

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

# Peer Review Report Phase 1 Legal and Regulatory Framework

**GHANA**





# **Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Ghana 2011**

PHASE 1

April 2011  
(reflecting the legal and regulatory framework  
as at October 2010)



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**Please cite this publication as:**

OECD (2011), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Ghana 2011: Phase 1*, OECD Publishing.  
<http://dx.doi.org/10.1787/9789264108868-en>

ISBN 978-92-64-10876-9 (print)

ISBN 978-92-64-10886-8 (PDF)

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

ISSN 2219-4681 (print)

ISSN 2219-469X (online)

Corrigenda to OECD publications may be found on line at: [www.oecd.org/publishing/corrigenda](http://www.oecd.org/publishing/corrigenda).

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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 90 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, 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.

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

All review reports are published once 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](http://www.oecd.org/tax/transparency).



## Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Ghana.
2. Ghana is not a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes, but was identified in 2008 as a jurisdiction that is relevant to the Global Forum's work as a result of the establishment of the Ghana International Financial Services Centre (the Ghana IFSC).
3. As a non-member of the Global Forum, Ghana was given the same opportunity to participate in its review as Global Forum members. Ghana participated co-operatively, but late in the review process. As a result, the review was delayed by four months and this assessment is primarily based on publicly available laws, regulations, and exchange of information mechanisms in force or effect as at October 2010.
4. Since 2007, the Ghana IFSC has permitted offshore banks to operate in Ghana. It is therefore possible for non-resident individuals and foreign companies to open offshore bank accounts in Ghana. As at October 2010, only one offshore bank had been issued a license to operate in Ghana and at that time Ghana planned to have a full range of non-bank financial services as part of a comprehensive financial sector development programme. The Global Forum is monitoring this development as a factor of Ghana's compliance with regard to the standards of transparency and exchange of information.
5. Generally, Ghana has an adequate legal and regulatory framework for transparency and exchange of information for tax purposes. In most cases, Ghana's legal and regulatory framework ensures that accurate, adequate and reasonably current information concerning legal ownership and control of legal entities is maintained in Ghana. Bank information and accounting records are also required to be maintained. Ghana's tax authorities have powers to obtain bank, ownership, identity and accounting records and have measures to compel the production of such information. As regards Ghana's IFSC, offshore banks are also obliged to maintain accounting records for

all account holders and this information is accessible to Ghana’s competent authority.

6. Some portion of Ghana’s framework for transparency and exchange of information is relatively new, in particular as regards the competent authority’s ability to access bank information. Thus, a Phase 2 assessment is particularly necessary in the case of Ghana.

7. Some improvements are needed to Ghana’s legal and regulatory framework to ensure effective exchange of information, notably with respect to:

- availability of ownership and identity information of external companies doing business in Ghana and of owners of companies where shares are held by nominees;
- maintenance of identity information concerning trusts;
- maintenance of underlying documentation as part of the obligation to maintain accounting records; and
- lack of exchange of information agreements with relevant partners.

8. Ghana has signed nine Double Taxation Conventions which provide for exchange of information, eight of which are in force. Five of Ghana’s agreements which are in force provide for effective exchange of information in tax matters (France, Germany, Italy, South Africa, and United Kingdom). Ghana’s tax treaty network, however, does not cover all of the significant economies with which Ghana has sizeable business. Given Ghana’s aim of further establishing the Ghana IFSC, effective exchange of information should be available for all jurisdictions from which investment flows originate and to which capital is destined to be invested. The report recommends that Ghana enter into additional agreements with all relevant partners.

9. Ghana’s response to the determinations, factors and recommendations in this report, as well as the application of the legal framework to the practices of its competent authority, will be considered in detail in the Phase 2 Review, which is scheduled for the second half of 2013.

## Introduction

### Information and methodology used for the peer review of Ghana

10. The assessment of the legal and regulatory framework of Ghana was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference*, and was prepared using the Global Forum's *Methodology for Peer reviews and Non-Member Reviews*.

11. Ghana's review began on 6 April 2010 by the sending of a questionnaire on Ghana's legal regulatory framework. Ghana did not respond to the questionnaire. Ghana did, however, participate co-operatively, but late in the review process. As a result, the review was delayed by four months and the assessment was primarily based on publicly available laws, regulations, and exchange of information mechanisms in force or effect as at October 2010.

12. The *Terms of Reference* breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses Ghana's legal and regulatory framework against these elements and each of the enumerated aspects. 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.

13. The assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Mr. Oscar Echenique of the México Tax Administration Service; Mr. Duncan Nicol of the Cayman Islands Tax Information Authority and Competent Authority; and Mr. Stewart Brant from the Global Forum Secretariat.

## Overview

14. Ghana is located on Africa's West coast on the Gulf of Guinea. Ghana has an area of approximately 238 thousand square kilometres and an estimated population of 23.8 million. Accra is the capital and largest city of Ghana. While the country's official language is English, Ghana is home to over 100 different ethnic groups and 47 principle ethnic languages. The majority of Ghanaians claim fluency in both English and at least one other language. Ghana shares borders with Côte D'Ivoire to the West, Burkina Faso to the North, and Togo to the East. The Ghanaian cedi (GHS) is the national currency of Ghana. As at 15 November 2010, GHS 1 = EUR 0.51.<sup>1</sup>

15. Ghana's 2009 Gross Domestic Product (GDP) was GHS 22 billion (EUR 11 billion) with a GDP Per Capita of GHS 952 (EUR 476), which is one of the highest in Africa<sup>2</sup>. Ghana remains somewhat dependent on international financial and technical assistance as well as the activities of a considerable number of Ghanaians in the diaspora. Under British colonial rule, Ghana was officially named the Gold Coast for its large quantity of gold resources and Ghana remains one of the world's top gold exporters. Other large industrial sectors include cocoa and timber production, mining, and electricity production. The agricultural sector accounts for 37% of GDP which employs 56% of the workforce in Ghana. Ghana's major trading partners include Brazil, China, France, Germany, Italy, Netherlands, Nigeria, South Africa, Switzerland, the United Kingdom, and the United States. In 2007, offshore oil reserves were discovered in Ghanaian water's and are estimated to contain 3 billion barrels of light oil. The discovery prompted commercial interest and a large influx of foreign capital is expected during the fourth quarter of 2010 when oil production is at commercial quantities.<sup>3</sup>

16. As codified in the *1998 Trade Act*, Ghana operates in a free market economy. Since 1983, Ghana has pursued an economic agenda which pushes privatisation and reduces government involvement in its economy. Ghana has progressively reduced import quotas and tariffs as part of structural adjustment programs attached to International Monetary Fund (IMF) and World Bank loans. Ghana is an active participant in the World Trade Organization (WTO).

1. [www.xe.com/](http://www.xe.com/).
2. IFS – International Financial Statistics, International Monetary Fund, accessed 13 October 2010: [www.imf.org/external/pubs/ft/weo/2010/01/weodata/weorept.aspx?sy=2009&ey=2010&scsm=1&ssd=1&sort=country&ds=.&br=1&c=652&s=NGD%2CNGDPPC&grp=0&a=&pr1.x=56&pr1.y=14](http://www.imf.org/external/pubs/ft/weo/2010/01/weodata/weorept.aspx?sy=2009&ey=2010&scsm=1&ssd=1&sort=country&ds=.&br=1&c=652&s=NGD%2CNGDPPC&grp=0&a=&pr1.x=56&pr1.y=14).
3. Ghana Leader: Oil reserves at 3B barrels, 22 December 2007, Associated Press, Accessed 18 June 2010: [http://web.archive.org/web/20071226200944/http://news.yahoo.com/s/ap/20071222/ap\\_on\\_re\\_af/ghana\\_oil\\_discovery\\_3](http://web.archive.org/web/20071226200944/http://news.yahoo.com/s/ap/20071222/ap_on_re_af/ghana_oil_discovery_3).

17. The financial system of Ghana has been profoundly transformed since the joint IMF-World Bank Financial Sector Assessment Program (FSAP) in 2000. Notably, the banking system has grown rapidly, fuelled by fast credit expansion. Banks now account for about 70% of the financial sector. That said, in 2009 it was estimated that Ghana’s banking system served only about 10% of the population.<sup>4</sup>

#### Financial institutions, 2009

	Total
Commercial Banks	25
Non-Bank Financial Institutions	45
Bureau de Change	276

#### Other financial sector institutions and businesses, 2009

	Total
Insurance	
Non-Life Insurance Companies	21
Insurance Brokers	37
The Security and Capital Market	
Investment Advisors	38
Broker Dealers	21
Mutual Funds	9
Unit Trusts	6
Custodians	4
Trustees	2
Security Depositors – Operated by BOG	2
Listed Companies on the Ghana Stock Exchange	35

18. Ghana also has a range of formal, semi-formal and informal institutions providing microfinance services to the urban and rural poor and under-served sectors of the economy.

4. The Implementation of the Growth and Poverty Reduction Strategy 2006-2009 (2008 Annual Progress Report), accessible at: <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan039854.pdf>.

19. The following designated non-financial businesses and professions have the same obligations under the *Anti-Money Laundering Act* as apply to financial institutions; casinos, auctioneers, notaries, lawyers, non-governmental organisations, accountants, religious bodies, real estate developers, operators of games of chance, trust and company service providers, dealers in motor vehicles, and dealers in precious minerals and stones.

### ***General information on legal system and the taxation system***

20. Ghana declared independence from the United Kingdom on 6 March 1957, establishing its government under a parliamentary democracy. Following independence, Ghana alternated between military and civilian governments until the 1992 parliamentary and presidential elections replaced the military government with the Fourth Republic. The current *1992 Constitution* divides power between the President, Parliament, Cabinet, Council of State, and an independent judiciary. Ghana has a two-party system with Presidential and Parliamentary elections held alongside one another every four years. Ghana is divided into 10 administrative regions which are further divided into 138 districts. Each district has its own District Assembly. District Assemblies collect their own revenues in the form of property taxes, user fees, licenses and permits. They have legislative power, though not with respect to taxation, financial sector or corporate matters.

21. The central Parliament is a unicameral body composed of democratically elected members plus a speaker. Parliament's power is limited by Article 108 of the *Constitution*, which prohibits the central Parliament from passing laws with any financial implications. Article 108 states that the central Parliament may not produce a bill concerning taxation, the use or allocation of public funds, or the composition or remission of any debt due to the Government of Ghana unless the motion or the bill itself is produced by or on behalf of the President. Almost all legislation requires the assent of the President in order to become law, granting the executive veto power on all laws except those passed with a vote of urgency.

22. Ghana has a traditional common law legal system based on English common law, customary (traditional) law, and the *1992 Constitution*. The highest court is the Supreme Court of Ghana, followed by the Court of Appeals and High Courts of Justice. Beneath these courts are circuit, magisterial, and traditional courts. The Constitution defines the laws of Ghana as comprising the Constitution; enactments made by Parliament (statutory law); orders, rules and regulations made by authorities under powers conferred by the Constitution and customary law. While the Constitution, acts and some regulations hold the status of law or regulation, the orders and rules issued by authorities, though often binding on the entities they relate to, do not.

### *Tax system*

23. Ghana taxes its residents (companies and individuals) on their worldwide income; however, income sourced outside Ghana is taxed in Ghana only if it is brought into or received in Ghana. Non-resident companies are taxed only on Ghana-source income. A company is resident in Ghana if it is incorporated under the laws of Ghana or its management and control are exercised in Ghana at any time during the year of assessment.

24. Ghana has moderate taxes which are collected on a federal level. The top income tax rate and the standard corporate tax rate are 25%. Other taxes include a value-added tax (VAT) and a property tax.

25. Ghana offers various tax incentives under the *Internal Revenue Act*, *Investment Promotion Centre Act*, and the *Free Zones Act*. Most incentives relate to specific areas, including agriculture and agribusiness, tourism, infrastructure and industry, financial services and oil and petroleum services.

26. Ghana's free zone regime was created by the *Free Zone Act* (1995). Under that act, the imports of a free zone company are exempt from all indirect taxes and duties. In addition, free zone companies enjoy a tax holiday of ten years from the payment of income tax on profits. Thereafter, a free zone company pays corporate tax on profits at a reduced rate of 8%, while shareholders are exempted from the payment of withholding taxes on dividends arising out of free zone investments. Eligibility for free zone status is a function of the ability of a company to prove that it will export a minimum of 70% of its production, and that it will not violate any other provisions of the *Free Zones Act*. The Ghana Free Zones Board is responsible for monitoring free zone companies and preventing abuse. Companies operating in Ghana's free zones are required to register with Ghana's Registrar General and submit tax returns and audited financial statements on a yearly basis.

27. Ghana's tax administration is divided among three primary agencies: the Internal Revenue Service (IRS), the Value-Added Tax Service (VATS) and the Customs, Excise and Preventive Service (CEPS). Since 1998, the Revenue Agencies Governing Board has overseen the operations of the different tax agencies and co-ordinates information sharing and analysis among them. The IRS is responsible for the administration and enforcement of Ghana's *Internal Revenue Act*.

### *Exchange of information for tax purposes*

28. Ghana is not a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

29. Ghana's legal and regulatory framework relevant to exchange of information for tax purposes is presided over by Ghana's Ministry of Finance.

The Commissioner of the IRS, or his authorised representative, acts as competent authority under Ghana's Double Taxation Conventions (DTCs).

30. Ghana signed its first DTC providing for exchange of information in tax matters in 1993 with the United Kingdom, which replaced the 1947 DTC between the United Kingdom and the then Gold Coast. At present, Ghana has bilateral tax treaties with nine jurisdictions, eight of which are in force.

## **Recent developments**

31. The *Banking (Amendment) Act* was passed on 18 June 2007, and establishes the basis for an International Financial Services Centre (IFSC) in Ghana. The Act provides for the licensing of offshore banks in Ghana. It has therefore become possible for non-resident individuals and foreign companies to open offshore bank accounts in Ghana. Barclays Bank (Ghana) Limited is the first, and presently only, bank to be given a General Banking Licence in Ghana. The Ghana IFSC is planned to have a full range of non-bank financial services. The Global Forum is monitoring this development as a factor of Ghana's compliance with regard to the standards of transparency and exchange of information.

## Compliance with the Standards

### A. Availability of Information

#### Overview

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

33. In most cases, ownership and identity information is available for relevant entities and arrangements. All companies formed under Ghana law are obliged to maintain a register of shareholders that identifies the legal owners of the company. Any transfers in ownership must be recorded in the register. All companies doing business in Ghana must also register with the Registrar. Bearer shares are prohibited under Ghana law.

34. External companies (companies incorporated outside of Ghana) that are operating in Ghana are required to register with the Registrar. They are not, however, obliged to provide information identifying their owners as a part of registration requirements. External companies are also not required to compulsorily keep a share register in Ghana. Therefore, the information that identifies the owners of external companies is not available.

35. Information is not required to be maintained by companies that identify the persons in an ownership chain where a legal owner of a company acts on behalf of another person as a nominee or under similar arrangement.

36. Partnerships conducting business in Ghana are obliged to register with the Registrar and to maintain an up-to-date register identifying all partners in the partnership. Partnership's are also obliged to file yearly tax returns with Ghana's Internal Revenue Service which contains the names and addresses of the partners in the partnership.

37. Trusts are considered separate taxable entities in Ghana. While trusts with chargeable income in Ghana are required to file returns for tax purposes, there is no specific requirement that information concerning the settlor, trustees and beneficiaries of trusts be maintained.

38. The obligations imposed in respect of accounting records are generally satisfactory, with sufficient specificity in respect of the precise information to be maintained. However, requirements for underlying documents and records that reflect the details required by A.2.2 of the *Terms of Reference* are uncertain. For those accounting records which are required to be kept, the obligation exists to retain them for at least five years.

39. Banks and other financial institutions in Ghana are obliged to maintain information for all account holders.

40. Overall, many of the elements are in place to ensure the availability of ownership, identity, accounting and bank information. However, some improvements are needed to ensure effective exchange of information, notably with respect to the availability of ownership and identity information of external companies doing business in Ghana and of owners of companies where shares are held by nominees, the maintenance of identity information concerning trusts, and the maintenance of underlying documentation as part of the obligation to maintain accounting records.

## A.1. Ownership and identity information

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

### *Companies (ToR<sup>5</sup> A.1.1)*

41. The *Companies Act* (1963) first schedule defines “company” as a body formed and registered under the *Companies Act*. The *Companies Act* s.8 provides that one or more persons may form an incorporated company by complying with the *Companies Act* in respect of registration. The Registrar General (Registrar) is responsible for the administration of the *Companies Act* (s.328).

### *Types of companies*

42. The *Companies Act* s.9 provides for the incorporation of the following types of companies:

- company limited by shares – a company having the liability of its members limited to the amount unpaid on the shares respectively held by them;
- company limited by guarantee – a company having the liability of its members limited to the amount that the members may respectively undertake to contribute to the assets of the company in the event of its being wound up; and
- unlimited company – a company not having a limit on the liability of its members.

43. A company may also be classified as a private company or a public company. A private company is a company which by its regulations: restricts the right to transfer its shares; limits the total number of its members and debenture holders to 50; prohibits the company from making an invitation to the public to acquire shares or debentures of the company; and prohibits the company from making an invitation to the public to deposit money for fixed period or payable at call (*Companies Act* s.9(3)). Any other company is a public company (s.9(5)).

44. Companies limited by guarantee cannot create or have shares and cannot be incorporated with the object of carrying on a business for the purpose of making profits (ss.9; 10). Non-profit organisations are registered under the *Companies Act* as companies limited by guarantee. Companies

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

limited by guarantee include associations, religious organisations, private organisations, social clubs, foundations and trading organisations.

### *Ownership information on domestic companies*

#### Registration of companies

45. All companies conducting business in Ghana are obliged to register with the Registrar (*Companies Act* s.8). The *Companies Act* s.14 obliges all companies to register a copy of their proposed regulations with the Registrar. The regulations of the company must include: the company's name, the nature of the business or business which the company is authorised to carry on; and the names of the first directors of the company (s.16). Upon receipt of a company's regulations, the Registrar issues a certificate of incorporation to the company (s.14(4)).

46. The *Companies Act* s.27 obliges all incorporated companies in Ghana to further register particulars with the Registrar prior to commencing business in Ghana. The particulars of a company include: the names and the former names, addresses and business occupations of its directors and secretary; the name and address of its auditor; the addresses of its registered office and principal place of business in Ghana; if its register of members is kept and maintained elsewhere than at the registered office of the company, the address at which it is kept; if the company has shares; the amount of its stated capital; and the number of its authorised shares (s.27). Upon receipt of this information, the Registrar publishes a copy of the particulars in the Gazette (s.27(4)). All companies are obliged to notify the Registrar of any changes to information registered with the Registrar (ss.27, 32, 119).

47. All companies are obliged, as from the date when they commence to carry on business or as from the 28th day after the date of incorporation, whichever is the earlier, to have a registered office in Ghana to which all communications and notices to the company may be addressed (s.119).

48. In the event of default in complying with company registration requirements, the company and every officer of the company who is in default is liable to a fine (not exceeding 25 penalty units<sup>6</sup>) for each day during which the default continues (*Companies Act* s. 29(1)). Where there is an error or omission in a return delivered to the Registrar under the *Companies Act* s.27, the company and every signatory of the return or declaration is liable to a fine (not exceeding 150 penalty units) (s.29(4)).

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6. One penalty unit is equal to GHS 12 (EUR 6). See section A.1.6 for further analysis of the available penalties.

49. The *Companies Act* s.122 obliges all domestic companies to register with the Registrar an annual return containing particulars of every member of the company. The annual return must set forth, *inter alia*:

- the name of every member of the company, the nationality, addresses and the business occupation of that member of the company, the number of shares held by that member at the date of the return, particulars of shares transferred since the last return by persons who are still members of the company, particulars of shares transferred since the last return by persons who have ceased to be members of the company; and
- the names, countries of incorporation, and nature of the businesses of the subsidiaries of the company and of the bodies corporate in which the company is beneficially entitled to equity shares conferring the right to exercise more than 25% of the votes exercisable at a general meeting of the body corporate.

50. In the case of a private company, the annual return must be accompanied by documents specified in the *Companies Act* s.269, which include: a certificate that the number of members and debenture holders of the company does not exceed fifty; and except in the case of a company limited by guarantee, a certificate that, to the best of the knowledge and belief of the persons signing the certificate, a body corporate is not or has not been at any time beneficially interested, otherwise than by way of security, in the issued shares of the company, or that if a body corporate is or has been so interested, it is an exempted body corporate (*i.e.* it is not a public company) (ss.122, 269).

51. In the case of a public company, the annual return must be accompanied by documents specified in the *Companies Act* s. 295, which include: a copy, certified by a director and the secretary of the company to be a true copy, of every balance sheet, profit and loss account, group accounts, directors' report and auditors' report sent to members and debenture holders of the company during the period to which the return relates (ss.122, 295).

52. Failure to file an annual return subjects the company and every officer of the company who is in default to a fine (not exceeding 25 penalty units) for every day during which the default continues.

53. The *Companies Act* s.331(3) provides the Registrar the authority to verify the contents of all registered information. If the Registrar is of the opinion that any documents or particulars delivered to the Registrar for registration contain information contrary to law, or by reason of error or omission have not been duly completed, or otherwise do not comply with the provision of the *Companies Act*, or contain an error, the Registrar may request that the document or particulars be amended or completed and re-submitted. The

Registrar may refuse to register documents and particulars until they have been appropriately amended or completed. (s.331(3)).

54. All information in the Registrar is available to the general public for inspection, on payment of a fee (s.333).

### Company's register of members

55. The *Companies Act* s.32 obliges all domestic companies to prepare and keep in Ghana a register of its members reflecting:

- the names and addresses of the members and, in the case of a company having shares a statement of the shares held by each member distinguishing each share by a number so long as the share has a number, and the amount paid or agreed to be considered as paid on the shares of each member and the amount remaining payable on the shares;
- the date at which the person was entered in the register as a member; and
- the date at which the person ceased to be a member.

56. Companies are obliged to maintain information on persons that cease to become members for six years from the date the person ceased to be a member (s.32(3)). Each company is obliged to inform the Registrar of the place their registers of members are kept and is also obliged to notify the Registrar of any change in the place at which it is kept (s.32(5)).

57. The register of members is available to members as well as the public for inspection and copying, on payment of a fee (free to members) (s.33). If an inspection is refused, or if a copy of the register of members is not sent, the company and every officer of the company which is in default is liable in respect of each offence to a fine (not exceeding 25 penalty units) for every day during which the default continues (s.33(4)). Further, the Court may by order compel an immediate production of the register for inspection or direct that the copies be sent to the person requiring them (s.33(5)).

58. Where a company defaults in complying with the requirements to maintain a register of members, the company and every officer of the company which is in default is liable to a fine (not exceeding 25 penalty units) for every day during which the default continues (*Companies Act* s.32(7)).

### Tax filing

59. Subsequent to registering with the Registrar pursuant to the *Companies Act*, all companies are obliged to register with Ghana's Internal Revenue Service (IRS) for a Tax Identification Number (TIN) to be used in filing tax

returns. The TIN must be quoted on all correspondence to the IRS (*Internal Revenue Act* s.119). To obtain a TIN, companies are obliged to go to a local IRS tax office and provide the IRS with certified true copies of its certificate of incorporation, certificate to commence business, company's regulations, manufacturing certificate (for manufacturing concerns), and vending agreement (if company was purchased). No information about a company's owners is required to be registered to obtain a TIN.

60. The TIN is a unique number given to all taxpayers in Ghana and necessary to: clear any goods in commercial quantities from any port or factory; register any title to land, interest in land or document affecting land; obtain a Tax Clearance Certificate from the Internal Revenue, Customs, Excise, and Preventative Service or the Value Added Tax Service; and to receive payment from the Controller and Accountant general or a District Assembly in respect of a contract for the supply of goods or provision of any service. After registering with the IRS, the IRS issues a Certificate of Registration which is required to be displayed conspicuously on the company's business premise.

61. Ghanaian resident companies are taxable on their world-wide income, separately from their shareholders (*Internal Revenue Act* ss.6, 44). Foreign business income and foreign investment income of a resident company, however, is only taxable in Ghana if it is brought into or received in Ghana during the year of assessment (s.6(1)(i)). All companies liable to pay tax are obliged to file annual tax returns (s.72). Company income tax returns include information on the: name and address of the company; total number of shareholders; total number of shareholders resident in Ghana; nature of the trade or business; name and address of the company's accountant/auditor; and name and salary of the company's directors (Company Income Tax Return). Company income tax returns do not contain information on the company's members or shareholders.

62. Failure to furnish a return to the IRS within the time required under the *Internal Revenue Act* is an offence and subject to a penalty (1 penalty unit in the case of a company and 1/2 penalty unit in the case of a self employed person) in respect of each day during which the default continues (s.142).

### *Ownership information on foreign companies*

#### Registration of external companies

63. The *Companies Act* s.302 defines "external company" as a body corporate formed outside of Ghana which has an established place of business in Ghana. The expression "established place of business" means a branch, management, share, transfer or registration office, factory, mine, or any other fixed place of business, but generally does not include an agency (s.302(3)).

The *Companies Act* ss.303-317 provides special rules for external companies. External companies are obliged to register with the Registrar within one month of the establishment of the place of business (s.303). Information required to be registered includes, *inter alia* (s.303(1)):

- a certified copy of the charter, statutes, regulations, memorandum and articles, or any other instrument constituting or defining the constitution of the company, in a language acceptable to the Registrar;
- the name of the company and the nature of its business or businesses or other main objects;
- the present and former name and the address and business occupation of one person or more persons authorised to manage the business of the company in Ghana (local manager);
- if the company has shares, the number and nominal value of its authorised and issued shares, the amount paid up on the shares and the amount remaining payable on the shares;
- the address of its registered or principal office in the country of its incorporation;
- the address of its principal place of business in Ghana; and
- the name and address in Ghana of a person authorised by the company to accept service of process and other documents on its behalf (process agent).

64. The Registrar registers documents received from external companies in the register of external companies and publishes the particulars contained in the registration in the Gazette (s.303(3)). External companies are obliged to notify the Registrar of any changes to information registered with the Registrar (s.304). The Registrar maintains information in the register of external companies for six years after the date the external company is taken off the register of external companies (s.311).

65. Where an external company or local manager or process agent of an external company fails to comply with registration obligations imposed on it or that manager or process agent, the external company which, and local agent or process agent who, is in default is liable to a fine (not exceeding 250 penalty units), or in the case of a continuing default an additional fine (5 penalty units) for every day during which the default continues (s.313).

66. Companies incorporated outside of Ghana but having their central management and control in Ghana are not required to provide information identifying their owners as a part of registration requirements and external companies are not required to compulsorily keep a share register in Ghana.

Therefore, the availability of information that identifies the owners of such companies will generally depend on the law of the jurisdiction in which the company is incorporated and so may not be available in all cases. In these cases, Ghana's IRS would be able to demand further particulars under their general information gathering powers.

### Tax filing

67. External companies (*i.e.* non-resident companies) are taxable on the company's total income from its business or investment accruing in or derived from Ghana (*Internal Revenue Act* s.6(1)(ii)). External companies that are liable to pay tax have the same obligations as resident companies to file yearly tax returns. The tax return does not contain any information on the company's members or shareholders.

### *Ownership information held by service providers*

68. Service providers in Ghana are governed by the *Anti-Money Laundering Act* (2008) (the "*AML Act*"). The *AML Act* is applicable to accountable entities set out in the First Schedule to the *AML Act* (s.21). Accountable entities include: banks licensed under the *Banking Act* (2004) or non-bank financial institutions carrying on specified activities listed in the First Schedule; lawyers; notaries; accountants; insurance companies; real estate companies or agents (only to the extent the company or agent receives funds in the course of the agent's business to settle real estate transactions); and trust and company service providers<sup>7</sup> (*AML Act*, First Schedule).

69. In its customer due diligence procedures, the *AML Act* requires all accountable entities that establish a business relationship<sup>8</sup> with a person to keep records of the identity of the person or the agent of the person, transactions<sup>9</sup> made through the accountable entity, and suspicious transactions reports made to the Financial Intelligence Centre (s.23(1)). Accountable entities are obliged to keep records for each single transaction made with them (s.23(3)).

70. There are no requirements in the *AML Act* that accountable entities monitor accounts, conduct ongoing due diligence or update their records

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7. Trust and company service providers means paid professional companies or unpaid persons who hold assets in a trust separate from their own assets (*AML Act*, s.51).
  8. A business relationship means an arrangement between a person and an accountable entity for the purpose of conducting a transaction (s.51).
  9. A transaction includes an act which establishes a right or obligation or gives rise to a contractual or legal relationship between parties to the contract or legal relationship and any movement of funds by any means with a covered entity (s.51).

on their clients. Accountable entities are also not obliged to verify or keep records of beneficial owners or persons who exercise control over an entity.

71. Accountable entities are obliged to keep records for not less than six years after the date on which a relationship is terminated in case of a business relationship, or not less than six years after the date a transaction is concluded (s.24). At the end of the six year period, accountable entities are obliged to send their records to Ghana's Public Records and Archives Administration Department (s.24).

72. Non-compliance with the record keeping requirements of the *AML Act* is an offence and subject on summary conviction to a fine (of not more than 500 penalty units) or to a term of imprisonment of not more than three years, or both (s.39(1)(a)). Where the offence is committed by a company or body of persons the penalty is a fine (of not more than 1 000 penalty units). In the case of a body corporate, other than a partnership, each director or an officer is considered to have committed the offence. In the case of a partnership, each partner or officer is considered to have committed that offence (s.39(2)).

#### *Ownership information held by nominees*

73. The *Terms of Reference* requires that jurisdictions ensure that information is available to their competent authorities that identify the owners of companies and any bodies corporate. Owners include legal owners, and, in any case where a legal owner acts on behalf of another person as a nominee or under a similar arrangement, that other person, as well as persons in an ownership chain, to the extent that it is held by the jurisdiction's authorities or is within the possession or control of persons within the jurisdiction's territorial jurisdiction.

74. The Registrar for companies does not maintain information on nominee shareholders or information that indicates whether shares are held for the benefit of a third party. Likewise, companies are not obliged to maintain this type of information in their own respective register of members.

75. The Registrar is, however, empowered under the *Companies Act* s.227 to verify the ownership of shares or debentures of a company. The Registrar exercises this power where it appears to the Registrar that there is good reason to investigate the ownership of any shares in, or debentures of, a company or where the directors of a company so request in writing. The Registrar may personally carry out the investigation or by written order appoint one or more inspectors to carry out the investigation (s.227(1)).

76. The Registrar may require a person whom the Registrar has reasonable cause to believe to be or to have been interested in shares or debentures,

or to act or to have acted in relation to those shares or debentures as the agent or adviser of someone interested in those shares or debentures, to give the Registrar any information which that person has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares and debentures (s.227(2)). For this purpose, a person has an interest in a share or debenture if that person has a right to acquire or dispose of the share or debenture or an interest in or to vote in respect of the share or debenture or if that person's consent is necessary for the exercise of any of the rights of other persons interested in the share or debenture, or if the other person interested in the share or debenture can be required or are accustomed to exercise their rights in accordance with the instructions of that person (s.227(3)).

77. A person who fails to provide information in response to a request from the Registrar under the *Companies Act* s.227, or who knowingly provides false information, is liable to a term of imprisonment not exceeding six months or to a fine (not exceeding 750 penalty units) or to both (s.227(4)).

78. Where it appears to the Registrar that there is difficulty in finding out the relevant facts about shares or debentures and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned to give accurate information as required by the *Companies Act* s.227, the Registrar may, by order, direct that the shares or debentures be subject to restrictions affecting *inter alia* the right to transfer the shares and the ability to exercise voting rights in respect of those shares (ss.227(5)–(6)).

### ***Bearer shares (ToR A.1.2)***

79. Ghanaian law does not allow the issuance of bearer shares. The *Companies Act* s.32 provides that a company is required to keep a register in Ghana of its members and enter in the register among other things, the names and addresses of the members and, in the case of a company having shares, a statement of the shares held by each member distinguishing each share by a number so long as the share has a number.

80. Once a company has issued shares or registered the transfer of shares, it shall within two months, deliver to the registered holder of the shares a share certificate under its common seal. The *Companies Act* s.53 provides that a share certificate should state:

- the number and class of shares held by that holder and the definitive numbers of the class,
- the amount paid on the shares and the amount remaining unpaid, and
- the name and address of the registered holder.

81. Statements made in a share certificate under the common seal of the company are prima facie evidence of the title to the shares of the person named in the certificate as the registered holder and of the amounts paid and payable on the certificate (s.54). The *Companies Act* s.95 provides that, except as expressly provided in a company’s regulations, shares are transferable without restriction by a written transfer in common form. A company is not allowed to register a transfer of shares unless a proper instrument of transfer duly stamped, if chargeable to a stamp duty, has been delivered to the company. The company may refuse to register a transfer unless it is accompanied by the appropriate share certificate. The *Companies Act* s.122(1) requires a company to, at least once each year, deliver to the Registrar for registration an annual return including particulars of each member of the company.

### ***Partnerships (ToR A.1.3)***

82. The *Incorporated Private Partnership Act* (1962) (“*Partnership Act*”) is the statutory law governing the formation and governance of partnerships in Ghana. The *Partnership Act* s.1 defines “partnership” as an association of two or more individuals carrying on business jointly for the purpose of making profits. Family ownership or co-ownership of property does not itself create a partnership whether or not the family or co-owners share any profits made by the use of the property (s.1(3)).

83. Partnerships registered under the *Partnership Act* are considered separate legal entities (s.10(1)). Although partnerships are considered separate legal entities, each partner is jointly and severally liable for the debts of the partnership, but are entitled to an indemnity from the partnership and to contribution from co-partners in accordance with the rights of that partner under the partnership agreement (ss.10(3), 14).

### Registration of partnerships

84. The *Partnership Act* s.3 obliges all partnerships consisting of 20 persons or less and of which a body corporate is not a member, to register with the Registrar. A partnership or association consisting of more than 20 persons or of which a body corporate is a member, and has for its object the acquisition of gain, is obliged to be incorporated and registered under the *Companies Act* (*Companies Act* s.5). Registration under the *Partnership Act* is effected by sending to the Registrar a copy of the partnership agreement and statement signed by the partners containing (s.3(1)):

- the firm name of the partnership;
- the general nature of the business;
- the address of the firm;

- the principal place of the partnership and any other places in Ghana at which the business is carried on;
- the names and the former residential addresses and business occupations of the partners;
- the date of commencement of the partnership; and
- particulars of any charges on the partnership.

85. Upon registration, the Registrar issues a certificate of registration to the partnership which states that names of the partners and that their liability is not limited (s.4(1)). A notice of registration is issued in the Gazette stating the terms of the certificate (s.4(2)). The *Partnership Act* s.5 requires partnerships to notify the Registrar of any changes to information previously registered within 28 days after the change. Where the change is in the partnership's name or of the identity of the partners, the Registrar, upon notification of the change, issues an amended certificate of registration and issues a notice in the Gazette stating the terms of the new certificate (s.5(3)). Partnerships are obliged to renew their registration annually by filing a statement of particulars with the Registrar that contains the same information required to be originally registered pursuant to the *Partnership Act* s.3 (s.6).

86. The *Partnership Act* s.3 empowers the Registrar to inspect documents and request additional information (e.g. books and accounts of the partnership) to verify the correctness of any information registered. All information registered with the Registrar under the *Partnership Act* is available to the general public, on payment of a fee (s.55).

87. Failure to provide a required statement for registration with the Registrar pursuant to the *Partnership Act* subjects each partner in the partnership to a fine (not exceeding 25 penalty unites) for each day during which the default continues (s.7(1)). Were a statement required to be furnished to the Registrar contains an error or omission, the partner concerned is liable to a fine (not exceeding 250 penalty units) (s.7(3)).

### Tax filing

88. Subsequent to registering with the Registrar pursuant to the *Partnership Act*, all partnerships are obliged to register with Ghana's IRS for a TIN to be used in filing tax returns. The TIN must be quoted on all correspondence to the IRS (*Internal Revenue Act* s.119). To obtain a TIN, partnerships are obliged to go to a local IRS tax office and provide the IRS with certified true copies of its partnership agreement, certificate of incorporation of partnership (which states the names of its partners), and the Registrar – general application form.

89. Partnerships are not considered to be separate taxable entities, instead they are treated as transparent entities through which partnership income flows to the partners and such share of income is included in the tax returns of its partners (*Internal Revenue Act* ss.40, 42). The *Internal Revenue Act* s.43 obliges all resident partnerships<sup>10</sup> or partnerships with a permanent establishment<sup>11</sup> in Ghana to file a yearly partnership return with Ghana's IRS. The partnership return must state the partnership's income for the year and the names and addresses of the partners and their allocable share of partnership income for that year. The duty to provide the partnership return rests with the active partner resident in Ghana or, where no partner is resident in Ghana by the attorney, agent or manager of the partnership resident in Ghana (Partnership Return).

90. Partnerships in Ghana are not liable for tax. The tax is levied on each partner according to their share of partnership income (s.42). An individual is taxable in respect of income from each business, employment, and investment, less the total amount of deductions allowed to that person (s.5). For a resident person, tax is payable on income accruing in, derived from, brought into, or received in Ghana. For a non-resident person, tax is payable on income accruing in or derived from Ghana whether the income is received in Ghana or not (s.6).

91. Failure to furnish a return to the IRS within the time required under the *Internal Revenue Act* is an offence and subject to a penalty (1 penalty unit in the case of a company and 1/2 penalty unit in the case of a self employed person) in respect of each day during which the default continues (s.142).

### *Information held by service providers*

92. Lawyers, notaries, accountants and banks (accountable entities) that establish a business relationship with a partnership are obliged to maintain records concerning the partnership as part of their customer due diligence obligations (*AML Act*, s.23). Accountable institutions are not, however, obliged to verify or maintain records on the identity of partners in a partnership.

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10. A partnership is a resident partnership for a year of assessment if, at any time during the year of assessment, any partner in the partnership is a resident person (*Internal Revenue Act* s.163).
  11. "Permanent establishment" means a place where a person carries on business, and a place where a person carries on business through an agent, other than a general agent of independent status acting in the ordinary course of business as such; a place where a person has, is using, or is installing substantial equipment or machinery; or a place where a person is engaged in a construction, assembly, or installation project for ninety days or more, including a place where a person is conducting supervisory activities in relation to such project (s.167).

### ***Trusts (ToR A.1.4)***

93. Trusts are recognised in Ghana under both common and statutory law. The law of trusts in Ghana is derived from the common law and the United Kingdom *Trustees Act* of 1860. Trust law was developed by the English Courts of equity and is a part of the common law which evolved into the laws of Ghana and is still retained as part of the existing law (*Courts Act* [1993]).

94. The only other statutes concerning trusts in Ghana are the *Public Trustee Ordinance* (1952) and the *Trustees (Incorporation) Act* (1962). The *Public Trustee Ordinance* creates the office of the Public Trustee and provides the holder with corporate status. The Public Trustee operates under the Ordinance as a trustee with power to administer the properties of mentally incapacitated persons and to be appointed as an ordinary trustee among other functions. The *Trustees (Incorporation) Act* enables trustees of a voluntary association established for a religious, literary, scientific, sports, or charitable purpose on registration under the Act, to become incorporated to hold immovable property in trust for the members of the relevant association. Since these enactments are restricted in their application, a law related to a trust which does not fall within their confines depends on the trust instrument as executed by the trustee. If the trust instrument does not state all the powers of the trustee and the rights of the beneficiaries, the Courts are left to follow English common law on trusts.

95. At common law, trusts are generally created when assets are transferred by a person (the settlor) to a trustee from the benefit of another person. There are no apparent prohibitions for a resident of Ghana to act as a trustee or otherwise in a fiduciary capacity in relation to a trust formed in Ghana or under foreign law. Likewise, there are no apparent prohibitions for a resident of Ghana from administering a trust or acting as a protector of a trust governed under foreign law. Trusts are not required to register with any authority in Ghana.

### **Tax filing**

96. Trusts are considered separate taxable entities in Ghana. The *Internal Revenue Act* s.167 defines “trust” as an arrangement affecting property in relation to which there is a trustee. Trusts are taxed as a “body of persons”, which is defined to include trusts created or recognised under a law in force in Ghana or elsewhere (s.167). The income of trusts is taxable to both the trust and its beneficiaries with double taxation being relieved through credit of any tax paid by the trust to the beneficiary (ss.46, 48). The *Internal Revenue Act*, Part VI, Division III, provides the principal rules for the taxation of bodies of persons (trusts) in Ghana.

97. Trusts created in Ghana are liable to pay tax on income accruing in, derived from, brought into, or received in Ghana. Foreign trusts are taxed on income accruing in or derived from Ghana whether the income is received in Ghana or not (s.6).

98. The *Internal Revenue Act* s.72 obliges all trusts with chargeable income to file a yearly tax return with Ghana's IRS. The form used by trusts to file a return is the same form used by partnerships (*i.e.* the Partnership Return). The return must state the trust's income for the year and, where a distribution of trust property was made to a beneficiary during the year, the names and addresses of the trust's beneficiaries and the amount of their respective distribution for that year. The duty to provide the return rests with the manager or other principal officer of the trust in Ghana (Partnership Return).

99. Failure to furnish a return to the IRS within the time required under the *Internal Revenue Act* is an offence and subject to a penalty (1 penalty unit in the case of a company and 1/2 penalty unit in the case of a self employed person) in respect of each day during which the default continues (s.142).

#### *Trust ownership and identity information required to be held by the trust*

100. There are no statutory obligations imposed in respect of trusts for any person such as the trustee to maintain any particular identity or ownership information relating to the trust including its settlors or beneficiaries. Although all trustees are subject to the common law requirements to have knowledge of all documents pertaining to the formation and management of a trust, the extent of such requirements could not be ascertained during the Phase 1 Review. An in-depth assessment of the effectiveness of this common law regime will be considered as part of the Phase 2 Review of Ghana.

#### *Information held by service providers*

101. Trust and company service providers, lawyers, notaries, accountants, banks (accountable institutions) that establish a business relationship with a trust are obliged to maintain records concerning the identity of the person or agent acting on behalf of a trust as part of their customer due diligence obligations (*AML Act*, s.23). Trust and company service providers means paid professional companies or unpaid persons who hold assets in a trust separate from their own assets (*AML Act*, s.51). Accountable institutions are not obliged under Ghana's *AML Act* to verify or maintain records on the identity of trustees, settlors, or beneficiaries of trusts.

### ***Foundations (ToR A.1.5)***

102. Foundations in Ghana are registered under the *Companies Act* as companies limited by guarantee (see paragraph 45). Companies limited by guarantee cannot create or have shares and cannot be incorporated with the object of carrying on a business for the purpose of making profits (*i.e.* foundations in Ghana are non-profit organisations) (ss.9; 10). While the incorporation, registration and tax filing requirements for companies in Ghana ensures the maintenance of ownership and identity information on a foundation's members and managers (foundation council), there are no requirements in the *Companies Act* that information on a foundation's beneficiaries be maintained.

103. Ghana did not provide the assessment team with information regarding foundations or other non-profit organisations operating in Ghana. Ghana was, however, the subject of a mutual evaluation conducted by GIABA (Inter-Governmental Action Group against Money Laundering in West Africa) in 2009 that produced a report<sup>12</sup> which reviews Ghana's non-profit sector. The report states that for a non-profit organisation to gain recognition by Ghana's Government, it must satisfy certain conditions upon registration, including provision of a statement of sources of income and fields of expenditure and an annual report listing the activities carried out during the reporting year (listing expenditures). In addition the report notes, at paragraph 737, that non-profit organisations are required by their supervisor and the Registrar-General to keep records of the sums of money received and expended by, or on behalf of, the non-profit organisation.

104. Where a foundation is a client of an accountable entity under Ghana's *AML Act*, the accountable entity is obliged to maintain information of the foundation. Accountable institutions are not, however, obliged to verify or maintain records on the identity of beneficiaries of foundations.

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

105. 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.

106. Ghana uses a system of penalty units for fines in its enactments. This method uses units instead of currency values. The *Fines (Penalty Units) (Amendment) Act* provides that one penalty unit is equal to 120 000 Ghanaian cedis (GHC). The old Ghanaian cedi (GHC) became obsolete subsequent to the enactment of the *Penalty Units Act*. It was replaced by the new Ghanaian

12. Accessible at: [www.giaba.org/media/M\\_evalu/GHANA%20-MER%20-English-1\[1\].pdf](http://www.giaba.org/media/M_evalu/GHANA%20-MER%20-English-1[1].pdf).

cedi (GHS) on 3 July 2007. Ten-thousand GHC are equivalent to 1 GHS. Accordingly, one penalty unit is now equal to GHS 12 (EUR 6).

107. Failure to comply with company registration requirements subjects the company and every officer of the company who is in default to a fine not exceeding GHS 300 (EUR 150) [25 penalty units] for each day during which the default continues (*Companies Act* s. 29(1)). Where there is an error or omission in a return delivered to the Registrar under the *Companies Act* s.27, the company and every signatory of the return or declaration is liable to a fine not exceeding GHS 1 800 (EUR 900) [150 penalty units] (s.29(4)).

108. Failure to file an annual return subjects the company and every officer of the company who is in default to a fine not exceeding GHS 300 [25 penalty units] for every day during which the default continues.

109. Where a company defaults in complying with the requirements to maintain a register of members, the company and every officer of the company which is in default is liable to a fine not exceeding GHS 300 [25 penalty units] for every day during which the default continues (*Companies Act* s.32(7)).

110. A person who fails to provide information in response to a request from the Registrar to verify the ownership of shares or debentures of a company, or who knowingly provides false information, is liable to a term of imprisonment not exceeding six months or to a fine not exceeding GHS 9 000 (EUR 4 500) [750 penalty units] or to both (s.227(4)).

111. Where an external company or local manager or process agent of an external company fails to comply with registration obligations imposed on it or that manager or agent, the external company which, and local agent or process agent who, is in default is liable to a fine not exceeding GHS 3 000 (EUR 1 500) [250 penalty units], or in the case of a continuing default GHS 60 (EUR 30) [5 penalty units] for every day during which the default continues (s.313).

112. Failure to provide a required statement for registration with the Registrar pursuant to the *Partnership Act* subjects each partner in the partnership to a fine not exceeding GHS 300 [25 penalty units] for each day during which the default continues (s.7(1)). Where a statement required to be furnished to the Registrar contains an error or omission, the partner concerned is liable to a fine not exceeding GHS 3 000 [250 penalty units] (s.7(3)).

113. Failure to furnish a return to the IRS within the time required under the *Internal Revenue Act* is an offence and subject to a penalty of GHS 12 (EUR 6) [1 penalty unit] in the case of a company and GHS 6 (EUR 3) [1/2 penalty unit] in the case of a self employed person in respect of each day during which the default continues (s.142).

114. Non-compliance with the record keeping requirements of the *AML Act* is an offence and subject on summary conviction to a fine of not more than GHS 6 000 (EUR 3 000) [500 penalty units] or to a term of imprisonment of not more than 3 years, or both (s.39(1)(a)). Where the offence is committed by a company or body of persons the penalty is a fine of not more than GHS 12 000 (EUR 6 000) [1 000 penalty units]. In the case of a body corporate, other than a partnership, each director or an officer is considered to have committed the offence. In the case of a partnership, each partner or officer is considered to have committed that offence (s.39(2)).

115. The effectiveness of the enforcement provisions which are in place in Ghana will be considered as part of the Phase 2 Peer Review.

### Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Nominees are not required to maintain ownership and identity information in respect of all persons for whom they act as legal owners.	An obligation should be established for all nominees to maintain relevant ownership information where they act as the legal owners on behalf of any other person.
Companies incorporated outside of Ghana but having their central management and control in Ghana are not required to provide information identifying their owners as a part of registration requirements and external companies are not required to compulsorily keep a share register in Ghana. Therefore, the availability of information that identifies the owners of such companies will generally depend on the law of the jurisdiction in which the company is incorporated and so may not be available in all cases.	In such cases, Ghana should ensure that ownership and identity information should be available.
There is no specific requirement that information concerning the settlor, trustees and beneficiaries of trusts be maintained.	An obligation should be established in Ghana to maintain information on the settlors, trustees and beneficiaries of their trusts.

## A.2. Accounting records

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

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

### *General requirements (ToR A.2.1)*

117. In Ghana, the *Internal Revenue Act*, *Companies Act*, *Partnership Act* and *AML Act* collectively contain provisions that generally require the maintenance of accounting records that correctly explain all transactions, enable the financial position of entities and arrangements to be determined with reasonable accuracy at any time, and allow financial statements to be prepared.

118. The *Companies Act* s.123 obliges all resident companies to keep proper books of account with respect to their financial position and any changes in the books of account. Proper books of account must reflect:

- all sums of money received and expended by, or on behalf of, the company and the matters in respect of which the receipt and expenditure takes place;
- the sales and purchases of the company of property, goods and services; and
- the assets and liabilities of the company and the interests of the members in the company.

119. Proper books of account of a company must give a true and fair view of the state of the company's affairs and must be detailed enough for the preparation of the company's profit and loss accounts and balance sheets (s.123(2)). Companies are obliged to keep their books of account at their registered office or at any other place that the directors consider fit, and such place must be open during normal business hours for inspection by the directors, secretary and auditors of the company (s.123(4)).

120. Private companies are obliged to include with their annual return (ss.122, 269):

- a copy of every profit and loss account, balance sheet and group accounts made during the period to which the annual return relates, and a copy of the report of the directors and of the report of the auditors accompanying those accounts, or
- a written statement by the auditors of the company that, to the best of their knowledge and belief, the company's accounts and reports have been sent to the company's members and debenture holders in accordance with the *Companies Act*, and a copy of the auditors' report so sent.

121. Public companies are obliged to include with their annual return a copy, certified by a director and the secretary of the company to be a true copy, of every balance sheet, profit and loss account, group accounts, directors' report and auditors' report sent to members and debenture holders of the company in accordance with the *Companies Act* during the period to which the return relates (ss.122, 295).

122. External companies are obliged, once in every year at intervals of not more than 15 months, to make out and deliver to the Registrar for registration a profit and loss account and balance sheet (s.307(1)). The profit and loss account and balance sheet must give a true and fair view of the profit and loss of the company and the state of affairs of the company for the period to which they relate (ss.125, 126). The Registrar may accept for registration a profit and loss account, a balance sheet and group accounts prepared in the form required under the law of the place of the company's incorporation if, in the Registrar's opinion, the accounts give substantially the same, or greater, information as that required by the *Companies Act* for resident companies (s.307(2)).

123. The *Partnership Act* s.30(1) obliges all partnerships registered under the Act to maintain proper accounts with respect to their financial position and changes in that position and with respect to the control of, and accounting for, the property acquired whether for resale or for use in the partnership's business. Proper accounts must reflect:

- the sums of money received and expended by or on behalf of the partnership and the matters in respect of which the receipt and expenditure takes place;
- the sales and purchases by the partnership of property, goods and services; and
- the assets and liabilities of the partnership and the interests of the partners in those liabilities and interests.

124. Partnerships are further obliged, at intervals of not more than 15 months, to prepare a profit and loss account giving a true and fair view of the profit or loss of the partnership for the period to which it relates, and a balance sheet giving a true and fair view of the assets and liabilities and state of affairs of the partnership and of the value of the interest of each of the partners in the partnership as at the end of the period to which the profit and loss account relates (*Partnership Act* s.30(2)). Failure to maintain or prepare the accounts and balance sheet required by the *Partnership Act* s.30 subjects each partner to a fine not exceeding GHS 6 000 (EUR 3 000) [500 penalty units].

125. The *Internal Revenue Act* s.122 obliges all persons liable to tax in Ghana, other than employees with respect to their employment income, to maintain in Ghana the necessary records to explain the information to be provided in a return or in any other document to be furnished to the Commissioner under the Act or to enable an accurate determination of the tax payable by that person. For this purpose, the Act requires all businesses to maintain records of all receipts and payments, all revenue and expenditure, and all assets and liabilities of the business (s.122(4)). The term “business” is defined to include any trade, profession, or vocation, but does not include employment (s.167). Such records are required to be maintained for a period of not less than 6 years (s.122(3)). Where a person does not maintain such records, the Commissioner may adjust that person’s liability to tax in a manner that is consistent with the intention of the Act (s.122(2)). Moreover, a person who deliberately fails to maintain proper records for a year of assessment is liable to pay a penalty equal to 5% of the amount of tax payable by that person for the year (s.141).

126. The tax return used by trusts (Partnership Return) requires trusts to attach copies of the “accounts including certified balance sheet as at the date to which the accounts are made up”.

127. The *AML Act* s.23 obliges all accountable entities (e.g. trust and company service providers, lawyers, notaries, accountants, banks) that establish a business relationship with a person to keep records of each single transaction made through the accountable institution. Non-compliance with the record keeping requirements of the *AML Act* is an offence and subject on summary conviction to a fine of not more than GHS 6 000 [500 penalty units] or to a term of imprisonment of not more than three years, or both (s.39(1)(a)).

### ***Underlying documentation (ToR A.2.2)***

128. There does not appear to be a requirement in the *Companies Act* for companies to maintain underlying documentation (such as invoices, contracts, etc.) in support of the accounting records. However, the *Companies Act*

s.136 specifies that auditors of companies, while acting in the performance of their functions under the Act, have a right of access to the books and account and vouchers of the company.

129. For income tax purposes, all persons liable to tax in Ghana, other than employees with respect to their employment income, are obliged to maintain in Ghana the necessary records to explain the information to be provided in a return or in any other document to be furnished to the Commissioner under the Act or to enable an accurate determination of the tax payable by that person (*Internal Revenue Act* s.122(1)). Ghana's officials indicate that this provision is interpreted to require the maintenance of such items as invoices, vouchers and receipts consistent with Ghana's generally accepted accounting principles. In addition, every person (including a partnership or trust) carrying on a business is obliged to maintain records of all receipts and payments, all revenue and expenditure, and all assets and liabilities of the business (s.122(4)). Ghana's Internal Revenue Service has developed non-binding statements of guidance and principles to assist taxpayers meet their tax and record keeping obligations. Both the Tax Information for Business guidelines and the Going into Business guidelines provide guidance on the types of records required to be maintained (e.g. accurate records of all business transactions and the receipts, bills, bank statements, cheque stubs, necessary to back claims), which includes underlying documentation. While contracts are not explicitly mentioned in the guidelines, all contracts which relate to accounting entries or information provided in a tax return must also be maintained. It is recommended that an express legal obligation be introduced in Ghana for all relevant entities to retain the underlying documentation described in the guidelines. The effectiveness of these obligations in practice will be examined in Phase 2.

### ***Document retention (ToR A.2.3)***

130. The *Internal Revenue Act* s.122 requires the maintenance of accounting records by all taxpayers for a period of not less than six years (s.122(3)).

131. The *Companies Act* is silent regarding the period for which companies are required to maintain accounting records.

132. Accountable entities under Ghana's *AML Act* are obliged to keep records for not less than six years after the date on which a relationship is terminated in case of a business relationship, or not less than six years after the date a transaction is concluded (s.24). At the end of the six year period, accountable entities are obliged to send their records to Ghana's Public Records and Archives Administration Department (s.24).

### Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement	
Factors underlying recommendations	Recommendations
Although an obligation exists for persons liable to tax in Ghana to maintain accounting records, there is no express legal requirement to maintain underlying documentation (e.g. invoices, contracts, etc.).	An express legal obligation should be introduced for all relevant entities to retain underlying documentation.

### A.3. Banking information

Banking information should be available for all account-holders.

#### *Record-keeping requirements (ToR A.3.1)*

133. All persons carrying on the business of banking<sup>13</sup> are subject to both licensing requirements under Ghana’s *Banking Act* (as amended in 2007) and customer due diligence and record retention requirements under Ghana’s *AML Act* (2008).

134. With regard to licensing requirements, the *Banking Act* provides that the business of banking can only be carried on by corporate bodies which have obtained a licence issued by the Bank of Ghana (BOG) (ss.3, 4). The BOG, which has overall supervisory and regulatory authority in all matters relating to banks, is authorised to issue three categories of banking licences:

- Class I Banking Licence (previously classified as Universal Banking Licence): allows the holder to transact domestic banking business;
- Class II Banking Licence: allows the holder to conduct banking business or investment banking business with non-residents and other Class II bank licence holders in currencies other than the Ghanaian

13. “Banking business” means: (a) accepting deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, orders or by any other means; (b) financing, whether in whole or in part or by way of short, medium or long term loans or advance, of trade, industry, commerce or agriculture; and (c) any other business activities that the Bank of Ghana may prescribe or recognise as being part of banking business (*Banking Act*, s.90).

currency except to the extent permitted by the BOG for trading on the foreign exchange market of Ghana and investment in money market instruments; and

- General Banking Licence: allows both Class I and Class II banking business in and from within Ghana.

135. As of 2007, offshore banks can operate in Ghana under a Class II licence. It has therefore become possible for non-resident individuals and foreign companies to open offshore bank accounts in Ghana. Barclays Bank (Ghana) Limited is the first, and presently only, bank to be given a General Banking Licence in Ghana. It now operates the first banking business under the international banking component of Ghana's International Financial Services Centre (IFSC). The Ghana IFSC is planned to have a full range of non-bank financial services, and is a part of a comprehensive financial sector development programme.

136. With regard to record-keeping requirements, the *AML Act* and the *Banking Act* oblige banks to maintain sufficient account information to permit reconstruction of individual transactions.

137. The *Banking Act* s.71 obliges all licensed banks in Ghana, including offshore banks with a Class II license, to maintain accounting records in a manner that gives an accurate and reliable account of their transactions. The records must give a true and fair view of the state of the affairs of the bank and its results for the accounting period. The BOG has also issued guidance (*The General Guide to Account Opening and Customer Identification*) which requires banks to preserve their customer identification documents and all transaction records pertaining to the accounts.

138. The *AML Act* s.23 further requires banks<sup>14</sup> and other accountable entities<sup>15</sup> that establish a business relationship with a customer to keep records

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14. "Bank" means a company incorporated under the laws of Ghana, or a branch of a company incorporated abroad, which is licensed in accordance with the *Banking Act* (*Banking Act*, s.90; *AML Act*, s.51). This definition includes offshore banks with a Class II license.

15. Relevant accountable entities include a bank or a non-bank financial institution which carries on any of the following activities: (i) accepting deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, orders or by any other means, (ii) financing, whether in whole or in part or by way of short, medium or long term loans or advances of trade, industry, commerce or agriculture, (iii) the issue and administration of means of payment including credit cards, travellers' cheques bankers' drafts and other financial instruments, (iv) the trade in foreign exchange, currency market instruments or transferable securities, (v) securities portfolio management and advice

on the: identity of the person or the agent of the person. Accountable entities are not however obliged to verify or keep records of beneficial owners or persons who exercise control over their customers. The Act also requires accountable entities to maintain information on all transactions made through the accountable entity and on suspicious transaction reports they have submitted to Ghana’s Financial Intelligence Centre. This requirement applies to each single transaction with an accountable entity. The *AML Act* s.24 provides that such records must be kept for a period of not less than six years after the date a transaction is concluded or the termination of the business relationship.

**Determination and factors underlying recommendations**

Phase 1 Determination
The element is in place.

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concerned with the portfolio management, (vi) dealing in shares, stocks, bonds or other securities, (vii) leasing, letting or delivering goods to a hirer under a hire-purchase agreement, (viii) the conduct of any business, (ix) the collection of money or acceptance of employer contributions and payment from these funds of legitimate claims for retirement benefits; and (x) any other business activities that the Bank of Ghana may prescribe or recognise as being part of banking business (*AML Act*, First Schedule).

## B. Access to Information

### Overview

139. 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 Ghana's legal and regulatory framework gives the authorities access powers that cover all relevant persons and information and whether rights and safeguards would be compatible with effective exchange of information.

140. Ghana's Internal Revenue Service (IRS) has broad powers to obtain bank, ownership, identity, and accounting information and has measures to compel the production of such information. The ability of Ghana's IRS to obtain information for exchange of information purposes is derived from its general access powers under the *Internal Revenue Act* coupled with the authority provided by the relevant exchange of information agreements. There is no requirement that the income be related to Ghana, nor is there a requirement that the suspicion be of income concealed from the Ghanaian government. There are no statutory bank secrecy provisions in place that would restrict effective exchange of information. Judicial procedures are required, however, to access bank information.

141. There are no rights or safeguards (e.g. notification, appeal rights) in Ghana that appear to restrict the scope of information that Ghana's IRS can obtain.

## 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)***

142. Ghana’s IRS has broad powers to obtain bank, ownership and identity information and accounting records from any person, whether or not liable to tax under the *Internal Revenue Act*. For this purpose, the *Internal Revenue Act* s.125(1) provides that the IRS can require, by notice in writing, any person to furnish it within the time specified in the notice any information required in the notice, or to attend for purposes of examination under oath concerning the tax affairs of that person or any other person. Where the notice requires the production of a book, record, or computer-stored information, it is sufficient if the book, record, or computer-stored information is described in the notice with reasonable certainty in the notice (s.124(2)). Persons to be examined under oath are entitled to a legal or other representation throughout the examination (s.124(3)). Section 125 of the *Internal Revenue Act* has effect notwithstanding any rule of law or enactment in relation to the production of, or access to, the documents.

143. Failure to comply with a request for information from the IRS is an offence and subject, on summary conviction, to a fine of not less than 10 penalty units<sup>16</sup> and not more than 100 penalty units (s.148(3)). Where the failure to comply results, or, if undetected, may result in an underpayment of tax in an amount exceeding 500 penalty units, the fine is equal to not less than 50 penalty units and not more than 300 penalty units (s.148(2)). Any person who, without reasonable excuse, makes a false or misleading statement to the IRS or omits any matter from a statement to the IRS commits an offence and is liable on summary conviction to a fine of not less than 5 penalty units and not more than 25 penalty units or imprisonment for a term of not less than 1 month and not more than 3 months, or both (s.150). Increased sanctions are provided for where the statement or omission is made knowingly or recklessly (s.150(1)(d)).

16. 10 penalty units = GHS 120 (EUR 60). One penalty unit is equal to GHS 12 (EUR 6). See section A.1.6 of this report for further information.

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

144. 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. Ghana has no domestic tax interest with respect to its information gathering powers. Information gathering powers provided to Ghana’s IRS under the *Internal Revenue Act* can be used to provide exchange of information assistance regardless of whether Ghana needs the information for its own domestic tax purposes. Further, the *Internal Revenue Act* s.111 provides that to the extent that the terms of an international arrangement are inconsistent with the provisions of the *Internal Revenue Act*, the terms of the international arrangement prevail. An “international arrangement” is defined, for this purpose, to include an agreement with a foreign government providing for the relief of international double taxation and the prevention of fiscal evasion, and an agreement with a foreign government providing for reciprocal administrative assistance in the enforcement of tax liabilities.

***Compulsory powers (ToR B.1.4)***

145. As previously described, Ghana’s IRS has powers to compel the production of information from natural and legal persons, whether or not liable to tax under the *Internal Revenue Act*, in response to an exchange of information request. Under the *Internal Revenue Act*, Ghana’s IRS has powers of discovery and inspection and is able to compel the production of information from taxpayers and third party record keepers.

***Secrecy provisions (ToR B.1.5)***

146. There are no provisions under Ghana’s laws relating to the secrecy of ownership, identity, or accounting information.

147. With respect to access to bank information, the *Banking (Amendment) Act* (2007) s.31, which amended s.84 of the *Banking Act* (2004) on Secrecy of Customer Information, provides exceptions to the duty of confidentiality imposed on banks to keep customer account information confidential. One exception is where an official from a bank is summoned to appear before a court or a judge in Ghana and the court or Judge orders the disclosure of information (s.84(3)(h)).

148. The *Banking Act* s.84(9) provides that the BOG or any other competent authority in Ghana or outside Ghana which requires information held by a bank relating to the transactions and accounts of any person, may apply to a Judge in Chambers for an order of disclosure of the transaction and accounts

or the part which may be necessary. The Judge is precluded from making an order of disclosure unless satisfied that the following grounds were met: (a) the applicant is acting in discharge of official duty; (b) the information is material to civil or criminal proceedings whether pending or contemplated or is required for the purpose of an inquiry into or related to the trafficking in narcotic and dangerous drugs, arms trafficking, offences related to terrorism or money laundering; or (c) the disclosure is otherwise necessary, in the circumstances (s.84(10)). The *Banking Act* s.84(11) provides that s.84 shall be applied so as to not limit the obligations of Ghana under an international treaty, convention or agreement.

149. Although the procedures for obtaining bank information through judicial procedure could unduly delay the effective exchange of information, the effectiveness of such procedures will be assessed in the Phase 2 assessment.

150. All of Ghana's exchange of information agreements permit Ghana to decline a request if responding to the request 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 standards set forth in Article 26 of the *OECD Model Tax Convention* and the *OECD Model TIEA*.

151. Common law attorney-client privilege exists in Ghana. At common law, the privilege attaches to confidential written or oral communications between a professional legal adviser and his client, or any person representing the client, in connection with and in contemplation of, and for the purposes of legal proceedings or in connection with the giving of legal advice. Thus, where an attorney acts in any other capacity other than as an attorney (*e.g.* as a real estate broker), the attorney-client privilege should not apply. As a result, other than with respect to advice between a lawyer and his/her client, attorney-client privilege will not be a barrier to effective exchange of information.

### Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
A court order must be obtained in order for Ghana's tax authorities to access bank information for exchange purposes.	Ghana should ensure that this procedure does not unduly delay or prevent effective exchange of information.

## 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)*

152. Ghana's laws do not require the IRS to inform the person concerned of the existence of an exchange of information request.

#### Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.



## C. Exchanging Information

### Overview

153. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. The legal authority to exchange information may be derived from bilateral or multi-lateral mechanisms (e.g. double tax conventions, tax information exchange agreements, the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters) or arise from domestic law. Within particular regional groupings information exchange may take place pursuant to exchange instruments applicable to that grouping (e.g. within the EU, the directives and regulations on mutual assistance).

154. Ghana has signed Double Tax Conventions (DTCs) that provide for the exchange of information for tax purposes with nine jurisdictions, namely: Belgium, France, Germany, Italy, Netherlands, Serbia and Montenegro, South Africa, Switzerland and United Kingdom. All but one of these agreements are in force and six meet the internationally agreed standards.

155. Only one agreement – with the Netherlands – includes the current version of Article 26 of the OECD *Model Tax Convention*. This agreement, however, is not to the standard as it contains additional language which limits the scope of bank information that can be exchanged by Ghana to cases involving tax fraud. Ghana's agreements with Belgium and Switzerland are also not to the standard due to domestic law limitations in Belgium and Switzerland's ability to access bank information for exchange of information purposes.

156. Ghana's domestic legislation does not appear to include secrecy provisions that could undermine the effectiveness of the exchange of information for tax purposes. Some uncertainty remains, however, as to how a request for bank information under Ghana's existing agreements would be dealt with in practice, and this will have to be closely evaluated in the context of Ghana's phase 2 review.

157. As Ghana has signed only six agreements that appear to meet the internationally agreed tax standard, its network of information exchange mechanisms does not cover all relevant partners. Given Ghana’s aim of establishing itself as an international hub for investment into Africa, effective exchange of information should be available for all jurisdictions from which investment flows originate and to which the capital is destined to be invested.

158. Ghana’s treaties are based on the OECD and UN *Model Tax Conventions*, and protect from disclosure any trade, business, industrial, commercial or professional secret or information which is the subject of attorney client privilege or information the disclosure of which would be contrary to public policy. Bilateral provisions are backed by domestic legislation that, while imposing a duty of confidentiality on tax officials, allows exceptions in a fairly well defined number of circumstances, including for exchange of information purposes.

159. As regards the timeliness of responses to requests for information, 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.

## C.1. Exchange-of-information mechanisms

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

### *Foreseeably relevant standard (ToR C.1.1)*

160. 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 paragraph 1 of Article 26 of the OECD *Model Taxation Convention set out below*:

*“The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out of the provisions this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.”*

161. Ghana has bilateral tax treaties with nine jurisdictions, namely: Belgium, France, Germany, Italy, Netherlands, Serbia and Montenegro, South

Africa, Switzerland and United Kingdom. Seven of Ghana’s agreements provide for the exchange of information that is “necessary” for carrying out the domestic laws of the Contracting States concerning taxes covered by the agreement. Ghana’s agreement with the Netherlands uses the term “foreseeably relevant” in place of “necessary”. The term “relevant” is used in the treaty with Belgium. The terms “as is necessary” and “as is relevant” are recognised in the commentary to Article 26 of the OECD *Model Taxation Convention* to allow for the same scope of exchange as does the term “foreseeably relevant”<sup>17</sup>.

162. Ghana’s agreement with Switzerland provides for the exchange of information that is “necessary” for carrying out the provisions of the agreement, but also incorporates additional language, noting that it applies to “such information (that the tax laws of contracting states can obtain through normal administrative practice)”<sup>18</sup>. The bracketed text is not in line with the standards as it limits the exchange of information article to information which can be obtained in the normal course of administration. Thus, if it is not “normal” for one of the parties to obtain certain information, the information might not be provided to the other Contracting State. The practical scope of information exchange under this agreement will be considered as part of the Phase 2 Review.

### ***In respect of all persons (ToR C.1.2)***

163. 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.”

164. Ghana’s agreements with Belgium, France, Germany, Italy, Serbia and Montenegro, Netherlands and South Africa specifically mention that

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17. The word “necessary” in paragraph 1 of Article 26 of the 2003 OECD *Model Taxation Convention* was replaced by the phrase “foreseeably relevant” in the 2005 version. The commentary to Article 26 recognises that the term “necessary” allows for the same scope of exchange as does the term “foreseeably relevant”.
  18. The sentence quoted is an informal translation of the French official text, which reads: “*Les autorités compétentes des Etats contractants échangent les renseignements (que les législations fiscales des Etats contractants permettent d’obtenir dans le cadre de la pratique administrative ordinaire) nécessaires pour appliquer les dispositions de la présente Convention et portant sur les impôts visés par la présente Convention*”.

the exchange of information is not restricted by Article 1 (Personal scope). Ghana's domestic laws are applicable to non-residents. Since the agreements with France, Serbia and Montenegro and the United Kingdom provide for the exchange of information also for carrying out the provisions of the domestic laws of the contracting States, it can be stated that, even in absence of reference to Article 1, the information can be exchanged in respect of all persons. The agreement with Switzerland, which provides for the exchange of information for the carrying out of the provisions of the agreement, is only applicable provided one of the persons concerned is resident in one of the Contracting States.

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

165. 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*, which is an authoritative source of the standards, stipulates that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

166. Only Ghana's DTC with the Netherlands includes provisions similar to paragraph 26(5) of the OECD *Model Taxation Convention*, which provides that a contracting state may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. This provision, however, only applies "in the case of the Netherlands". With respect to Ghana, the exchange of information Article contains an additional paragraph, which reads:

*"In the case of Ghana, Ghana shall at the request of the Netherlands supply information to the Netherlands if such information is obtained by Ghana in the course of court proceedings in relation to a prosecution involving acts of tax fraud in the Courts of Ghana".*

167. The scope of information that can be exchanged under Ghana's treaty with the Netherlands is restricted, as bank information maintained in Ghana can only be exchanged in cases of tax fraud. However, it is not clear whether in practice this wording would effectively result in a limitation of the type of information that can be exchanged between Ghana and the Netherlands because it does not appear that Ghana's *Banking Act* limits access to bank information to cases of tax fraud.

168. Ghana’s treaties with, France, Germany, Italy, Serbia and Montenegro, South Africa, and United Kingdom do not contain paragraphs similar to paragraphs 4 and 5 of Article 26 of the OECD *Model Tax Convention*. Nonetheless, under Ghana’s *Internal Revenue Act* s.127, secrecy provisions applicable to Ghanaian tax officials do not “prevent the disclosure of information or documents to ... the competent authority of the government of another country with which Ghana has entered into an agreement for the avoidance of double taxation or for the exchange of information, to the extent permitted under that agreement”. These treaties, therefore, may still meet the standard insofar as Ghana’s counterparties do not have domestic law limitations with respect to access to bank information. Should this be the case, the absence of a specific provision requiring exchange of bank information unlimited by bank secrecy will serve as a limitation on the exchange of information which can occur under the relevant treaty. Ghana should consider renegotiating its DTAs to include paragraph 26(5) of the OECD *Model Taxation Convention*.

169. Ghana’s treaties with Belgium and Switzerland do not meet the standard as a result of limitations in both of these country’s laws with respect to access to bank information. Moreover, Ghana’s treaty with Switzerland expressly provides that bank information cannot be exchanged.

#### ***Absence of domestic tax interest (ToR C.1.4)***

170. 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 based on 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.

171. As Ghana’s agreements generally follow the OECD and UN *Model Tax Conventions*, they do not restrict the exchange of information to information that is relevant for the determination of tax in the requested state. Ghana’s agreement with the Netherlands includes Article 26(4) of the OECD *Model Tax Convention*, which provides that a contracting state may not decline to supply information solely because it has no interest in obtaining the information for its own tax purposes. There are no domestic tax interest restrictions on Ghana’s powers to access information, which require that the information be relevant to the determination of a tax liability in Ghana (see section B.1 of this report). Ghana is able to exchange information, including in cases where the information is not publicly available or already in the possession of governmental authorities. Ghana should, however, consider renegotiating its DTAs to include paragraph 26(4) of the OECD *Model Taxation Convention*.

***Absence of dual criminality principles (ToR C.1.5)***

172. 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.

173. There are no dual criminality requirements in Ghana's treaties that provide for the exchange of information in tax matters.

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

174. 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").

175. All of Ghana's treaties provide for exchange of information in both civil and criminal tax matters.

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

176. There are no restrictions in the exchange of information provisions in Ghana's exchange of information agreements that would prevent Ghana from providing information in a specific form, as long as this is consistent with Ghana's own administrative practices.

***In force (ToR C.1.8)***

177. 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.

178. Eight of the nine agreements signed by Ghana are in force. The status of the agreement with Serbia and Montenegro, which is not in force, is unclear. Serbia and Montenegro ceased to exist on 5 June 2006. Serbia is the legal successor of the state union of Serbia and Montenegro. Once in force, the treaty will thus be applicable in relations between Serbia and Ghana. Montenegro has declared that it will honour all tax treaties that applied with

respect to Serbia and Montenegro. However, application of the pending treaty with Montenegro has not been confirmed by Ghana.

179. Five of Ghana’s DTCs took longer than two years from the date they were signed to enter into force (Belgium 40 months; France 48 months; Germany 40 months; Italy 29 months; South Africa 29 months). The effectiveness of Ghana’s procedures for bringing signed agreements into force expeditiously will be considered as part of the Phase 2 Review.

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

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

181. Article 75 of the *1992 Constitution* grants the President of Ghana the power to conclude treaties subject to ratification by an Act of Parliament or a resolution of Parliament supported by more than one-half of all members of Parliament. With respect to tax matters, the *Internal Revenue Act* s.111 provides that, if an international arrangement is inconsistent with the provisions of Ghana’s domestic tax laws, the terms of the international arrangement will prevail, provided that it has been ratified by Parliament under article 75 of the *Constitution*. Paragraph 6 specifies that, for the purposes of Section 111, the term “international arrangement” includes both “an agreement with a foreign government providing for the relief of international double taxation and the prevention of fiscal evasion” and “an agreement with a foreign government providing for reciprocal administrative assistance in the enforcement of tax liabilities”.

### **Determination and factors underlying recommendations**

<b>Phase 1 Determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
Five of Ghana’s nine agreements which are in force providing for the exchange of information for tax purposes are in line with the international standards.	Ghana should renegotiate relevant DTAs, including where appropriate through inclusion of wording akin to paragraphs 26(4) and (5) of the <i>OECD Model Taxation Convention</i> , in order for them to be in line with the international standard.

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

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

182. Ultimately, the international standards require 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.

183. Five of Ghana's agreements which are in force appear to provide for effective exchange of information in tax matters (France, Germany, Italy, South Africa, and United Kingdom). These agreements are with counterparties which represent the following:

- 5 of its 13 primary trading partners (not Brazil, China, Nigeria, Togo and the United States; and its agreements with Belgium, Netherlands and Switzerland are not to the standard);
- 5 of the 92 Global Forum member jurisdictions;
- 4 of the 33 OECD member economies;
- 5 of the 19 non-EU G20 members;
- 4 counterparties in Europe, 1 in Africa.

184. There is no indication that Ghana has not entered into an agreement with a jurisdiction when requested to do so. Ghana currently has three DTC negotiations in various stages of progress.

185. Ghana's network of international agreements for the exchange of tax information is small and does not cover all of the significant economies with whom Ghana has sizeable business, such as Nigeria and Togo, the United States, Brazil and China. Ghana's treaties with Belgium, the Netherlands and Switzerland are not taken into account in this regard as the agreements are not to the standard (see section C.1 of this report). Nor is its agreement with Serbia and Montenegro, which is not in force.

186. Moreover, given Ghana's aim of establishing an international finance centre (the Ghana IFSC), effective exchange of information should be available for all jurisdictions from which investment flows originate and to which capital is destined to be invested.

### Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Ghana has only five agreements in force which appear to provide for effective exchange of information.	Ghana should bring its existing agreements that do not meet the standard up to the standard and enter into agreements with all relevant exchange of information partners. Ghana should also be prepared to enter into new arrangements that provide for effective exchange of information.

### 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)*

187. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, countries with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

188. All exchange of information Articles in Ghana's treaties contain confidentiality provisions modeled on Article 26(2) of the *OECD Model Tax Convention*.

189. Ghana's domestic legislation also contains relevant confidentiality provisions. Importantly, the *Internal Revenue Act* s.127(1) provides that tax officials are obliged to regard and deal with all documents and information which may come to their possession or knowledge in connection with the performance of their official functions as secret and "shall not disclose any information or document except in accordance with the provisions of the *Internal*

*Revenue Act* or under an order of a superior court”. Section 127(2) provides for a limited numbers of exceptions to this rule, including the disclosure to the competent authority of the government of another country with which Ghana has entered into an agreement for the avoidance of double taxation or for the exchange of information<sup>19</sup>.

190. The *Internal Revenue Act* s.127(3) further provides that “A person receiving documents and information under subsection (1) or (2) shall keep them secret under the provisions of this section, except to the minimum extent necessary to achieve the purpose for which the disclosure is necessary”. Failure to maintain the confidentiality of tax information is an offence and subject on summary conviction to a fine, or to imprisonment, or to both (s.152).

### ***All other information exchanged (ToR C.3.2)***

191. The confidentiality provisions in Ghana’s exchange of information agreements and domestic law do not draw a distinction between information received in response to requests or information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

#### **Determination and factors underlying recommendations**

Phase 1 Determination
<b>The element is in place.</b>

19. Disclosure is also authorised to: (a) the Minister responsible for Finance or any other person where the disclosure is necessary for the purposes of this Act or any other fiscal law; (b) a person in the service of the Government in a revenue or statistical department where the disclosure is necessary for the performance of official duties; (c) the Auditor-General or a person authorised by the Auditor-General where the disclosure is necessary for the performance of official duties (*Internal Revenue Act*, s.127(2)).

#### 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)*

192. Each of Ghana's exchange of information agreements ensures that the parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of professional privilege or information the disclosure of which would be contrary to public policy.

##### **Determination and factors underlying recommendations**

###### **Phase 1 Determination**

**The element is in place.**

#### 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)*

193. 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.

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

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

195. Ghana's competent authority under its DTCs is the Commissioner of the IRS. A review of Ghana's organisational process and resources will be conducted in the context of its Phase 2 review.

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

196. There were no aspects of Ghana's laws that appear to impose restrictive conditions on exchange of information.

**Determination and factors underlying recommendations**

<b>Phase 1 Determination</b>
<b>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.</b>

## Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. ( <i>ToR A.1</i> )		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	Nominees are not required to maintain ownership and identity information in respect of all persons for whom they act as legal owners.	An obligation should be established for all nominees to maintain relevant ownership information where they act as the legal owners on behalf of any other person.
	Companies incorporated outside of Ghana but having their central management and control in Ghana are not required to provide information identifying their owners as a part of registration requirements and external companies are not required to compulsorily keep a share register in Ghana. Therefore, the availability of information that identifies the owners of such companies will generally depend on the law of the jurisdiction in which the company is incorporated and so may not be available in all cases.	In such cases, Ghana should ensure that ownership and identity information should be available.
	There is no specific requirement that information concerning the settlor, trustees and beneficiaries of trusts be maintained.	An obligation should be established in Ghana to maintain information on the settlors, trustees and beneficiaries of their trusts.

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>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	Although an obligation exists for persons liable to tax in Ghana to maintain accounting records, there is no express legal requirement to maintain underlying documentation (e.g. invoices, contracts, etc.).	An express legal obligation should be introduced for all relevant entities to retain underlying documentation.
Banking information should be available for all account-holders. <i>(ToR A.3)</i>		
<b>The element is in place.</b>		
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>		
<b>The element is in place.</b>	A court order must be obtained in order for Ghana's tax authorities to access bank information for exchange purposes.	Ghana's should ensure that this procedure does not unduly delay or prevent effective exchange of information.
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>		
<b>The element is in place</b>		
Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	Five of Ghana's nine agreements which are in force providing for the exchange of information for tax purposes are in line with the international standards.	Ghana should renegotiate relevant DTAs, including where appropriate through inclusion of wording akin to paragraphs 26(4) and (5) of the OECD <i>Model Taxation Convention</i> , in order for them to be in line with the international standard.

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	Ghana has only five agreements in force which appear to provide for effective exchange of information.	Ghana should bring its existing agreements that do not meet the standard up to the standard and enter into agreements with all relevant exchange of information partners. Ghana should also be prepared to enter into new arrangements that provide for effective exchange of information.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3)</i>		
<b>The element is in place.</b>		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4)</i>		
<b>The element is in place.</b>		
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i>		
<b>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.</b>		



## Annex 1: Jurisdiction's Response to the Review Report\*

In November 2010, the Government Statistician revised Ghana's GDP from Gh¢ 24.1 billion to Gh¢ 44.8 billion. A population census was conducted in October 2010 and put the current population at 24.3 million. The per capita GDP based on 24.3 populations is Gh¢ 1,843.

### Trust Law

Government of Ghana has no current legislation specifically on Trust Law and has initiated a process of putting together a legislation to deal with all matters relating to trusts, foundations and charities in Ghana. In the absence of existing legislation, the current practice is for charities to voluntarily register as companies limited by Guarantee with the Registrar General's Department under Act 179 (registration of Associations and Groups). Smaller groups also register with the Ministry responsible for Social Welfare.

#### International Financial Services Centre

Ghana amended its Banking Act in 2007 to allow for off-shore banking. However, the Bill to establish the International Financial Services Centre has still not been passed into law even though it has been laid in Parliament. Barclays Bank was the only bank issued with the license to operate off-shore banking. However Barclays Bank has since February 2011 surrendered the license to the Bank of Ghana.

The Anti-Money Laundering Act 2008(Act 749) was also passed to safeguard Ghana's reputation on the international scene.

The Regulations to the Anti-Money Laundering Act, Anti-Money Laundering Regulation (L.I 1987) was gazetted on the 4th February, 2011 to provide guidelines to the implementation of the Act.

The provisions in the Regulations answer some of the concerns raised in the Peer Review's report.

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

The following provisions should be of particular interest to the Peer Review.

1. Regulation 2 deals with internal rules related to the establishment and verification of identity. It provides for the necessary processes and working methods which will cause particulars related to the identities of parties to a business relationship or single transaction to be obtained on each occasion when the business relationship is established or a single transaction is concluded with the institution.
2. Regulation 3 provides for the necessary systems, processes and working methods to ensure that relevant staff members of the accountable institution obtain the information of which record shall be kept on each occasion when a business relationship is established or a transaction is concluded with the accountable institution.
3. Regulation 6 ensures that the anti-money laundering reporting officer of the accountable institution has access to other information that may be of assistance to the anti-money laundering officer in the consideration of a suspicious or unusual transaction report.
4. Regulation 7 deals with information to identify proceeds from unlawful activity. It states that an accountable institution shall obtain information from or in respect of;
  - (a) a client who establishes a business relationship or concludes a single transaction, or
  - (b) a prospective client who seeks to establish a business relationship or conclude a single transaction.
5. Regulation 16 deals with the verification of identity of a beneficial owner. It demands that an accountable institution shall:
  - (a) identify a beneficial owner, and
  - (b) take reasonable measures to verify the identity of a beneficial owner by obtaining from the beneficial owner, that beneficial owner's: full name, date of birth, current permanent residential address, nature of business, National Identification number, valid passport number, spouse's name, address of spouse; and relationship between the beneficial owner and client.
6. Regulation 17 deals with information related to foreign nationals. It stipulates that an accountable institution shall obtain from a prospective client who is a foreign national and not resident in the country that prospective client's: full name, date of birth, nationality, passport number, postal address, residential address, and overseas address.

7. Regulation 18 deals with verification of information related to foreign nationals. It states that accountable institutions shall verify the identity of their prospective clients by requesting a passport or identity document of the prospective client as evidence of name.

## Double Taxation Conventions

We provide below, the full list and update on Double Taxation Conventions finalized and others still under negotiations.

	<b>Jurisdiction</b>	<b>Type of Eol Agreement</b>	<b>Date Signed</b>	<b>Status</b>
1	Belgium	DTC	12 Oct.2008	Ratified
2	Czech	DTC	20 June 2005	
3	Denmark	DTC	22 Dec 1954	
4	Emirates	DTC		
5	Ethiopia	DTC		
6	France	DTC	5 April 1993	Ratified
7	Germany	DTC	12 July 2004	Ratified
8	Iran	DTC		
9	Italy	DTC	19 Feb 2004	
10	Korea	DTC		
11	Malaysia	DTC		
12	Mauritius	DTC		
13	Netherlands	DTC	10 March 2008	Ratified
14	Qatar	DTC	24 April 2008	
15	Saudi Arabia	DTC		
16	Serbia	DTC	25 April 2005	Ratified
17	Sweden	DTC		
18	Switzerland	DTC	23 June 2008	
19	Syria	DTC		
20	Thailand	DTC		
21	United Kingdom	DTC	20 June 1993	Ratified

## Annex 2: List of All Exchange-of-Information Mechanisms in Force

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
1	Belgium	Double Taxation Convention (DTC)	22-Jun-05	17-Oct-08
2	France	DTC	05-Apr-93	01-Apr-97
3	Germany	DTC	12-Aug-04	14-Dec-07
4	Italy	DTC	19-Feb-04	05-Jul-06
5	Netherlands	DTC	10-Mar-08	12-Nov-08
6	Serbia and Montenegro	DTC	25-Apr-00	Not in Force
7	South Africa	DTC	02-Nov-04	23-Apr-07
8	Switzerland	DTC	23-Jul-08	30-Dec-09
9	United Kingdom	DTC	20-Jan-93	10-Aug-94

## **Annex 3: List of all Laws, Regulations and Other Relevant Material**

### ***Commercial Laws***

*Companies Act*

Incorporated Private Partnerships Act

Securities Industry Act

Fines *Penalty Units Act*

Investment Promotion Centre Act

Free Zones Act

### ***Taxation Laws***

*Internal Revenue Act*

### ***Banking Laws***

*Banking Act*

Non-Bank Financial Institutions Act

### ***Anti-Money Laundering***

*Anti-Money Laundering Act*

## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

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

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# Global Forum on Transparency and Exchange of Information for Tax Purposes

## PEER REVIEWS, PHASE 1: GHANA

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

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

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

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

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

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 visit [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency).

Please cite this publication as:

OECD (2011), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Ghana 2011: Phase 1: Legal and Regulatory Framework*, Global Forum on Transparency and Exchange of Information for Tax Purposes: Peer Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264108868-en>

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