject to the AML regime ensuring the availability of information on the clients for whom a nominee acts. The Saint Lucian Authorities have indicated that in practice there will only be exceptional cases whereby a nominee will not be acting for profit or gain and therefore not deemed to be acting in a professional capacity, and hence even if nominees were to be acting in a non-professional capacity, this category represents a very small proportion of all nominees acting in Saint Lucia. In addition, Saint Lucian authorities have reported that they have never come across a nominee acting in a non-professional capacity.

120. To date no requests involving nominee shareholders have been received so far by Saint Lucia, and of the EOI partners that provided peer input, none indicated that there were any issues in relation to nominee ownership.

Conclusion

121. Domestic companies are required to keep share registers of their members and file ownership information on an annual basis with the Registrar. IBCs are required to keep a share register up to date although IBCs can delete the identity details of former members from their share register as soon as they cease to be members. However, information on shareholders must also be kept by its registered agent for a minimum of 7 years under the AML regime.

122. External companies carrying on business in Saint Lucia are required to file ownership information on an annual basis with the Registrar. For companies incorporated under the laws of a member state of CARICOM or the

OECS, which are carrying on business in Saint Lucia, there are no express obligations to ensure ownership information is available and Saint Lucia should clarify the obligations to which these entities are subject. For professional nominees, there is an AML regime obligation to know the identity of the person for whom they act. For all nominees, there is an obligation to identify the nominee where they are act as a “substantial” shareholder, so there is only a small class of non-professional nominees for whom identity obligations on the person for whom they act, may not apply.

Bearer Shares (ToR A.1.2)

123. Companies incorporated under the Companies Act are not permitted to issue bearer shares or bearer share certificates (s29(2), Companies Act). There is no similar express prohibition under the IBC Act. However the Act does provide for shares to be issued as registered shares (s40(1)(a)), it does not make any provision for the issuance of bearer shares and it requires that all shareholders must be identified in the annual return filed with the Companies Registrar.

Partnerships (ToR A.1.3)

124. Saint Lucian law allows for the creation of domestic partnerships (either ordinary or limited) and international partnerships (either general or limited).

125. Partnerships are defined as a relationship “between persons carrying on a business in common with a view of profit”, under article 21 of the Commercial Code, Chapter 244. Ordinary partnerships are governed by the Commercial Code, and each partner has unlimited liability in respect of the partnership’s obligations (art. 28, Commercial Code). Limited partnerships are partnerships formed in the manner described in articles 64 to 72 of the Commercial Code, and must be registered otherwise will be deemed to be an ordinary partnership (art. 65). A limited partnership must have at least one general partner who has unlimited liability and at least one limited partner (which may be a body corporate) whose liability is limited to the amount of their capital contribution and who may not participate in the management of the partnership (art. 65 and 67, Commercial Code).

126. International Partnerships (IPs) which can be either International General Partnerships (IGPs) or International Limited Partnerships (ILPs) are partnerships registered under the International Partnerships Act (IP Act) and subject to its provisions. They are permitted to only carry on business with non-residents (except for incidental business activity) and are not allowed to own interests in immovable property in Saint Lucia, other than a lease of property for use as an office. Saint Lucia has advised that presently there are no IPs formed under the IP Act.

Ownership information held by government authorities

127. Ordinary partnerships are not required to be formed by deed, however they must register with the Registrar, being the Registrar of Companies and provide a written statement including the names of all partners and the date of the commencement of the partnership (art. 20, Commercial Code). There is no express obligation for ordinary partnerships to keep this information up to date if there is a change of the partners in the partnership. As of January 2014, there were 44 ordinary partnerships registered in Saint Lucia.

128. Limited partnerships must be registered with the Registrar (the Registrar of the Supreme Court) by providing information including the partnership's principal place of business and the full name of each of the partners indicating which are the general and limited partners (art. 68, Commercial Code). Any change to this information must be notified by signed statement delivered to the Registrar within seven days (art. 69, Commercial Code). As of January 2014, there were no limited partnerships registered in Saint Lucia.

129. Each IP is required to maintain a registered agent (subject to the AML regime) and registered office in Saint Lucia (s25, IP Act). An IP is formed by the execution of articles which must be provided to the IP's registered agent. The registered agent is then required to provide to the Registrar (s8 and s14, IP Act) a memorandum which will include the name and address of the registered agent and registered office. For IPs, the registrar is the Registrar of International Business Companies (s6, IP Act). For IGPs, there is no obligation to file the names of any partners with the Registrar. For ILPs, the full names and addresses of the general partners are required to be included in the memorandum filed with the Registrar. Any changes to that memorandum, including changes to the identity information of the general partners, must be notified to the Registrar (ss14 and 16, IP Act). As of January 2014, there were no IPs registered in Saint Lucia.

Ownership and identity information required to be held by partnerships

130. There is no specific requirement imposed on an ordinary partnership to hold ownership and identity information on its partners, other than in the original partnership agreement required to be filed with the Registrar. However, no person may be introduced to the partnership without the consent of all other partners (art. 43(7), Commercial Code). There is also a requirement for all partnership books to be kept at the partnership's place of business, with every partner having a right to access those books as they think fit (art. 43(9), Commercial Code). However it is not clear what information is required to be kept in the partnership books. There is also an obligation that all partners are bound to render true and full information of all

things affecting the partnership to the other partners (article 47, Commercial Code). For an ordinary partnership constituted by deed, any person wishing to retire from the partnership must give written notice (art 45, Commercial Code).

131. There is an obligation on limited partnerships to keep partnership “books” (art. 67(1)(a), Commercial Code). While there is no statement in the Commercial Code on what information such books must contain, in order to comply with the obligation to advise the Registrar of any changes in the partners, limited partnerships must be subject to an implicit obligation to know such information.

132. There is no specific requirement imposed on an IGP to hold ownership and identity information on its partners. For ILPs, under section 87 of the IP Act, a Register of Contributions must be kept by the general partners recording the name, address, and amounts of the contributions of each partner, with this information to be kept up to date within 21 days of any change. Further, the addition of any limited partners must be recorded in the articles of the ILP (s68, IP Act), as well as any assignment of any existing partnership interest (s78, IP Act).

Anti-Money Laundering regime

133. All IPs are required to have a registered agent, who will be AML Service Providers subject to Saint Lucia’s AML regime. Section 15 of the MLPA requires AML Service Providers to take “reasonable measures” to determine the true identity of the person seeking to or carrying out relevant transactions. Where satisfactory evidence is not produced, the AML Service Provider must not proceed further with the transaction. Further detail on the AML regime is found in the *Companies* section of Part A.1 of this report.

134. The AML Guidelines describe the “know your client” obligations at paragraph 70 and following, the specific identity information measures to be taken are described:

for partnerships: identify those partners and managers “relevant to the application for business” in accordance with identity verification guidelines for individuals. In the case of a limited partnership, the general partner should be treated as the verification subject. Limited partners need not be verified unless they are significant investors.

135. Once a business relationship is established, the AML Service Provider must keep all relevant identity and transaction records for a minimum 7 year period (paragraph 170).

Income Tax Law

136. Partnerships are not taxed at the partnership level (s21, Income Tax Act), but “every partnership”, excluding International Partnerships, is required to file an annual return of income (s84(2), Income Tax Act). Each partnership must appoint a “precedent partner” who must be notified to the Commissioner, and who has responsibility for meeting the partnership’s obligations under the Income Tax Act (s94, Income Tax Act). The annual income return form for Partnerships requests the names and addresses of the partners in the partnership. Non-declaration of information which is requested in the return can render the partnership liable to penalties under section 133 of the Income Tax Act.

137. However, there is an exemption to the provisions of the Income Tax Act for all International Partnerships, under section 101 of the International Partnerships Act as described in the Introduction to the report. This includes an exemption from income tax for all International Partnerships, as well as any payments made by the IP to a non-resident and any capital gain realised with respect to an interest in an international partnership held by a non-resident.

Conclusion and practice

138. The Income Tax Act establishes obligations on every partnership, except for International Partnerships, to provide identity information on each partner, and which must be updated on an annual basis. For International Limited Partnerships, the IP Act also requires identity information all partners (general and limited) to be kept. The AML regime requires the IPs registered agent to know the identity of all general partners of a partnership (which will include all the partners in an International General Partnership). Therefore, in all instances there is an obligation to ensure that identity information on all partners of relevant partnerships is maintained.

139. Saint Lucian authorities have reported that partnerships are rare in Saint Lucia (44 in total as of January 2014) and they mostly consist of accounting and legal firms conducting local business in Saint Lucia. Both ordinary and limited partnerships must be registered in person at the Companies Registrar and the process for doing so is similar to that as above outlined for companies (see section A.1.1 *Registration of companies in practice*). Upon submission of the relevant document and payment of the fee (ECD 100) the partnership is issued a certificate of registration. There is also the option for partnerships to submit the partnership agreement and whilst this is not mandatory, the Registrar has indicated that in practice this will generally be submitted upon registration. Once the partnership deed has been submitted, the partnership is obliged to notify the Registrar where there are changes to the partnership deed. This is done via submission of a notice to the Registrar.

140. There is no annual return filing obligation for partnerships. However, in the case of a change in one of the partners of a limited partnership, updated ownership information must be provided to the Registrar within seven days. Ordinary partnerships are under no obligation to file updated ownership information with the Registrar. In respect of IPs, while ILPs must supply ownership information on the general partners at the time of registration and continue to update this information in the event of any changes, there is no obligation for IGPs to file any ownership information on the partners with the Registrar or for the IGP to hold this information. However, as all IPs must have a registered agent who will be subject to client identification rules under the AML regime. Further, Saint Lucian authorities have reported that the compliance reviews undertaken by the registered agent ensures that updated ownership information regarding partners in all IPs is available. In addition, all registered agents must maintain a register of the entities for which they act that is made available to the public.

141. The Registrar has reported that it does not undertake any system of monitoring of partnerships' compliance with ownership information requirements set down under the Commercial Code or the IP Act. In regards to LPs, in the event of a change in the partners, there is no system of monitoring of updated changes being submitted to the Registrar. In regards to IPs, while currently none exist, in the event an LP was to register to do business in Saint Lucia, its registered agent will be subject to "know your client" obligations under the AML regime. As outlined above, the FSRA has reported that there has been a limited number of onsite inspections performed over the review period due to internal restructuring and all monitoring of registered agents over the review period has been conducted in the form of desktop audits.

142. In the three year period under review, Saint Lucia has not received any EOI requests for information relating to the identity of partners in a partnership. Although there is some oversight of partnerships and registered agents being undertaken by the financial regulator, it is recommended that Saint Lucia enhance their programme of onsite visits for all partnerships and their registered agents to ensure that all partnership ownership information will be made available pursuant to an EOI request.

Trusts (ToR A.1.4)

143. Trusts can be created in Saint Lucia as:

- Ordinary trusts: which are trusts formed under and subject to the common law (including English common law – article 916A, Civil Code) regarding trusts as well as Saint Lucia's Civil Code; or
- International trusts: which are trusts registered under the International Trust Act 2006 (Trust Act), and which are subject to that Act, the

common law and the Civil Code, with the provisions of the Trust Act to prevail over any inconsistency with the common law or Civil Code. The settlor and beneficiaries may not be a resident of Saint Lucia at the time the trust is settled, or when property is transferred into the trust.

144. For ordinary trusts, the trust deed must be in writing (art. 916A, Civil Code) and the trusts' assets can include immovable property located in Saint Lucia.

145. For International Trusts, the trust deed must be in writing, signed by the settlor or their nominee and by the registered trustee, and the beneficiary(s) must be identified by name or ascertainable by class or relationship in the trust deed (s3, Trust Act). The trust property must not include any immovable property in Saint Lucia, or any interest in such property. The Trust Act provides that trusts, which contain certain provisions that may otherwise be invalid under English common law, are valid. That is, a trust where the settlor retains considerable control over the trust, including power to revoke or amend the trust, to be a beneficiary of the trust (including as the sole beneficiary), to direct, remove or appoint a trustee, protector or advisor (s18, Trust Act). The trust may also be revocable if so specified in the trust deed (s16, Trust Act).

Trust ownership and identity information held by government authorities

146. There is no obligation to register an ordinary trust, although Saint Lucia has advised that it is possible to register the deed establishing the ordinary trust in the Register of Deeds and Mortgages. Officials from the Registrar of Deeds and Mortgages have reported those deeds that have been registered mainly relate to family probate cases concerning local property in Saint Lucia. In the last ten year period (2004 – 2014) there have been four trust deeds filed at the Registrar of Deeds and Mortgages.

147. International trusts must be registered with the Registrar, who is the Registrar for International Business Companies (s5, International Trust Act). In January 2014, there were 98 International Trusts registered in Saint Lucia. Upon registration, the registered trustee must complete the prescribed form which requires the disclosure of the trustee's name and address as well as a copy of the trust deed. Other identity information, namely the identity of any other trustees, the settlor or the beneficiary, is not required to be provided upon registration (unless it is included in the trust deed).

148. Where a trustee of a trust (ordinary or international) is a corporation, they will be subject to the Trust Corporation (Probate and Administration) Act (TCPAA). Under section 3 of the TCPAA, in order to act as a trustee, a

company must have the approval of the Governor-General. The TCPAA does not establish any requirements to keep identity information regarding the trust.

149. All international trusts must be registered by a registered trustee who has been issued a license by the FSRA under the RATLA and who will be responsible for all filing obligations of the trust. At the time of registration, some ownership information is captured by completion of a due diligence questionnaire which includes questions pertaining to full identification of the trustee and the trust deed must also be submitted. Changes in the registered trustee must be filed at the Registrar but such changes rarely occur in practice. As of January 2014, there were four registered trustees operating in Saint Lucia.

150. Registered trustees are obliged to submit an annual return each year to the FSRA for each trust which they manage in which they must update any changes in the registered trustee. This form does not contain any ownership information on the settlor or the beneficiaries of any of the trusts that they manage. However, the registered trustee is obliged to provide details of all compliance reviews they have undertaken of the entities they act for that throughout the year. The compliance reviews undertaken by the registered trustee include the verification of client ownership information and a risk review of certain factors, such as the type of activity the client engages in, for AML purposes. Details of the arrangements in place for conducting due diligence checks and all findings arising from these reviews must also be submitted with the annual return.

151. The Registrar monitors the filing of the annual return and payment of the renewal fee by the date specified (usually June 30 of that year). In the event that an international trust fails to comply with the annual filing requirement and payment of the renewal fees, the trust will lapse and if it wishes to be reinstated it will have to reconstitute as a new trust. The Registrar has reported that of the 98 international registered trusts, as of May 2014, 32 of these had already submitted their 2013 annual return and renewed for 2014. Those that have not renewed by June 2014 will be automatically cancelled.

152. Over the review period, monitoring of registered trustees by the FSRA was conducted via desktop audits. However, the extent to which this will ensure that registered trustees are complying with the “know your client” obligations under the AML regime is uncertain.

Trust ownership and identity information required to be retained by the trust

153. For both ordinary and International Trusts, the common law creates fiduciary duties on trustees to have full knowledge of all the trust documents, to act in the best interests of the beneficiaries, and to only distribute assets to

the correct persons. These obligations implicitly require all trustees to identify all the beneficiaries of the trust since this is the only way the trustee can carry out his duties properly. If the trustees fail to meet their common law obligations they are liable for legal action for breach of their fiduciary duties.

154. Officials from the Attorney General’s Office of Saint Lucia confirmed that English common law relating to trusts and the fiduciary duties of the trustee as applicable to trustees operating in Saint Lucia is followed. The principles of English common law as they apply to trusts are set out in the East Caribbean Supreme Court decision of *Raymond Flood v’s First Caribbean International Bank Ltd.* which is applied in Saint Lucia and the Saint Lucian High Court decision of *Desmond Deveaux v’s Richard Johnson.* Pursuant to English common law requirements, trustees must maintain ownership and identity information regarding the trust. Firstly, the trustee is obligated to administer the trust solely in the interests of the beneficiaries and, therefore, the beneficiaries will have to be made clearly identifiable in the trust deed. Secondly, the trustee owes a duty to manage the trust in accordance with the instructions of the settlor, meaning that the settlor will also have to be clearly identifiable in the trust deed.

155. Pursuant to English common law, trustees have a duty to account to the beneficiaries and must be able to provide a beneficiary with information concerning the operation and transactions of the trust. Such information will extend to maintaining accounting information and other trust documents such as the trust deed and documents relating to transfers of property made by the settlor and all other documents required in order to ensure that the trustee’s duty to the beneficiaries is carried out (see also section A.2 *Accounting Records*).

156. In the event of non-compliance with these duties by the trustee, beneficiaries have the right to enforce the trust (*Beswick v Beswick* [1968] AC 58). In the event of non-compliance of their duties, the settlor or beneficiaries can commence legal proceedings against the trustee.

157. All persons in Saint Lucia that are acting as trustees in their professional capacity must be licensed under the Registered Agents and Trustee Licensing Act (RATLA) and are subject to the AML regime. Section 15 of the MLPA requires AML Service Providers to take “reasonable measures” to determine the true identity of the person seeking to or carrying out relevant transactions. Where satisfactory evidence is not produced, the AML Service Provider must not proceed further with the transaction. Further detail on the AML regime is found in the *Companies* section of Part A.1 of this report.

158. The AML Guidelines describe the “know your client” obligations at paragraph 70 and following. The specific identity information measures to be taken in respect of trusts are described: the trustee should verify the

identity of a settlor or guarantor or any other person adding assets to the trust, in accordance with the identity verification guidelines for individuals. In particular, the following minimum information should be obtained: (i) for settlors: name and business, trade or occupation; and (ii) for beneficiaries: name, address and other identity information such as passport number.

159. Once a business relationship is established, the AML Service Provider must keep all relevant identity and transaction records for a minimum seven-year period (paragraph 170).

160. In the case of an International Trust, section 60 of the International Trust Act also imposes requirements to keep the following information:

- a copy of the instrument creating the trust and copies of any other instrument amending or supplementing such information;
- a register in which the following information is set out:
 - the name of the settlor and the name of the beneficiary or the beneficiaries and the names of the trustee or trustees and where applicable the name of the protector,
 - if a purpose or charitable trust, a summary of the purposes of the trust and the name of the protector(s) of the trust, and
 - such documents as are necessary to show the true financial position of the trust, which shall be current as of one month following the close of each fiscal quarter.

161. As outlined above (see section A.1.1 *Regulation of entities in practice*) the FSRA is the body responsible for the monitoring of licensed trustees' compliance with the "know your client" obligations under the AML regime. The FSRA has reported that over the review period it was standard practice to monitor trustees' compliance with ownership information obligations via an annual desktop audit at the time of application of renewal of their licence. Over the review period, it has not conducted any onsite inspections of licensed trustees. However, now that the restructuring of the FSRA has been completed, the FSRA has reported that it will recommence a systematic programme of onsite inspections, including for all licensed trustees, in the latter half of 2014.

Income tax law

162. A trust will be tax-resident in Saint Lucia if the trust is "established in Saint Lucia" (s2, Income Tax Act), which Saint Lucia has described as meaning all trusts which are subject to the laws of Saint Lucia. The trust's representative taxpayer (the trustee) is responsible for the filing of income

returns and doing all other things required under the Income Tax Act including the keeping of records (s24).

163. The annual income return form for trusts requires the names and address of any beneficiaries to whom income was distributed in the relevant tax year. A beneficiary who is chargeable to tax on any income distributed from a trust (being a person either resident or in receipt of Saint Lucian source income) will also be required to file an income return. However there is an exemption to the provisions of the Income Tax Act for all trusts established in Saint Lucia (whether International Trusts or otherwise) where the trust has a qualifying trustee, pursuant to the International Trusts Act as described in the Introduction.

164. Also, a tax exemption applies to International Trusts, both for the trust itself, as well as the trust income distributed to beneficiaries (provided the beneficiary is not a resident of Saint Lucia). However, any income of an International Trust which accrues or derives from Saint Lucia will be subject to tax (with the exception of ordinary bank interest or portfolio securities investments) although the scope of "income or gains deriving from Saint Lucia" is expanded for these purposes, as described in the Introduction.

165. As of February 2014, there are six ordinary trusts and no international trusts registered for tax purposes in Saint Lucia. In the case of an ordinary trust (where the trustee is not a licensed trustee) the trust must file an annual return and where there has been a distribution of trust income to a beneficiary this must be detailed. Otherwise, no information on the settlor or beneficiaries of an ordinary trust is required. The audit branch of the Inland Revenue Department monitors the filing of income tax returns which are due by March 31 after the end of the financial year. Officials from the Inland Revenue Department have reported that most trustees comply with the annual filing requirement. In the rare event of non-compliance, it is the practice of the Inland Revenue Department to write a letter to the trustee reminding them of the annual return filing requirement. On receipt of a reminder notification to comply with the annual return filing requirements trustees usually submit the annual return, officials from the Inland Revenue Department have advised within one to two weeks of receipt of the reminder notification. Therefore, it has not been necessary to impose penalties for non-compliance with this obligation (see also section A.1.6 *Enforcement provisions to ensure availability of information*).

Conclusion and trust information in practice

166. For International Trusts, the International Trust Act and the AML regime establish clear obligations to keep identity information on the settlor, trustee and beneficiaries of the trust. For ordinary trusts, with a professional

trustee, the obligations of the AML regime will also apply. Further, for trusts which are tax-resident in Saint Lucia and where there is income distributed to beneficiaries (whether resident in Saint Lucia or otherwise) and the trust does not have a professional trustee, the name and address of the beneficiary in receipt of income must be disclosed in the annual income return.

167. There may be a small class of trusts, being ordinary trusts without a professional trustee, for whom an obligation to know the identity of the settlor arises only from the requirements of the common law. Further, in the event that an ordinary trust has taxable income the trustee will have to register for tax purposes and will be subject to the provisions of the Income Tax Act and must file an annual income tax return detailing any distributions made to beneficiaries. The beneficiaries will also have to file a tax return in respect of this income. Further, as a number of ordinary trusts are registered with the Registrar of Deeds and Mortgages, information on the settlor and beneficiaries will also be maintained at the Registrar.

168. Finally, it is conceivable that a trust could be created which has no connection with Saint Lucia other than that the settlor chooses the trust to be governed by Saint Lucia's law. In that event, there may be no information about the trust available in Saint Lucia although Saint Lucia maintains that such trusts are caught by the phrase "established in Saint Lucia" in the Income Tax Law. In line with Saint Lucia's interpretation, those trusts whose only connection with Saint Lucia was that they are governed by the laws of Saint Lucia would be subject to the record keeping requirements in the Income Tax Act as described above. However it is unclear how enforcement measures would be applied in such cases, as there may be no person with a territorial connection with Saint Lucia. Also, trust information would be available in the jurisdiction where the trustee is located as the relevant records would be situated there.

169. The availability of ownership and identity information in respect of trusts is in place through a combination of common law, AML and other regulatory requirements. In the case of non-professional trustees, the common law fiduciary duties of the trustee should ensure that trustees are complying with their ongoing record keeping requirements. In practice, Saint Lucia has reported that individuals acting in a non-numerated capacity as trustee will occur in a very limited number of ordinary trusts, the majority consisting of probate cases. However, the effectiveness of this enforcement measure in ensuring the availability of information for EOI purposes in practice should be monitored by Saint Lucia on an ongoing basis.

170. In the three year period under review, Saint Lucia has not received any EOI request for information relating to the identity of the settlor, trustee or beneficiary of a trust.

Foundations (ToR A.1.5)

171. The laws of Saint Lucia do not include the concept of a foundation and it is therefore not possible to create a foundation in Saint Lucia.

Other types of relevant entities and arrangements***Co-operatives***

172. Co-operatives can be created pursuant to the Cooperative Societies Act, and upon registration become a body corporate. A co-operative is defined as an entity comprising a group of people with a commitment to joint action on the basis of democracy and self-help to secure a service or economic arrangement that is both socially desirable and beneficial to all taking part (for example, a credit union, worker's society or agricultural society).

173. Co-operatives must be registered with the Registrar of Cooperatives, who is responsible for registration, and maintenance of adequate and reliable records among others (Co-operative Societies Act, sec 5). Under section 23 of the Act, only citizens or residents of Saint Lucia may be members and co-operatives must keep a register of all members which includes their names and addresses and the date on which they became, and ceased to be, a member (Co-operative Societies Act, sec 25). A transfer of a membership share must be approved by the board and is effective only upon registration of the transfer with the co-operative (s95, Cooperative Societies Act).

174. A co-operative must have at all times a registered office and the address of such office must be specified in the by-laws (s17, Co-operative Societies Act). This office must make available the co-operative's records, including registers of members, copies of its by-laws, all minutes of meetings of members and directors and the register of directors. In accordance with Part 8 of the Cooperative Societies Act, co-operatives are also required to prepare audited annual financial statements, although there are no express requirements to keep all underlying documentation to the accounts, or to keep accounting records for a minimum period. Co-operatives are exempt from income tax (Co-operative Societies Act, sec. 235) and as such are not required to file a return of income with the Comptroller (s84(2), Income Tax Act). However, as they are carrying on business, they are still subject to the obligations described in section 90 of the Income Tax Act to keep accounting records.

175. All co-operatives continue to be registered with the Registrar of Cooperatives. However in terms of their supervision, since January 2014, all financial co-operatives are regulated by the FSRA and all producer co-operatives regulated by the Ministry of Agriculture. As of January 2014, there were 16 Financial Cooperatives and 24 Producer Cooperatives registered in Saint

Lucia. During the review period, the Registrar of Co-operatives has reported that it did not carry out any inspections of co-operatives in order to inspect their compliance, including ownership obligations, with the requirements of the Co-operatives Societies Act. However, as financial co-operatives are now under the supervision of the FSRA, it is expected that the FSRA will implement a system of monitoring and onsite inspections for these entities during 2014.

176. In the three year period under review, Saint Lucia has not received any EOI requests for information relating to ownership information of a co-operative and of the EOI partners that provided peer input, none indicated that there were any issues in relation to co-operative ownership information.

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

177. The existence of appropriate penalties for non-compliance with key obligations is an important tool for jurisdictions to effectively enforce the obligations to retain identity and ownership information. Non-compliance with obligations affects whether the information is available to Saint Lucia to respond to a request for information by its EOI partners in accordance with the international standard. The relevant enforcement provisions are set out below.

Companies

178. For domestic companies and external companies registered under the Companies Act, section 194(3) establishes an offence for failure to submit annual information returns, which includes identity information on the owners of such companies. Under the general penalty provision of section 541 of the Companies Act, a person found liable for the offence will be subject upon summary conviction to a fine of ECD 5 000 (USD 1 850). In addition, the Registrar of Companies has the power to strike-off defaulting companies from the register (s519, Companies Act). In respect of the specific obligation to keep a register of substantial shareholdings, section 184(3) makes it an offence for non-compliance, and which will also be subject to the general penalty provision of section 541 of the Companies Act.

179. An IBC which wilfully contravenes the requirement to keep a shareholder register is liable to a penalty of USD 500 per day, with the director of an IBC who knowingly permits the contravention also so liable (s28(6), IBC Act).

Partnerships

180. For ordinary and limited partnerships, the fine for non-compliance with the obligation to register the partnership and provide to the Registrar identity information on each of the partners is ECD 24 (USD 9) and

ECD 4.80 (USD 1.7) for every further day of default (art. 20, Commercial Code). A limited partnership is under an express obligation to keep that ownership information in the Register up to date and a failure to comply will render each general partner liable to a fine of ECD 4.80 (USD 1.7) for every day in default.

181. For IPs (both IGP and ILP), there is a general penalty provision applicable for any breach of the obligations of the IP Act. Under section 113, a person found responsible for a breach is liable to a fine of USD 5 000 (ECD 13 500). In addition, where an ILP wilfully contravenes the obligation to maintain a Register of Contributions, which includes the name and address of each partner, each general partner will be liable to a fine not exceeding USD 500 (ECD 1 350). In addition, an ILP is required to name the general partners in the memorandum of partnership registered with the Registrar and keep that information up to date. Where a memorandum contains false information, any person suffering loss in reliance may hold liable the general partners as well as the ILP's registered agent.

Trusts

182. All trustees must be registered, and under the RATLA, there is a general penalty provision applicable for any person who commits an offence under the Act. That person will be liable to conviction on indictment to a fine of ECD 100 000 (USD 37 037) or to imprisonment for three years, or both. Also, in respect of the trustee's obligations under the Act, the Director of the FSRA may determine whether a breach of the obligations of the RATLA has occurred, including in relation to the obligation to keep books and records as required by section 18. A breach can be classed as either a compliance issue or as "grave". For compliance issues, the Director will advise the trustee of the breach and the steps needed to rectify it, by letter; for grave matters, the Director has a number of penalty measures available including suspension or revocation of the trustee's licence.

Tax law

183. Section 140 of the Income Tax Act is a general penalty provision for failure to comply with any requirements of the Income Tax Act, including the obligation to keep records of transactions and preserve books and documents required by section 90. A person failing to comply with those requirements is liable to a fine of ECD 1 000 (USD 370) or imprisonment for one year. Further, a person who fails to furnish information or produce documents when requested by the Comptroller will be liable to a penalty not exceeding ECD 500 (USD 185) (s136).

184. Pursuant to section 132 of the Income Tax Act, where any person who is liable to furnish an annual return does not do so within the prescribed time, they will be liable to a penalty of 5% of the amount of tax charged for that year.

Anti-money laundering regime

185. A breach of the Money Laundering (Prevention) (Guidance Notes) Regulations (which includes the AML Guidelines) constitutes an offence, and persons in breach of those regulations may be liable to a fine not exceeding ECD 1 000 000. Also, section 16(h) of the MLPA requires the specified transaction records to be kept in a legible, retrievable form, and a person who fails to comply with that obligation commits an offence, with fines ranging from ECD 100 000 (USD 37 037) to ECD 500 000 (USD 185 185), or imprisonment of between 7-15 years.

186. In addition, AML Service Providers which are regulated financial service entities are subject to a licensing regime supervised by the FSRA, whose licensing obligations require compliance by the licensee with their obligations under the AML regime.

Enforcement in practice

187. The enforcement of sanctions in practice by the various authorities in Saint Lucia for non-compliance for each entity is outlined below.

Companies and enforcement of penalties in practice

188. All domestic and external companies must be registered with the Companies Registrar, who has a staff of nine full-time officials who monitor that entities supply all the correct information on registration as well as comply with their ongoing information submitting requirements. Both domestic companies and external companies are required to submit ownership information on a regular basis to the Registrar of Companies. The Registrar has advised that penalties are rarely enforced solely for failure to comply with the information filing obligations. However, the Registrar regularly enforces penalties for failure to file the annual return and the non-payment of fees. One of the most regularly imposed sanctions is the striking off of entities from the Register. The Registrar has reported that nine domestic companies have been struck from the Register over the review period for non-compliance with the requirement to file an annual return and pay the annual renewal fee.

189. There is currently a system of review underway by the Registrar in order to determine the compliance of registered companies with information

keeping requirements for the years 2011-13. However, to date, even though there is a vast array of penalties in place for non-compliance with information keeping obligations, there have been few instances where these penalties have been applied in practice.

190. IBCs must be registered with the IBC Registrar. Details of the registered agent and registered office must be submitted and updated when there is a change but IBCs are not required to submit any ownership information at the time of registration or on an ongoing basis. Since 2001 when IBCs were introduced in Saint Lucia, 2 020 IBCs have been struck from the Register for non-compliance with the requirement to file an annual return and pay the annual renewal fee and over the review period 1 330 IBCs were struck off for non-compliance with this requirement. The IBC Registrar has reported that they have not imposed any penalties on IBCs for non-compliance with their obligations to comply with their information keeping obligations under the IBC Act.

Partnerships and enforcement of penalties in practice

191. Both ordinary and limited partnerships are under an obligation to register with the Companies Registrar but only in the case of limited partnerships will ownership information be submitted. Limited partnerships are subject to a requirement to submit any changes to the information filed and in the case of non-compliance the LP is subject to a fine. Officials from the Registrar have advised that there has been no incidence of any penalties being enforced on partnerships under the three year period under review and no partnerships have been struck from the Registrar for failure to comply with information filing requirements.

192. Domestic companies, external companies, general and limited partnerships and ordinary trusts are all subject to income tax and must file an annual return in respect of that income with the Inland Revenue Department. In most cases the annual return form does not require ownership information except in the case of partnerships whereby it requests the names and addresses of the partners in the partnership. The filing of tax returns is monitored by the Audit section of the Inland Revenue Department in which there are 20 full time employees. In the event of non-compliance with the obligation to file an annual return, the Inland Revenue Department will write to those entities reminding them of their obligation to file a return. In the event of continued non-compliance, the Inland Revenue Department will proceed to calculate their tax liability based on their previous return and will automatically impose a fine of 5% of the amount of tax charged for that year.

193. In Saint Lucia all entities that wish to transact with a financial institution such as opening a bank account or getting loan approval, will first be required to get tax clearance from the Inland Revenue Department to show

that they have complied with their tax filing obligations. The Inland Revenue Department has indicated that this requirement operates as an incentive for entities to comply with their tax filing obligations including in the case of partnerships, the submission of fully updated ownership information.

194. The Inland Revenue Department has an audit programme in place encompassing periodic internal reviews to detect late and non-filing of tax returns. In addition, auditors carry out sector specific reviews, risk based audits and joint reviews in collaboration with other entities throughout the year. There are also a number of penalties such as fines and imprisonment at the disposal of the Inland Revenue Department for failure to comply with their obligations under the Income Tax Act. In a few extreme cases concerning non-compliance with the payment of tax obligations, the Inland Revenue Department has garnisheed funds in bank accounts of entities and has also placed liens on real property. However, over the three year review period, there has been little to no enforcement of penalties by the Inland Revenue Department for non-compliance with information filing requirements.

195. As there are no IPs registered to date in Saint Lucia, there has been no monitoring required for these partnerships.

Trusts and enforcement of penalties in practice

196. International trusts must be registered with the International Trust Registry as maintained by the IBC Registrar. Whilst the trust deed is required on registration which may have ownership and identification information on the settlor, trustee and beneficiaries, there is no requirement to update any changes to this information.

197. All international trusts must engage a trustee licensed by the FSRA. In the event of non-compliance with the requirements to comply with the licensing requirements under the RATLA, the licence may be suspended by the FSRA (s. 20, RATLA). In the event of a serious breach of the obligations the FSRA may refer the matter to the Minister of Finance and ultimately the licence may be revoked (s. 21, RATLA). Further in the event of such failure as to obtain a licence or to supply the information as required under the act, they may be subject on conviction to a fine of ECD 100 000 (USD 37 037) or to imprisonment for three years or to both (s. 28, RATLA). The FSRA has reported that to date they have not had to revoke or suspend the licence of a registered trustee.

198. The FSRA is the body responsible for monitoring licensed trustees' compliance with their obligations under the RATLA which include the "know your client" obligations as set out under the AML regime. There are presently four licensed trustees in Saint Lucia. Over the three year period, officials from the FSRA have indicated that their monitoring of licensed trustees

obligations under the RATLA, consisted of desktop reviews where they have found a high level of compliance.

Regulatory Laws

199. The FSRA is the body responsible for the monitoring of regulated entities' compliance with their requirements under the various regulatory laws (with the exception of commercial banks and credit institutions who are monitored by the ECCB). The FSRA supervises entities via desktop reviews and also onsite inspections. In the event that the FSRA finds deficiencies, it is common practice for them to issue a letter of recommendation concerning the breach in which the entity will be given a timeframe of usually one month during which to rectify the deficiency. If the licensed entity continues to be in default of their obligations, ultimately the entity may forfeit its license which would also have follow-on repercussions such as severe reputational damage. Over the review period the FSRA has reported that they have carried out six onsite inspections of the 199 entities under its supervision and due to a high level of compliance by those entities inspected, there have been no sanctions enforced by the FSRA. The ECCB, which is responsible for the monitoring and supervision of commercial banks and credit institutions, has conducted one onsite inspection in Saint Lucia over the review period. The ECCB has reported that compliance has been found to be very high and as a result they have not enforced any penalties or other sanctions.

Anti-money laundering regime

200. There are a range of penalties such as fines and imprisonment set out under AML guidelines. Pursuant to section 2(2) of the guidelines, if an entity is in breach of its obligations, including its "know your client" requirements, it may be subject to a fine of ECD 1 000 000 (approximately USD 370 370). However, the FIA has reported that to date, they have not had any reason for a fine to be imposed. In the case of non-compliance with the obligations set out under the AML regime, it is the practice of the FIA to firstly issue a warning to the entity and allocate them a time period of up to one month in order to rectify any breaches they have discovered. The FIA has reported that they have a close relationship with many of the regulated entities and that entities always obey these warnings and amend any deficiencies in a very short time frame (usually two weeks).

Conclusion on enforcement measures

201. Saint Lucia's legal framework establishes enforcement measures in respect of the relevant ownership and identity obligations. In regards to companies, the main obligations are under the Companies Act and for those companies

that are regulated, obligations are also found under the regulatory laws and the AML regime. Therefore, in cases of non-compliance it is the Companies Registrar and the FSRA who are responsible for enforcing compliance. To date, there are a small number of cases of entities being struck from the Companies and IBC Registrar for failure to comply with annual information filing requirements, but this action has mainly been taken due to non-payment of fees. No other penalties have been applied by the Registrars in practice. Further the FSRA and the FIA have not imposed any penalties and to date have only issued warning letters. It is recommended that Saint Lucia should implement a comprehensive programme of monitoring of all entities for compliance with their ownership information requirements to ensure that all ownership information is made available pursuant to an EOI request. In the event of non-compliance with the information keeping requirements under the entity acts, regulatory laws and AML regime, penalties should be readily enforced.

Conclusion for Part A.1

202. There are obligations to require that ownership and identity information is available for all domestic companies, IBCs and foreign companies carrying on business in Saint Lucia. All partnerships liable to tax, carrying on business or formed under the laws of Saint Lucia (including limited partnerships) are also subject to identity information requirements in respect of their partners. For trusts formed as International Trusts in Saint Lucia, there are clear obligations for the trustee to be registered and to know the identity of the settlor and beneficiaries. For ordinary trusts, the trustee will be required to advise on the identity of beneficiaries at the time of any distribution to them under the Income Tax Act. While the trustee will be subject to common law fiduciary duties these may not ensure that ownership information on the identity of the settlor for such ordinary trusts is available unless they engage a professional trustee. Finally, enforcement measures under Saint Lucia's laws exist to support compliance with Saint Lucia's legal framework to keep identity and ownership information.

203. In practice, there is some oversight of ownership information requirements in Saint Lucia such as the filing of the annual income tax returns by the Inland Revenue Department. The Companies and IBC Registrars do not actively monitor the information keeping obligations under the acts governing the relevant entities and arrangements. Further, there is little monitoring of licensed entities' information keeping requirements being carried out in practice by the regulators. The FSRA has reported that whilst it does carry on monitoring of certain licensed entities, mainly via desktop audits, they have not yet implemented a comprehensive onsite inspection programme to sufficiently oversee all licensed entities' compliance with their information-keeping obligations under the AML regime, on an on-going basis. Now that

the internal restructuring of the FSRA is in the final stages of completion, the FSRA has reported that it plans to implement a comprehensive programme of onsite inspections in the second half of 2014.

204. Further, whilst adequate penalties are generally in place for non-compliance with information-keeping requirements and whilst a small amount of enforcement actions being taken over the review period such as the striking off of companies and IBCs from the registries, there is little evidence of penalties being applied in practice. Given the reliance that IBCs and international trusts place on registered agents and trustees to ensure that relevant ownership information is being maintained, the lack of a clear system of monitoring in respect of all ownership obligations may affect the availability of client ownership and identity information for all legal entities. Therefore, it is recommended that Saint Lucia ensures that a regular system of oversight is in place for all entities, especially in respect of registered agents and trustees, and that Saint Lucia makes use of its enforcement powers to ensure full ownership information for all entities is made available where requested.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
The obligation for a company formed under the laws of another CARICOM or OECS member state, but carrying on business in Saint Lucia, to ensure the availability of ownership information is not clear.	Saint Lucia should ensure that for companies formed under the laws of a CARICOM or OECS member state and carrying on business in Saint Lucia, there are clear obligations for ownership information to be maintained.
Phase 2 rating	
Largely compliant.	
Factors underlying recommendations	Recommendations
The Registrars or the regulator in Saint Lucia did not have a regular system of oversight of compliance of entities' ownership and identity information keeping requirements during the review period.	Saint Lucia should ensure that there is a regular system of oversight of the legal obligations put in place and that its enforcement powers are sufficiently exercised in practice to ensure the availability of ownership and identity information in all cases.

A.2. Accounting records

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

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

Companies

205. All companies formed under the Companies Act, must prepare annual financial statements (s149, Companies Act), being a balance sheet, statement of income and retained earnings, and a statement of changes in financial position. The company is also subject to a separate obligation under section 187, to keep “adequate” accounting records which include records sufficient to enable the directors to ascertain the financial position of the company with reasonable accuracy on a quarterly basis. These obligations under the Companies Act would be sufficient to enable the financial position of the company to be determined with reasonable accuracy and require the preparation of financial statements, but may not allow a sufficient explanation of all transactions, or the maintenance of underlying documentation, in line with the international standards.

206. The IBC Act provides for IBCs to keep at their registered office such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the IBC (s66, IBC Act). However, the IBC Act also provides at section 111 that:

“Notwithstanding any enactment to the contrary, an international business company may keep such books, records, and financial statements as it thinks fit.

207. Therefore, IBCs are not required to keep the records that are otherwise required to be kept by all persons carrying on business, whether pursuant to the Income Tax Act or otherwise imposed by Saint Lucia’s laws.

208. Companies formed in a CARICOM or OECS member state and carrying on business in Saint Lucia are not subject to any express requirements to keep accounting information under the Companies Act. They will be subject to the obligations of the Income Tax Act where they are carrying on business in Saint Lucia, or where they are tax-resident (for example where they are managed and controlled in Saint Lucia).

209. For all other foreign companies carrying on business in Saint Lucia, there are no express accounting record requirements imposed by the Companies Act.

210. When any company formed under the laws of another jurisdiction is tax resident in Saint Lucia (including where it is managed and controlled in Saint Lucia) or is carrying on business in Saint Lucia, it will generally be subject to the account record-keeping obligations found in the Income Tax Act.

Partnerships

211. The Commercial Code establishes requirements for accounting records which are applicable to ordinary and limited partnerships. Partners are bound to render “true accounts and full information” of all things affecting the partnership to any other partner and all partners must account to the partnership for any benefit derived from any transaction concerning the partnership, or any use by the partner of the partnership’s property, name or business connections (ss47-48, Commercial Code). Partners of International Partnerships are subject to the same requirements as under the Commercial Code for ordinary partnerships, pursuant to sections 49-50 of the International Partnerships Act. Neither the Commercial Code nor the International Partnerships Act establishes a minimum retention period for these accounting records.

Trusts

212. For ordinary trusts, there are no obligations under the Civil Code or the Trusts Act 2006 establishing accounting record requirements in respect of the trust. Trusts formed under Saint Lucia’s laws will be subject to common law fiduciary obligations on trustees to keep accurate accounts and records. If the trustees fail to meet their common law obligations they are liable for legal action for breach of their fiduciary duties. Some ordinary trusts will also be subject to the income tax law obligations and Saint Lucia’s anti-money laundering regime. The scope of these accounting obligations for ordinary trusts is discussed in more detail below (see *Availability of accounting information in practice*).

213. For International Trusts, the registered trustee must keep documents necessary to show the “true financial position of the trust” (s52(1)(c), International Trust Act). The scope of this requirement is not clear and does not clearly establish an obligation for the trustee to keep all reliable accounting records, including underlying documentation for a 5 year minimum period. Therefore, by itself, this obligation would not meet the international standard.

214. All trustees of International Trusts carrying on that trustee business in or from Saint Lucia must be registered under the RATLA, and are required to keep books or records of account as accurately reflect the business of the trust (s18, RATLA). A failure to keep such documents will render the

registered trustee liable on conviction to a fine of ECD 100 000 (USD 37 037) and the Court may order that they be supervised or cease to serve as a trustee for up to 4 years. All registered trustees will also be subject to the record-keeping obligations of the income tax law (as the representative taxpayer of the trust, but only in so far as the trust itself is “carrying on business”) and also the record keeping obligations of the AML regime.

Income tax law

215. “Every person carrying on any business” shall keep the accounting records described in section 90 of the Income Tax Act. The term “carrying on business” is not defined for the purposes of the Income Tax Act. However, “business” is defined as “any profession, trade, venture, or undertaking and includes the provision of personal services or technical and managerial skills and any adventure or concern in the nature of trade but does not include any employment”. Therefore, the obligations will cover many persons chargeable to tax under the Income Tax Act, but, for example, would not include individual employees.

216. The accounting records required to be kept pursuant to section 90 of the Income Tax Act are:

such records or books of accounts as are necessary to reflect the true and full nature of the transactions of the business regard being had to the nature of the activities concerned and the scale on which they are carried on.

217. Further, every person carrying on any business shall “preserve all books of account *and other records which are essential to the explanation of any entry* in such books of account of that business for a period of 6 years” (s90(4), Income Tax Act). Any person that fails to keep the records as required under section 90 is guilty of an offence and liable to a fine of ECD 1 000 (USD 370) and to imprisonment for one year (s140, Income Tax Act). These requirements are in line with the international standard in respect of the maintenance of reliable accounting records.

218. These obligations under the Income Tax Act do not apply to IBCs however (s111 of the IBC Act) nor do they apply to International Partnerships (s101 International Partnerships Act) or trusts which are either International Trusts or trusts established in Saint Lucia where that trust has a qualifying trustee (s51(5), International Trust Act). While co-operatives are exempt from income tax and from the obligation to file an annual return, they are “carrying on a business” and Saint Lucia has confirmed that they remain subject to the record-keeping obligations described in s90 of the Income Tax Act.

Financial Services Regulatory regime

219. Regulated entities (entities under the supervision of the FSRA) must prepare financial statements, in accordance with each specific regulatory act. In particular, for International Banks, International Insurance entities and International Mutual Funds, these are the standards established by the International Accounting Standards Board.⁶ Domestic insurance entities must keep “such books, vouchers, records, receipts and other documents as may be necessary to enable it to prepare for transmission to the Registrar a statement of the insurance business carried on by it in Saint Lucia” (s24, Insurance Act). Under section 26 of the Insurance Act, domestic insurance companies must also prepare annual financial statements.

220. For entities subject to the Registered Agent and Trustees Act, the requirement is to keep “proper records” and have in place “adequate” accounting procedures and internal controls. For co-operatives, section 124 of the Cooperative Societies Act requires financial statements to be tabled annually; however co-operatives may be relieved of this obligation provided the reason for the omission is set out in the financial statement to be placed before the members or in a note attached thereto, as determined by the Registrar.

221. For international banks, insurance entities and mutual funds there is no clear requirement to keep underlying documents, or to keep any documents for a minimum five year period if they are not otherwise subject to the relevant Income Tax Act or AML regime obligations. For registered agents and trustees, there is no clear obligation to keep all relevant accounting records, including underlying documents, for a five year minimum period unless otherwise subject to the relevant Income Tax Act or AML regime obligations.

Anti-money laundering regime

222. AML Service Providers must keep accounting records in respect of the persons for whom they act in respect of certain transactions. Relevant transactions will be those involving the formation of a business relationship (or where such a relationship has already been established); a one-off transaction (or series of transactions) involving ECD 10 000 (USD 3 700) or more; or where there is knowledge or suspicion of money laundering (s15(c), MLPA).

223. Under section 16(a)(i) of the MLPA, AML Service Providers shall:

6. These obligations arise from s15, International Banks Act; s15 International Insurance Act; and s37, International Mutual Funds Act.

establish and maintain transaction records for both domestic and international transactions for a period of seven years after the completion of the transaction recorded

224. Relevant transactions are those involving the formation of a business relationship (or where such a relationship has already been established); a one-off transaction (or series of transactions) involving ECD 10 000 (USD 3 700) or more; or where there is knowledge or suspicion of money laundering (s15(c), MLPA).

225. A transaction is defined in section 2 of the MLPA to include the making of a gift, the purchase of anything including services, wire transfers, account deposits and internet transactions.

226. Section 16(h) requires these transaction records to be kept in a legible, retrievable form, and a person who fails to comply with that obligation commits an offence, with fines ranging from ECD 100 000 (USD 37 037) to ECD 500 000 (USD 185 185), or imprisonment of between 7-15 years.

227. Best practice in respect of these record-keeping obligations is described in the AML Guidelines. Under paragraph 170 of the AML Guidelines, AML Service Providers should maintain “all relevant records on the identity and transactions of their customers, both locally and internationally, for seven years or longer if required by the Authority”. This should include all entry, ledger, and supporting (such as credit and debit slips, and cheques) records as described in paragraph 172 of the MLPGNR. They should be maintained in such a manner that permits the reconstruction of individual transactions (paragraph 180).

228. The AML regime creates obligations which ensure accounting records are maintained in line with the international standard. However, while an entity or arrangement is required to engage an AML Service Provider, there is no obligation that it conducts all transactions through that person. Given the reliance that IBCs in particular place on the AML regime to ensure that relevant accounting records are maintained (in the absence of satisfactory obligations imposed directly on those entities and arrangements), these limitations are such that full accounting records may not be available in certain cases in respect of these entities and arrangements.

Conclusion for Part A.2

229. Companies which are carrying on business are subject to the Income Tax Act record keeping obligations, and are obliged to keep all relevant accounting records, including underlying documentation for a minimum period of six years. All ordinary and limited partnerships, as well as co-operatives are also subject to these Income Tax Act record keeping obligations.

230. IBCs and International Partnerships are exempt from the Income Tax Act obligations. IBCs are only required to keep such records as their directors think fit, and partners in an International Partnerships must render “true accounts and full information” of all things affecting the partnership. Both IBCs and International Partnerships are required to keep a registered agent, who will be subject to the AML record keeping obligations, and are required to keep relevant accounting records for the IBCs in respect of those transactions which the IBC conducts through them. However this will not ensure that all relevant accounting information for the IBC or International Partnership is available.

231. For both International Trusts and trusts established in Saint Lucia that have a qualifying trustee, there is an exemption from the record-keeping provisions of the Income Tax Act. All International Trusts are required to have a registered trustee who will be subject to the AML regime, and for other trusts established in Saint Lucia, their trustee will also be subject to the AML regime where the trustee is resident in Saint Lucia. However, these AML regime obligations will not ensure that reliable accounting information is kept in all instances in line with the international standard.

Availability of accounting information in practice

232. Whilst there are some accounting record obligations set out under the various entity acts (i.e. the Companies Act, IBC Act, Partnerships Act, International Trust Act and Cooperatives Act), there is no set of comprehensive accounting requirements in place in Saint Lucia in line with the international standard. The Companies, IBC and Cooperatives Registrars are the entities responsible for monitoring all entities’ compliance with the accounting record requirements that are set out under the various entity acts. Whilst all registered entities must submit an annual return to the Registrars, there is no requirement for accounting information to be included. In regards to monitoring of the accounting record obligations under the entity acts, the Registrars have indicated that there is currently no system in place to ensure that accounting records are being maintained and enforcement of these obligations will therefore not occur in practice.

233. As outlined above, regulated entities are also subject to obligations to maintain some accounting records under regulatory laws and also as set out under the AML regime. For all regulated entities, the FSRA is the body responsible for ensuring that all licensed entities in Saint Lucia maintain accounting records as set out under the regulatory laws. The FSRA has carried out a number of desktop audits and onsite inspections over the review period and has reported that during these onsite inspections, compliance with the accounting record keeping was very high. However, there have only been three onsite inspections carried out of a registered agent over the review

period. Further, the inspections as carried out to date by the FSRA during the review period were mainly in regards to the accounting records as being maintained by the registered agents showing their own financial position, rather than the accounting records being maintained by their clients (i.e. the IBCs).

234. There are comprehensive accounting record obligations set out under the Income Tax Act that will apply to all entities “carrying on business” in Saint Lucia. Although, carrying on business is not defined, the definition of business is very broad and the Inland Revenue Department has reported that this will cover every trade, profession and business undertaking including entities involved in the management of passive investments in Saint Lucia. The Inland Revenue Department has reported that there are currently 934 IBCs registered for tax purposes that are subject to the provisions of the Income Tax Act. However, as mentioned above, there is the option under the IBC Act for the IBCs to only maintain those accounting records “as the directors think fit”. Therefore, it is not clear if all taxable IBCs are adhering to the accounting record obligations set out under the Income Tax Act to ensure that full accounting record information will be available in all cases.

235. In regards to the accounting record obligations under the Income Tax Act, whilst the Inland Revenue Department monitors entities compliance with the filing of tax returns, no accounting information is required at the time of filing the annual income tax return.

236. During the review period, there were three requests for accounting information from two jurisdictions in response to which the competent authority was unable to provide accounting information. At the time of the request, there was (and continues to be) insufficient accounting obligations in place for IBCs to maintain comprehensive accounting records. Further, Saint Lucia has explained that at the time it was the practice of the competent authority to only approach the service provider (i.e. the registered agent) to access accounting information (see section B.1 *Gathering information in practice*). As the registered agent is only required to keep limited accounting information in relation to AML legislation, the competent authority did not obtain the requested information. It is recommended that on the implementation of accounting record requirements in line with the international standard for all entities, Saint Lucia should ensure that it is sufficiently able to access full accounting information.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
International Business Companies are exempt from the record-keeping obligations of the Income Tax Act, and otherwise are only required to keep such accounting records as their directors think fit. Pursuant to the AML regime, some relevant accounting records for transactions conducted by the IBC through their registered agent or other AML Service Provider will be required to be kept. However this will not ensure all relevant accounting records are maintained.	Saint Lucia should introduce requirements to ensure that IBCs are in all instances subject to requirements to keep relevant accounting records, including underlying documentation, for a minimum five year period.
International Partnerships are exempt from the record keeping requirements of the Income Tax Act. They will only be subject to the accounting record obligations established by the Commercial Code which requires partners to render “true accounts and full information” of all things affecting the partnership. There is no express requirement to keep such records for any minimum period of time. Pursuant to the AML regime, some relevant accounting records will be required to be kept in respect of the transactions conducted by the International Partnership through its registered agent or other AML Service Provider. However this will not ensure all relevant accounting records are maintained.	Saint Lucia should ensure that International Partnerships are subject to a requirement to keep reliable accounting information, including underlying documentation for a minimum period of five years.

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
Trusts will be subject to the common law obligations to keep records relating to the trust, although the scope of those accounting record obligations were not ascertainable. Further, certain ordinary trusts will also be subject to the Income Tax record-keeping obligations. Trusts which engage an AML Service Provider will be required to keep some relevant accounting records, however these obligations will not ensure that all relevant accounting information is kept in respect of trusts created under the laws of Saint Lucia, or which are administered from or have a trustee resident in Saint Lucia.	Saint Lucia should ensure that trusts which are established under its laws, administered from, or with a trustee resident in Saint Lucia, are subject to requirements in all instances to keep reliable accounting information, including underlying documentation for a minimum period of 5 years.

Phase 2 rating	
Non-Compliant	
Factors underlying recommendations	Recommendations
In cases where accounting records are required to be maintained such as for the purposes of the Income Tax Act, Saint Lucia has no system of oversight of compliance with the accounting record requirements or enforcement experience to ensure the availability of accounting information.	Saint Lucia should ensure that there is a regular system of oversight put in place and enforcement powers are sufficiently exercised in practice to ensure the availability of accounting information in the case of all entities.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

237. Saint Lucia’s AML regime creates obligations to keep client identity information as well as all financial and transactional information relating to account holders. These obligations are imposed on “financial institutions” or persons engaged in “other business activities”, which are defined under Schedule 2 of the MLPA. Relevantly, a “financial institution” will include:

- a bank licensed under the Banking Act;
- a building society or credit society registered under the relevant Acts;
- a company performing international financial services under the international financial services legislation in force in Saint Lucia;
- a trust company, finance company or deposit taking company, declared by the Minister to be a financial institution; and
- exchange bureaus and cash remitting services.

238. Persons engaged in “other business activities” includes persons engaged in money transmission services or issuing and administering means of payment (e.g. credit cards, travellers’ cheques and bankers’ drafts), deposit taking, investment or merchant banking. While there is no specific reference in Schedule 2 of the MLPA to companies licensed under the International Banks Act,⁷ it appears that such companies would in all instances be considered as a company performing international financial services, and therefore also be covered by the requirements of the AML regime.

239. Provisions concerning the obligation to keep banking information on account holders arise from the MLPA, with best practice described in the MLPGNR.

240. Section 15 of the MLPA requires AML Service Providers to take “reasonable measures” to determine the true identity of the person seeking to or carrying out a transaction. Relevant transactions will be those involving the formation of a business relationship, or a one-off transaction (or series of transactions) involving ECD 10 000 (USD 3 700) or more, or where there is knowledge or suspicion of money laundering (s15(c), MLPA). Where satisfactory evidence is not produced, the AML Service Provider must not proceed further with the transaction.

7. The International Banks Act is the legislation governing the licensing and regulatory regime for companies wishing to carry out international banking business from Saint Lucia (s4(1), International Banks Act).

241. Where the account holder appears to be acting on behalf of another person, as a trustee, nominee, agent or otherwise, reasonable measures shall be taken to verify the identity of that other person (s15(f-g), MLPA). However, in the case of account holder whose identity has already been established, there is no ongoing obligation to verify their identity in the course of further transactions (s15(j), MLPA) except where there is doubt about the previously obtained information, the transaction is above ECD 25 000 (USD 9 259) or in other circumstances, taking into account the client's risk profile (s17, MLPA).

242. In respect of other information pertaining to the accounts, including financial and transactional information, section 16 of the MLPA requires the financial institution to:

establish and maintain transaction records for both domestic and international transactions for a period of seven years after the completion of the transaction recorded.

243. The AML Guidelines describe the transaction records to be kept, including information on all transactions carried out on behalf of or with a customer in the course of relevant business. This extends to transaction records in support of entries in the accounts, in whatever form they are used, e.g. memoranda of sale and purchase, custody of title documentation *etc.*, should be maintained in a readily retrievable form from which a satisfactory audit trail may be compiled where necessary, and which may establish a financial profile of any suspect account or customer. These should include underlying documents, which would be necessary to compile any audit trail. Once a business relationship is established, the AML Guidelines recommends the AML Service Provider keep all relevant identity and transaction records for a minimum seven-year period (paragraph 170).

244. In sum, there are sufficient legal obligations in place requiring financial institutions to establish and maintain all relevant records pertaining to accounts, as well as to related financial and transactional information.

Availability of banking information in practice

245. Saint Lucia's banking sector is made up of 22 banks; nine international banks and 13 domestic banks that all have physical presence on the islands. At December 2013, both domestic banks and international banks together held approximately US 2 980 000 in assets. Saint Lucia's banking sector is quite small in size when compared with similar offshore financial sectors.

246. All international banks operating in Saint Lucia are required to be licensed by the FSRA and all domestic banks are licensed by the Ministry of Finance. In the case of international banks, the FSRA will first conduct

due diligence on the entity before issuing them with a banking licence. In the case of commercial banks and credit institutions, prior to them being issued a license by the Minister for Finance of Saint Lucia, he must consult with the secretariat of the ECCB who will perform the relevant due diligence on the applicant entity based on the information they have submitted in the application to the FSRA. The ECCB has the authority to request any additional information directly from the applicant or other relevant person when conducting the due diligence procedure. The ECCB will then proceed to issue a legal opinion making a recommendation as to whether or not the entity should be approved to function as a commercial bank or credit institution. This opinion is not binding on the Minister for Finance, but in practice the Minister has always followed the opinion of the ECCB. However, applications for this sort of entity to operate in Saint Lucia don't arise often and the last such license issued was in 2007. As of January 2014, there were 6 commercial banks and 7 credit institutions in Saint Lucia under the supervision of the ECCB.

247. There is a comprehensive set of legal obligations in place to maintain banking information both pursuant to the licensing requirements set out under the Banking Act as well as those obligations imposed on all financial institutions under the AML regime to ensure that banking information is made available when requested. A condition of being issued a license and continuing to carry on business in the banking sector is that the entity is in compliance with their obligations under the AML regime including ownership information requirements and transaction information for all account holders. Persons subject to the AML requirements (“AML Service Providers”) are described in Schedule 2 of the MLPA and include all licensed banks. The obligations of the AML regime are mainly regulated and supervised by the FSRA, the ECCB, and to a lesser extent by the Financial Intelligence Authority (FIA).

248. The FSRA has reported that it performs some onsite inspections of the licensed entities' obligations under the AML regime. The FSRA selects the entities to inspect on a risk based approach and all licensed banking entities will be inspected at least once over a three year period. On selection of the entity for inspection, the FSRA usually gives the entity two weeks to one months' notice. During these inspections the FSRA takes samples of customer files to verify whether sufficient banking information is being kept for all account holders. The FSRA has reported that it has found compliance to be quite high and where deficiencies were identified, these were not related to account information. On completion of the onsite visit, the FSRA conducts a meeting with the banking institution where they discuss any deficiencies they have found and remind them of the conditions of their license, and in particular compliance with the AML regime. The banking institution is usually given one month in which to rectify any deficiencies found. Over the review period,

the FSRA performed six onsite inspections of licensed banks and financial institutions. Officials from the FSRA have advised that due to internal restructuring the number of onsite inspections carried out was lower than in years prior to the three year review period. The FSRA is to implement a regular system of onsite inspections for all financial entities in the second half of 2014.

249. The ECCB, as the regulator for commercial banks and credit institutions in Saint Lucia, has reported that its inspection programme combines both onsite examination and offsite surveillance adopting a risk based approach to supervision. The risk focused criteria will be drawn from the prudential returns which are returns that entities under the supervision of the ECCB must submit to the ECCB on a monthly, quarterly or annual basis. These returns include mainly financial data such as the amount of deposits over the period, the amount of lending activity, their level of capital, lending ratios and exposure to risk as well as notes from internal prudential meetings. Other information required to be reported includes changes in the minutes, budget plan, auditors report, policies, strategic plan and manuals including changes in directorship, management and senior staff or significant changes in ownership

250. The onsite examinations carried out by the ECCB will mainly cover the financial conditions of their license including some aspects of their compliance with the AML obligations to maintain sufficient records on all account holders and transactions. The ECCB has reported that these onsite inspections are quite in-depth in nature and are usually conducted over a period of five business days and in very complex cases have lasted two to three weeks.

251. Over the course of an onsite inspection of a bank, in the case that the ECCB finds that the financial institution or any affiliate, director, officer, employee or significant shareholder of the financial institution is engaging in unsafe or unsound practices in conducting the business of the institution or is in violation of any laws, regulations or guidelines to which the institution or person is subject, the ECCB may:

- Issue a written warning;
- Conclude a written agreement with the financial institution providing for a programme of remedial action;
- Issue a cease and desist order that requires the financial institution, the affiliate or the person responsible for the management of the financial institution to cease or desist from the practice or violation specified in the order; or
- Issue such determinations as it deems necessary in relation to the persons comprising the management of the financial institution.

252. The ECCB has indicated that remedial action, normally by signing a letter of commitment to undertake action to address the issues in a specified time period, is taken as the first step when deficiencies are detected during an onsite inspection. If the issues are not appropriately addressed during the specified time period, the ECCB issues a memorandum with a specified restrictive timeframe to remedy the issues. If the issues are still not addressed, the ECCB would use its cease and desist power to restrict the bank's actions and in extreme cases, the ECCB would consider using its power to intervene and take control of the bank.

253. The ECCB has reported that generally, compliance, especially with account holder and transaction information is very high and the instances where there have been deficiencies in the past are more concerned with operational procedures. The ECCB has confirmed that they have not had reason to apply any penalties, fines or charges against any institutions licensed during the three-year period under review but have applied fines on other occasions in the past in Saint Lucia. The most recent onsite inspection visit undertaken by the ECCB in Saint Lucia was in December 2013.

254. Over the three-year period there were no requests made for banking information. However, in the case that an EOI request for banking information was received by the Competent Authority they have reported that this would be actioned by sending a notice to the banking institution directly.

Conclusion

255. The combination of the obligations as set out under the Banking Act and the AML regime for licensed banks and other financial institutions ensures that all records pertaining to accounts as well as related financial and transactional information are available. Although over the three year review period there were no requests made for banking information, these obligations should result in Saint Lucia being able to provide banking information to its exchange of information partners when requested. The financial regulator of Saint Lucia, the FSRA undertakes monitoring of licensed banks and financial institutions in the form of desktop audits and onsite inspections. However, due to internal restructuring during the review period, the number of onsite inspections conducted by the FSRA was lower than in previous years. The ECCB, as the regulator for commercial banks and credit institutions, has a regular system of monitoring and oversight in place. Therefore, the monitoring conducted by the FSRA and the ECCB should ensure that Saint Lucia will be able to provide banking information to its exchange of information partners when requested.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

B. Access to Information

Overview

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

257. Saint Lucia's powers to access information for EOI purposes are set out under the Income Tax Act and the International Tax Cooperation Act (ITC Act). A possible domestic tax interest connected to the powers under the Income Tax Act was identified in the Phase 1 review and as a result, Saint Lucia enacted the ITC Act in August 2012 and made amendments to its Income Tax Act in January 2014 to clarify the use of its powers to access all information pursuant to an EOI request. Saint Lucia has advised that for the purposes of gathering information for an EOI request, its powers under the ITC Act will take precedence. In order to use its powers under the ITC Act to access information, the agreement must be first scheduled to the ITC Act. However, due to the delayed scheduling of some of its EOI agreements to the ITC Act, Saint Lucia only used its access powers under the Income Tax Act to gather information in all cases during the review period.

258. Saint Lucia's Minister of Finance (the Minister), or his duly authorised representative, has broad powers under the ITC Act to obtain relevant information from any person within the jurisdiction who has relevant information in his possession, custody or under his control. The Minister's access powers are predominantly exercised by the issue of a notice requesting the production of information. The notice will include details of the request, which have been agreed with the EOI partner. Where authorised by Court

procedure, the Minister also has the power to search premises and seize information where there is a reasonable certainty that relevant information is endangered. In addition to the powers assigned to the Minister under the ITC Act, the Comptroller of the Inland Revenue Department has broad powers to access information under the Income Tax Act. While there are penalties in place for not providing the information under the Income Tax Act and certain actions such as tampering with the information can be sanctioned with significant penalties under the ITC Act, it is noted that there is currently no penalty in place under the ITC Act for failure to provide the information requested. A recommendation has been made for Saint Lucia to address this omission.

259. Pursuant to the ITC Act, any obligations to which a person would otherwise be subject in respect of the information sought are overridden where provision of the information to the Minister is in relation to an EOI request. Further, a person providing such information has an absolute defence to the breach of any confidentiality obligation. The rights of a person in respect of the protection of legally privileged information remain protected by domestic legislation and there are exceptions made in the case of information sought pursuant to an EOI request. Element B.1 was found to be in place.

260. Element B.2 concerns the rights and safeguards that apply to persons in Saint Lucia. A right of appeal and, in some limited cases, a prior notification right exist in respect of the compulsory access powers. However, these provisions are not incompatible with the effective access to and exchange of information. Under the ITC Act, all information that has been accessed by the Minister for EOI purposes must be held for a period of 20 days. In the case that an objection is made within this 20 day period there is an obligation on the Minister to delay providing the information to an EOI partner. To date, there have been no such objections filed in Saint Lucia. Nevertheless, a recommendation is made for Saint Lucia to address this issue. Element B.2 is found to be in place.

261. In practice, in order to obtain information requested pursuant to an EOI request, the competent authority will firstly check its own tax databases at the Inland Revenue Department. In the event that further information is sought, the competent authority will then perform a search of the Companies or IBC Registry database. Over the review period, the information held by these authorities has been sufficient to partially answer some requests. However, for most of the requests over the review period, the competent authority had to obtain the requested information from other third parties whereby a formal notice to produce this information was issued to the holder of the information under the Income Tax Act. Information is generally produced within the 28 day timeframe given by the authorities and in the cases where information was produced, it was provided to the requesting party within 180 days.

262. Over the review period, Saint Lucia received a total of four requests; four of the requests concerned ownership information and three requests concerned accounting information. Saint Lucia was able to provide ownership information in two cases and in the other two cases ownership information was unable to be provided as it was not produced by the registered agent. Due to a lack of sufficient accounting record obligations for all entities and a possible domestic tax interest in the access powers under the Income Tax Act, accounting information was unable to be provided in those three cases where it was requested over the review period.

263. In all cases during the review period where information was sought from a third party, it was the practice of Saint Lucia to only serve a notice on the registered agent of the entity, regardless of whether the registered agent was obliged to keep the information sought. As a result, not all information was obtained in all cases. Saint Lucia has advised that with the enactment of the ITC Act in August 2012, it revisited all of its EOI practices and implemented a formal EOI Unit as well as an EOI Manual detailing the exact procedures for accessing information, including the service of notices on IBCs in addition to the registered agent where the information is expected to be in their possession or control. Saint Lucia should monitor the practical implementation of the ITC Act to ensure that it can access 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).

Bank, ownership, and identity information (ToR B.1.1) and accounting records (ToR B.1.2)

264. Saint Lucia’s competent authority is the Minister of Finance, or their authorised representative. The Comptroller of Inland Revenue (the Comptroller) is an authorised representative of the Minister for the purposes of Saint Lucia’s EOI agreements. Pursuant to section 3, the Comptroller is responsible for the administration of the Income Tax Act, which includes, under section 60(1)(e), the power given to the Minister to enter into EOI agreements. The Minister is the named competent authority under section 5(1) of the ITC Act and under section 5(4) may delegate these powers in writing to a public officer. In practice, the powers to gather information under the ITC Act have been delegated to the Comptroller.

265. The CA's powers to access information are found in Part 9 of the Income Tax Act, and in particular under sections 87-88. There are general access powers, as well as specific powers for the purpose of accessing bank information. The general access powers are broad, under which the Comptroller may require a person to:

- furnish information: s87(1)(a);
- produce records or other documents: s87(1)(b);
- attend before the Comptroller to give evidence s87(1)(c); or
- give access to any premises to the Comptroller in order to examine business records: s88.

266. For bank information, there is a specific provision in section 87(2), which requires banks to grant the Comptroller access to any information held by them.

267. Due to the identification of a possible domestic tax interest concerning the powers under the Income Tax Act during the Phase 1 review, Saint Lucia took steps to explicitly clarify the use of their powers for EOI purposes. In January 2014, Saint Lucia enacted the Income Tax (Amendment) Act which explicitly clarifies that the powers under section 87 may also be used to comply with any request for the exchange of information.

268. Further, Saint Lucia also enacted the ITC Act in August 2012 which clarifies its powers to access all types of information in all cases for the purposes of EOI. The ITC Act covers all aspects related to EOI including access to, and exchange of information, in respect of requests pursuant to all agreements that provide for the exchange of information with respect to tax matters between Saint Lucia and its treaty partners. Under this Act, the Minister has powers to access information by issuing notices for its production, or in certain instances through the use of search and seizure warrants under the compulsory processes set out below.

269. In order to access information under an agreement with the powers under the ITC Act, upon its ratification, the agreement must be scheduled to the ITC Act via an order published in the official gazette. It is noted that during the review period, not all agreements were immediately scheduled to the ITC Act and hence the powers under the ITC Act could not be used for EOI requests made under the agreements that had not yet been scheduled. As a result, the competent authority continued to use its powers under the Income Tax Act to access information. However, as of May 2014, all agreements have now been scheduled to the ITC Act. Further, Saint Lucian authorities have reported that for all aspects related to EOI, including access to information, the provisions of the ITC Act will now take precedence over those under the Income Tax Act.

270. Under the ITC Act, the powers of the Minister to obtain relevant information to respond to an EOI request (s7, ITC Act) are consistent, regardless from whom the information is to be obtained, for example from a government authority, bank, company, trustee or individual; or the type of information to be obtained, whether it is ownership, banking or accounting information. There is also no variation of the powers between instances where the information is required to be kept pursuant to a positive legal obligation, or not.

271. Pursuant to section 7 of the ITC Act, the Minister may require any person to deliver information within 28 days of having been served with a notice. Under section 8, the Minister or any authorised officer is empowered to enter premises via court order and can seize or remove any article, document or information that they deem relevant to a request. During the review period, the Saint Lucian competent authority only used its access powers under the Income Tax Act to gather information for EOI purposes. The Saint Lucian competent authority did use its access powers under the ITC Act to gather information for one request received shortly after the review period had ended. This request has not been examined for the purposes of the review. However, it is noted that all information was accessed using the powers under the ITC Act and provided to the EOI partner within 90 days.

Gathering information in practice

272. The processes used by the competent authority to access ownership, banking and accounting information are outlined below.

Access to ownership information

273. On receipt of an EOI request, it is the practice of the competent authority to firstly ensure that the request satisfies the requirements as set out under the relevant TIEA and that the information being sought is foreseeably relevant to the administration and enforcement of the requesting jurisdiction's tax laws with respect to the taxpayer identified (s. 6, ITC Act). Pursuant to the ITC Act, this will entail ensuring that certain information has been provided by the requesting jurisdiction such as the identity of the person under investigation, a description of the information sought, the tax purpose for which the information is sought, the grounds for believing it is in the possession or control of a person within the jurisdiction of the requested party, to the extent known, the name and address of any person believed to be in possession of the requested information, a statement that the request is in conformity with the laws and administrative practices of the applicant party, a statement that the requesting jurisdiction has pursued all possible means in its own territory to obtain the information, an indication of whether the formation sought is

related to a civil or criminal matter, the law that is believed to have been contravened and evidence that the information sought is “foreseen as relevant” to the administration or enforcement of the tax laws of the requesting state. Saint Lucian authorities have reported that, despite slightly different wording to the model TIEA, they interpret “foreseen as relevant” exactly the same as “foreseeably relevant”. To date, there has been no incidence in which the standard of foreseeable relevance was not satisfied.

274. Once foreseeable relevance has been determined by the Deputy Comptroller from the Audit section of the Inland Revenue Department, the information request is then assigned to the Assistant Comptroller, who is then responsible for ensuring this information is retrieved and for overall monitoring of the process. The Assistant Comptroller or an authorised delegate first checks whether information is in the possession of the Inland Revenue Department and where the information can be accessed from the taxpayer database, this is then submitted to the requesting jurisdiction at the earliest possible time. Where the information requested is not in the hands of the Internal Revenue Department, but it is suspected to be with another government agency such as the Companies or IBC Registry or a third party, a notice is then issued and hand delivered to this party requesting the information. In practice, government agencies always comply with requests to produce information as transmitted via a notice between the competent authority and the relevant agencies.

275. Over the review period, there were three cases where a notice to produce IBC ownership information under the Income Tax Act was served on the registered agent. In two of these cases, the registered agent refused to provide the requested information. As noted above, these powers may have been subject to a domestic tax interest. Nevertheless, the competent authority having issued a notice to produce the information did not apply any of their enforcement powers to compel production of the information nor seek other means by which to access the information. These practices resulted in the Saint Lucian competent authority not obtaining all the requested information.

276. As mentioned above, upon ratification, all EOI agreements must be scheduled to the ITC Act via publication of an order in the official gazette. However, on enactment of the ITC Act in August 2012, not all agreements were immediately scheduled to the Act. As a result, the competent authority used its access powers under the Income Tax Act which have been subject to a domestic tax interest. As of May 2014, all agreements have been scheduled to the ITC Act and officials from Saint Lucia have advised that it is now policy to schedule all of its EOI agreements to the ITC Act as soon as possible after ratification. Saint Lucia also amended the Income Tax Act in January 2014 to clarify the use of its powers under the Act to access information for the purposes of EOI. Saint Lucia has advised its powers under the ITC Act will take precedence over the Income Tax Act in order to access information.

277. Further, Saint Lucia implemented a formal EOI structure in January 2013, including a comprehensive EOI manual, detailing the processes for accessing each type of information from the different entities. Saint Lucia has reported that it now serves the notice for information on all IBCs (via its registered agent) in addition to serving the notice on the registered agent where the information is expected to be in the possession or control of the IBC. One peer indicated that a request concerning IBC ownership information was received by Saint Lucia shortly after the end of the review period. Although this request is not considered for the purposes of the review, it is noted that all IBC ownership information was obtained from the IBC and a complete response was sent under this new procedure. It is recommended that Saint Lucia ensures that the access powers of its competent authority are used effectively to obtain all information included in an EOI request.

278. The time given to the person who is served a notice is 28 days commencing on the date when the notice is served (s. 7(4), ITC Act). In certain cases, where just cause is shown, the competent authority may grant an extension to the 28 day period. To date, Saint Lucia has not received any request for an extension in regards to the time given to produce information pursuant to an EOI request. However, in the case that an extension was requested, in making the decision whether or not to grant an extension, the competent authority has reported that they would carefully consider the reasons for requesting the extension, the urgency of the request and any other factors particular to the case that may be relevant and would also consult with the requesting competent authority before granting an extension of time in order to ensure the extension would not unduly delay the exchange of information in practice.

Access to banking information

279. To date, Saint Lucia has not received any request for banking information. However, in the event that a request for banking information is received, Saint Lucian authorities have reported that the competent authority would proceed to send a notice directly to the bank. The competent authority has reported that due to small nature of the banking environment in Saint Lucia, they have a very strong relationship with the banking sector and would deliver any notice for information in person and fully explain the contents.

Access to accounting information

280. During the review period, there were three requests concerning IBC accounting information in which case a notice served on the registered agent under the Income Tax Act. As outlined above, there are currently incomplete accounting information keeping obligations in respect of IBCs (see

section A.2.1 *Accounting Information*). Further, it was the practice of the competent authority to deliver and address the notice to produce information to the registered agent only. However, there was no legal obligation on the registered agent to maintain or have access to IBC accounting information during the review period. Notices were neither served on nor addressed to the IBC itself over the review period. Therefore, it is unclear whether accounting information was not provided due to the lack of a legal obligation for it to be maintained by the IBC or due to the fact that a notice to produce the information was only issued to the registered agent. Further, the access powers at the disposal of the competent authority may have been subject to a domestic tax interest and were insufficient to gather information for the purposes of EOI. On the implementation of comprehensive accounting obligations for all entities, it is recommended that Saint Lucia ensures that the access powers of its competent authority are used effectively to obtain all information included in an EOI request.

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

281. 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.

282. The possibility of a domestic tax interest requirement with respect to the access powers under the Income tax Act was identified in the Phase 1 review of Saint Lucia. In March 2014, Saint Lucia amended its powers under section 87 of the Income Tax Act.

283. Section 87(1)(a)-(c) provides the Comptroller with powers to require persons to *inter alia* furnish information, produce records, and attend before him to give evidence. These powers can be used equally for gathering information for domestic purposes or for gathering information pursuant to an EOI request:

Section 87 (1) For the purposes of the administration or the enforcement of this Act **or to comply with any request for the exchange of information pursuant to section 6(2)(c)**, including obtaining full information in respect of the income of any person who is or may be liable to tax, the Comptroller may, by notice in writing, require that person or any other person whom the Comptroller reasonably believes is capable of so doing:

(a) to furnish to the Comptroller at such time as may be specified in such notice such further return of income, statement of assets and liabilities or other information as may be required by him or her;

... [emphasis added]

284. Section 6(2) of the Income Tax Act authorises the disclosure of information by the Comptroller and all employees of the Inland Revenue Department to another jurisdiction with whom Saint Lucia has either concluded an international agreement for the purposes of double taxation avoidance or for the exchange of information.

285. Therefore, it is now explicit that the powers under the Income Tax Act may be used by the competent authority to access and exchange all types of information with their treaty partners for the purposes of EOI.

286. The specific provision for access to bank information is clearly not subject to any domestic tax interest requirement (s87(2), Income Tax Act).

287. In addition, Saint Lucia also enacted the ITC act in August 2012 to clarify its powers to access all types of information for all entities pursuant to an EOI request. Under section 7 of the Act, the Minister or his duly appointed representative have broad powers to obtain relevant information from any person within the jurisdiction who has relevant information in his possession, custody or under his control. Section 8 also grants the power to search premises and seize information, via judicial procedure, where there is a reasonable doubt that relevant information is endangered.

288. During the review period, there were three cases in which IBC ownership and accounting information was not made available by a registered agent when requested by the competent authority. In all of these cases the registered agent stated that as the entity was exempt for tax purposes, the requested information did not have to be produced for the purposes of EOI. As outlined above, whilst the powers used to access the information under the Income Tax Act may have been subject to a domestic tax interest, the competent authority having issued a notice to access the information did not make full recourse to any of its enforcement powers under the Income Tax Act to compel production of the information. The competent authority of Saint Lucia has advised that as the possibility of a domestic tax interest has been identified in the course of its Phase 1 review, it was uncertain as to the use of its enforcement powers in these cases to compel production of the information.

289. The enactment of the ITC Act in August 2012 clarified the powers of the competent authority to access all types of information from all entities for the purposes of EOI. However, as all the EOI agreements were not immediately scheduled to the ITC Act, the competent authority continued to use its powers under the Income Tax Act to gather information for EOI requests from some treaty partners.

290. As Saint Lucia only used the access powers under the Income Tax Act during the review period, the access powers of the competent authority under the ITC Act are untested in practice. Peer feedback obtained in

the course of the Phase 2 review has indicated that one request concerning IBC ownership information was sent to Saint Lucia shortly after the end of the review period and a complete response was received. Saint Lucia has reported that this information was accessed using its powers under the ITC Act. It is recommended that Saint Lucia ensures that the access powers of its competent authority are used effectively to obtain all information included in an EOI request even where the information is not required for its own purposes.

Compulsory powers (ToR B.1.4)

291. The Comptroller's general access powers under the ITC Act are broad as described in more detail above. Pursuant to sections 7 and 8, the Comptroller may require a person to furnish information as requested in a notice, and may enter premises (with a search warrant) and seize any article, document, or information found which he or she has cause to believe may be relevant to a request.

292. Further, for access to bank information, under section 87(2) of the Income Tax Act, the Comptroller may require any bank:

- (a) to furnish to him or her details of any banking account or other assets which may be held on behalf of any person, or to furnish a copy of bank statements of any such banking account;
- (b) to permit the Comptroller or any officer not being below the rank of a senior tax inspector authorised by him or her to inspect the records of the bank with respect to the banking account of any person; or
- (c) may require the attendance of any officer of a bank before him or her to give evidence respecting any bank account or other assets which may be held by the bank on behalf of any person.

293. Under the ITC Act, once a request is received by Saint Lucia which is in accordance with the relevant TIEA, the Minister may issue a notice requiring a person to produce specified relevant information. The notice must contain "details of the request to which the notice relates (s7(3), ITC Act)". In practice, Saint Lucia has indicated that these details will be decided on a case by case basis. No requests were responded to over the review period using the procedure under the ITC Act. However, Saint Lucia has confirmed that upon issuing a notice for information under the ITC Act, they will continue with their practice to date which is to contain a description of the information requested, the date this information is due by and where necessary to describe the information sought, the identification of the taxpayer. Further,

Saint Lucia has advised that details of a request would not be released unless they are agreed prior with each of Saint Lucia's EOI partners. A person will have 28 days from the date of service of the notice to produce the information, however, the Minister may extend this period. A request to extend the response time has not yet been received in Saint Lucia. However Saint Lucian authorities have advised that such a request will be considered on a case by case basis and may be influenced by logistical and geographical difficulties encountered by the holder in accessing the information.

294. Once information has been received by the Minister pursuant to either a notice or a search warrant, the Minister must not disclose the information to any person for a period of twenty days, after which he may provide copies of the information to the requesting jurisdiction (s9, ITC Act).

295. The ITC Act (s10) also establishes a mechanism to require persons to provide information in the form of witness depositions, and authenticated or certified copy documents to the extent so permitted under Saint Lucian law. Pursuant to section 11, if certain conditions are met, the Minister may also permit representatives of the requesting state to interview individuals and examine records in Saint Lucia.

296. Pursuant to section 7(7) of the ITC Act, it is an offence for a person to wilfully tamper with, or alter any information such that it is false when received by the Minister; or wilfully alter, destroy, damage or conceal any information requested under a notice. Further, pursuant to section 8, a person who wilfully obstructs the execution of a search warrant commits an offence. Such offences are liable on summary conviction for fines of up to ECD 50 000 (USD 18 519) or imprisonment for a term not exceeding 6 years or both.

297. Section 140 of the Income Tax Act sets out a general penalty provision for failure to comply with any requirements of the Income Tax Act, including the failure to furnish the Comptroller with any return or document when required to under the Act. A person failing to comply with those requirements is liable to a fine of ECD 1 000 (USD 370) or imprisonment for one year. Further, pursuant to section 136 of the Income Tax Act, any person who fails to furnish information or produce documents when requested by the Comptroller will be liable to a penalty not exceeding ECD 500 (USD 185). However, it is noted in the case of a person failing to deliver the information required pursuant to a notice under the ITC Act, this is not considered an offence and there is no penalty in place. It is recommended that Saint Lucia amend the relevant provisions of the ITC Act to implement enforcement measures to compel the production of all information sought pursuant to an EOI request.

Use of compulsory powers in practice

298. In the three-year review period, Saint Lucia has not applied any penalties for failure to produce information or made use of any other compulsory power. However, in two cases information was not produced by the person who was served the notice, which seems to have included information that should have been in the possession of this person (most notably ownership information, see A.1). This person claimed that the fact that the subject of the request (an IBC) was exempt from the provisions of the Income Tax Act, they were not obliged to provide the requested information to the Saint Lucian competent authority. Nevertheless, at the time of the request, the registered agent would have been subject to “Know Your Client” obligations under the AML regime to have ownership information on all IBCs for whom they act. In the event of failure to comply with a notice to produce information, it is recommended that Saint Lucia ensures that its compulsory powers are applied where appropriate to compel the production of all information pursuant to an EOI request.

Secrecy provisions (ToR B.1.5)

299. Under Saint Lucia’s domestic legal framework, a number of secrecy provisions exist, namely under the Constitution the Income Tax Act, as well as specific provisions for information regarding international mutual funds, international insurance entities as well as domestic banks and financial institutions, and International Trusts.

300. The Constitution of Saint Lucia provides that a person shall not without their consent be subject to a search of their person, property or entry of others onto their property. An exception applies, however, where such access is done under the authority of a law (section 7, Constitution).

301. The Income Tax Act expressly permits the Comptroller, or any person employed in carrying out or having any official duties under the Income Tax Act, to disclose information obtained in the course of their duties which would otherwise be secret (s6(1), Income Tax Act) to:

any authorised officer of the Government of a country with which an international agreement for the avoidance of double taxation or exchange of information exists, for the purposes of that agreement (s6(2)(c), Income Tax Act)

302. According to the ITC Act (s. 7(6)), a person who provides information to the Minister, pursuant to a notice requiring him to do so, has an absolute defence to any claim brought against him as a result of producing that information.

International Mutual Funds and International Insurance

303. Both the International Insurance Act (s20) and the International Mutual Funds Act (s53) require that the Minister or other person shall not disclose any information about entities registered or having applied to register under those Acts, which those persons have obtained in the course of their duties under those Acts. An exception permits disclosure where it is permitted “under any other law in force in Saint Lucia” (s20(2), International Insurance Act; s53(2)(d), International Mutual Funds Act), which will therefore permit access to such information for EOI purposes.

Bank secrecy

304. For banks and financial institutions subject to the Banking Act, section 32 of the Banking Act imposes an obligation on persons, including directors, managers, secretaries, officers, employees or any agents of a financial institution, not to disclose the “identity, assets, liabilities, transactions or other information in respect of a depositor or customer of a financial institution”. However, section 32(d) provides a relevant exception:

Except-

(d) under the provisions of any law of Saint Lucia or agreement among the participating Governments;

305. For banks licensed under the International Banks Act, there does not appear to be any express obligation to maintain the confidentiality of customer or transaction information. Further, the secrecy provision of section 32 of the Banking Act does not appear to apply to such banks. Section 55 of the International Bank Act provides:

“Except as expressly provided therein, the Banking Act shall not apply to any company carrying on international banking business, and this Act shall have no application to companies licensed to carry on a banking business under the Banking Act.”

306. Therefore, the obligations to maintain the secrecy of bank information under the Banking Act and the International Bank Act are subject to exemptions where the information is to be accessed for EOI purposes.

Trust secrecy

307. Trustees, protectors “or other person” are subject to an obligation pursuant to section 53 of the International Trust Act not to disclose to “any person not legally entitled thereto” any information regarding an International Trust. Trustees are liable, jointly and severally, for any breach of an International

Trust, for any loss or depreciation to the trust property which results, or any profit which would have accrued but for the breach.

308. There is no clear provision indicating that the Comptroller would be a person “legally entitled” to information regarding an International Trust.

309. The Comptroller’s ability to access trust information for EOI purposes has been clarified under the ITC Act. Pursuant to section 5(2), the Minister (or his delegated representative) “is not restricted by any arrangement, any law or any rule of law relating to confidentiality except as expressly provided for in the (EOI) agreement”. Therefore, this provision will override the confidentiality provisions of the International Trust Act.

Professional secrecy

310. All of Saint Lucia’s exchange of information agreements permit Saint Lucia to decline a request if responding to it would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy. This follows the international standard.

311. Among the situations in which Saint Lucia is not obliged to supply information in response to a request is when the requested information would disclose communications protected by attorney-client privilege.

312. The scope of attorney-client privilege under the international standard is described in the OECD Model TIEA and OECD Model Double Tax Convention, and their commentaries, and refers to confidential communications (i) produced for the purposes of seeking or providing legal advice or (ii) produced for the purposes of use in existing or contemplated legal proceedings.

313. In Saint Lucia, attorney-client privilege is defined by paragraph 22(2) of the Code of Ethics as contained in Schedule 3 of the Legal Profession Act, which provides that

An attorney-at-law shall scrupulously guard and never divulge his or her client’s secrets and confidences

314. Additional guidance on the scope of attorney-client privilege is provided in the Code of Ethics as scheduled to the Legal Profession Act which sets out the duties of an attorney and stipulates the general and mandatory obligations of an attorney. Pursuant to Rule 18 of the Code of Ethics (Schedule 3, Code of Ethics, Part B Mandatory Guidelines) an attorney shall not disclose what has been communicated to him in his capacity as an “attorney-at-law”. Therefore, the scope of attorney-client privilege will not extend

to those situations where the lawyer is acting in the capacity of a fiduciary, nominee or agent.

315. Further, pursuant to paragraph 18 of Part B of the Code of Ethics, there is an exception created where the attorney has been lawfully ordered to disclose information by the court or by statute. This will cover situations when a lawyer has been requested to disclose information to the competent authority under the ITC Act for an EOI request and attorney-client privilege will be overridden for this purpose. Pursuant to section 35 of the Legal Profession Act, a breach of the rules as set out under the Code of Ethics may amount to professional misconduct for which disciplinary proceedings may be initiated against the lawyer which may result in the lawyer having to pay a penalty or in extreme cases, being disbarred from the legal profession. Therefore, the scope of information covered by the privilege and the exception for disclosing information pursuant to an EOI request are in line with the international standard.

Operation of secrecy provisions and attorney-client privilege in practice

316. The Saint Lucian authorities have confirmed that, for domestic tax purposes, the professional secrecy exception in relation to lawyers is applied in a restrictive manner which does not prevent tax authorities from accessing books of account, working papers and other documentation held by lawyers where they exercise their information gathering powers. In relation to domestic tax issues, the Saint Lucian authorities have confirmed that claims of attorney-client privilege rarely arise in practice and to date there have been no incidences where a claim of attorney-client privilege over information requested by the competent authority has been successful.

317. The Office of the Attorney General has reported that attorney-client privilege has never been claimed over information sought pursuant to an EOI request nor over information sought for domestic purposes during the review period. Saint Lucia's EOI partners indicate that professional secrecy has never caused any problem in practice in relation to EOI. There have been no cases in which an EOI request has been denied or in which, as a result of the information provided, an entity or individual has raised an objection founded on professional secrecy.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
Although there are clear penalties in place for failure to provide information requested under the Income Tax Act, there is no penalty in place under the International Tax Cooperation Act for failure to provide information requested in a notice pursuant to an EOI request.	Saint Lucia should amend the provisions of the International Tax Cooperation Act to ensure that there are effective penalties in place for failure to supply the information requested in a notice issued under the International Tax Cooperation Act pursuant to an EOI request.

Phase 2 rating	
Partially-compliant.	
The access powers granted to the competent authority under the International Tax Cooperation Act have not been tested in practice over the review period.	It is recommended that Saint Lucia monitors its access powers to information for EOI purposes to make sure that they are effective in all cases.
Over the three-year review period, it was the practice of Saint Lucia's competent authority to serve a notice to produce on the registered agent only. In cases where the registered agent refused to produce information, the access powers at the disposal of Saint Lucia were insufficient to compel the production of this information. This resulted in Saint Lucia not obtaining all of the information requested in a number of cases.	Saint Lucia 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)

318. The *Terms of Reference* provide that 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).

319. There is no requirement in Saint Lucia’s domestic legislation that the taxpayer under investigation or examination must be notified of a request. Once the Minister receives information pursuant to a notice or search warrant, he must retain that information for 20 days prior to providing a copy of it to the requesting jurisdiction. Pursuant to section 9(c) of the ITC Act this 20 day period “shall” be extended by the Minister:

in the event a taxpayer or interested person has objected to the Minister providing the assistance requested and has sought judicial review of an act of the Minister or other lawful recourse against an act of the Minister pursuant to the provisions of section 10.

320. The ITC Act is not clear how long the retention of the documents must be extended, however it may be until the objection is resolved. Therefore, section 9(c) of the ITC Act may impact the legal framework for effective access to information. There is however no notification requirement under Saint Lucia’s legislation and further Saint Lucia has advised that to date there have been no legal challenges to the Minister’s powers under the ITC Act, or to an exchange of information pursuant to an EOI agreement. However, as the ITC Act only came into force in August 2013, whether this obligation to retain information is compatible with effective access for EOI purposes has not been tested in practice.

321. The actions of the competent authority and Comptroller in exercising their powers in respect of carrying out the obligations of Saint Lucia’s EOI agreements would also be subject to usual processes of judicial review, for example in relation to determining whether they had acted *ultra vires*.

Rights and safeguards in practice

322. All information when delivered to the offices of the competent authority is initially held for a period of 20 days and in the event of an objection this period must be extended by the Minister. Saint Lucian authorities have stated that in no cases has there been an objection raised to the exchange of this information during that holding period. In practice, an objection may be raised by either the taxpayer or an “interested person” who has either sought judicial review of the decision of the Minister to exchange the information or has sought some other lawful recourse against the Minister, such as applying to the Court for relief or redress from an alleged breach of constitutional protections. A definition of an “interested person” is not provided for in the law. Saint Lucia has stated that an interested person could range from the holder of the information to a connected business entity including those persons resident outside of Saint Lucia. As “taxpayer” is separately defined in the ITC Act, Saint Lucian authorities have advised that the concept of “interested person” would not include the taxpayer or the subject of the request.

323. In the event that an objection is made, the Minister must extend the holding period (s9(c), ITC Act). Saint Lucia has reported that this extension could be from one month to several in the case that leave is granted for an application for judicial review. In the case of leave for judicial review being granted, as this has not yet occurred in relation to an EOI request, it is not known how long this may take. However, based on other judicial review cases for domestic purposes, Saint Lucia has indicated that this could take up to a period of one year, depending on the issues at stake and the schedule of the Court.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
In the case of information exchange, under the International Tax Cooperation Act, the competent authority is required to extend the 20 day holding period where a taxpayer or interested person has sought judicial review or other legal recourse.	Saint Lucia should ensure that its domestic law provisions are compatible with the timely access and exchange of information.
Phase 2 rating	
Compliant.	

C. Exchanging Information

Overview

324. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Saint Lucia, the legal authority to exchange information is derived from its double taxation conventions (DTCs), tax information exchange agreements (TIEAs) as well as from its domestic law. This section of the report examines whether Saint Lucia has a network of information exchange that would allow it to achieve effective exchange of information in practice.

325. Saint Lucia has a broad network of EOI agreements covering 32 EOI partners, and all of those agreements are in force. These agreements are a mixture of tax information exchange agreements, a multilateral double tax convention between members of the Caribbean Community, as well as a bilateral double tax convention with Switzerland. These agreements are generally in line with the international standard with the exception of the agreement with Switzerland. Overall, Saint Lucia's network of EOI agreements meets the international standard and the confidentiality of information exchanged under those agreements is adequately protected. As a result, elements C.1, C.2 and C.3 are found to be in place.

326. Confidentiality of the information exchanged by Saint Lucia is adequately protected both by the terms of the international agreements and under domestic law provisions. In practice, other confidentiality measures are also in place such as locked cabinets for the storing of information, the use of encrypted email for correspondence, and the use of a courier service to send all requested information to EOI partners. Hard copies of all documentation regarding exchange of information requests are stored in locked filing cabinets which can only be accessed by two members of the competent authority.

327. The EOI arrangements and domestic law respect the rights and safeguards of taxpayers and relevant third parties and element C.4 is found to be in place.

328. There are no legal restrictions on the ability of Saint Lucia's competent authority to respond to EOI requests within 90 days of receipt by providing the information requested or an update on the status of the request.

329. The unit in charge of exchanging information for tax purposes (EOI Unit) is located within the Office of the Comptroller of the Inland Revenue Department which sits within the Ministry of Finance. In the case that the information requested is directly accessible from the taxpayer database, this information is accessed immediately by the EOI Unit and forwarded to the requesting jurisdiction. For three out of four cases during the review period, the information had to be requested from third parties and in particular from registered agents.

330. During the three year review period, Saint Lucia received four EOI requests from two partner jurisdictions. Over the review period, where IBC ownership and accounting information was requested, it was the practice at the time for the competent authority to only issue a notice on the registered agent and not on the IBC itself. Saint Lucia has recently revisited its EOI processes and implemented a formal EOI unit with a comprehensive EOI manual in an effort to ensure that all information requested is being provided. Saint Lucia provided a receipt of request in all cases within 10 days of receiving the request and in cases where the information was provided, it was provided within 180 days. Nevertheless, Saint Lucia should continue to monitor the implementation of the ITC Act to ensure that their organisational processes allow them to provide all information requested under an EOI request.

331. Saint Lucia's agreements and domestic law ensure that the contracting parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

332. The terms of Saint Lucia's laws and agreements governing the exchange of information are set out below.

C.1. Exchange-of-information mechanisms

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

333. Saint Lucia's Minister of Finance is empowered to enter into EOI agreements pursuant to section 60 of the Income Tax Act:

Section 60(1) Despite any other provisions of this Act, the Minister may enter into an agreement with the Government of any other country with a view to:

- (e) the rendering of reciprocal assistance to facilitate the administration of this Act and the income tax laws of that

other country and any agreement for the avoidance of double taxation or the exchange of information

334. To date, Saint Lucia’s EOI arrangements include 21 signed tax information exchange agreements (TIEAs), a double tax convention (DTC) signed with Switzerland, as well as being a signatory since 1994 to the multilateral CARICOM tax treaty⁸ with 10 other members of the Caribbean Community. In total, its network of signed agreements covers 32 EOI partners, and all of these EOI agreements are in force.

335. In addition, Saint Lucia has 6 further DTCs which contain very limited provisions on exchange of information. These are the DTCs signed between the UK and Saint Lucia (1949), and the DTCs signed between the UK and the following countries, which were later extended by exchange of notes or amending protocols to apply to Saint Lucia: Canada (1946), Norway (1951), Sweden (1949), Switzerland (1963) and the USA (1945). These DTCs whilst still in force, were concluded by the UK and extended to have effect for Saint Lucia when it still formed part of the British Empire (either as an “associated state” of the UK or otherwise). The EOI provisions of these DTCs are generally restricted to information available under each party’s domestic tax laws which are relevant for the purposes of the Convention, and with the exception of the agreement with Switzerland, also permit information exchange necessary for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes covered by the Convention. As Saint Lucia now has more expansive exchange of information agreements in place with five of these six countries (with the exception of Switzerland), the five earlier agreements are not considered further.

Foreseeably relevant standard (ToR C.1.1)

336. 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, with a similar provision in Article 26(1) of the Model Tax Convention, as set out below:

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8. The “CARICOM tax treaty” is agreement is a double tax convention between member states of the Caribbean Community (CARICOM); its full title is: Agreement among the Governments of the member states of the Caribbean Community for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Profits or Gains and Capital Gains and for the Encouragement of Regional Trade and Investment.

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.

337. Each of the TIEAs signed by Saint Lucia, as well as the CARICOM tax treaty meets the “foreseeably relevant” standard set out above and described further in the Commentary to Article 1 of the OECD Model TIEA.

338. Saint Lucia’s DTC with Switzerland provides only for the exchange of information for the purposes of “carrying out the provisions of the present Convention in relation to the taxes which are the subject of the Convention”. Saint Lucia should take steps to bring its DTC with Switzerland in line with the standard, in order to also permit the exchange of information which is foreseeably relevant to the administration and enforcement of the relevant domestic tax laws of the two parties.

339. Pursuant to section 6(4)(xiii) of the ITC Act, all requests should contain “evidence that the information being sought is foreseen as relevant” to the administration and enforcement of the tax laws of the requesting jurisdiction. Saint Lucian authorities have advised that in order to satisfy this legal obligation, all EOI requests will be considered on an individual basis. Saint Lucia has reported that they consider the standard of foreseeable relevance as being met once sufficient information such as the reason for which it is being requested, the laws to which it relates, and the relevance of the information sought to the taxpayer under investigation is provided.

340. Under the three year period under review, Saint Lucia has advised that they have not sought clarifications nor declined to answer any request for information on the basis that the requested information was not foreseeably relevant, which is confirmed by feedback received from peers.

In respect of all persons (ToR C.1.2)

341. 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 exchange of information mechanisms will provide for exchange of information in respect of all persons.

342. None of Saint Lucia’s TIEAs restrict the exchange of information to persons either resident or national of one of such as those considered resident in or nationals of one of the contracting jurisdictions, or precludes the application of EOI provisions in respect to certain types of entities. Further, each of the TIEAs contains a provision on jurisdictional scope equivalent to article 2 of the OECD Model TIEA:

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction

343. The CARICOM tax treaty does not contain the sentence indicating that EOI is not restricted by Article 1. However, its EOI provision applies to “carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation there under is not contrary to the Convention”. This agreement would not be limited to residents because all taxpayers, resident or not, are liable to the domestic taxes listed in Article 2 (e.g. domestic laws also apply taxes to the income of non-residents). Exchange of information in respect of all persons is thus possible under the terms of this agreement.

344. Over the three year review period, no issues have arisen regarding the jurisdictional scope in relation to an EOI request.

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

345. 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 Taxation Convention* and *OECD Model TIEA*, specify 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.

346. Each of the TIEAs signed by Saint Lucia specify that the parties should ensure that they have the power to obtain and provide upon request information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity, including nominees or trustees, consistently with Article 5(4) of the OECD Model TIEA.

347. Article 20 of Saint Lucia’s DTC with Switzerland only requires the exchange of information “which is at their [the parties] disposal under their respective taxation laws in the normal course of administration”. Further, it does not include a provision equivalent to article 26(5) of the OECD Model Tax Convention, to prevent the parties from declining to supply information

solely because it is held by a bank, financial institution, nominee or other person acting in an agency or fiduciary capacity. As a result, the exchange of all types of information with Switzerland is not possible because of restrictions in Switzerland's domestic laws. Saint Lucia is able to access all types of information under its domestic tax law.

348. The CARICOM tax treaty does not contain provisions similar to paragraph 26(5) of OECD Model Taxation Convention.⁹ However, the absence of this paragraph does not automatically create restrictions on the exchange of bank information. The commentary in the convention to Article 26(5) indicates that while paragraph 5, added to the Model Tax Convention in 2005, represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information.

349. In respect of Saint Lucia and the CARICOM tax treaty, the obligation to exchange all types of information is clearly available with respect to six of its signatories; Saint Kitts and Nevis and Saint Vincent and the Grenadines, Antigua and Barbuda, Barbados, Belize and Jamaica. As of May 2014, it is unclear as to whether Saint Lucia can exchange information with the remaining signatories to the CARICOM tax treaty for the following reasons:

- Dominica has not provided any information regarding powers of competent authority to access bank information;

9. The full EOI Article in the CARICOM treaty reads “(1) The competent authorities of the Member States shall exchange such information as is necessary for the carrying out of this Agreement and of the domestic laws of the Member States concerning taxes covered by this Agreement in so far as the taxation there under is in accordance with this Agreement. Any information so exchanged shall be treated as secret and shall only be disclosed to persons or authorities including Courts and other administrative bodies concerned with the assessment or collection of the taxes which are the subject of this Agreement. Such persons or authorities shall use the information only for such purposes and may disclose the information in public court proceedings or judicial decisions.

(2) In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Member States the obligation: (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Member States; (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Member States; (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process the disclosure of which would be contrary to public policy”.

- Grenada has enacted a new EOI Act providing for EOI to the international standard, however the CARICOM tax treaty is not a scheduled agreement to the Act, meaning that the information gathering powers under Grenada’s EOI Act does not apply to the CARICOM tax treaty;
- For Guyana, there is no information available about competent authorities’ powers to access bank information or to access ownership, identity and accounting information for the purpose of exchange of information, so it is not possible to confirm that for the purposes of the CARICOM tax treaty it can meet the obligations of the international standards;
- Trinidad and Tobago are only able to access information for the purpose of their TIEAs with the United States, therefore, they will not be able to exchange all information under the CARICOM agreement.

350. In the phase 1 reports of Antigua and Barbuda, Barbados, Belize, St. Vincent and the Grenadines and Saint Kitts and Nevis, no deficiencies with regard to element B.1 were identified and the element were assessed as “*in place*” for all these jurisdictions¹⁰. In the phase 2 report of Jamaica, no deficiencies with regard to element B.1 were identified and the element was assessed as “*in place*”. This suggests that all these six jurisdictions would be able to obtain all types of information under their respective domestic law.

351. It is recommended that Saint Lucia work with those signatories to the CARICOM tax treaty to ensure exchange of information to the standard can occur.

Absence of domestic tax interest (ToR C.1.4)

352. 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. An inability to provide information because of a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party.

353. All of Saint Lucia’s TIEAs explicitly require the parties to use all relevant information gathering measures to provide the requested information requested, notwithstanding that it may not be required for a domestic tax purpose. Of the parties to the CARICOM tax treaty, Trinidad and Tobago can obtain information only from taxpayers who are under examination or in the

10. In the cases of Antigua and Barbuda, Barbados and Belize, Phase 1 reports include supplementary reports.

course of their assessment. These domestic tax interests could be an obstacle to the effective exchange of information and not in line with the international standard.

354. Previously, there was some uncertainty over the interpretation of Saint Lucia's general access powers, as described in Part B.1 of the report, in terms of whether they include a domestic tax interest requirement. As a result a recommendation was made for Saint Lucia to clarify its ability to access all relevant information for EOI purposes. Saint Lucia enacted the ITC Act in August 2012 to ensure that it can access all information requested for all entities pursuant to an EOI. Pursuant to section 7 of the ITC Act, the Minister has the power to issue a notice for all information requested under any of its EOI agreements regardless of whether or not the information is required for its own tax purposes. Further, in January 2014, Saint Lucia passed an amendment to its Income Tax Act to explicitly clarify that it is now permitted to use its powers under the Act, not only for the administration or enforcement of the Act but also to gather information for the purposes of EOI.

355. During the review period, there were two cases where the registered agent refused to provide the requested IBC ownership and accounting information. In both cases, the registered agent stated that as that the IBC was exempt for tax purposes, they did not have to provide this information. One peer provided feedback concerning a request made shortly after the end of the review period. Although this request has not been examined for the purposes of this review, it is noted that in this case, Saint Lucia was able to access and provide the IBC ownership information requested by use of its access powers under the ITC Act.

Absence of dual criminality principles (ToR C.1.5)

356. 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 country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

357. None of Saint Lucia's TIEAs or the CARICOM tax treaty applies the dual criminality principle to restrict the exchange of information and in practice no issue linked to dual criminality has arisen.

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

358. 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”).

359. All of the TIEAs signed by Saint Lucia and the CARICOM tax treaty provide for the exchange of information in both civil and criminal tax matters.

360. Pursuant to section 6(4)(v) of the ITC Act, the tax purpose for which the information is sought must be specified in the request. Saint Lucia has advised that this will not extend to specifying whether the request relates to a civil or criminal tax matter. However, in practice, this information may be included in the request at the discretion of the requesting jurisdiction. In the event that this information has been disclosed previously in an EOI request, in practice, this information is never made known to the taxpayer or a third party.

361. Saint Lucia has indicated that the procedures and agencies involved for gathering information are the same for civil and criminal tax matters, as far as the EOI Unit is concerned. During the three year review period, Saint Lucia has reported that all EOI requests related to civil tax matters and in practice no difficulties have arisen with respect to this issue.

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

362. In some cases, a Contracting State 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. Contracting States should endeavour as far as possible to accommodate such requests. The requested State 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.

363. All of the TIEAs signed by Saint Lucia expressly allow for information to be provided in the specific form requested, to the extent allowable under the requested jurisdiction’s domestic laws. In addition, there are no restrictions in the CARICOM tax treaty or Saint Lucia’s own domestic laws which would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices.

364. Section 10 of the ITC Act sets out that in the case of it being requested, the Minister shall provide information in the form of witness disposition statements and certified copies of original documents.

365. To date, Saint Lucia has not been asked to provide information in any specific form. One peer did advise that copies of information received were unauthenticated. However, a request for the information to be authenticated was not included in the EOI request. Saint Lucian authorities have reported that in the event that information is requested in a specific form such as in the form of an affidavit or witness disposition statement, it would provide information in a specific form, so long as it was consistent with its own administrative practices.

In force (ToR C.1.8)

366. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. Where exchange of information agreements have been signed, the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

367. As of May 2014, all of the TIEAs signed by Saint Lucia, as well as the CARICOM tax treaty have been brought into force. It is also noted that the TIEA with the U.S., which was signed in 1987, was only ratified by Saint Lucia in May 2014. It is recommended that Saint Lucia takes all steps to ensure the expeditious ratification of all of its EOI agreements.

Treaty negotiation in practice

368. In Saint Lucia the same negotiation process exists for DTCs and TIEAs. The responsibility for treaty negotiation is delegated to the Minister of Finance who is advised by a Cabinet appointed committee consisting of representatives from the office of the Solicitor-General, the Revenue Department, the Ministry of Finance, the Companies Registry and which is chaired by the Director of the FSRA. To date, all EOI agreements in Saint Lucia have been requested by the treaty partner. In most cases, the request for an EOI agreement arrives via diplomatic channels such as the Ministry for External Affairs.

369. On receipt of a request for an EOI agreement, Saint Lucia acknowledges receipt of the request and will send their draft model agreement to the prospective treaty partner who may then propose changes. All further negotiations are then conducted via email and once a common understanding as been reached, as indication of acceptance the document is initialled, usually by the chairman of the Cabinet appointed committee. Once the parties have agreed on the draft of the agreement, signing is scheduled, usually in

Saint Lucia or one of the neighbouring Caribbean jurisdictions where more convenient. Occasionally signature may also take place at the ambassadorial level in jurisdictions where Saint Lucia keeps Ambassadorial services. One such location is the Office of the High Commission of Saint Lucia in London where the authority to sign has been delegated via written instrument to the High Commissioner of Saint Lucia based in the United Kingdom.

370. Once an EOI agreement has been signed, an ITC Order is drawn up under section 15 of the ITC Act, facilitating the agreement to be scheduled as part of the ITC Act in order to become part of domestic law. The order is then gazetted at which stage, ratification occurs and the agreement will then have full legal effect as part of the ITC Act. Upon publication of the Order in the Official Gazette, a notification is sent to the partner via the Ministry of External Affairs and the EOI agreement will then come into force pursuant to its terms. Saint Lucia has reported that in practice this scheduling process is quite short and agreements are usually ratified expeditiously and the whole process of ratification should take no longer than 6 months. The same process exists for DTCs and TIEAs.

371. The Inland Revenue Department of Saint Lucia is currently undergoing work to its website so that eventually all agreements, once ratified, will be made publicly available. Currently, all ratified agreements are circulated internally amongst all auditors within the Inland Revenue Department alongside an explanatory note concerning the new agreement. Saint Lucia has also advised that there is an update of the status of all EOI agreements provided in their annual budget address.

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

372. For exchange of information to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement.

373. Saint Lucia has generally enacted all the legislation necessary to comply with the terms of its agreements. In particular, section 6 of the Income Tax Act and section 5(2) of the ITC Act expressly provide that the obligation to maintain the secrecy of tax information is lifted to allow the disclosure of information necessary for the purposes of an EOI agreement.

374. In the three year period under review there were three cases where information could not be made available due to the lack of clarity regarding the extent of the access powers of the Competent Authority (see section B.1 *Gathering information in practice*). As a result, Saint Lucia enacted the ITC Act in August 2012 and also passed an amendment to the Income Tax Act to clarify the powers under their domestic laws to exchange all types of information for the purposes of an EOI request made under one of its agreements.

375. In order to access information under the ITC Act, all agreements must be scheduled to the Act via an order published in the Official Gazette. However, during the review period, not all agreements were immediately scheduled to the Act and as a result, the competent authority continued to use its powers under the Income Tax Act to access information. Due to a possible domestic tax interest in the powers under the Income Tax Act, information was not provided in all cases pursuant to an EOI request under all agreements. As of March 2014, all agreements have been scheduled to the ITC Act. It is recommended that Saint Lucia ensures that its EOI agreements are scheduled to the ITC Act expeditiously in order to give full effect to all of its agreements under domestic law.

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.

376. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

377. Saint Lucia's main trading partners are the United Kingdom, the United States, and the other CARICOM countries, in particular Trinidad and Tobago. External direct investments in Saint Lucia (that is, from countries outside CARICOM and the ECCU) derive mainly from Canada, the United States, the United Kingdom, Venezuela, and Hong Kong (China).

378. Saint Lucia has signed and ratified EOI arrangements with 32 jurisdictions. All of those agreements have entered into force, and a complete list of its EOI agreements including their dates of signature and entry into force can be found in Annex 2.

379. Saint Lucia's network of EOI arrangements includes:

- 29 Global Forum members; and
- 16 OECD members.

380. As of January 2014, Saint Lucia had initialled another five agreements, all with Global Forum members.

381. Saint Lucia has reported that they have in every case been the country approached to negotiate EOI agreements and they are usually approached by countries that are of significant business interest. Comments were sought from Global Forum members in the course of the preparation of this report and no jurisdiction advised that Saint Lucia had refused to negotiate or conclude an EOI arrangement. However, one peer did indicate a lack of response from Saint Lucia when they had initially contacted them to negotiate an EOI agreement. Saint Lucia has reported that due to the time and resource constraints at the time of receipt of this request, Saint Lucia did not immediately respond. Saint Lucia has reported that it has since made contact with this prospective treaty partner regarding the initiation and scheduling of future EOI negotiations.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	Saint Lucia 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)

382. 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.

383. All of Saint Lucia's EOI arrangements include provisions to protect the confidentiality of information exchanged pursuant to those arrangements which are in line with the international standard.

384. In some agreements, provisions are included to take into account additional confidentiality obligations. Saint Lucia's TIEAs with Belgium, Denmark and the Netherlands (art. 8.2) require that the parties conform to Chapter 6 of the Economic Partnership Agreement between the Cariforum States and the European Community and its Member States of 15 October 2008. The Economic Partnership Agreement concerns the protection of information of identified or identifiable individuals. Chapter 6, in particular article 199 of that agreement outlines principles and general rules relating to information exchange. Importantly, these principles note that (i) information should only be used as authorised by the sending party; and (ii) persons to whom the information concerns (e.g. the subject of an EOI request) have a right to receive all information related to them, except where it is in the public interest not to allow this.

385. In its domestic law, the secrecy of information exchanged under an EOI arrangement is protected by section 6 of the Income Tax Act. That section provides:

the Comptroller and every person employed in carrying out the provisions of or having any official duty under this Act shall regard and deal with all documents and information relating to any person, and all confidential instructions in respect of the administration of this Act which may come into his or her possession or to his or her knowledge in the course of his or her duties, as secret.

386. Every person subject to this obligation must make an oath or affirmation of secrecy (s6(4), Income Tax Act) and the obligation to maintain the secrecy of the information continues notwithstanding the person ceases to be employed or have any official duties under the Act (s6(6), Income Tax Act).

387. Any person who contravenes the secrecy provisions in the Income Tax Act commits an offence and is liable to a fine of ECD 1 000 (USD 370) or imprisonment of one year (s139(b), Income Tax Act).

388. Section 12 of the ITC Act contains a confidentiality provision which requires that:

A person who is notified or required to take any action or required to supply any information in relation to any matter to which a request relates, shall not disclose the notification or receipt of such request or supply the information to any person except in accordance with the Agreement.

389. Any person found to be in breach of this provision is liable on conviction to a fine not exceeding ECD 10 000 (approximately USD 3 700) or to imprisonment for up to 2 years.

390. Pursuant to section 7(3) of the ITC Act, Saint Lucia is required to include details of an EOI request when issuing a notice to obtain information (see also section below *Details of a request as contained in a notice*). Saint Lucian authorities have reported that in practice, they will always seek to come to an understanding with their treaty partners as to which details of a request may be disclosed when issuing a notice to access information.

Ensuring confidentiality in practice

391. The measures in place in Saint Lucia for ensuring the confidentiality of all information exchanged are discussed below.

Details of a request as contained in a notice

392. In practice, Saint Lucia’s EOI manual contains a template which is used in all cases to request information from a taxpayer or third party. The template sets out the name of the taxpayer and the information desired. In the case of information being requested from other government agencies, this will include the agreement under which the request has been solicited but all details provided in the notice will be kept strictly confidential. In regards to third parties, in no cases is the agreement under which they have requested the information stated. No further information or details of the request is disclosed. Therefore, the requirement under the ITC Act to set out “details of the request” is interpreted quite narrowly by Saint Lucia.

Handling and storage of EOI requests and related information

393. EOI requests are first received at the office of the Ministry of Finance as the named competent authority, where it is reviewed and then entered into internal mail in a sealed envelope which is sent to the office of the Comptroller of the Inland Revenue Department as the duly authorised representative of the Minister of Finance. The office of the Comptroller acts

as the EOI Unit and carries out the day-to-day operations in relation to EOI matters. During the processing of an EOI request, communication with other competent authorities is generally carried out via email or telephone. In the case of email communications, where taxpayer information is being revealed, all correspondence is password protected.

394. Once the request has been received in the EOI Unit, two hard files are created; the first containing the original documents (permanent file) and the second file which acts as a “working file” throughout the processing of the request and will maintain copies of all correspondence. The permanent file is maintained in a secure filing cabinet of the office of the Comptroller where only officials from the EOI Unit have access. The working file, which is used to compile the responses, is maintained throughout the processing of the request in a secure locked cabinet in the office of the Deputy Comptroller.

395. Access to the office of the Comptroller, which acts as the EOI unit, is limited for security purposes in Saint Lucia. All staff must wear an identification card and a full-time security guard is on duty to ensure that access is strictly monitored.

396. All notices requesting information from taxpayers or third parties are hand delivered, usually by the Deputy Comptroller from the EOI Unit. On delivery of the notice, the Deputy Comptroller explains the contents of the notice and in particular, points out the confidential nature of the notice, any information requested and any further correspondence relating to the request. The Deputy Comptroller also advises the third party to deliver the information via courier or in person where possible to the office of the EOI Unit. Saint Lucia has advised that the competent authority has also engaged in a series of EOI educating seminars with third parties such as registered agents and all licensed entities. In the course of these sessions, particular emphasis is placed on confidentiality measures and the requirements of section 12 of the ITC Act requesting third parties not to disclose any information regarding a notice to any person except those permitted under the terms of the EOI agreement.

Provision of requested information to EOI partners

397. When the requested information is received from the taxpayer or third party by the competent authority this information is copied and a copy is filed in both the permanent hard file and the working file which are marked “settled” or “closed” and stored in the Comptroller’s office. All information produced is reviewed by the Comptroller, an accompanying cover letter is drafted and both are hand delivered to the office of the Minister of Finance. The Minister of Finance as the competent authority reviews all requests and signs the cover letter and then returns it to the Office of the Comptroller

for the information to be forwarded via courier to the named contact in the requesting competent authority. It is practice in Saint Lucia to inform the requesting jurisdiction that the response has been dispatched.

Personnel

398. There are currently four personnel within the Inland Revenue Department directly involved with the exchange of information in Saint Lucia; the Comptroller, the Deputy Comptroller, the assistant Comptroller of the Audit division, and a senior audit supervisor which make up the EOI Unit. All officers must take an oath of secrecy administered by a magistrate prior to commencing work with the Inland Revenue Department. Once employees commence work with the Inland Revenue Department, there are regular training sessions performed in-house to remind officers of their secrecy obligations. All officers of the EOI Unit have previously worked in the prosecution service or other Government departments and are professionally fully aware of their obligations of confidentiality. Saint Lucia also adheres to the joint Global Forum / OECD publication *Keeping it safe: Guide On The Protection Of Confidentiality Of Information Exchanged For Tax Purposes* and, where relevant, it indicated that it will use it as a guide for best practices related to confidentiality. Every officer of the Inland Revenue Department receives a copy of each new EOI agreement once signed and is made aware of the confidentiality provisions.

All other information exchanged (ToR C.3.2)

399. The confidentiality provisions in Saint Lucia's exchange of information agreements and domestic tax law do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to information received and provided under an EOI agreement, including background documents to EOI requests which may be provided by the requesting state, and any documents recording communications between the requesting and requested states.

Conclusion

400. Saint Lucia has sufficient provisions both in its EOI agreements and in its domestic laws to ensure the confidentiality of all information exchanged as well as all information relating to all requests with its treaty partners. In practice, there is a combination of measures in place to assure confidentiality when processing EOI requests. These include clear handling and storage security measures as well as all personnel being bound by strict confidentiality rules against any disclosure of information concerning EOI requests.

Although the ITC Act legally requires that Saint Lucia discloses details of the request to the holder of the information, the notice for information contains minimal details relating to the request. Saint Lucia also reminds holders of the information of their confidentiality obligations both in person on delivery of the notice to produce information and via regular EOI information sessions.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place
Phase 2 rating
Compliant

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)

401. 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 secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many jurisdictions.

402. 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. Where attorney-client privilege is more broadly defined it does not provide valid grounds on which to decline a request for exchange of information. 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, exchange of information resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule.

403. Each of Saint Lucia's TIEAs and its DTC with Switzerland contains a provision that the requested state is not obliged to provide certain information such as professional or trade secrets, or where the disclosure of the

information would be contrary to public policy. These provisions are in line with the international standard described in Article 7(2) of the OECD Model TIEA and Article 26(3)(c) of the OECD Model Tax Convention. Also, the OECD Model TIEA provides that the rights and safeguards of persons remain applicable “to the extent that they do not unduly prevent or delay effective exchange of information”, and Saint Lucia’s TIEAs generally follow this model although its agreements with Portugal and the USA do not expressly contain such a provision.

404. In the CARICOM tax treaty, the provision equivalent to Article 26(3)(c) of the OECD Model Tax Convention (Article 24(2)(c)) is cumulative, that the requested state is not obliged to supply information “which would disclose any trade, business, industrial, commercial or professional secret or trade process *the disclosure of which* would be contrary to public policy” (*emphasis added*). These grounds for declining to provide information are therefore even narrower than those contemplated under the international standard.

405. Pursuant to section 5(2) of the ITC Act, in processing an EOI request, the competent authority is not restricted by any arrangement or law relating to confidentiality except for those confidentiality provisions set out under its EOI agreements.

406. The scope of attorney-client privilege in Saint Lucia is found to be in line with the standard and no issues regarding attorney-client privilege have been encountered in practice. Further, officials from the office of the Attorney General have reported that claims of attorney-client privilege rarely arise in Saint Lucia and attorney-client privilege has never been claimed over any information requested by the Inland Revenue Department for international co-operation or domestic tax purposes.

407. 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 Saint Lucia’s exchange of information 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)

408. 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.

409. There are no specific legal or regulatory requirements in place which would prevent Saint Lucia responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request.

Response times in practice

410. During the three year period, Saint Lucia received four requests for information from two different jurisdictions. One of these requests was for IBC ownership information only and the other three of these requests were for IBC accounting and ownership information. Saint Lucia has not made any EOI requests as they have not needed to request taxpayer information for domestic purposes outside of their own jurisdiction.

411. Once an EOI request has been received in Saint Lucia, a letter of confirmation of receipt is prepared and dispatched to the competent authority of the requesting party within seven days of the official date of receipt, or as soon as possible thereafter. The Deputy Comptroller from the EOI Unit will then perform an initial analysis of the request including checking for validity (see also section C.5.2 *Organisational process and resources*). Over the review period, Saint Lucia has not had to revert back to the requesting jurisdiction for clarifications.

412. Timelines for the management of the EOI processes are set out in the EOI manual of the EOI Unit. Once a notice has been issued, the holder of the information is given 28 days within which to provide this information to the competent authority. In the case that the information is requested from a government agency, they are allocated a timeframe of 14 days in which to produce the information. There is the possibility of requesting an extension where the information is not easily accessible. To date, an extension of time has not been requested but in the event that it is requested Saint Lucia has

advised that the extension time given would be one to two weeks depending on the circumstances of the case. The internal EOI manual outlines a timeframe of 28 days for the competent authority to supply the information to the requesting jurisdiction and Saint Lucia has reported that, in practice, it endeavours to supply the information within this timeframe, although in some cases it may be quite a strict timeframe.

413. In cases where information cannot be provided within 90 days Saint Lucia keeps their EOI partners well informed of any potential delays in retrieving the requested information and it is the procedure that a status update is provided in these cases. From a total of four requests over the review period, where the information was able to be provided, Saint Lucia was in a position to provide a final response within 90 days in one case. In another case, Saint Lucia was able to provide some of the information requested within 180 days.

414. Over the three year review period, there were three occasions where Saint Lucia was not in a position to provide accounting information (see section A.1.2 *Accounting information*). There were also two cases where IBC ownership information was unable to be provided where the registered agent did not provide it (see section B.1 *Competent Authority's ability to obtain and provide information*). In these cases, the powers at the disposal of the competent authority over the review period were not sufficient to access this information. In all cases where information was unable to be provided, Saint Lucia reverted back to the requesting jurisdiction in a timely manner to inform them of the outcome of the request.

415. Input from Saint Lucia's exchange of information partners confirms that where information was provided, it was provided within 180 days.

Organisational process and resources (ToR C.5.2)

416. Saint Lucia's legal and regulatory framework relevant to exchange of information for tax purposes is presided over by the Minister of Finance or the Minister's authorised representative. In the case of Saint Lucia, this representative is the Comptroller of the Inland Revenue.

417. Previously, requests were handled within the Office of the Comptroller of the Inland Revenue Department but there were no formal procedures in place to process or monitor the requests. Further, records of all EOI requests received were not consistently maintained. However, in January 2013, a formal EOI Unit was put in place and the Office of the Comptroller within the Inland Revenue Department is now the body responsible for the day-to-day operations of the competent authority in relation to EOI matters. There is currently four full-time staff directly involved in the processing of EOI requests; the Comptroller, the deputy Comptroller, the assistant Audit Comptroller and

a senior Audit supervisor. The procedure for handling requests is set out in the internal EOI Manual. These procedures outline the steps to be followed in processing a request as well as the timelines to be adhered to and the templates to be used in the processing of EOI requests.

418. On receipt of an EOI request, it is reviewed by the Minister of Finance where it is then entered into internal mail as a sealed document and sent to the Office of the Comptroller. The Comptroller reviews the request and discusses the contents with the Deputy Comptroller and the assistant Audit Comptroller. The assistant Audit Comptroller reviews the request to ensure that it is in conformity with the terms of the EOI agreement. Once it is established that the request is valid, contact is made via email or phone to the requesting party to acknowledge receipt of the request, which usually occurs within 7 days of receipt of the request. A template receipt for acknowledgment of the receipt of the request is contained in Appendix 1 of the EOI Manual. Two hard files are then opened; a permanent file containing the original request which is maintained at the Office of the Comptroller and the other file which operates as a “working file” and will contain copies of the request, all correspondence in dealing with the request and copies of the information provided.

419. The EOI Unit then make an assessment as to how best to access the information. The first step is to look at their own taxpayer databases in order to ascertain what information may be available with the Inland Revenue Department. If the request is more complex and involves the intervention of the Audit section of the Inland Revenue Department in order to compile information from multiple sources, the working file is passed to the Assistant Audit Comptroller who co-ordinates gathering all of the information requested.

420. In the case of information being requested from third parties, a notice to produce the information is issued. A template notice is annexed to the EOI manual and is used in all cases.

421. To date, all notices to produce information have been delivered in person by either the Deputy Comptroller or the assistant Audit Comptroller who outlines the details of the request. During the time that the notice is with the third party, the assistant Audit Comptroller closely monitors the progress of the request to ensure that the timelines are being adhered to. Due to the low quantity of requests received, as yet Saint Lucia has not felt the need to diarise timelines. However, they have recently implemented a system to monitor the timelines for responses via outlook reminders and are also in the process of developing a soft copy master spreadsheet in order to record and oversee the time frame for all requests.

422. Information is delivered, usually in person or via registered mail to the offices of the competent authority. It is first reviewed by the Deputy Comptroller to ensure that the information received is what was requested. Once the information has been verified to be correct, a response is drafted, reviewed by the Comptroller, and then sent to the Minister of Finance who signs off on the information and then returns it to the Office of the Comptroller for the information to be forwarded to the EOI partner.

423. All information received must be held by the competent authority for a period of 20 days from the date of receipt (s9(a) ITC Act). In the case where the taxpayer or another party makes an objection to the Minister's transmitting such information, this period is extended (see also section B.2.1 *Rights and safeguards in practice*). Saint Lucian authorities have reported that to date there have been no objections to providing information to a requesting jurisdiction nor have there been any cases of the holding period's being extended.

424. After the 20 day holding period has elapsed, the Saint Lucian competent authority will send the original of the requested information along with the signed cover letter via courier to the EOI partner. It is practice in Saint Lucia to inform the requesting jurisdiction that the response has been dispatched. Copies of the information are placed in the working file, which are stored in locked cabinets within the office of the Comptroller.

425. Prior to the enactment of the ITC Act and the implementation of formal EOI processes (as documented in the EOI manual), it was the procedure of the EOI unit to issue a notice for information on the registered agent only, whether they were under a legal obligation to maintain this information or not (see also section B.1). In cases where the registered agent indicated that it did not have the information or that it did not agree to provide all of the information, the EOI Unit did not make use of its other powers, such as search and seizure, or to attempt to access this information from another party such as the entity itself. This issue was raised by two peers who indicated that they did not receive all of the information requested. However, the authorities from Saint Lucia have indicated that the enactment of the ITC Act and the new internal procedures they have put in place ensure that notices are being issued on the correct entity and all information is being provided. It is recommended that Saint Lucia continues to monitor the legal requirements of the ITC Act and the newly established internal procedures to ensure that requested information can be provided in all cases.

Resources

426. There are currently four full time staff members directly involved in the processing of EOI requests; the Comptroller of the Inland Revenue

Department, the Deputy Comptroller, the assistant audit Comptroller and a senior audit supervisor. The Deputy Comptroller is the person who oversees the running of the unit and in practice requests will be dealt with by either the Deputy Comptroller or the assistant audit Comptroller. Both the Comptroller and the Deputy Comptroller are chartered accountants with many years' experience working in the Inland Revenue Department. The senior audit supervisor formerly worked as a financial examiner for the ECCB and has also worked for the Inland Revenue Department for over five years.

427. Despite the low number of requests to date, EOI is a high priority within the Office of the Comptroller and there have been considerable efforts to implement formal procedures for addressing all aspects of the EOI process. Measures adopted over the course of the review period include the putting in place a formal EOI Unit, the adoption of an EOI Manual including formal templates and notices. Much training is currently undertaken on the job. Further, the Deputy Comptroller recently attended an EOI seminar in the Caribbean region. Saint Lucia has indicated that current staff levels are set at an appropriate level and should the number of requests increases, the staff levels are adequate to address an increase.

Conclusion

428. Previously, there was no formal EOI Unit or procedures in place in Saint Lucia. Although information was still provided, monitoring of the processing of requests and maintenance of comprehensive records was not undertaken on a consistent basis. In August 2012, Saint Lucia enacted the ITC Act in which has clarified their powers for accessing information for EOI purposes and set out the processes that need to be adhered to for the effective processing of EOI requests. Since January 2013, the processing of EOI requests within Saint Lucia is carried out by a well organised and adequately resourced EOI Unit who have implemented significant measures in order to formalise their EOI procedures by the establishment of a formal EOI Unit and the adoption of an EOI manual detailing the exact procedures to be carried out in the case of an EOI request. In order to ensure compliance with the legal obligations set out under the ITC Act, the EOI Unit has formalised all of their processes in an EOI manual. They have also developed templates specifically for the EOI process and these are regularly used.

429. Over the review period, the competent authority did not undertake all measures to compel the provision of IBC ownership and accounting information. Further, due to the delayed scheduling of all of its EOI agreements to the ITC Act, the competent authority continued to use its powers under the Income Tax Act to access information, which may have been limited by a domestic tax interest. As a result, not all the requested information was provided. Although peer input confirms that Saint Lucia has successfully used its access powers

under the ITC Act to gather information for a request received after the review period, for the purposes of the review, these powers are untested in practice.

430. Saint Lucia commenced exchanging information in 2010 and was initially quite unfamiliar with the means by which to access the requested information. However peer input has indicated and officials from Saint Lucia have confirmed that the EOI Unit is now much more familiar with exchanging information. Further, in order to streamline its internal processes, the EOI Unit has recently documented all EOI procedures in an EOI manual to ensure that Saint Lucia complies with their treaty obligations. Feedback from peers has recognised the improved efforts by Saint Lucia over the review period and has reported Saint Lucia to be a co-operative EOI partner who has made considerable progress in the processing of EOI requests. Nevertheless, Saint Lucia should continue to monitor the organisational processes of the EOI unit to ensure that they are effective for the exchange of information in all cases.

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

431. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. As noted in Part B of this Report, there are no aspects of Saint Lucia’s domestic laws that appear to impose additional restrictive conditions on exchange of information.

Determination and factors underlying recommendations

Phase 1 determination	
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.	
Phase 2 rating	
Largely Compliant	
Factors underlying recommendation	Recommendations
Saint Lucia has recently put in place a comprehensive organisational process, including a formal EOI Unit and EOI manual that appear to be adequate for dealing with incoming EOI requests. However, the new procedures of the EOI unit have not been sufficiently tested in practice.	Saint Lucia should continue to monitor the practical implementation of the organisational processes of the EOI unit to ensure that they are sufficient for effective and timely EOI in practice.

Summary of Determinations and Factors Underlying Recommendations

Overall Rating
PARTIALLY 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 (<i>ToR A.1</i>)		
Phase 1 determination: The element is in place.	The obligation for a company formed under the laws of another CARICOM or OECS member state, but carrying on business in Saint Lucia, to ensure the availability of ownership information is not clear.	Saint Lucia should ensure that for companies formed under the laws of a CARICOM or OECS member state and carrying on business in Saint Lucia, there are clear obligations for ownership information to be maintained.
Phase 2 rating: Largely compliant	The Registrars or the regulator in Saint Lucia did not have a regular system of oversight of compliance of entities' ownership and identity information keeping requirements during the review period.	Saint Lucia should ensure that there is a regular system of oversight of the legal obligations put in place and that its enforcement powers are sufficiently exercised in practice to ensure the availability of ownership and identity information in all cases.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
<p>Phase 1 determination: The element is not in place.</p>	<p>International Business Companies are exempt from the record-keeping obligations of the Income Tax Act, and otherwise are only required to keep such accounting records as their directors think fit. Pursuant to the AML regime, some relevant accounting records for transactions conducted by the IBC through their registered agent or other AML Service Provider will be required to be kept. However this will not ensure all relevant accounting records are maintained.</p>	<p>Saint Lucia should introduce requirements to ensure that IBCs are in all instances subject to requirements to keep relevant accounting records, including underlying documentation, for a minimum five year period.</p>
	<p>International Partnerships are exempt from the record keeping requirements of the Income Tax Act. They will only be subject to the accounting record obligations established by the Commercial Code which requires partners to render “true accounts and full information” of all things affecting the partnership. There is no express requirement to keep such records for any minimum period of time. Pursuant to the AML regime, some relevant accounting records will be required to be kept in respect of the transactions conducted by the International Partnership through its registered agent or other AML Service Provider. However this will not ensure all relevant accounting records are maintained.</p>	<p>Saint Lucia should ensure that International Partnerships are subject to a requirement to keep reliable accounting information, including underlying documentation for a minimum period of five years.</p>

Determination	Factors underlying recommendations	Recommendations
	Trusts will be subject to the common law obligations to keep records relating to the trust, although the scope of those accounting record obligations were not ascertainable. Further, certain ordinary trusts will also be subject to the Income Tax record-keeping obligations. Trusts which engage an AML Service Provider will be required to keep some relevant accounting records, however these obligations will not ensure that all relevant accounting information is kept in respect of trusts created under the laws of Saint Lucia, or which are administered from or have a trustee resident in Saint Lucia.	Saint Lucia should ensure that trusts which are established under its laws, administered from, or with a trustee resident in Saint Lucia, are subject to requirements in all instances to keep reliable accounting information, including underlying documentation for a minimum period of 5 years.
Phase 2 rating: Non-Compliant	In cases where accounting records are required to be maintained such as for the purposes of the Income Tax Act, Saint Lucia has no system of oversight of compliance with the accounting record requirements or enforcement experience to ensure the availability of accounting information.	Saint Lucia should ensure that there is a regular system of oversight put in place and enforcement powers are sufficiently exercised in practice to ensure the availability of accounting information in the case of all entities.
Banking information should be available for all account-holders (<i>ToR A.3</i>)		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
<p>Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1</i>)</p>		
<p>Phase 1 determination: The element is in place.</p>	<p>Although there are clear penalties in place for failure to provide information requested under the Income Tax Act, there is no penalty in place under the International Tax Cooperation Act for failure to provide information requested in a notice pursuant to an EOI request.</p>	<p>Saint Lucia should amend the provisions of the International Tax Cooperation Act to ensure that there are effective penalties in place for failure to supply the information requested in a notice issued under the International Tax Cooperation Act pursuant to an EOI request.</p>
<p>Phase 2 rating: Partially-compliant</p>	<p>The access powers granted to the competent authority under the ITC Act have not been tested in practice over the review period.</p>	<p>It is recommended that Saint Lucia monitors its access powers to information for EOI purposes to make sure that they are effective in all cases.</p>
	<p>Over the three-year review period, it was the practice of Saint Lucia's competent authority to serve a notice to produce on the registered agent only. In cases where the registered agent refused to produce information, the access powers at the disposal of Saint Lucia were insufficient to compel the production of this information. This resulted in Saint Lucia not obtaining all of the information requested in a number of cases.</p>	<p>Saint Lucia should ensure that the access powers of its competent authority are used effectively to obtain all information included in an EOI request.</p>

Determination	Factors underlying recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>)		
Phase 1 determination: The element is in place.	In the case of information exchange, under the International Tax Cooperation Act, the competent authority is required to extend the 20 day holding period where a taxpayer or interested person has sought judicial review or other legal recourse.	Saint Lucia should ensure that its domestic law provisions are compatible with the timely access and exchange of information.
Phase 2 rating: Compliant		
Exchange of information mechanisms should allow for effective exchange of information (<i>ToR C.1</i>)		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
Phase 1 determination: The element is in place.		Saint Lucia should continue to develop its exchange of information network with all relevant partners.
Phase 2 rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
The jurisdiction should provide information under its network of agreements in a timely manner (<i>ToR C.5</i>)		
<p>Phase 1 determination: The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</p>		
<p>Phase 2 rating: Largely compliant</p>	<p>Saint Lucia has recently put in place a comprehensive organisational process, including a formal EOI Unit and EOI manual that appear to be adequate for dealing with incoming EOI requests. However, the new procedures of the EOI unit have not been sufficiently tested in practice.</p>	<p>Saint Lucia should continue to monitor the practical implementation of the organisational processes of the EOI unit to ensure that they are sufficient for effective and timely EOI in practice.</p>

Annex 1: Jurisdiction’s response to the review report¹¹

Saint Lucia acknowledges the significant effort and cooperation of the assessment team and Peer Review Group members in the conduct of this assessment. Saint Lucia has made significant progress in refining and updating its legislative framework and importantly, has in place a network of information exchange agreements which conform with the commitments to partners. Furthermore, we have established an EOI Unit and formalized our EOI procedures by developing a comprehensive EOI procedure manual and model templates for the efficient and timely exchange of information.

The report confirms our continuing commitment to the principles of transparency and exchange of information for tax purposes, and the effective implementation of the standards in practice. Saint Lucia concurs with this assessment presented in the report and takes note of the recommendations.

We recognize there continues to exist a few deficiencies and will make every effort to conform to the international standards espoused by the Global Forum. Saint Lucia remains committed to this challenge and looks forward to working with you. In that regard we will explore the possibility / feasibility of a supplementary report in keeping with already established mechanisms.

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

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

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
1	Antigua and Barbuda	CARICOM tax treaty	July 1994*	Nov 1994
2	Aruba	TIEA	May 2010	Oct 2011
3	Australia	TIEA	March 2010	Feb 2011
4	Barbados	CARICOM tax treaty	July 1995*	Nov 1994
5	Belgium	TIEA	Dec 2009	Nov 2011
6	Belize	CARICOM tax treaty	July 1994*	Nov 1994
7	Canada	TIEA	June 2010	May 2011
8	Curaçao	TIEA	Oct 2009	Oct 2011
9	Denmark	TIEA	Dec 2010	Oct 2011
10	Dominica	CARICOM tax treaty	July 1994*	Nov 1994
11	Faroe Islands	TIEA	May 2010	Oct 2011
12	Finland	TIEA	May 2010	Oct 2011
13	France	TIEA	April 2010	Jan 2011
14	Germany	TIEA	June 2010	Feb 2013
15	Greenland	TIEA	May 2010	Oct 2011
16	Grenada	CARICOM tax treaty	July 1994*	Nov 1994
17	Guyana	CARICOM tax treaty	July 1994*	Nov 1994
18	Iceland	TIEA	May 2010	Oct 2011
19	Ireland	TIEA	Dec 2009	Jan 2011
20	Jamaica	CARICOM tax treaty	Dec 2009	Jan 2011
21	Mexico	TIEA	July 2013	Feb 2014
22	Netherlands	TIEA	Dec 2009	Jan 2011
23	Norway	TIEA	May 2010	Oct 2011
24	Portugal	TIEA	July 2010	Oct 2011

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
25	Saint Kitts and Nevis	CARICOM tax treaty	July 1994*	Nov 1994
26	Saint Vincent and the Grenadines	CARICOM tax treaty	July 1994*	Nov 1994
27	Sint Maarten	TIEA	Oct 2009	Oct 2011
28	Sweden	TIEA	May 2010	Oct 2011
29	Switzerland	DTC	Aug 1963	Jan 1961
30	Trinidad and Tobago	CARICOM tax treaty	July 1995*	Nov 1994
31	UK	TIEA	Jan 2010	Jan 2011
32	USA	TIEA	Jan 1987	May 2014

* The later of the dates the CARICOM tax treaty was signed by Saint Lucia or the partner jurisdiction.

** Date of exchange of notes, extending DTC signed in 1954 between UK and Switzerland, to Saint Lucia.

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

Commercial Laws

Commercial Code
Companies Act
Companies (Amendment) Act 2008
International Business Companies Act (IBC Act).
International Partnerships Act
International Trusts Act 2006 (Trust Act)
Trust Corporation (Probate and Administration) Act (TCPAA)
Registered Agents and Trustee Licensing Act (RATLA)
Cooperative Societies Act
Registered Agent and Trustee Licensing Act

Taxation Laws

Income Tax Act
International Tax Cooperation Act (ITC Act)
Income Tax (Amendment) Act 2013

Banking Laws

Banking Act 2006
International Banks Act

Anti-Money Laundering Laws

Money Laundering (Prevention) Act (MLPA)

Money Laundering (Prevention) (Guidance Notes)

Guidelines in the Schedule to the Money Laundering (Prevention)
(Guidance Notes) Regulations (MLPGNR)

Other Laws

Constitution of Saint Lucia

Civil Code

International Insurance Act

International Mutual Funds Act

Annex 4: Persons interviewed during the onsite visit

Officials from the Saint Lucia Inland Revenue Department

Officials from the Financial Services Regulatory Authority

Officials from the Saint Lucia Ministry of Finance

Representative from the office of the Attorney General of Saint Lucia

Officials from the Saint Lucia Financial Intelligence Authority

Officials from the Saint Lucia Companies and IBC Registrars

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: SAINT LUCIA

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 120 jurisdictions which participate in the work of the Global Forum on an equal footing.

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

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

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

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